

FUTURE COMBAT SYSTEMS (FCS) PURCHASE ORDER TERMS AND CONDITIONS

THE FOLLOWING FCS RELATED TERMS AND CONDITIONS ARE IN ADDITION TO STANDARD GENERAL DYNAMICS LAND SYSTEMS TERMS AND CONDITIONS 84-005-0807

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.

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
2005	Technical Direction (R&D)	10/15/02
2006	Right to Use Technical Information	10/15/02
2011	Surveillance and Written Technical Direction	10/15/02
3003	Seller Compliance with Occupational Safety & Health Act of 1970	10/15/02
3006	Audit Rights	10/15/02
3008	Buyer Audit Rights for Option Pricing of Follow-on Contracts	10/15/02
3009	Government – Furnished Property (GFP)	10/15/02
3010	Use of Government Production and Research Property (Industrial Facilities, Special Tooling, and Special Test Equipment)	10/15/02
3011	Limitation of Buyer's Obligation	10/15/02
3012	Government Property Control	10/15/02
3024	Special Tooling	10/15/02
3027	Rent-Free, Noninterference Use of Government Facilities	10/15/02
3028	Rent-Free Use of Government Facilities Not Authorized	10/15/02
3032	Special Test Equipment – Title	10/15/02
3042	Buyer –Furnished Property	10/15/02
3049	Prime Contract Flowdown Provisions	10/15/02
3050	Cost Accounting Standards	10/15/02
3051	Disclosure and Consistency of Cost Accounting Practices	10/15/02
CCR	Customer Contract Requirements Future Combat Systems Contract No. W56HZV-05-C-0724	07/24/07

NOTE:

The LSI contract clauses can be accessed on the Internet via the following pathway:

Enter: <http://www.boeing.com/companyoffices/doingbiz/sccommon/guide.htm>

Then select the applicable "Section" to view each of the clauses with the exception of Clause CCR 07/24/07. Clause CCR 07/24/07 full-text is included herein as Appendix A on page 6.

PRIME CONTRACT FEDERAL ACQUISITION REGULATION (FAR) FLOWDOWNS

FAR 52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997).
FAR 52.215-11	Price Reduction for Defective Cost or Pricing Data – Modifications (OCT 1997).
FAR 52.215-13	Subcontractor Cost or Pricing Data – Modifications (OCT 1997).
FAR 52.215-21	Requirement for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (OCT 1997).
FAR 52.230-6	Administration of Cost Accounting Standards (APR 2005).
FAR 52.246-3	Inspection of Supplies—Cost-Reimbursement.
FAR 52.246-5	Inspection of Services—Cost-Reimbursement.
FAR 52.247-34	F.o.b. – Destination

252.211-7003 Item Identification and Valuation (4/05) DFAR Clause 252.211-7003 is not applicable in the SDD Phase of the FCS Program, except to the extent that all subcontractors at all tiers must consider this requirement also in its planning for transition to production.

Incorporate by reference DFAR Clause 252.211-7003, Item Identification and Valuation (4/05) which applies to the extent indicated in Clause 5068 Section (f) (i) page 17 Design Source Considerations.

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

OTHER FCS PROGRAM PROVISIONS**Small Business Subcontracting Plan**

a) Seller shall comply with the requirements of FAR 52.219-9 set forth in Clause 5068, which incorporates the FAR prime contract flow-down requirements), and the lower tier reporting requirements set forth below.

b) Seller shall provide Buyer a summary of its subcontracted effort (“Commitment Dollars”) semi-annually and at completion of this contract, using the Buyer-furnished reporting template. Seller’s semi-annual reports shall be in accordance with the “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).

c) “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.

d) The following two documents/attachments shall be utilized for Small Business reporting will be provided by the cognizant buyer or subcontracts administrator as required:

(1) Buyer-furnished reporting template entitled "FCS Lower Tier Partner Information Input Form"; and

(2) "FCS Small Business Report Schedule"

Seller shall comply with the template instructions and definitions in performing its reporting requirements. Seller shall submit its semi-annual small business reports using the Boeing Partner Network (BPN), which is a secure file-transfer service accessible by way of a Buyer-provided identification number. Buyer shall provide this identification number and instructions on how to use BPN under separate cover.

e) No later than 30 days after award of this contract, 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 to the Buyer by way of BPN.

f) 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).

g) Seller shall incorporate this clause in all subcontracts under this contract.

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, DCMA).

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.

Ordering From Government Supply Sources

Seller is authorized to use Government Federal Supply Schedule Contracts in the performance of this Agreement. This authorization is issued in accordance with provisions of 48CRF subpart 51.1 "Contractor Use of Government Supply Sources" and can be used only to acquire goods and services required specifically for performance under this Agreement as set forth in Department of the Army Letter No. AMSTA-AQ-ABF.

For each order placed to a Federal Supply Schedule vendor (1) copy of the authorization letter must accompany the order, unless a copy was previously furnished to the vendor, and (2) the following statement must appear on the order:

"This order is placed under written authorization from the U. S. Army Tank-Automotive and Armaments Command (TACOM) dated 11 June 2003. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule Contract, the latter will govern."

Seller's ordering authorization may be unilaterally withdrawn, or suspended, in whole or in part, by providing written notice to the Seller.

Material Inspection And Receiving Report

DFARS 252.246-7000 (MAR 1996) "Material Inspection And Receiving Report," is incorporated by reference. "Contractor" means Seller and "Government" means Buyer. If Seller is shipping/performing supplies/services to Buyer, Seller shall provide a commercial packing slip and, as applicable, a Certificate of Conformance, test reports and other documentation evidencing completion. If Seller is shipping to Buyer by way of drop shipment to another Buyer subcontractor, Seller shall prepare and furnish with each shipment, a commercial packing slip with copy to Buyer and, as applicable, a Certificate of Conformance, test reports and other documentation evidencing completion.

Certificate Of Conformance

FAR 52.246-15 (APR 1984), "Certificate of Conformance," is incorporated by reference. "Contractor" means Seller and "Government" means Buyer. In shipments to Buyer, Seller shall use commercial shipping/packing lists. Seller is not required to provide a Certificate of Conformance for a contract deliverable that has been inspected and accepted at Seller's facility by Government or Buyer, unless otherwise specified as a requirement by the contract Statement of Work or Subcontract Data Requirements List. Seller is not required to submit a Certificate of Conformance under this clause for deliverable data items. "Inspected at Seller's facility" as used in this modified clause means final inspection and acceptance by Government or Buyer at Seller's facility.

REPORT OF PATENTS

(1) The prime contract incorporates FAR 52.227-12, "Patent Rights – Retention by the Contractor (Long Form)." A subcontract issued for experimental, developmental or research work to other than a small business concern is subject to the above patent rights clause, or if the subcontractor is issued to a small business concern, FAR 52.227-11 Patent Rights – Retention By the Contract (Short Form), applies to the subcontract.

(2) This Subcontract involves experimental, developmental or research work. Accordingly, Seller is required to submit periodic patent reports to the Government.

(3) Seller's reports of invention, including interim reports, final reports, utilization reports, and other reports required by the referenced Patent Rights clauses, as well as any correspondence with respect to such matter, should be directed to the Contracting Officer (Grants Officer) unless transmitted in response to correspondence or request from Buyer. Seller's inquiries or requests regarding disposition of rights, election of rights, or related matters should also be directed to the Contracting Officer. Buyer shall be notified in writing upon submittal to the Contracting Officer.

(4) The prime contract Contracting Officer's name/address is:
Mr. John M. Hopfner, Contracting Officer
U.S. Army Tank-automotive and Armaments Command (TACOM)
6501 E. Eleven Mile Road Building 231, Mailstop 321
Warren, MI 48397-5000

(5) The substance of this clause shall be included in any subcontract hereunder that incorporates clause FAR 52.227-11 or FAR 52.227-12.

**CUSTOMER CONTRACT REQUIREMENTS
FUTURE COMBAT SYSTEMS
CONTRACT NO. W56HZV-05-C-0724**

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. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract 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 contract exceeds \$100,000.

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

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$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 (SEP 2005). 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 contract exceeds \$100,000.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEP 2005). This clause applies only if this Contract exceeds \$100,000. Paragraph (c) (4) is modified to read as follows: "(c) (4) Seller will promptly submit any disclosure required (with written notice to Boeing) directly to the PCO for the prime contract. Boeing will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

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

52.211-5 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 contract.

52.215-2 Audit and Records - Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types: (ii) Seller was 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 contract exceeds \$650,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert “of this

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contract" 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." (If this contract incorporates a version of H900H (or any variant thereof, such as H900, H900A, H900V, etc.), dated 12/10/2006 or later, FAR 52.215-10 is deleted.)

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$650,000 and is not otherwise exempt. The certificate required by paragraph (b) of the referenced clause shall be modified as follows: delete "to the Contracting Officer or the Contracting Officer's representative" and substitute in lieu thereof "to The Boeing Company or The Boeing Company's representative (including data submitted, when applicable, to an authorized representative of the U.S. Government)."

52.215-14 Integrity of Unit Prices (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 contract 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 (JUL 2005). This Clause applies to this contract if it meets the requirements of FAR 15.408(j).

52.215-19 Notification of Ownership Changes (OCT 1997). This Clause applies to this contract 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). This clause applies only if this contract exceeds \$650,000. The term "Contracting Officer" shall mean Buyer.

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

52.219-9 Small Business Subcontracting Plan (JUL 2005). In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern.

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 contract 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, Veterans of the Vietnam Era, and Other Eligible Veterans. (SEP 2006). This clause applies only if this contract exceeds \$100,000.

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

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006). This clause applies only if this contract exceeds \$100,000.

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this contract 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 contract.

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

52.223-11 Ozone Depleting Substances (MAY 2001).

52.225-13 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 contract exceeds \$100,000.

52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984). This clause applies only if this contract 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 Contract 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 Contract 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 (APR 2003). This clause applies only if (1) this contract is a cost-reimbursement contract; (2) this contract 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 contract 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 " before "the CFAO" in paragraph (m). This provision applies only if Clause H001, H002 or H004 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) – Alternate I (April 1984) is incorporated by reference. "Contractor" means Seller. "Government" and "Contracting Officer" mean "Buyer". If this clause is inserted in a cost-reimbursement contract substitute in paragraph (a)(2) the words "the Termination Clause of this contract" for the words "the default, or Termination for Convenience of the Buyer of this contract". In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

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52.244-5 Competition in Subcontracting (DEC 1996)

52.244-6 Subcontracts for Commercial Items (FEB 2006)

52.245-2 Government Property (Fixed Price Contracts) (MAY 2004). This clause is not applicable if this contract incorporates Form GP4. "Government" shall mean Government throughout except the first time it appears in paragraph (f) when "Government" shall mean the Government or the Buyer.

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (MAY 2004). This clause applies only if this contract incorporates GP4. "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 contract, 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." GP4, article 22, Government-Owned Property, is hereby deleted.

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

52.253-1 Computer Generated Forms (JAN 1991).

2. DoD Contracts. The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller except as otherwise noted. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

252.203-7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract Related Felonies (excluding paragraph (g)) (DEC 2004). This clause applies only if this contract 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."

252.204-7000 Disclosure of Information (DEC 1991). Seller will submit requests for authorization to release through Buyer.

252.211-7003 Item Identification and Valuation (JUN 2005). Seller shall comply with the unique item identification requirements of this clause for those subassemblies, components, and parts specified elsewhere in this contract. Such identification and marking shall be a high-capacity 2D machine-readable code to comply with MIL-STD-130, Rev. M. The code may include, as space is available, linear bar code and human readable characters. Unless otherwise specified in Boeing product drawings or specifications, Seller may use either Construct #1 or Construct #2. Seller shall not be required to furnish item valuations as set forth in this clause.

252.211-7006 Radio Frequency Identification (FEB 2007).

252.215-7000 Pricing Adjustments (DEC 1991). This clause applies only if this contract exceeds \$650,000.

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

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Buyer in paragraphs (c)(3), (c)(4), (c)(5), and the second time it appears in (g)(1)(i). "Contracting Officer" means Contracting Officer and Buyer in paragraph (g)(4). "Contracting Officer" means Buyer in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and each time it appears in (d).

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

252.223-7007 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 contract."

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 contract outside the United States and Canada that (1) exceeds \$500,000 in value and (2) could be performed inside the United States or Canada.

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

252.225-7013 Duty-Free Entry (OCT 2006). 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:	JoAnne Hamilton Parks
ACO's Address:	DCMA Program Integration Office (PIO) Future Combat Systems Program (FCS) P.O. Box 516 St. Louis MO 63166-0516
Contract Administration Office: CAO Address:	DCMA St. Louis 325 McDonnell Blvd. M/C 381357 Hazelwood MO 63143
CAO Activity Address Number:	S2606A
Contractor:	The Boeing Company
Contractor's Address:	J.S. McDonnell Blvd. St. Louis MO 63166-0516
Contractor's Cage Code:	69236
Prime Contract Number:	W58RGZ-05-C-0724
Prime Contract Dollar Value:	\$4,432,151,666

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 (MAR 2006). This clause does not apply to the purchase of commercial items or to items that do not contain ball or roller bearings.

252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (JUN 2005). "Contracting Officer" means Buyer. This clause applies only if the product furnished under this contract

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 contract 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 contract is over \$1,000,000 and is with an United Kingdom firm.

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

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises – DoD Contracts (SEP 2004). This clause applies if this contract 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 95)

252.227-7016 Rights in Bid or Proposal Information (JUN 1995).

252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions (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 contract.

252.227-7030 Technical Data - Withholding of Payment (MAR 2000). In this clause, "Government" and "Contracting Officer" shall mean Buyer. This clause applies only if the delivery of technical data is required under this contract

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

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 contract requires the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

252.242-7002 Earned Value Management System (MAR 2005). This clause applies only if this contract exceeds \$5 million. "Government" and "Contracting Officer" shall mean Buyer. (1) If this contract exceeds \$50 million, Seller shall use an Earned Value Management System (EVMS) that conforms to the 32 Guidelines cited in ANSI-748 and has also been certified by DCMA. Seller will use a Cost Performance Report (CPR) to report its EVM information. (2) If this contract exceeds \$5 million and is less than \$50 million, Seller shall use a Cost Performance Report (No Criteria) to report its EVM information. Seller may use its DCMA certified

EVM System if Seller has an Advanced Agreement or equivalent in place. If Seller does not have a certified EVM System, a collaborative review of the implemented management processes will be performed to determine if they meet the intent of the Seven Principles defined under ANSI-748 and represent sound management practices. Depending on the tier level of the subcontract, Buyer will lead an evaluation team comprised of earned value practitioners from the Army, DCMA and the LSI (if the LSI is not the team lead). All activities associated with the planning, scheduling and conducting of the review will be performed in a collaborative manner with final approval of the development and implementation of the overall EVM approach residing with the Army. Seller may request a waiver from this EVM reporting requirement from the LSI. The LSI will approve waivers based on low cost, schedule and / or technical risk, after evaluation of recommendations from the FCS Joint Surveillance and Certification Working Group. (3) Seller and any lower tier subcontractor shall include this DFARS clause, as modified above, in all subcontracts, regardless of tier, that exceed \$5 million.

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.

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 contract. "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 contract 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 contract.

3. If goods or services being procured under this contract 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 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract 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 contract 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 contract 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 contract exceeds \$100,000 and are 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) (Applicable if this contract incorporates clause H001). The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause H001 is the version dated April 1998.
- (2) (Applicable if this contract incorporates clause H002). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause H002 is the version dated April 1998.
- (3) (Applicable if this contract incorporates clause H003). The version of FAR 52.230-4, Consistency in Cost Accounting Practices, incorporated by clause H003 is the version dated August 1992.
- (4) (Applicable if this contract incorporates clause H004). The version of FAR 52.230-5, Cost Accounting Standards – Educational Institution, incorporated by clause H004 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

(a) **Controlled Unclassified Information.** There are types of information, that are not classified, that require application of controls and protective measures for a variety of reasons. This information is known as controlled unclassified information (CUI). This clause 5.A covers the definition of CUI and provides basic information about the nature of this information and the procedures for identifying and controlling it. The types of information considered CUI for the Future Combat Systems (FCS) program are "For Official Use Only" information and information contained in technical documents.

(1) **Protection of CUI Information**

(a) **Storing/Handling.** During working hours, reasonable steps should be taken to minimize risk of access by unauthorized personnel. After working hours, CUI information shall be stored in locked desks, file cabinets, bookcases, locked rooms, or similar means. CUI may not be displayed in public places, such as airports, airplanes, restaurants, etc. Computers used for processing CUI do not need to be accredited for classified use. However, personally owned computers are not authorized for processing CUI.

(b) **Dissemination.** Printed documents and material containing CUI may be transmitted through mail channels or hand carried without formal courier orders. Transmission of CUI information by voice or facsimile (voice, fax, VTC, etc.) should be by approved secure communications systems whenever possible. Digital transmission will be by FCS Advanced Collaborative Environment (ACE) or Army Knowledge Online (AKO) collaborative suites. However when ACE and AKO are not feasible (e.g., foreign suppliers, non-FCS associated personnel, etc.). The following guidelines apply:

(1) Collaborative suites may be used by personnel not located on a government backbone (i.e., NIPRNET) without Government Future Combat Systems (Brigade Combat Team) (FCS (BCT)) Security Office approval provided all of the following requirements apply:

(a) Use only NIST approved cryptographic vendors and algorithms. The latest validation lists may be obtained at: <http://csrc.nist.gov/cryptval/> ,

(b) An internally hosted service which (does not use third-party collaborative suite service provider), and

(c) Notify Buyer's Authorized Procurement Agent in writing of the collaborative suite and revision (to facilitate obtaining the FCS Office of the Chief Information Officer and Government FCS (BCT) Security Office approval for utilizing an alternative collaborative suite and version).

(2) Personnel with access to NIPRNET require local Designated Approving Authority (DAA) approval prior to participation in any collaborative suite that requires installation of mobile code on the local NIPRNET connected system.

(3) CUI may be transmitted/disseminated, processed, and stored internally (within your own domain (e.g., Boeing to Boeing and SAIC to SAIC)) without encryption when distribution is to an authorized recipient and the receiving system is protected by either physical isolation or a password protection system. Discretionary access control measures must be used to preclude access to CUI data by authorized users but who are not authorized access to CUI information.

- (4) External transmission/Dissemination of CUI (i.e. email and file transfers) outside your own domain (e.g. Boeing to SAIC) and NOT to or from a DoD computer shall use applications utilizing NIST approved cryptographic vendors and algorithms. The latest validation lists may be obtained at: <http://csrc.nist.gov/cryptval/>.
 - (5) External transmission/dissemination of CUI (i.e. email and file transfers) to or from a DoD computer, to include contract deliverables, shall be encrypted by use of a DoD approved Public Key Infrastructure Certification. These are available from: <http://iase.disa.mil/pki/eca/iecavendors.html>.
 - (6) Internet shall be equated with "Public Access". Therefore, CUI must be reviewed and officially approved for public release before placing on the Internet.
- (c) Disposal. CUI documents shall be destroyed by shredding or tearing into pieces so as not to be easily reconstructed and discarding the pieces in regular trash containers. Removable media must be reformatted, shredded, or degaussed before being disposed of or transferred to another office.
- (b) For Official Use Only Information (FOUO)
- (1) Description. "For Official Use Only (FOUO)" is a Government designation that is applied to unclassified information that may be exempt from mandatory release to the public under the Freedom of Information Act (see also http://www.apd.army.mil/pdf/files/r25_55.pdf).
 - (2) Markings. Information that has been determined to qualify for FOUO status should be indicated by markings when included in documents and similar material. Markings should be applied at the time documents are drafted to promote proper protection of the information.
 - (3) Unclassified documents and material containing FOUO information shall be marked as follows:
 - (a) Documents will be marked "FOR OFFICIAL USE ONLY" at the bottom of the front cover (if there is one), the title page (if there is one), the first page, and the outside of the back cover (if there is one). Must be spelled out, no abbreviations.
 - (b) Pages of the document that contain FOUO information shall be marked "FOR OFFICIAL USE ONLY" at the bottom.
 - (c) Material other than paper documents (for example, slides, computer media, films, etc.) shall bear markings that alert the holder or viewer that the material contains FOUO information.
 - (d) FOUO documents must bear an expanded marking on the face of the document.

"This document contains information exempt from mandatory disclosure under the FOIA. Exemption(s) _____ apply."
 - (4) FOUO information contained in classified documents and material shall be marked as follows:

- (a) Overall markings on the document shall follow the proper classification marking rules. No special markings are required on the face of the document because it contains FOUO information.
- (b) Portions of the document shall be marked with their classification. If there are unclassified portions that contain FOUO information, they shall be marked with "FOUO" in parentheses at the beginning of the portion. Since FOUO information is, by definition, unclassified, the "FOUO" is an acceptable substitute for the normal "U."
- (5) Pages of the document that contain classified information shall be marked as required. Pages that contain FOUO information but no classified information will be marked "FOR OFFICIAL USE ONLY" at the top and bottom.
- (6) Documents that have no classified material attached, but do have FOUO attachments or appendices shall be marked with a statement similar to this one on the first page, title page or front cover: "FOR OFFICIAL USE ONLY ATTACHMENT (or APPENDIX)."
- (7) Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text.
- (8) Access to FOUO Information FOUO information may be disseminated within the DoD Components and between officials of the DoD Components and DoD contractors, consultants, and grantees as necessary in the conduct of official business. FOUO information may also be released to officials in other Departments and Agencies of the Executive and Judicial Branches in performance of a valid Government function.
- (c) Technical Data
- (1) Description. Any recorded information related to experimental, developmental or engineering works that can be used to define an engineering or manufacturing process or to design, procure, produce, support, maintain, operate, repair, or overhaul material. The data may be graphic or pictorial, such as drawings or photographs, text in specifications, or related performance or design documents, or computer printouts.
- (2) FCS Distribution Statement. Distribution statements are required on technical data. The originating office may make case-by-case exceptions to distribution limitations imposed by the statements (see <http://www.dtic.mil/whs/directives/corres/html/523024.htm> for more distribution statements).
- “Distribution Statement D: Distribution authorized to the DoD and U.S. DoD contractors only; [reason]; [date]. Other requests for this document shall be referred to Program Manager, Future Combat Systems (Brigade Combat Team), SFAE-GCS-UA-WS/515, 6501 East 11 Mile Road, Warren, MI 48397-5000.”
- (4) Export Requirement. Technical data approved for export shall display the appropriate export control caveat.
- (d) Program Protection Plan
- The Program protection Plan (PPP) requirement is effective immediately and is mandatory for use by all FCS program participants, field activities and matrix support personnel at all FCS locations. It shall cover all locations where Critical Program Information (CPI) is researched, manufactured,

stored, processed or tested. All PPPs shall be marked, at a minimum, FOR OFFICIAL USE ONLY (FOUO).

(e) Operation Security (OPSEC) Requirements

Between August and November, all U.S. FCS contractors will provide annual FCS OPSEC training for all FCS personnel. An OPSEC training status report is due no later than 15 December to the Government Brigade Combat Team Security Office. NOTE: Classified suppliers should review the DD 254 for supplemental OPSEC requirements.

- (f) Seller shall include subparagraphs (a), (b), (c), (d) and (e) 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.

(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 Contract without first obtaining approval for Public Release as identified in the DD254 and per this clause.
- (b) An electronic copy of Buyer's Request for Public Release, Form X32256, completed with full text and graphics, must be provided to Buyer's Authorized Procurement Agent at least twenty five (25) working days 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 Form X32256. 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 Contract.

(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 establish 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 (DEVIATION)

- (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 contract.

E. RESERVED

F. DATA AND SOFTWARE RIGHTS

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

In accordance with DFARS 252.227-7013(b)(4) and DFARS 252.227-7014(b)(4) in this Contract, Buyer and Seller agree to the following Specifically Negotiated License Agreement in all Technical Data ("Data" hereunder), Computer Software and Computer Software Documentation to be delivered under this contract.

- (1)
 - (A) "Data," "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:
 - (A) With respect to deliverable Data, Computer Software and Computer Software Documentation, the Government shall have GPR for 20 years.
 - (B) 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 252.227-7037, as applicable.
 - (E) Markings for all Seller Data, Computer Software and Computer Software Documentation delivered under Seller's predecessor contract will remain valid. New Data, Computer Software or Computer Software Documentation delivered under this Contract, or revised versions of any Data, Computer Software or Computer Software Documentation previously delivered under Seller's predecessor contract, will comply with the standard marking requirements contained in DFARS 252.227-7013 and DFARS 252.227-7014.
- (2)
- (A) Limitations 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."
 - (B) Seller agrees to retain and maintain in good condition until three years after completion or termination of Buyer's prime Agreement, all Data or Computer Software or Computer Software Documentation developed under this contract 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 subparagraph (2)(C) of this article, Seller agrees, upon written request from the Government or Buyer to deliver to the Government (or Buyer if so requested by Buyer on behalf of the Government), Data Computer Software and Computer Software Documentation developed under this Contract necessary to achieve Practical application of deliverable items, components and processes within 60 calendar days from the date of the written request. The Government agrees to pay the costs of delivering such Data and Software and agrees these delivery costs are not covered by payments to Seller under this contract.
 - (C) Seller agrees that, with respect to Data Computer Software and Computer Software Documentation developed under this contract 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) 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 within 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 contract, the Government will, subject to paragraph (2)(F), receive Government Purpose Rights, or if subparagraph (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 or 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 or Computer Software Documentation.
- (E) The Government shall have Unlimited Rights in Data, Computer Software or Computer Software Documentation that are:
 - (i) Otherwise publicly available or have been released or disclosed by Buyer, Seller or a 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 or 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 or 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 or 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 Seller's, or a subcontractor's, exclusive right to use such Data for commercial purposes has expired.
- (F) (This paragraph and paragraphs (G), (H), (I) and (J) apply only if this contract 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, Software or Software Documentation of Seller and its subcontractors, which Seller or its subcontractor asserts will be furnished with rights that are more restrictive than Government Purpose Rights. This list is subject to the appropriate Validation of Restrictive Markings clause of this contract. The list may be amended, subject to approval of the Government PCO, based upon new information or inadvertent omissions. When an amendment is required to the Attachment/Exhibit, the cognizant Integrated Product Team (IPT) Lead must first approve any such request. The

asserting party shall provide documentation supporting the assertions at the time the assertions are forwarded to the Government PCO. The Government PCO will approve or disapprove the assertions after receipt of all requested documentation. No Data, Computer Software or Computer Software Documentation shall be delivered or furnished as day-to-day IPT product under this contract 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 to the Government under Buyer's prime Contract (including any Data required to be delivered under this contract) and listed in Attachment/Exhibit, Data or Software to be Furnished with Restrictions.
 - (i) Pertaining to items, components, or processes developed exclusively at private expense and marked with the Limited Rights legend prescribed in this contract, or
 - (ii) Created exclusively at private expense in the performance of an Agreement/contract that does not require the development, manufacture, construction, or production of items, components, or processes.
 - (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 to the Government under Buyer's prime Contract (including any Computer Software and Computer Software Documentation required to be delivered under this contract) that were developed exclusively at private expense 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 or Computer Software Documentation item deliverables that are copyrighted. The license will permit the Government to copy, modify, and/or distribute the Data, Computer Software or Computer Software Documentation item deliverables in any manner consistent with the restrictions in this contract on the Government's use and disclosure of the Data, Computer Software or 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 Contract (or were first generated in the performance of Seller's predecessor contract) 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 contract. 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 a 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 requirements for future subcontracts under the FCS program.
- (3) Except as otherwise specified elsewhere in this contract, delivery of Computer Software, Computer Software Documentation or Data required by this Contract 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 contract, does not constitute waiver of Buyer's right to take delivery of the final Data, Computer Software and Computer Software Documentation developed under the contract.
- (5) The rights in Data, Computer Software and Computer Software Documentation that were originally asserted under Seller's predecessor contract are also asserted under this Contract.
- (6) For purposes of this Contract, terms such as "special rights" refer to specifically negotiated license rights.
- (7) 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 contract. 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 contract, it is agreed that disposition of intellectual property developed under this contract shall be in accordance with applicable provisions set forth in this contract. 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 Buyer, as the Lead Systems Integrator of the FCS Program, intends to use a team approach to management of various aspects of this contract. The management team will be comprised of employees of Buyer, as well as Government and associate contract representatives. Seller agrees that it will accept representatives of the Government and associate contractors at meetings, program reviews, test viewings, etc, 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 contract, Seller is aware and agrees that representatives of the Government and associate contractors have no authority to direct the efforts of Seller.