

## FUTURE COMBAT SYSTEMS (FCS) PURCHASE ORDER TERMS AND CONDITIONS

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**THE FOLLOWING FCS RELATED TERMS AND CONDITIONS ARE IN ADDITION TO STANDARD GENERAL DYNAMICS LAND SYSTEMS TERMS AND CONDITIONS 84-005-0807**  
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ALL QUESTIONS RELATED TO THE TERMS AND CONDITIONS ARE TO BE ADDRESSED TO THE PROCUREMENT AGENT LISTED AT THE BOTTOM OF THE RFI/RFP/RFQ OR PURCHASE ORDER.

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### I.1. FAR, DFARS, OTHER LSI AND PRIME CONTRACT FLOWDOWN CLAUSES

The Lead System Integrator (LSI) (aka Boeing) and U.S. Government clauses applicable to the Future Combat Systems (FCS) Program are identified below:

<u>Clause</u>	<u>Title</u>	<u>Date</u>
2003	Reporting of Discrepancies in Buyer Drawings	10/15/02
2006* <b>M</b>	Right to Use Technical Information	10/15/02
2008	Specification Responsibility	10/15/02
2011	Surveillance and Written Technical Direction	10/15/02
3000	Dangerous Goods and Hazardous Material	10/15/02
3002	Hazardous Materials – Material Safety Data Sheets	10/15/02
3003	Seller Compliance with Occupational Safety & Health Act of 1970	10/15/02
3004	Polychlorinated Biphenyls	10/15/02
3006 <b>M</b>	Audit Rights	10/15/02
3009	Government – Furnished Property (GFP)	10/15/02
3010*	Use of Government Production and Research Property (Industry Facilities, Special Tooling, and Special Test Equipment)	10/15/02
3012	Government Property Control	10/15/02
3027	Rent-Free, Noninterference Use of Government Facilities	10/15/02
3042	Buyer –Furnished Property	10/15/02
3049	Prime Contract Flowdown Provisions	10/15/02
3050 <b>\$</b>	Cost Accounting Standards	10/15/02
CCR* <b>M</b> <b>\$</b>	Customer Contract Requirements (CCR) FAR Prime Contract W56HZV-05-C-0724 FCS SDD	12/20/06

NOTES:           \* These Clauses are modified as in Section I.2 herein.  
**M**Mandatory Clauses to be Flowed Down to Seller’s Suppliers  
**\$** Dollar Threshold Clause(s)

The LSI contract clauses can be accessed on the Internet via the following pathway:  
Enter: "<http://www.boeing.com/companyoffices/doingbiz/scccommon/index.html>"  
Select: "terms and conditions", then the applicable "Section" to view the clause

MGV-ENV-003, FCS MGV Environmental Design Guide, Rev 3 (See Section J)	20 Apr05
SMALL BUSINESS SUBCONTRACTING PLAN	See I.3.1
CERTIFICATION OF FINAL INDIRECT COSTS	See I.3.2
SPECIAL TERMINATION LIABILITY COSTS	See I.3.3
FAR 52.216-7 Allowable Cost and Payment, if this is a Cost type contract	
FAR 52.216-8 Fixed Fee, if this is a Cost-Plus-Fixed Fee contract	
FAR 52.216-10 Incentive Fee, if this is a Cost-Plus-Incentive Fee contract, with Paragraph (e) of this clause being set forth elsewhere in this contract.	
FAR 52.232-20* Limitation of Cost	See I.2.4
FAR 52.232-22* Limitation of Funds	See I.2.5
FAR 52.245-2 Government Property (Fixed-Price Contracts)	
FAR 52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)	See I.2.3. 1
FAR 52.249-2* Termination (Cost-Reimbursement)	See I.2.6
FAR 52.249-6* Termination for Convenience of the Government (Fixed-Price)	See I.2.7

NOTES: \* These Clauses are modified in Section I.2 herein.

To review any of the FAR or DFARS clauses listed within this contract, visit one of the following websites:

- **FAR(52.XXX):** <http://www.arnet.gov/far/> or <http://farsite.hill.mill/vffara.htm>
- **DFAR(252.XXX):** <http://www.acq.osd.mil/dp/dars/dfars/tocword.htm> or <http://farsite.hill.mill/vffara.htm>
- **15 CFR 700L:** [http://www.access.gpo.gov/nara/cfr/waisidx\\_01/15cfrv2\\_01.html#700](http://www.access.gpo.gov/nara/cfr/waisidx_01/15cfrv2_01.html#700)

In the event of a conflict between these FAR provisions and the General Provision, the FAR provisions shall control. The FAR and DFAR clauses set forth within this contract are in effect as of the date of the prime contract, unless otherwise noted, and are incorporated herein by reference. In all clauses listed herein, unless otherwise noted, the term "Contractor" means Seller, "Government" and "Contracting Officer" mean Buyer and "Subcontractor, shall mean "Seller's Subcontractor".

Any provision which permits the Government Contracting Officer or their authorized Government representative to inspect the books and records of the subcontractor shall retain their original meaning, whether or not appropriately indicated.

I.2. **REVISED PROVISIONS**

The following revised provisions apply to this contract:

I.2.1. **Clause 2006 – Right to Use Technical Information**

Seller hereby grants and agrees to grant to Buyer the right to reproduce and disclose the specifications, records, drawings, data, and any other technical information to be delivered by Seller to Buyer under this contract only for the purpose of the FCS Program, subject to the rights established by Seller pursuant to Customer Contract Requirements paragraph 5.F. (See Section I.2.3 below), FAR clause 52.227-11 or 52.227-12 (Patent Rights clauses) and any Proprietary Data Agreement executed the Buyer and Seller, whichever is applicable. The substance of this clause, including this sentence, will be included in all lower-tier subcontracts hereunder. This clause will not diminish any rights granted to Buyer under any other provisions of this subcontract.

I.2.2. **Clause 3010 – Use of Government Production and Research Property (Industry Facilities, Special Tooling, and Special Test Equipment**

Pursuant to the concurrence contained in the Seller's Contracting Officer's Letter, Seller is hereby authorized the use of the industrial facilities, special tooling and/or special test equipment now in its possession on a rent free non-interference basis, subject to the limitations, if any, specified in said letter.

I.2.3. **Customer Contract Requirements (CCR)--FAR Prime Contract W56HZV-05-R-0705  
FUTURE COMBAT SYSTEMS (FCS) SYSTEM DEVELOPMENT AND DEMONSTRATION (SDD)**

1. 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 (JUL 1995). This clause applies only if this Subcontract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 1995). Buyer may withhold 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 Subcontract exceeds \$100,000.

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997). This clause applies to this Subcontract if the Seller, its employees, officers, directors or agents participated personally and substantially in any part of the preparation of a proposal for this Subcontract. 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 Subcontract 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 from sums owed Seller the amount of the reduction.

52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991). By signing and returning its solicitation response, Seller is executing the certification included in this clause. The certification required by this clause applies only if this Subcontract exceeds \$100,000.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2005). This clause applies only if this Subcontract 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 GDLS and Boeing) directly to the PCO for the prime contract. GDLS will obtain from Boeing the identify of the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

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

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

52.211-15 Defense Priority and Allocation Requirements (SEP 1990). This clause is applicable if a priority rating is noted in this Subcontract.

52.215-2 Audit and Records - Negotiation (JUN 1999). This clause applies only if this Subcontract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types: (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this Subcontract exceeds \$550,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert "of this Subcontract" after "price or cost." 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 Cost or Pricing Data (OCT 1997). This clause applies only if this Subcontract exceeds \$550,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause (15.406-2 -- Certificate of Current Cost or Pricing Data) shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to the purchaser or the purchaser's representative".

52.215-14 Integrity of Unit Prices (excluding subparagraph (b)) (OCT 1997). This clause applies except for contracts at or below \$100,000; 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 2004). This Clause applies to this Subcontract if it meets the requirements of FAR 15.408(g).

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUN 2005). This Clause applies to this Subcontract if it meets the requirements of FAR 15.408(j).

52.215-19 Notification of Ownership Changes (OCT 1997). This Clause applies to this Subcontract if it meets the requirements of FAR 15.408(k).

52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997), Alternates I, II, and III (OCT 1997). This clause applies only if this Subcontract exceeds the threshold set forth in FAR 15.403-4. The term "Contracting Officer" shall mean Buyer. Said proprietary information will be provided in accordance with Clause 3006 (Audit Rights).

52.219-8 Utilization of Small Business Concerns (MAY 2004).

52.219-9 Small Business Subcontracting Plan (JUN 2005). In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this Subcontract exceeds \$500,000 and Seller is not a small business concern. Also see I.3.1. SMALL BUSINESS SUCONTRACTING PLAN.

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

52.222-20 Walsh-Healey Public Contracts Act (DEC 1996). This clause applies only if this Subcontract exceeds \$10,000.

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

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this Subcontract exceeds \$25,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this Subcontract exceeds \$ 10,000.

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 Subcontract exceeds \$25,000.

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this Subcontract exceeds \$100,000.

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

52.223-7 Notice of Radioactive Materials (JAN 1997). This clause applies only if this Subcontract 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 Subcontract, 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 (MAR 2001).

52.225-13 Restrictions on Certain Foreign Purchases (MAR 2005).

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

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

52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984). This clause applies only if this Subcontract will involve access to classified information.

52.227-11 Patent Rights - Retention by the Contractor (Short Form) (JUN 1997). This clause only applies if this Subcontract is for experimental, developmental, or research work and Seller is a small business firm or nonprofit organization.

52.227-12 Patent Rights - Retention by the Contractor (Long Form) (JAN 1997). This clause only applies if this Subcontract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

52.229-10 State of New Mexico Gross Receipts and Compensating Tax (OCT 1988). This clause applies only if (1) this Subcontract is a cost-reimbursement contract; (2) this Subcontract directs or authorizes Seller to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the subcontractor, and (3) this Subcontract is for services to be performed in whole or in part in the State of New Mexico.

52.230-6 Administration of Cost Accounting Standards (APR 2005). Add "Buyer and the" before "Contracting Officer in paragraph (f). This provision applies if Clause 3050, 3051, or 3066 is included in Buyer's contract.

52.234-1 Industrial Resources Developed Under Defense Production Act Title III (DEC 1994).

52.242-15 Stop Work Order (AUG 1989). Notwithstanding the termination clause of this contract, FAR 52.242-15 Stop Work Order (AUG 1989) Alternate I (April 1984) is incorporated herein by this reference. "Contractor" means Seller. "Government" and "Contracting Officer" mean "Buyer", except in paragraph (c) where "Government" shall retain its original meaning. This clause is applicable to cost reimbursement orders.

52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items (DEC 2004)

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (MAY 2004). "Contractor" means Seller, and "Government" and "Contracting Officer" mean or include Buyer. Paragraph (g) is revised to read as follows: "(g) Risk of Loss. Seller, upon the delivery to it or acquisition by it of any Government property, assumes the risk of and shall be responsible for all loss thereof or damage thereto. When such property is no longer needed for the performance of this Subcontract, or at such other time as may be directed by the Buyer pursuant to paragraph (i) of this clause, Seller shall return such property to the Buyer or the Government, as applicable, in as good condition as when received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of work hereunder."

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

52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit (JUN 1997).

52.253-1 Computer Generated Forms (JAN 1991).

2. DoD Contracts. If this Subcontract is placed under a Department of Defense Contract, 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. Unless otherwise provided, the clauses are those in effect as of the date of this Subcontract.

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (excluding paragraph (g)) (DEC2004). This clause applies only if this Subcontract exceeds \$100,000 and does not apply to the purchase of commercial items or commercial components. "Contractor" and "contract" are not changed in paragraphs (a) and (b). In paragraph (e), "Government" shall mean Government or Buyer. In paragraph (f), "through the Buyer" is inserted after "Contracting Officer". Paragraph (g) is deleted and "Contracting Officer" shall mean Contracting Officer.

252.204-7000 Disclosure of Information (DEC 1991).

252.211-7003 Item Identification and Valuation (JUN 2005). (d) Change reference to DD250 to DD1149.

252.211-7006 Radio Frequency Identification (NOV 2005)

252.215-7000 Pricing Adjustments (DEC 1991). This clause applies only if this Subcontract exceeds \$550,000.

252.223-7002 Safety Precautions for Ammunition and Explosives (MAY 1994). This clause applies only if this Subcontract 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 Subcontract. The term "Contracting Officer" means Buyer.

252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (SEP 1999).

252.225-7001 Buy American Act and Balance of Payments Program (JUN 2005). The term 'end product', as defined in paragraph (a)(3), shall mean the deliverable line items set forth in this Subcontract."

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

252.225-7004 Reporting of Contract Performance Outside the United States (JUN 2005). So that Buyer is able to comply with the requirements of this clause, Seller notify Buyer if it will perform any part of this Subcontract outside the United States and Canada that (1) exceeds \$500,000 in value and (2) could be performed inside the United States of Canada.

252.225-7012 Preference for Certain Domestic Commodities (JUN 2004).

252.225-7013 Duty-Free Entry (JUN 2005). 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.

ACO	
Activity Address	<u>DCMC Boeing</u>
Activity Address Number	<u></u>
Prime Contractor	<u>The Boeing Company</u>
Prime Contractor's Address	<u></u>
Cage Code	<u></u>
Prime Contract Number	<u></u>
Prime Contract Dollar Value	<u>\$</u>

252.225-7014 Preference for Domestic Specialty Metals (JUN 2005), Alternate I (APR 2003).

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (JUN 2005).

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (JUN 2005). This clause does not apply to the purchase of commercial items other than ball or roller bearings or to items which contain no ball or roller bearings.

252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (APR 2003). "Contracting Officer" means Buyer. This clause applies only if the product furnished under this Subcontract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based carbon fibers or PAN-based graphite fibers).

252.225-7025 Restriction on Acquisition of Forgings (JUN 2005). This clause applies only if this Subcontract is for goods that contain restricted forging items per paragraphs (a) and (b) of the referenced clause.

252.225-7032 Waiver of United Kingdom Levies – Evaluation of Offers (APR 2003). This clause applies if this Subcontract is over \$1,000,000 and is with a United Kingdom firm.

252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States (JUN 2005). This clause applies only if this Subcontract 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.

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises – DoD Contracts (SEP 2004). This clause applies if this Subcontract exceeds \$500,000 and does not apply to the acquisition of commercial items/services as defined in FAR 2.101.

252.227-7013 Rights in Technical Data – Noncommercial Items (NOV 1995)

252.227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995)

252.227-7019 Validation of Asserted Restrictions – Computer Software (JUN 1995)

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

252.227-7030 Technical Data – Withholding of Payment (MAR 2000). In this clause, “Government” and “Contracting Officer” shall mean Buyer, and “ten percent (10%)” shall be deleted and “one percent (1%)” inserted in lieu thereof. This clause applies only if the delivery of technical data is required under this Subcontract.

252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999)

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

252.231-7000 Supplemental Cost Principles (DEC 1991)

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

252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (NOV 2005).

252.245-7001 Reports of Government Property (MAY 1994). Seller will provide information that the Buyer may require to complete Buyer's annual report. Replace the paragraph (3) date of October 31 with October 10, in order to meet report submittal dates up through Boeing and to the Government.

252.246-7001 Warranty of Data (DEC 1991). The warranty period in paragraph (b) is three years from the Government's acceptance of the final items of data under this Subcontract. “Government” and “Contracting Officer” shall mean Buyer.

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. If this Subcontract is at or below \$100,000, 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 Proposed Program Termination or Reduction (DEC 1996). This clause applies only if this contract is \$500,000 or more. Seller will comply with the notice and flowdown requirements of paragraph (d)(2) of the referenced clause.

252.251-7000 Ordering From Government Supply Sources (NOV 2004). This clause applies only if Seller is notified by Buyer that Seller is authorized to purchase from Government supply sources in the performance of this Subcontract.

3. If goods or services being procured under this Subcontract are commercial items, as defined in FAR Part 2.101, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR/DFARS clauses are inserted in lieu thereof:

52.219-8 Utilization of Small Business Concerns (MAY 2004). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), Seller and any lower tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001). This clause applies only if this Subcontract exceeds \$25,000.

52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this Subcontract exceeds \$10,000.

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this Subcontract exceeds \$100,000.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003). In paragraph (C)(2) "20" and "30" are changed to 10 and 20 respectively. This clause only applies if this Subcontract is (i) a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value (generally, the Contractor 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.

252.225-7014, Preference for Domestic Specialty Metals (APR 2003), Alternate I (APR 2003).

252.247-7023 Transportation of Supplies by Sea (MAY 2002). This clause applies only if this Subcontract exceeds \$100,000 and are of a type of supplies described in paragraph (b)(2) of this clause. In paragraph (c), "45 days" is changed to "60 days". In paragraph (g) "Government" means Buyer.

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.

4. Cost Accounting Standards

- (1) The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause 3050 is the version dated April 1998.

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

A. PROGRAM SECURITY AND PUBLIC RELEASE

(1) Program Security

“SELLER SHALL INCLUDE THE FOLLOWING IN ALL SUBTIER SUBCONTRACTS THAT SELLER EXECUTES FOR PERFORMANCE OF FCS WORK, REGARDLESS OF TIER:

-ATTACHMENT A (CONTROLLED UNCLASSIFIED INFORMATION)

For Subcontracts that a DD254 will be issued, the following two prime contract requirements will be flowed down:

-BLOCK 13 ITEM 11.J (OPERATION SECURITY (OPEC) REQUIREMENTS)

-BLOCK 13 ITEM 11.L (PROGRAM PROTECTION PLAN (PPP) REQUIREMENTS)

FLOWDOWN OF THE ABOVE SHALL BE MODIFIED AS APPROPRIATE TO IDENTIFY THE CONTRACTUAL PARTIES

(2) Public Release

- a. Except for FCS Program information previously approved for public release by the Government under the FCS Program, Seller shall not release any FCS Program information outside of (i) the United States Government, (ii) Buyer, (iii) Seller, (iv) Seller’s subcontractors performing FCS work, and (v) Associate Contractors, at any tier, and (vi) any other individual or entity that is contractually bound to protect FCS Program information from public release, regarding the work performed under this Subcontract without first obtaining approval for Public Release as identified in the DD254 and per this clause.
- b. An electronic copy of a public release request, completed with full text and graphics, must be provided to Buyer’s Authorized Procurement Agent at least twenty-eight (28) working days (includes 7 days for GDLS, 19 days for US Government and 2 days for LSI review) prior to the requested date for release of the FCS Program information. If all or part of the FCS Program information was developed by a third party, that third party’s written authorization of release must accompany the public release request. All such requests for public release approval will be sent to the PM UA for a review by technical and Security Office personnel, culminating in a determination by the Procuring Contracting Officer (PCO). The PCO will, after appropriate review, either authorize or reject the request to disseminate FCS Program information publicly. Note that authorization may be given contingent on specified changes being made to the material for which public release has been requested. Seller shall submit such public release requests through Buyer.
- c. Seller shall include subparagraphs (a.) and (b.) above, appropriately modified to identify the contractual parties, in all subcontracts that Seller executes for performance of FCS work, and shall require such inclusion in all subsequent subcontracts, regardless of tier.

**B. FOREIGN ACCESS TO TECHNOLOGY**

(1) Definitions

(A) "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 contract, any agency or instrumentality of a foreign government, and firms, institutions or business organizations that are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

(B) "Foreign Person" means any natural person who (i) is not a lawful permanent resident of the United States, or of its territories or possessions, as defined by 8 U.S.C. 1101(a)(20) or who (ii) is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).

(2) Export Compliance

(A) Seller shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Subcontract.

(B) Pursuant to ITAR Section 125.4(b)(1), Seller may disclose classified and unclassified export-controlled technical data to foreign persons when the following conditions apply: The Deputy Assistant Secretary of the Army (DASA) Defense Exports and Cooperation (DE&C) (DASA DE&C) provides written direction to Seller to disclose ITAR-controlled technical data to a Foreign Person. The PM, UA may request Seller to provide copies of the data/information that will be disclosed to the Foreign Person as part of the affirmation process with DASA DE&C. The term "PM, UA" refers to the Government's Program Manager, Unit of Action, and their designated staff.

(C) All technical data that is exported under ITAR Sections 125.4(b)(1) must be reviewed and approved by the US Army in accordance with approved disclosure guidelines for FCS.

(D) Before authorizing CUI (Controlled Unclassified Information) disclosures, the PM, UA Disclosure Authority shall ensure that the contract or agreement contains the requisite access, use, and distribution clauses required before disclosing CUI with another government, international organization, or foreign contractor (pursuant to SAAL-RP memo, 27 May 2000, Subject: Authority to Disclose Technical Controlled Unclassified Information (CUI)).

(3) Lower Tier Subcontracts

Seller shall include this article, suitably modified to identify the parties, in all subcontracts hereunder.

**C. SENSITIVE GOVERNMENT PROGRAM INFORMATION**

- (1) In the course of contract performance, the Government or Buyer may furnish Seller information (written, verbal or otherwise) developed outside of the FCS program, regarding Army programs and initiatives that is often sensitive to past, present, and future procurements within the Government (hereafter "Sensitive Government Program Information"). If the Government or Buyer initially makes a disclosure of Sensitive Government Program Information to Seller in non-written form, e.g., verbally, the information disclosed shall be identified as being Sensitive Government Program Information and confirmed as such, in

writing by the Government or Buyer within 30 days from such disclosure. Subject to the foregoing, Sensitive Government Program Information will be marked as such before it is provided to Seller. Seller agrees to use reasonable efforts not to use or reproduce Sensitive Government Program Information for any purpose other than fulfilling the FCS Program (the "Purpose"), and to keep Sensitive Government Program Information in confidence, disclosing it only for the Purpose to (i) Seller's employees assigned to or supporting the FCS Program, (ii) the Government and its FCS Program support contractors, and (iii) other companies, organizations, or individuals that have agreed contractually to control Sensitive Government Program Information under the same conditions set forth herein. The obligations set forth above shall not apply: to information which is or becomes publicly available, or to information which is already in the possession of the recipient without restrictions, or to the extent prior written authorization of the Government is given, or after three years after receipt of the information. This provision does not supersede the terms and conditions of other contract clauses governing rights in data and software.

- (2) Seller shall utilize appropriate written procedures as required to carry out the obligations of this article.
- (3) Seller may disclose such Sensitive Government Program Information to subcontractors, regardless of tier, on the FCS program, provided that it includes this article, appropriately modified to identify the contractual parties, is included in each such subcontract.

**D. ACQUISITION STREAMLINING 252.211.7000**

- (1) The Government's acquisition streamlining objectives are to:
  - (a) Acquire systems that meet stated performance requirements;
  - (b) Avoid over-specification; and
  - (c) Ensure that cost-effective requirements are included in future acquisitions.
- (2) In the event Seller creates acquisition streamlining recommendation(s) relative to the FCS program goals per paragraph (1) above, submission of such recommendations shall be made electronically to Buyer's Authorized Procurement Representative, in contractor format, for forwarding to the Procuring Contracting Officer. Seller is encouraged to coordinate any recommendations, informally, with Buyer's Authorized Procurement Representative in advance of any submission. Advance coordination will preclude the expenditure of effort on streamlining recommendations that may not be accepted by the Government.
- (3) The Government has the right to accept, modify or reject Seller's recommendations.
- (4) Seller shall insert this article, including this paragraph (4), in all subcontracts over \$1 million, awarded in the performance of this Subcontract.

**E. DATA CORRECTION AND UPDATE**

Notwithstanding inspection and acceptance by Buyer of data or software delivered under this Subcontract, and notwithstanding any provision of this Subcontract concerning the conclusiveness of acceptance, Buyer shall have the right to require Seller to correct (or update) any such data or software, found deficient (or outdated), within three years of the delivery of such data or software. Such Correction shall be at Buyer's expense.

F. Data and Software Rights

(This article is applicable only if Seller will deliver Data or Software under this Subcontract.)

(1) In accordance with DFARS 252.227.7013(b)(4) and DFARS 252.227-7014(b)(4) in this Subcontract, Buyer and Seller agree to the following Specifically Negotiated License Agreement (Special License Rights) in all Technical Data (“Data” hereunder), Computer Software and Computer Software Documentation required to be delivered under this Subcontract.

(A) “Technical Data” (“Data” hereunder), “Computer Software” and “Computer Software Documentation,” as used in this article, shall have the definitions set forth in DFARS 252.227-7013 and 252.227-7014.

(B) The period during which the Government shall have Government Purpose Rights (GPR), as defined in DFARS 252.227-7013(b)(2)(ii) and DFARS 252.227-7014(b)(2)(ii), shall be as follows:

(1) With respect to Data, Computer Software and Computer Software Documentation deliverables required to be delivered under the Subcontract (“deliverables”), the Government shall have GPR for 20 years.

(2) With respect to day-to-day IPT products as defined in subparagraph (2)(J) below, the Government shall have GPR without expiration.

(C) The Government shall have unlimited rights in Data which are form, fit and function data as defined in DFARS 252.227-7013(a)(10).

(D) Validation of restrictive markings, on Data, Computer Software and Computer Software Documentation shall be accomplished in accordance with DFARS 252.227-7019 and 52.227-7037, as applicable.

(E) Markings for all Seller Data, Computer Software and Computer Software Documentation delivered under Seller’s predecessor Subcontract will remain valid. New Data, Computer Software or Computer Software Documentation delivered under this Subcontract, or revised versions of any Data, Computer Software or Computer Software Documentation previously delivered under Seller’s predecessor Subcontract, will comply with the standard marking requirements contained in DFARS 252.227-7013 and DFARS 252.227-7014. Notwithstanding the use of the markings from the DFARS clauses, the meanings and duration of the rights granted to the Government shall be governed by the specifically negotiated license rights set forth in Paragraph 5.F, “Data and Software Rights”, and not the DFARS clauses related to allocation of rights.

(2) (A) Limitations of the Government associated with limited-rights Data shall not apply to any Government Systems Engineering and Technical Assistance (SETA) contractors under contract to the Government for the purpose of providing systems engineering and technical assistance services and/or administrative support services; provided that, the parties to whom this Data is disclosed shall have a legitimate need-to-know, and are under contract subject to DFARS clause 252.227-7025 entitled, “Limitations on the Use or Disclosure of Government-Furnished Information marked with Restrictive Legends.” The owner of the limited rights data reserves the right to require the SETA contractors sign a non-disclosure agreement prior to providing any data directly to the SETA contractors.

(B) Seller agrees to retain and maintain in good condition until three years after completion or termination of Buyer’s prime Contract, all Data or Computer Software or Computer Software Documentation developed under this Subcontract necessary to achieve Practical application (as defined in the FAR Patent Rights Clause included herein) of deliverable items, components and processes. In the event of exercise of the

Government's March-in Rights as set forth under the FAR Patent Rights Clause included herein or paragraph (2)(C) of this article, Seller agrees, upon written request from the Government to deliver to the Government (or Buyer on behalf of the Government), Data, Computer Software, and Computer Software Documentation developed under this Subcontract necessary to achieve Practical application of deliverable items, components and processes within 60 calendar days from the date of the written request. The Buyer agrees to pay the costs of delivering such Data, and Computer Software, and Computer Software Documentation and agrees these delivery costs are not covered by payments to Seller under this Subcontract.

- (C) Seller agrees that, with respect to Data, Computer Software, and Computer Software Documentation developed under this Subcontract necessary to achieve Practical application of deliverable items, components and processes, TACOM has the right to require Buyer (and in turn Seller) to deliver all such Data, Computer Software, and Computer Software Documentation to TACOM (through Buyer if so requested on behalf of the Government) in accordance with its reasonable directions if TACOM determines that:
- (i) Such action is necessary because Buyer, Seller, or assignee has not taken effective steps within three years after completion or termination of Buyer's prime Contract, consistent with the intent of Buyer's prime Contract, to achieve Practical application of deliverable items, components and processes;
  - (ii) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Buyer, Seller, assignee, or their licensees within three years after completion or termination of Buyer's prime Contract; or
  - (iii) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Buyer, Seller, assignee, or licensees with three years after completion or termination of Buyer's prime Contract.
- (D) With respect to all Data, Computer Software, and Computer Software Documentation delivered under this Subcontract, the Government will, subject to paragraph (2)(F), receive Government Purpose Rights, or if paragraph (2)(E) applies, Unlimited Rights. In the event of the Government's exercise of its right under paragraph (2)(C) of this article, the Government shall, subject to paragraph (2)(F), receive Government Purpose Rights in all such Data, Computer Software, and Computer Software Documentation . With respect to all Data, Computer Software, and Computer Software Documentation previously delivered to the Government with Government Purpose Rights, the Government shall receive those same rights for the Data, Computer Software, and Computer Software Documentation .
- (E) The Government shall have Unlimited Rights in Data, Computer Software, and Computer Software Documentation that are:
- (i) Otherwise publicly available or have been released or disclosed by Buyer, Seller or a lower tier subcontractor, without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data, Computer Software, and Computer Software Documentation to another party or the sale or transfer of some or all of a business entity or its assets to another party;

- (ii) Data, Computer Software, and Computer Software Documentation in which the Government has obtained Unlimited Rights under another Government Agreement/contract or as a result of negotiations; or
  - (iii) Data, Computer Software, and Computer Software Documentation delivered to the Government, under this or any other Government Agreement/contract or subcontract thereunder, with --
    - (aa) Government Purpose Rights or Limited Rights and the restrictive condition(s) has/have expired; or
    - (bb) Government Purpose Rights and Buyer's, or a subcontractor's exclusive right to use such Data for commercial purpose has expired.
- (F) (This paragraph and paragraphs (G), (H), (I) and (J) apply only if this Subcontract incorporates an attachment/exhibit entitled "Data or Software to be Furnished with Restrictions.") Attachment/Exhibit, Data or Software to be Furnished with Restrictions, lists Data, Computer Software, and Computer Software Documentation of Seller, and its subcontractors, which will be furnished with rights which are more restrictive than Government Purpose Rights. The Parties agree and acknowledge that the form used to list Data, Computer Software or Computer Software Documentation does not include all information required by DFARS 252.227-7013 and 252.227-7014. Instead this list only includes those items to which the Government is granted Limited (data) or Restricted (software) or Special License (data/software) Rights (Special License Rights) other than those described herein. The failure of the parties to include data or software to which the Government has been granted Government Purpose Rights shall in no way increase the rights the Government may have in the data or software. This list is subject to appropriate Validation of Restrictive Markings clause of this Subcontract. Any lower tier subcontract which includes Data, Computer Software, and Computer Software Documentation to be included in Attachment/Exhibit, Data or Software to be Furnished with Restrictions, must be approved by the Government prior to Seller entering into the subcontract. The list may be amended, subject to approval of the Government, based upon new information or inadvertent omissions. The cognizant integrated Product Team (IPT) Leader and IPT Co-Leader must first approve any such requested amendment. No Data, Computer Software, and Computer Software Documentation shall be delivered under this Subcontract with rights which are more restrictive than Government Purpose Rights unless included in Attachment/Exhibit, Data or Software to be Furnished with Restrictions.
- (G) Except for Data subject to Unlimited Rights or Special License Rights, the Government shall have Limited Rights in Data required to be delivered under this Subcontract and listed in Attachment/Exhibit, Data or Software to be Furnished with Restrictions.
- (H) Except for Computer Software, and Computer Software Documentation subject to Unlimited Rights or Special License Rights, the Government shall have Restricted Rights in Computer Software required to be delivered under this Subcontract and are listed in Attachment/Exhibit, Data or Software to be Furnished with Restrictions.
- (I) The Government will receive a copyright license in any Data, Computer Software, and Computer Software Documentation item deliverables that are copyrighted. The license will permit the Government to copy, modify, and/or distribute the Data, Computer Software, and Computer Software Documentation item deliverables in any manner consistent with the restrictions in this Subcontract on the Government's use and

disclosure of the Data, Computer Software, and Computer Software Documentation in the deliverables.

- (J) Data, Computer Software, and Computer Software Documentation which are day-to-day IPT products (such as technical assessment results, analysis, distributed product descriptions, trade studies, and plans) that are first generated in the performance of this Subcontract and which are made available via the ACE, and which are not listed in Attachment/Exhibit, Data or Software to be Furnished with Restrictions, will be subject to Government Purpose Rights (GPR) unless greater restrictions are applicable thereto as specified in the appropriate "Validation of Restrictive Markings" clause of this Subcontract. In accordance with the foregoing, such day-to-day IPT products will be marked with the appropriate legend as set forth in DFARS 252.227-7013 or 252.227-7014. Day-to-day IPT products do not include Data, Computer Software or Computer Software Documentation which are developed by Seller or lower tier subcontractor that are marked as proprietary and are made available on the ACE to a FCS IPT only for the IPT's use in developing specifications and requirement for future subcontracts under the FCS program.
- (3) Except as otherwise specified elsewhere in this Subcontract, delivery of Computer Software, Computer Software Documentation or Data required by this Subcontract shall be by electronic means, unless the Statement of Work or specification for individual item(s) of computer Software, computer Software Documentation or Data specifies another means of delivery.
- (4) Buyer access, use, and/or acceptance of day-to-day IPT products, as defined herein during performance of this Subcontract, does not constitute waiver of Buyer's right to take delivery of the final Data, Computer Software and Computer Software documentation developed and required to be delivered under the Subcontract.
- (5) The rights in Data, computer Software and Computer Software and computer Software Documentation that were originally asserted under Seller's predecessor Subcontract are also asserted under this Subcontract.
- (6) Lower Tier Agreements

Seller shall include this article, suitably modified to identify the Parties, in all subcontracts regardless of tier, which require delivery of Data, Computer Software or computer Software Documentation to be provided to the Government in the performance of the prime Contract or this Subcontract. Seller will not, as part of the consideration for awarding the subcontract, obtain rights in the lower tier subcontractor's Data, Computer Software or computer Software Documentation.

#### G. EFFECT OF TERMINATION ON PATENT RIGHTS AND DATA AND SOFTWARE

In the event of a termination of this Subcontract, it is agreed that disposition of intellectual property developed under this Subcontract shall be in accordance with applicable provisions set forth in this Subcontract. Buyer and Seller will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination.

H. MANAGEMENT OF THE FCS PROGRAM

Seller is aware that Boeing, as the Lead Systems Integrator of the FCS Program, intends to use a team approach to management of various aspects of this Subcontract. The management team will be comprised of employees of Buyer, as well as Government and associate contract representatives. The Buyer and Seller agree that they will accept representatives of the Government and associate contractors at meetings, program reviews, test viewings, etc, in accordance with Buyer or Seller's security and badging requirements as applicable and any restriction imposed by this Subcontract, as though they were employees of Buyer. In order to make the most efficient use of the management-team members, representatives of the Government and/or associate contractors may attend meetings, program reviews, test viewings, etc, without an employee of Buyer being in attendance. Notwithstanding this team approach to management of various aspects of this subcontract, Seller is aware and agrees that representatives of the Government and associate contractors have no authority to direct the efforts of Seller.

**I.2.4 FAR 52.232-20 Limitation of Cost (Apr 1984)**

(Applicable if this contract is fully funded.) "Schedule means this contract, "Contractor" means Seller and "Government" and "Contracting Officer" mean Buyer. The word "exclusive" in the first sentence of paragraph (a) is revised to "inclusive" and paragraph (d)(1) is revised to read:

"(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of (i) the estimated cost and fee specified in the contract or, (ii) if this is a cost-sharing contract, the estimated cost to Buyer specified in the Contract."

**I.2.5 FAR 52.232-22 Limitation of Funds (Apr 1984)**

(Applicable if this contract is incrementally funded.) "Schedule means this contract, "Contractor" means Seller and "Government" and "Contracting Officer" mean Buyer. The word "exclusive" in the first sentence of paragraph (a) is revised to "inclusive" and paragraph (f)(1) is revised to read:

"(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of the total amount allotted by Buyer to this Contract, and"

**I.2.6 FAR 52.249-2 Termination for Convenience of the Government (Fixed-Price) (May 2004)**

(Applicable if this is a Fixed-Price contract) FAR 52.249-2 is incorporated herein by reference, except for the following changes: 1) "Government" and "Contracting Officer" mean Buyer, 2) ) subparagraph (d), change "15 days" and "45" days to "30" days and "90" days respectively, 3) subparagraph (e), the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place, and 4) the term "90" days is changed to "45" days.

**I.2.7 FAR 52.249-6 Termination (Cost Reimbursement) (May 2004)**

(Applicable if this is a Cost-Reimbursement contract) FAR 52.249-6 is incorporated herein by reference, except for the following changes: 1) "Government" and "Contracting Officer" mean Buyer. 2) subparagraph (e), change "15 days" and "45" days to "30" days and "90" days respectively, and 3) subparagraph (f), the phrase "1 year" is deleted each place it occurs and "six months" is substituted in its place.

I.3. **OTHER FCS PROGRAM PROVISIONS**

I.3.1. **SMALL BUSINESS SUBCONTRACTING PLAN:**

- (a) This clause does not apply to small business concerns
- (b) Seller shall comply with the requirements of FAR 52.219-9 set forth in the clause CCR, within paragraph I.2.3., If Seller does not have a Department of Defense approved comprehensive subcontracting plan, Seller's individual subcontracting plan for this contract shall include, at a minimum, the goals set forth below in paragraph (c).
- (c) The small business subcontracting goals for the FCS Program are set forth below. Seller shall endeavor to support these goals. Seller shall include these goals in all subcontracts with large business concerns that exceed \$500,000, and shall require such subcontractors to include these goals in all of their subcontracts with large business concerns that exceed \$500,000.

Small Business	17.5%
Small Disadvantaged Business	3.5%
Woman Owned Small Business	2.5%
Historically Underutilized Business Zone Small Business	1.5%
Veteran Owned Small Business	
Service Disabled Veteran Owned Small Business	0.2%

- (d) In addition to the small business reporting requirement set forth under paragraph (b) above, Seller shall also provide Buyer a summary of its subcontracted effort ("Commitment Dollars") semi-annually and at completion of this subcontract, using the Buyer-furnished reporting template entitled "FCS Lower Tier Partner Information Input Form". Seller's semi-annual reports shall be in accordance with the Buyer-furnished "FCS Small Business Report Schedule". Seller will report all Commitment Dollars from its lower tier large business subcontractors (second-tier) and their large business subcontractors (third-tier). NOTE: The above reporting template can be obtained by contacting the FCS Small Business Liaison Office at fcssupplierdiversity@boeing.com. Seller will report all Commitment dollars from its subcontracts with large business concerns that exceed \$500,000 (second-tier) and their subcontracts with large business concerns that exceed \$500,000 (third-tier).

Seller shall comply with the template instructions and definitions in performing its reporting requirements.

- (e) "Commitment Dollars" are defined as the funded portion of Seller's FCS subcontracts. If a subcontract is fully funded, then Seller shall report the total subcontract value. If a subcontract is incrementally funded, then Seller shall report only the funded portion. Example: If the subcontract value is \$1.2M, and the subcontract is incrementally funded for a total funded amount of \$500K, the Commitment Dollars to be reported would be \$500K.
- (f) No later than 30 days after award of this subcontract, Seller shall provide Buyer the name, phone number and e-mail address of Seller's responsible data focal. Seller's data focal shall be responsible for providing Small Business Reports.
- (g) Seller's reports shall include the small business Commitment Dollars of its large business subcontractors (second tier) and the Commitment Dollars of its large business subcontractors' large business subcontractors (third tier).

- (h) Seller shall incorporate the substance of this clause in all subcontracts with large business concerns that exceed \$500,000.

**I.3.2. CERTIFICATION OF FINAL INDIRECT COSTS.**

- a. For the purposes of this certificate, Seller will submit the standard FAR certificate of final indirect costs (see FAR 52.242-4) to the cognizant Government activity. If a Seller is not otherwise required to submit the standard FAR certificate for final indirect costs, then it shall submit the certificate below.
- b. Seller (as applicable) shall (1) certify, in the format below, any proposal to establish or modify final indirect cost rates; and (2) have the certificate signed by an individual of Seller's organization at a level no lower than a vice president or chief financial officer of Seller's business segment that submits the proposal.
- c. Failure to execute and submit the certification described may result in final indirect cost rates being unilaterally established by the Government Grants Officer or Government Administrative Agreements Officer. The Grants Officer may request a copy of Seller's Certificate of Final Indirect Costs from the cognizant Government agency assigned (e.g. DCAA, DCMS).

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief, all costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements, or in the case of a non-traditional defense contractor in accordance with GAAP, applicable to the contracts to which the final indirect cost rates apply.

Firm: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name of Certifying Official: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_

- d. Seller shall submit the above certificate to Buyer's authorized Procurement Agent at the time it establishes its final, annual indirect cost rates, except when Seller is submitting to the cognizant Government activity the standard FAR certificate of final indirect costs. If Seller is submitting the standard FAR certificate, Seller shall provide written notification to Buyer's authorized Procurement Agent of this occurrence.

**I.3.3. SPECIAL TERMINATION LIABILITY COSTS**

Notwithstanding any other references to termination, the following shall apply to special termination costs as defined below. This clause shall apply to Subcontracts which have a value of \$20 million or more.

a. "Special termination costs," as used in this clause, means only costs in the following categories:

(1) Severance pay

(A) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are not covered in this clause.

(B) Severance pay to be allowable must meet the general allowability criteria in paragraph (i) of this subsection, and, depending upon whether the severance is normal or abnormal, criteria in paragraph (ii) for normal severance pay or paragraph (iii) for abnormal severance pay also apply. In addition, paragraph (ii) of this subsection applies if the severance cost is for foreign nationals employed outside the United States.

(i) Severance pay is allowable only to the extent that, in each case, it is required by:

- (aa) Law;
- (bb) Employer-employee agreement;
- (cc) Established policy that constitutes, in effect, an implied agreement on Seller's part; or
- (dd) Circumstances of the particular employment

Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by Seller at another facility, subsidiary, affiliate, or parent company of Seller are not severance pay and are unallowable.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in Seller's plant, or if Seller provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed in Seller's plant.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to Buyer and Seller. Thus, accruals for this purpose are not allowable. However, Buyer recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(2) "Reasonable costs continuing after termination" – Despite all reasonable efforts by Seller, costs that cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of Seller to discontinue the costs shall be unallowable.

(3) "Settlement expenses" – Settlement expenses, including the following, are generally allowable:

(A) Accounting, legal, clerical, and similar costs reasonably necessary for:

- (i) The preparation and presentation, including supporting data, of settlement claims to Buyer; and
- (ii) The termination and settlement of subcontracts

(B) Reasonable costs for the storage, transportation, protection and disposition of property acquired or produced for this contract.

(C) Indirect costs related to salaries and wages incurred as settlement expenses in paragraphs (A) and (B); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs. If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(4) Costs in paragraphs, a (1), (2), and (3) of this clause to which subcontractors may be entitled in the event of termination.

- b. Notwithstanding the Limitation of Cost/Limitation of Funds article of this contract, Seller shall not include in its estimate of costs incurred or to be incurred any amount for special termination costs to which Seller may be entitled in the event this contract is terminated.
- c. Seller agrees to perform this contract in such a manner that Seller's claim for special termination costs will not exceed the amounts specified below:

<b>Army Fiscal Year*: (\$ in millions)</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Special Termination							

Army Fiscal Year is October 1 through September 30.

- d. Buyer shall have no obligation to pay Seller any amount for special termination costs in excess of these amounts. Periodic negotiations and adjustments of these amounts reserved for special termination costs will be accomplished as requested by Buyer.
- e. In the event of termination, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount of the costs payable by Buyer.
- f. This clause shall remain in full force and effect until this contract, excluding task orders, is fully funded.