

| | | | | | | | |
|---|------------------------|---|---|---|--|-----------------------|-----------------------------|
| AWARD/CONTRACT | | 1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) | | RATING | | PAGE OF PAGES 1 42 | |
| 2. CONTRACT (Proc. Inst. Ident.) NO. HSBPI010C00026 | | | 3. EFFECTIVE DATE 05/27/2010 | | 4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 0020052095 | | |
| 5. ISSUED BY DHS - Customs & Border Protection Department of Homeland Security 1300 Pennsylvania Ave, NW NP 1310 Washington DC 20229 | | | 6. ADMINISTERED BY (If other than Item 5) CODE DHS - Customs & Border Protection Department of Homeland Security 1300 Pennsylvania Ave, NW NP 1310 Washington DC 20229 | | | | |
| 7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State & Zip Code) GENERAL ATOMICS AERONAUTICAL SYS 14200 KIRKHAM WAY POWAY CA 92064 | | | | 8. DELIVERY <input checked="" type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below) | | | |
| | | | | 9. DISCOUNT FOR PROMPT PAYMENT | | | |
| | | | | 10. SUBMIT INVOICES TO THE ADDRESS SHOWN IN: (4 copies unless otherwise specified) 4 | | ITEM - See Block 12. | |
| CODE 824684229 | | FACILITY CODE | | | | | |
| 11. SHIP TO/MARK FOR See Attached Delivery Schedule | | | 12. PAYMENT WILL BE MADE BY DHS - Customs & Border Protection National Finance Center PO Box 68908 Indianapolis IN 46268 | | | | |
| 13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) () <input checked="" type="checkbox"/> 41 U.S.C. 253 (c) (1) | | | 14. ACCOUNTING AND APPROPRIATION DATA See Attached | | | | |
| 15A. ITEM NO. | 15B. SUPPLIES/SERVICES | | | 15C. QUANTITY | 15D. UNIT | 15E. UNIT PRICE | 15F. AMOUNT |
| | See Attached | | | | | | |
| 15G. TOTAL AMOUNT OF CONTRACT | | | | | | \$13,684,992.00 | |
| 16. TABLE OF CONTENTS | | | | | | | |
| (X) | SEC | DESCRIPTION | PAGE(S) | (X) | SEC | DESCRIPTION | PAGE(S) |
| PART I - THE SCHEDULE | | | | PART II - CONTRACT CLAUSES | | | |
| X | A | SOLICITATION/CONTRACT FORM | 5-5 | X | I | CONTRACT CLAUSES | 21-41 |
| X | B | SUPPLIES OR SERVICES AND PRICES/COSTS | 6-6 | PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH. | | | |
| X | C | DESCRIPTION/SPECS./WORK STATEMENT | 7-7 | X | J | LIST OF ATTACHMENTS | 42-42 |
| X | D | PACKAGING AND MARKING | 8-8 | PART IV - REPRESENTATIONS AND INSTRUCTIONS | | | |
| X | E | INSPECTION AND ACCEPTANCE | 9-9 | K | REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS | | |
| X | F | DELIVERIES OR PERFORMANCE | 10-10 | | | | |
| X | G | CONTRACT ADMINISTRATION DATA | 11-12 | | | | |
| X | H | SPECIAL CONTRACT REQUIREMENTS | 13-20 | L | INSTRS., CONDS., AND NOTICES TO OFFERORS | | |
| | | | | M | EVALUATION FACTORS FOR AWARD | | |
| CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE | | | | | | | |
| 17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 1 copies to issuing office). Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.) | | | | 18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary. | | | |
| 19A. NAME AND TITLE OF SIGNER (Type or print) (b) (6) Sr. Contracts Admin. | | | | 20A. NAME OF CONTRACTING OFFICER STEPHANIE ALEXANDER | | | |
| 19B. NAME OF CONTRACTOR (b) (6) | | | 19C. DATE SIGNED 5/27/10 | 20B. DATE SIGNED (b) (6) | | | 20C. DATE SIGNED 5-27-10 |

TABLE OF CONTENTS

Table Of Contents

| | | |
|-----------|--|----|
| SECTION A | SOLICITATION/CONTRACT FORM | 5 |
| SECTION B | SUPPLIES OR SERVICES & PRICES OR COSTS | 6 |
| B.1 | SCHEDULE OF SUPPLIES/SERVICES | 6 |
| B.2 | ACCOUNTING and APPROPRIATION DATA | 6 |
| B.3 | DELIVERY SCHEDULE | 6 |
| B.4 | CONTRACT TYPE (OCT 2008) | 6 |
| SECTION C | SPECIFICATIONS/SOW/SOO/ORD | 7 |
| C.1 | SPECIFICATIONS, STATEMENT OF WORK, OR STATEMENT OF OBJECTIVES ATTACHED (MAR 2003) | 7 |
| SECTION D | PACKAGING & MARKING | 8 |
| D.1 | PACKAGING, PACKING AND MARKING (MAR 2003) | 8 |
| SECTION E | INSPECTION & ACCEPTANCE | 9 |
| E.1 | 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) | 9 |
| E.2 | 52.246-2 INSPECTION OF SUPPLIES--FIXED-PRICE (AUG 1996) | 9 |
| E.3 | 52.246-16 RESPONSIBILITY FOR SUPPLIES (APR 1984) | 9 |
| E.4 | CONDITIONAL ACCEPTANCE | 9 |
| SECTION F | DELIVERIES OR PERFORMANCE | 10 |
| F.1 | 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) | 10 |
| F.2 | 52.242-15 STOP-WORK ORDER (AUG 1989) | 10 |
| F.3 | 52.247-30 F.O.B. ORIGIN, CONTRACTOR'S FACILITY (FEB 2006) | 10 |
| F.4 | 52.247-55 F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (JUN 2003) | 10 |
| F.5 | PERIOD OF PERFORMANCE (MAR 2003) | 10 |
| SECTION G | CONTRACT ADMINISTRATION DATA | 11 |
| G.1 | 3052.242-72 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (DEC 2003) | 11 |
| G.2 | CONTRACTING OFFICER'S AUTHORITY (MAR 2003) | 11 |
| G.3 | SUBMISSION OF INVOICES (JUN 2009) | 11 |
| SECTION H | SPECIAL CONTRACT REQUIREMENTS | 13 |
| H.1 | GOVERNMENT CONSENT OF PUBLICATION/ENDORSEMENT (MAR 2003) | 13 |
| H.2 | TRAVEL COSTS (AUG 2008) | 13 |
| H.3 | DISCLOSURE OF INFORMATION (MAR 2003) | 13 |
| H.4 | NON-PERSONAL SERVICE (MAR 2003) | 14 |
| H.5 | HOLIDAYS AND ADMINISTRATIVE LEAVE (MAR 2003) | 14 |
| H.6 | ACCESS TO CLASSIFIED NATIONAL SECURITY INFORMATION (AUG 2008) | 15 |
| H.7 | SECURITY PROCEDURES (OCT 2009) | 15 |
| H.8 | GOVERNMENT PROPERTY (MAR 2003) | 17 |
| H.9 | POST AWARD EVALUATION OF CONTRACTOR PERFORMANCE (OCT 2007) | 17 |
| H.10 | EQUITABLE PRICE ADJUSTMENT FOR SUBCONTRACTOR COSTS | 18 |
| H.11 | GROUND AND FLIGHT RISK | 18 |
| SECTION I | CONTRACT CLAUSES | 21 |
| I.1 | 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) | 21 |
| I.2 | 52.202-1 DEFINITIONS (JUL 2004) | 21 |
| I.3 | 52.203-3 GRATUITIES (APR 1984) | 21 |
| I.4 | 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984) | 21 |
| I.5 | 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006) | 21 |
| I.6 | 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) | 21 |
| I.7 | 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) | 21 |
| I.8 | 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007) | 21 |
| I.9 | 52.204-2 SECURITY REQUIREMENTS (AUG 1996) | 21 |
| I.10 | 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000) | 21 |
| I.11 | 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008) | 21 |
| I.12 | 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007) | 21 |
| I.13 | 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006) | 21 |
| I.14 | 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) | 21 |
| I.15 | 52.215-2 AUDIT AND RECORDS-NEGOTIATION (MAR 2009) | 21 |
| I.16 | 52.215-8 ORDER OF PRECEDENCE-UNIFORM CONTRACT FORMAT (OCT 1997) | 21 |
| I.17 | 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) | 21 |

| | | |
|------|--|----|
| I.18 | 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS (OCT 1997) | 21 |
| I.19 | 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) | 21 |
| I.20 | 52.215-13 SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 1997) | 21 |
| I.21 | 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997) ALTERNATE I (OCT 1997) | 21 |
| I.22 | 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004) | 21 |
| I.23 | 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997) | 21 |
| I.24 | 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) | 21 |
| I.25 | 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999) | 22 |
| I.26 | 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) | 22 |
| I.27 | 52.222-3 CONVICT LABOR (JUN 2003) | 22 |
| I.28 | 52.222-19 CHILD LABOR--COOPERATION WITH AUTHORITIES AND REMEDIES (AUG 2009) | 22 |
| I.29 | 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) | 22 |
| I.30 | 52.222-26 EQUAL OPPORTUNITY (MAR 2007) | 22 |
| I.31 | 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006) | 22 |
| I.32 | 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998) | 22 |
| I.33 | 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006) | 22 |
| I.34 | 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009) | 22 |
| I.35 | 52.223-6 DRUG-FREE WORKPLACE (MAY 2001) | 22 |
| I.36 | 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) | 22 |
| I.37 | 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008) | 22 |
| I.38 | 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007) | 22 |
| I.39 | 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) | 22 |
| I.40 | 52.227-14 RIGHTS IN DATA-GENERAL (DEC 2007) | 22 |
| I.41 | 52.227-21 TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT-MAJOR SYSTEMS (DEC 2007) | 22 |
| I.42 | 52.229-4 FEDERAL, STATE, AND LOCAL TAXES (STATE AND LOCAL ADJUSTMENTS) (APR 2003) | 22 |
| I.43 | 52.230-2 COST ACCOUNTING STANDARDS (OCT 2008) | 22 |
| I.44 | 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008) | 22 |
| I.45 | 52.232-1 PAYMENTS (APR 1984) | 22 |
| I.46 | 52.232-8 DISCOUNTS FOR PROMPT PAYMENT (FEB 2002) | 22 |
| I.47 | 52.232-11 EXTRAS (APR 1984) | 22 |
| I.48 | 52.232-17 INTEREST (OCT 2008) | 22 |
| I.49 | 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) | 22 |
| I.50 | 52.232-25 PROMPT PAYMENT (OCT 2008) | 22 |
| I.51 | 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER-CENTRAL CONTRACTOR REGISTRATION (OCT 2003) | 22 |
| I.52 | 52.233-1 DISPUTES (JUL 2002) | 22 |
| I.53 | 52.233-3 PROTEST AFTER AWARD (AUG 1996) | 23 |
| I.54 | 52.242-2 PRODUCTION PROGRESS REPORTS (APR 1991) | 23 |
| I.55 | 52.242-13 BANKRUPTCY (JUL 1995) | 23 |
| I.56 | 52.243-1 CHANGES - FIXED-PRICE (AUG 1987) | 23 |
| I.57 | 52.243-2 CHANGES - COST-REIMBURSEMENT (AUG 1987) | 23 |
| I.58 | 52.243-7 NOTIFICATION OF CHANGES (APR 1984) | 23 |
| I.59 | 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996) | 23 |
| I.60 | 52.245-1 GOVERNMENT PROPERTY (JUN 2007) | 23 |
| I.61 | 52.245-9 USE AND CHARGES (JUN 2007) | 23 |
| I.62 | 52.246-24 LIMITATION OF LIABILITY-HIGH-VALUE ITEMS (FEB 1997) | 23 |
| I.63 | 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004) | 23 |
| I.64 | 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) | 23 |
| I.65 | 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984) | 23 |
| I.66 | 52.253-1 COMPUTER GENERATED FORMS (JAN 1991) | 23 |
| I.67 | 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007) | 23 |
| I.68 | 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) | 24 |
| I.69 | 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2006) (DEVIATION) ALTERNATE II (OCT 2001) | 24 |
| I.70 | 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (APR 2009) | 29 |

| | | |
|-------------------------------|---|----|
| I.71 | 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) | 31 |
| I.72 | 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001) | 31 |
| I.73 | 52.232-16 PROGRESS PAYMENTS (JUL 2009) | 32 |
| I.74 | 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004) | 37 |
| I.75 | 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APR 2010) | 37 |
| I.76 | 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006) | 38 |
| I.77 | 3052.204-71 CONTRACTOR EMPLOYEE ACCESS (JUN 2006) Alternate I (JUN 2006) | 38 |
| I.78 | 3052.211-70 INDEX FOR SPECIFICATIONS (DEC 2003) | 39 |
| I.79 | 3052.219-70 SMALL BUSINESS SUBCONTRACTING PLAN REPORTING (JUN 2006) | 40 |
| I.80 | 3052.222-70 STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (DEC 2003) | 40 |
| I.81 | 3052.222-71 STRIKES OR PICKETING AFFECTING ACCESS TO A DHS FACILITY (DEC 2003) | 40 |
| I.82 | 3052.223-70 REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES--APPLICABLE LICENSES AND PERMITS (JUN 2006) | 40 |
| I.83 | 3052.228-70 INSURANCE (DEC 2003) | 40 |
| I.84 | 3052.242-71 DISSEMINATION OF CONTRACT INFORMATION (DEC 2003) | 41 |
| I.85 | 3052.245-70 GOVERNMENT PROPERTY REPORTS (AUG 2008) | 41 |
| SECTION J LIST OF ATTACHMENTS | | 42 |
| J.1 LIST OF ATTACHMENTS | | 42 |

PART I – THE SCHEDULE
SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS

This is Firm Fixed Price Contract, for the procurement of one (1) Unmanned Aircraft Systems (UAS) Predator B aircraft to be delivered in accordance with the terms and conditions stated herein. This effort will include the production, testing and delivery of UAS aircraft, communications systems, mission payloads, support systems, spares, ground support equipment, and data. The Contractor shall perform the work as specified in Section C as set forth in the Statement of Work and as described in the updated proposal GACP 8092-190 dated April 13, 2010. CLIN 0010 is a Cost Reimbursable CLIN to cover Shipping Costs for the UAS Hardware Items.

The period of performance is twenty-four months (05/27/2010 – 05/26/2012)

| <u>CLIN</u> | <u>DESCRIPTION</u> | <u>QTY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>EXTENDED AMOUNT</u> |
|---------------------------------------|---|------------|-------------|-------------------|----------------------------|
| UNMANNED AIRCRAFT SYSTEM (UAS) | | | | | |
| 0001 | Predator B Aircraft (UHS97000-5, UHK16076-1, UHK16018-1) | 1 | Each | (b) (4) | (b) (4) |
| 0002 | Lynx SAR Block 20 (LNXD 20000-006) | 1 | Each | | |
| 0003 | Aircraft Shipping Container (UHK91100-1) w/CWmod | 1 | Each | | |
| 0004 | Propeller Shipping Container (UHK91101-1) | 1 | Each | | |
| 0005 | Spare Part | 1 | Lot | | |
| 0006 | North Dakota Ground Support Equipment | 1 | Lot | | |
| 0007 | Southeastern Border Ground Support Equipment | 1 | Lot | | |
| 0008 | MTS-B (4980990-1) | 1 | Each | | |
| 0009 | MTS-B (4980990-1) | 1 | Each | | |
| 0010 | Shipping (Cost Reimbursable) | | | <u>Est. Cost:</u> | |
| 0011 | Data Deliverables | | | NSP | NSP |
| TOTAL | | | | | <u>\$13,684,992</u> |

NSP: Not Separately Priced

SECTION B SUPPLIES OR SERVICES & PRICES OR COSTS**B.1 SCHEDULE OF SUPPLIES/SERVICES**

| ITEM # | DESCRIPTION | QTY | UNIT | UNIT PRICE | EXT. PRICE |
|--------|--|-------|------|------------|------------|
| 10 | Air Vehicle (UHS97000-5)w/center hardpts | 1.000 | AU | (b) (4) | (4) |
| 30 | SAR w/GMTI (LNXD 2000-006) | 1.000 | AU | | |
| 40 | Shipping Container (UHK91100-1)w/CWmod | 1.000 | AU | | |
| 50 | Shipping Container (UHK91101-1) | 1.000 | AU | | |
| 60 | Spare Parts | 1.000 | AU | | |
| 70 | Ground Support Equipment Lot A | 1.000 | AU | | |
| 80 | Ground Support Equipment Lot B | 1.000 | AU | | |
| 90 | EO/IR Sensor w/Laser Illum MTS-B w/H Fil | 1.000 | AU | | |
| 100 | EO/IR Sensor w/Laser Illum MTS-B w/H Fil | 1.000 | AU | | |
| 110 | Shipping (Cost Reimbursable) | 1.000 | AU | | |

Total Funded Value of Award:

\$13,684,992.00

B.2 ACCOUNTING and APPROPRIATION DATA

| ITEM # | ACCOUNTING and APPROPRIATION DATA | AMOUNT |
|--------|--|---------|
| 10 | 6999.3113USCSGLCS0922105000Z00009109AM01 OM0093113 | (b) (4) |
| 30 | 6999.3113USCSGLCS0922105000Z00009109AM01 OM0093113 | |
| 40 | 6999.3113USCSGLCS0922105000Z00009109AM01 OM0093113 | |
| 50 | 6999.3113USCSGLCS0922105000Z00009109AM01 OM0093113 | |
| 60 | 6100.2652USCSGLCS0922105000Z00009109AM01 OM0092652 | |
| 70 | 6999.3113USCSGLCS0922202050Z00007109AM01 OM0403113 | |
| 80 | 6999.3113USCSGLCS0922105000Z00009109AM01 OM0093113 | |
| 90 | 6999.3113USCSGLCS0922100100Z00009109AM01 OM0093113 | |
| 100 | 6999.3113USCSGLCS0922100100Z00009109AM01 OM0093113 | |
| 110 | 6100.2525USCSGLCS0922100100Z00009109AM01 OM0092525 | |

B.3 DELIVERY SCHEDULE

| DELIVER TO: | ITEM # | QTY | DELIVERY DATE |
|---|--------|-------|---------------|
| Customs and Border Protection 1300 Pennsylvania Avenue N W Washington, DC 20229 | 10 | 1.000 | 02/11/2011 |
| | 30 | 1.000 | 08/01/2011 |
| | 40 | 1.000 | 10/01/2010 |
| | 50 | 1.000 | 10/01/2011 |
| | 60 | 1.000 | 12/01/2011 |
| | 70 | 1.000 | 12/01/2011 |
| | 80 | 1.000 | 12/01/2011 |
| | 90 | 1.000 | 10/01/2011 |
| | 100 | 1.000 | 12/01/2011 |
| | 110 | 1.000 | 12/01/2011 |

B.4 CONTRACT TYPE (OCT 2008)

This is a Firm Fixed Price contract.

[End of Clause]

SECTION C SPECIFICATIONS/SOW/SOO/ORD

C.1 SPECIFICATIONS, STATEMENT OF WORK, OR STATEMENT OF OBJECTIVES ATTACHED (MAR 2003)

The Specifications, Statement of Work, or Statement of Objectives which describe the work to be performed hereunder, although attached, is incorporated and made a part of this document with the same force and effect of "specifications" as described in the clause, Order of Precedence, FAR 52.215-8, incorporated by herein by reference.

[End of Clause]

SECTION D PACKAGING & MARKING

D.1 PACKAGING, PACKING AND MARKING (MAR 2003)

Material shall be packaged, packed and marked for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination.

Packages shall be clearly identified on the outer wrapping with the contract number and delivery /task order number, if applicable.

[End of Clause]

SECTION E INSPECTION & ACCEPTANCE

E.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

www.acquisition.gov

I. FEDERAL ACQUISITION REGULATION (48 CHAPTER 1) CLAUSES

| NUMBER | TITLE |
|--------|-------|
|--------|-------|

| | |
|--|--|
| E.2 52.246-2 INSPECTION OF SUPPLIES--FIXED-PRICE (AUG 1996) | |
|--|--|

| | |
|---|--|
| E.3 52.246-16 RESPONSIBILITY FOR SUPPLIES (APR 1984) | |
|---|--|

E.4 CONDITIONAL ACCEPTANCE

Conditional acceptance of each aircraft shall take place upon delivery via the execution of a conditional form DD250 by either the Contracting Officer's Technical Representative or the Contracting Officer. This Conditional DD250 will contain a list of all outstanding deficiencies associated with the aircraft. A withhold appropriate to the importance and number of outstanding deficiencies shall be agreed to by both the Government and the contractor at the time of executions of the conditional DD250. This withhold will remain in place until all outstanding deficiencies cited on the Conditional DD250 have been satisfactorily resolved. In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration. There will be only one conditional and one final acceptance for each aircraft.

[End Clause]

SECTION F DELIVERIES OR PERFORMANCE

F.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

www.acquisition.gov

I. FEDERAL ACQUISITION REGULATION (48 CHAPTER 1) CLAUSES

| NUMBER | TITLE |
|--------|-------|
|--------|-------|

| | |
|---|--|
| F.2 52.242-15 STOP-WORK ORDER (AUG 1989) | |
|---|--|

| | |
|--|--|
| F.3 52.247-30 F.O.B. ORIGIN, CONTRACTOR'S FACILITY (FEB 2006) | |
|--|--|

| | |
|--|--|
| F.4 52.247-55 F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (JUN 2003) | |
|--|--|

| | |
|---|--|
| F.5 PERIOD OF PERFORMANCE (MAR 2003) | |
|---|--|

The period of performance of this contract shall be from 05/21/2010 through 05/20/2012.

[End of Clause]

SECTION G CONTRACT ADMINISTRATION DATA

G.1 3052.242-72 CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (DEC 2003)

- (a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the Contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.
- (b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

(End of Clause)

G.2 CONTRACTING OFFICER'S AUTHORITY (MAR 2003)

The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract. In the event the Contractor effects any changes at the direction of any person other than the Contracting Officer, the changes will be considered to have been made without authority and no adjustment will be made in the contract price to cover any increase in costs incurred as a result thereof. The Contracting Officer shall be the only individual authorized to accept nonconforming work, waive any requirement of the contract, or to modify any term or condition of the contract. The Contracting Officer is the only individual who can legally obligate Government funds. No cost chargeable to the proposed contract can be incurred before receipt of a fully executed contract or specific authorization from the Contracting Officer.

[End of Clause]

G.3 SUBMISSION OF INVOICES (JUN 2009)

Copies of invoices (paper submissions) may be submitted to the following addresses OR as an alternative, to the email addresses cited below:

1. Payment Center:

DHS/U.S. Customs and Border Protection
National Finance Center/Commercial Accounts
P. O. Box 68908
Indianapolis, Indiana 46268

OR as an alternative:

Email: cbpinvoices@dhs.gov

Note – Only for awards with payment terms less than net 30:

The Subject line for all Emailed invoices to the National Finance Center must include the text
“Per CBP, Net [state # days] Invoice.”

2. Contracting Officer's Technical Representative (fill in at time of award):

DHS/U.S. Customs and Border Protection
Attention: (b) (6)

AIR & MARINE
1300 PENNSYLVANIA AVE NW, SUITE 5.2C

WASHINGTON, DC 20229

OR as an alternative:

Email: (b) (6)

3. Contracting Officer (or Contract Administrator)(fill in at time of award):

DHS/U.S. Customs and Border Protection
Attention: STEPHANIE F. ALEXANDER

OFFICE OF PROCUREMENT
1331 PENNSYLVANIA AVE NW, NP SUITE 1310
WASHINGTON, DC 20229

OR as an alternative:

Email: (b) (6)

To constitute a proper invoice, the invoice shall include all the items required by Federal Acquisition Regulation (FAR) 32.905.

[End of Clause]

SECTION H SPECIAL CONTRACT REQUIREMENTS

H.1 GOVERNMENT CONSENT OF PUBLICATION/ENDORSEMENT (MAR 2003)

Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any news release or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

[End of Clause]

H.2 TRAVEL COSTS (AUG 2008)

Costs for transportation, lodging, meals, and incidental expenses shall be reimbursed in accordance with Federal Acquisition Regulation (FAR) Subsection 31.205-46 and acceptable accounting procedures.

If it becomes necessary for the contractor to use the higher actual expense method repetitively or on a continuing basis in a particular area (see FAR 31.205-46(3)(iii)), the contractor must obtain advance approval from the contracting officer and comply with all requirements for justifications and documentation set forth in FAR Subsection 31.205-46 for allowability of travel costs.

As provided in FAR 31.205-46(a)(5), the Contracting Officer may consider an advance agreement (see FAR 31.109) with the contractor to avoid confusion in the treatment of costs anticipated to be incurred in unusual or special travel situations. The advance agreement shall be incorporated in the contract.

[End of Clause]

H.3 DISCLOSURE OF INFORMATION (MAR 2003)

A. General

Any information made available to the Contractor by the Government shall be used only for the purpose of carrying out the provisions of this contract and shall not be divulged or made known in any manner to any persons except as may be necessary in the performance of the contract.

B. Technical Data Rights

The Contractor shall not use, disclose, reproduce, or otherwise divulge or transfuse to any persons any technical information or data licensed for use by the Government that bears any type of restrictive or proprietary legend except as may be necessary in the performance of the contract. Refer to the Rights in Data clause for additional information.

C. Privacy Act

In performance of this contract the Contractor assumes the responsibility for protection of the confidentiality of all Government records and/or protected data provided for performance under the contract and shall ensure that (a) all work performed by any subcontractor is subject to the disclosure restrictions set forth above and (b) all subcontract work be performed under the supervision of the Contractor or their employees.

[End of Clause]

H.4 NON-PERSONAL SERVICE (MAR 2003)

1. The Government and the contractor agree and understand the services to be performed under this contract are non-personal in nature. The Contractor shall not perform any inherently Governmental functions under this contract as described in Office of Federal Procurement Policy Letter 92-1
2. The services to be performed under this contract do not require the Contractor or his employees to exercise personal judgment and discretion on behalf of the Government, but rather, the Contractor's employees will act and exercise personal judgment and discretion on behalf of the Contractor.
3. The parties also recognize and agree that no employer-employee relationship exists or will exist between the Government and the Contractor. The Contractor and the Contractor's employees are not employees of the Federal Government and are not eligible for entitlement and benefits given federal employees. Contractor personnel under this contract shall not:
 - (a) Be placed in a position where there is an appearance that they are employed by the Government or are under the supervision, direction, or evaluation of any Government employee. All individual employee assignments any daily work direction shall be given by the applicable employee supervisor.
 - (b) Hold him or herself out to be a Government employee, agent or representative or state orally or in writing at any time that he or she is acting on behalf of the Government. In all communications with third parties in connection with this contract, Contractor employees shall identify themselves as such and specify the name of the company of which they work.
 - (c) Be placed in a position of command, supervision, administration or control over Government personnel or personnel of other Government contractors, or become a part of the government organization. In all communications with other Government Contractors in connection with this contract, the Contractor employee shall state that they have no authority to change the contract in any way. If the other Contractor believes this communication to be direction to change their contract, they should notify the CO for that contract and not carry out the direction until a clarification has been issued by the CO.
4. If the Contractor believes any Government action or communication has been given that would create a personal service relationship between the Government and any Contractor employee, the Contractor shall promptly notify the CO of this communication or action.
5. Rules, regulations directives and requirements which are issued by U.S. Customs & Border Protection under their responsibility for good order, administration and security are applicable to all personnel who enter U.S. Customs & Border Protection installations or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control that is inconsistent with a non-personal services contract.

[End of Clause]

H.5 HOLIDAYS AND ADMINISTRATIVE LEAVE (MAR 2003)

U.S. Customs & Border Protection (CBP) personnel observe the following days as holidays:

| | |
|-------------------------------|------------------|
| New Year's Day | Labor Day |
| Martin Luther King's Birthday | Columbus Day |
| President's Day | Veteran's Day |
| Memorial Day | Thanksgiving Day |
| Independence Day | Christmas Day |

Any other day designated by Federal statute, by Executive Order or by the President's proclamation.

When any such day falls on a Saturday, the preceding Friday is observed. When any such day falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not be cause for an extension to the delivery schedule or period of performance or adjustment to the price, except as set forth in the contract.

Except for designated around-the-clock or emergency operations, contractor personnel will not be able to perform on site under this contract with CBP on holidays set forth above. The contractor will not charge any holiday as a direct charge to the contract. In the event Contractor personnel work during a holiday other than those above, no form of holiday or other premium compensation will be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work.

In the event CBP grants administrative leave to its Government employees, at the site, on-site contractor personnel shall also be dismissed if the site is being closed. However, the Contractor shall continue to provide sufficient personnel to perform around-the-clock requirements of critical efforts already in progress or scheduled and shall be guided by the instructions issued by the Contracting Officer or her/his duly appointed representative. In each instance when the site is closed to Contractor personnel as a result of inclement weather, potentially hazardous conditions, explosions, or other special circumstances; the

Contractor will direct its staff as necessary to take actions such as reporting to its own site(s) or taking appropriate leave consistent with its policies. The cost of salaries and wages to the Contractor for the period of any such site closure are a reimbursable item of direct cost under the contract for employees whose regular time is normally a direct charge if they continue to perform contract work; otherwise, costs incurred because of site closure are reimbursable as indirect cost in accordance with the Contractor's established accounting policy.

[End of Clause]

H.6 ACCESS TO CLASSIFIED NATIONAL SECURITY INFORMATION (AUG 2008)

This contract requires access to classified national security information up to the SECRET level. The successful contractor must currently possess the appropriate security level clearance and be a participant under the National Industrial Security Program (NISP) prior to award. This requirement also applies to any subcontractors utilized by the Contractor. A DD Form 254 (Contract Security Classification Specification) and security classification guide will be incorporated and made a part of this contract.

[End of Clause]

H.7 SECURITY PROCEDURES (OCT 2009)

A. Controls

1. The Contractor shall comply with the U.S. Customs and Border Protection (CBP) administrative, physical and technical security controls to ensure that the Government's security requirements are met.
2. All Government furnished information must be protected to the degree and extent required by local rules, regulations, and procedures. The Contractor shall comply with all security policies contained in CBP Handbook 1400-05C, Information Systems Security Policies and Procedures Handbook.
3. All services provided under this contract must be compliant with the Department of Homeland Security (DHS) information security policy identified in DHS Management Directive (MD) 4300.1, Information Technology Systems Security Program and DHS 4300A, Sensitive Systems Handbook.
4. All Contractor employees under this contract must wear identification access badges when working in CBP facilities. Prior to Contractor employees' departure/separation, all badges, building passes, parking permits, keys and pass cards must be given to the Contracting Officer's Technical Representative (COTR). The COTR will ensure that the cognizant Physical Security official is notified so that access to all buildings and facilities can be revoked. NOTE: For contracts within the National Capitol Region (NCR), the Office of Internal Affairs, Security Management Division (IA/SMD) should be notified if building access is revoked.
5. All Contractor employees must be registered in the Contractor Tracking System (CTS) database by the Contracting Officer (CO) or COTR. The Contractor shall provide timely start information to the CO/COTR or designated government personnel to initiate the CTS registration. Other relevant information will also be needed for registration in the CTS database such as, but not limited to, the contractor's legal name, address, brief job description, labor rate, Hash ID, schedule and contract specific information. The CO/COTR or designated government personnel shall provide the Contractor with instructions for receipt of CTS registration information. Additionally, the CO/COTR shall immediately notify IA/SMD of the contractor's departure/separation.

6. The Contractor shall provide employee departure/separation date and reason for leaving to the CO/COTR in accordance with CBP Directive 51715-006, Separation Procedures for Contractor Employees. Failure by the Contractor to provide timely notification of employee departure/separation in accordance with the contract requirements shall be documented and considered when government personnel completes a Contractor Performance Report (under Business Relations) or other performance related measures.

B. Security Background Investigation Requirements

1. In accordance with DHS Management Directive (MD) 11055, Suitability Screening Requirements for Contractors, Part VI, Policy and Procedures, Section E, Citizenship and Residency Requirements, contractor employees who require access to sensitive information must be U.S. citizens or have Lawful Permanent Resident (LPR) status. A waiver may be granted, as outlined in MD 11055, Part VI, Section M (1).
2. Contractor employees that require access to DHS IT systems or development, management, or maintenance of those systems must be U.S. citizens in accordance with MD 11055, Part VI, Section E (Lawful Permanent Resident status is not acceptable in this case). A waiver may be granted, as outlined in MD 11055, Part VI, Section M (2)
3. Provided the requirements of DHS MD 11055 are met as outlined in paragraph 1, above, contractor employees requiring access to CBP facilities, sensitive information or information technology resources are required to have a favorably adjudicated background investigation (BI) or a single scope background investigation (SSBI) prior to commencing work on this contract. Exceptions shall be approved on a case-by-case basis with the employee's access to facilities, systems, and information limited until the Contractor employee receives a favorably adjudicated BI or SSBI. A favorable adjudicated BI or SSBI shall include various aspects of a Contractor employee's life, including employment, education, residences, police and court inquiries, credit history, national agency checks, and a CBP Background Investigation Personal Interview (BIPI).
4. The Contractor shall submit within ten (10) working days after award of this contract a list containing the full name, social security number, place of birth (city and state), and date of birth of employee candidates who possess favorably adjudicated BI or SSBI that meets federal investigation standards. For employee candidates needing a BI for this contract, the Contractor shall require the applicable employees to submit information and documentation requested by CBP to initiate the BI process.
5. Background Investigation information and documentation is usually submitted by completion of standard federal and agency forms such as Questionnaire for Public Trust and Selected Positions or Questionnaire for National Security Positions; Fingerprint Chart; Fair Credit Reporting Act (FCRA) form; Criminal History Request form; and Financial Disclosure form. These forms must be submitted to the designated CBP official identified in this contract. The designated CBP security official will review the information for completeness.
6. The estimated completion of a BI or SSBI is approximately sixty (60) to ninety (90) days from the date of receipt of the properly completed forms by CBP security office. During the term of this contract, the Contractor is required to provide the names of contractor employees who successfully complete the CBP BI or SSBI process. Failure of any contractor employee to obtain and maintain a favorably adjudicated BI or SSBI shall be cause for dismissal. For key personnel, the Contractor shall propose a qualified replacement employee candidate to the CO and COTR within 30 days after being notified of an unsuccessful candidate or vacancy. For all non-key personnel contractor employees, the Contractor shall propose a qualified replacement employee candidate to the COTR within 30 days after being notified of an unsuccessful candidate or vacancy. The CO/COTR shall approve or disapprove replacement employees. Continuous failure to provide contractor employees who meet CBP BI or SSBI requirements may be cause for termination of the contract.

C. Security Responsibilities

1. The Contractor shall ensure that its employees follow the general procedures governing physical, environmental, and information security described in the various DHS CBP regulations identified in this clause. The contractor shall ensure that its employees apply proper business practices in accordance with the specifications, directives, and manuals required for conducting work under this contract. Applicable contractor personnel will be responsible for physical security of work areas and CBP furnished equipment issued under this contract.
2. The CO/COTR may require the Contractor to prohibit its employees from working on this contract if continued employment becomes detrimental to the public's interest for any reason including, but not limited to carelessness, insubordination, incompetence, or security concerns.

3. Work under this contract may require access to sensitive information as defined under Homeland Security Acquisition Regulation (HSAR) Clause 3052.204-71, Contractor Employee Access, included in the solicitation/contract. The Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the CO.
4. The Contractor shall ensure that its employees who are authorized access to sensitive information, receive training pertaining to protection and disclosure of sensitive information. The training shall be conducted during and after contract performance.
5. Upon completion of this contract, the Contractor shall return all sensitive information used in the performance of the contract to the CO/COTR. The Contractor shall certify, in writing, that all sensitive and non-public information has been purged from any Contractor-owned system.

D. Notification of Contractor Employee Changes

1. The Contractor shall notify the CO/COTR via phone, facsimile, or electronic transmission, immediately after a personnel change become known or no later than five (5) business days prior to departure of the employee. Telephone notifications must be immediately followed up in writing. Contractor's notification shall include, but is not limited to name changes, resignations, terminations, and reassignments to another contract.
2. The Contractor shall notify the CO/COTR and program office (if applicable) in writing of any proposed change in access requirements for its employees at least fifteen (15) days, or thirty (30) days if a security clearance is to be obtained, in advance of the proposed change. The CO/COTR will notify the Office of Information and Technology (OIT) Information Systems Security Branch (ISSB) of the proposed change. If a security clearance is required, the CO/COTR will notify IA/SMD.

E. Non-Disclosure Agreements

When determined to be appropriate, Contractor employees are required to execute a non-disclosure agreement (DHS Form 11000-6) as a condition to access sensitive but unclassified information.

[End of Clause]

H.8 GOVERNMENT PROPERTY (MAR 2003)

The Contractor will be provided with the following items of property for performance of this contract, in accordance with the Government Property clause(s) contained herein.

| Item Description | Property ID Number | Quantity | Delivery Date |
|---------------------|-----------------------|----------|---------------|
| SAT Tracker | | 1 | 4 MARO |
| KU Time and Support | | 1 | 6 MARO |
| MTS-B | | 1 | 4 MARO |
| Lynx SAR | | 1 | 4 MARO |
| CBP Compatible GCS | | 1 | 4 MARO |
| RVT | | 1 | 6 MARO |

MARO=Months After Receipt of Order

[End of Clause]

H.9 POST AWARD EVALUATION OF CONTRACTOR PERFORMANCE (OCT 2007)

a. Contractor Performance Evaluation

Interim and final evaluations of contractor performance will be prepared on this contract in accordance with FAR Subpart 42.15. A final performance evaluation will be prepared at the time of completion of work. In addition to the final evaluation, interim evaluations will be prepared annually to coincide with the anniversary date of the contract. (If evaluations are to be conducted more or less frequently than annually, modify this sentence as appropriate.)

Interim and final evaluations will be provided to the contractor as soon as practicable after completion of the evaluation. The contractor will be permitted thirty days to review the document and to submit additional information or a rebutting statement. Any disagreement between the parties regarding an evaluation will be referred to an individual one level above the Contracting Officer, whose decision will be final.

Copies of the evaluations, Contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used to support future award decisions.

b. Electronic access to contractor Performance Evaluations

Contractors that have Internet capability may access evaluations through a secure Web site for review and comments by completing the registration form that can be obtained at the following address:
http://oamp.od.nih.gov/OD/CPS/cps_contractor.htm

The registration process requires the contractor to identify an individual that will serve as a primary contact and who will be authorized access to the evaluation for review and comment. In addition, the contractor will be required to identify an alternate contact who will be responsible for notifying the cognizant contracting official in the event the primary contact is unavailable to process the evaluation within the required 30-day time frame.

[End of Clause]

H.10 EQUITABLE PRICE ADJUSTMENT FOR SUBCONTRACTOR COSTS

(Applicable to CLINs 0008 and 0009 Only)

In order to protect the Contractor and CBP against significant fluctuations in Subcontractor Material Costs due to delayed quotes from the Subcontractor, a one time price adjustment will be made when quote is received. The Contractor shall submit a copy of the quote and/or agreement along with their Cost and Price Analysis (if applicable) to CBP for review. Upon review and evaluation of information, a fair and reasonable price shall be negotiated and agreed to between both parties. A bilateral modification will be issued to incorporate the negotiated price adjustment.

[End Clause]

H.11 GROUND AND FLIGHT RISK

(a) *Definitions.* As used in this clause—

(1) "Air Vehicle," unless otherwise provided in the Contract, means—

(i) Air vehicle to be delivered to the Government under this contract (either before or after Government acceptance), including complete air vehicle and air vehicle in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the air vehicle; and

(ii) Air vehicle, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all property installed, in the process of installation, or temporarily removed; provided that the air vehicle and property are not covered by a separate bailment agreement.

(2) "Contractor's premises" means those premises designated in the Contract or in writing by the Contracting Officer, and any other place the air vehicle is moved for safeguarding.

(3) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the air vehicle, or previously approved in writing by the Contracting Officer.

(i) For land based air vehicles, "flight" begins with the taxi roll from a flight line on the Contractor's premises and continues until the air vehicle has completed the taxi roll in returning to a flight line on the Contractor's premises;

(ii) All air vehicles off the Contractor's premises shall be considered to be in flight when on the ground for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(4) "Flight crew member" means the Air Vehicle Operator, the Sensor Payload Operator, and the Ground Safety Observer when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor.

(5) "In the open" means located wholly outside of buildings on the Contractor's premises or other places described in the Contract as being "in the open." Government furnished air vehicles shall be considered to be located "in the open" at all times while in the Contractor's possession, care, custody, or control.

(6) "Operation" means operations and tests of the air vehicle and its installed equipment, accessories, and power plants, while the air vehicle is in the open or in motion. The term does not apply to air vehicles on any production line or in flight.

(b) Except as may be specifically provided in the Contract as an exception to this clause, the Government assumes the risk of damage to, or loss or destruction of air vehicle "in the open," during "operation," and in "flight." The Contractor shall not be liable to the Government for such damage, loss, or destruction.

(c) The Government's assumption of risk for air vehicle in the open shall continue unless the Contracting Officer finds that the air vehicle is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

(1) The Contracting Officer, when finding air vehicle in the open under unreasonable conditions, shall notify the Contractor in writing of the unreasonable conditions and require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable. If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions. Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any air vehicle in the open under the cited conditions. The termination will be effective at 12:01 a.m. on the fifteenth day following the day the written notice is received by the Contractor. If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk. Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk, the risk of loss for Government-furnished property shall be determined in accordance with the Government Property clause of this contract.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected. If the Government elects to again assume the risk of loss and relieve the Contractor of liabilities, the Contracting Officer will notify the Contractor. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Contractor notice of correction until the Contractor is notified that the Government will assume the risk of loss. If the Government does not again assume the risk of loss and conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day.

(d) The Government's assumption of risk shall not extend to damage, loss, or destruction of air vehicle which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of air vehicle in the open and during operation in accordance with sound industrial practice. The term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor's business; or all

or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed; or a separate and complete major industrial operation in connection with the performance of this contract;

(2) Is sustained during flight if the flight crew members have not been approved in writing by the Government;

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice in the property.); or

(6) Is sustained while the air vehicle is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first \$25,000 of loss or damage to air vehicle in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the air vehicle be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government \$25,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage, loss, or destruction of air vehicle while in its possession or control, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of air vehicle in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability, and damage, loss, or destruction occurs, the Contractor shall enforce liability against the subcontractor for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of air vehicle while in the open, during operation, or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for air vehicle in the open.

(h) In the event of damage, loss, or destruction of air vehicle in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the air vehicle from further damage, to separate damaged and undamaged air vehicle, to put all air vehicle in the best possible order and further, except in cases covered by paragraph (e) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

- (1) The damaged, lost, or destroyed air vehicle;
- (2) The time and origin of the damage, loss, or destruction;
- (3) All known interests in commingled property of which air vehicle are a part; and
- (4) The insurance, if any, covering the interest in commingled property.

Except in cases covered by paragraph (e) of this clause, the Contracting Officer will make an equitable adjustment in the contract price for expenditures made by the Contractor in performing the obligations under this paragraph.

(i) If prior to delivery and acceptance by the Government, air vehicle is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

- (1) Require that the air vehicle be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(2) Terminate this contract with respect to the air vehicle, in which event the Contractor shall be paid the contract price for the air vehicle (or, if applicable, any work to be performed on the air vehicle) less any amount the Contracting Officer determines—

(i) It would have cost the Contractor to complete the air vehicle (or any work to be performed on the air vehicle) together with anticipated profit on uncompleted work; and

(ii) Would be the value of the damaged air vehicle or any salvage retained by the Contractor.

The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed air vehicle, or any parts of the air vehicle. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any air vehicle shall be considered a dispute under the Disputes clause.

(j) In the event the Contractor is reimbursed or compensated by a third person for damage, loss, or destruction of air vehicle and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.

(End of clause)

SECTION I CONTRACT CLAUSES

I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

www.acquisition.gov

I. FEDERAL ACQUISITION REGULATION (48 CHAPTER 1) CLAUSES

| NUMBER | TITLE |
|--------|-------|
|--------|-------|

- | | |
|------|--|
| I.2 | 52.202-1 DEFINITIONS (JUL 2004) |
| I.3 | 52.203-3 GRATUITIES (APR 1984) |
| I.4 | 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984) |
| I.5 | 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006) |
| I.6 | 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) |
| I.7 | 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) |
| I.8 | 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007) |
| I.9 | 52.204-2 SECURITY REQUIREMENTS (AUG 1996) |
| I.10 | 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000) |
| I.11 | 52.204-7 CENTRAL CONTRACTOR REGISTRATION (APR 2008) |
| I.12 | 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007) |
| I.13 | 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006) |
| I.14 | 52.211-5 MATERIAL REQUIREMENTS (AUG 2000) |
| I.15 | 52.215-2 AUDIT AND RECORDS-NEGOTIATION (MAR 2009) |
| I.16 | 52.215-8 ORDER OF PRECEDENCE-UNIFORM CONTRACT FORMAT (OCT 1997) |
| I.17 | 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) |
| I.18 | 52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS (OCT 1997) |
| I.19 | 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997) |
| I.20 | 52.215-13 SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 1997) |
| I.21 | 52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997) ALTERNATE I (OCT 1997) |
| I.22 | 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004) |
| I.23 | 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997) |
| I.24 | 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) |

- I.25 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (JAN 1999)
- I.26 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
- I.27 52.222-3 CONVICT LABOR (JUN 2003)
- I.28 52.222-19 CHILD LABOR--COOPERATION WITH AUTHORITIES AND REMEDIES (AUG 2009)
- I.29 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
- I.30 52.222-26 EQUAL OPPORTUNITY (MAR 2007)
- I.31 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
- I.32 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
- I.33 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)
- I.34 52.222-50 COMBATING TRAFFICKING IN PERSONS (FEB 2009)
- I.35 52.223-6 DRUG-FREE WORKPLACE (MAY 2001)
- I.36 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)
- I.37 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
- I.38 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)
- I.39 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)
- I.40 52.227-14 RIGHTS IN DATA-GENERAL (DEC 2007)
- I.41 52.227-21 TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT-MAJOR SYSTEMS (DEC 2007)
- I.42 52.229-4 FEDERAL, STATE, AND LOCAL TAXES (STATE AND LOCAL ADJUSTMENTS) (APR 2003)
- I.43 52.230-2 COST ACCOUNTING STANDARDS (OCT 2008)
- I.44 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (MAR 2008)
- I.45 52.232-1 PAYMENTS (APR 1984)
- I.46 52.232-8 DISCOUNTS FOR PROMPT PAYMENT (FEB 2002)
- I.47 52.232-11 EXTRAS (APR 1984)
- I.48 52.232-17 INTEREST (OCT 2008)
- I.49 52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)
- I.50 52.232-25 PROMPT PAYMENT (OCT 2008)
- I.51 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER-CENTRAL CONTRACTOR REGISTRATION (OCT 2003)
- I.52 52.233-1 DISPUTES (JUL 2002)

- I.53 52.233-3 PROTEST AFTER AWARD (AUG 1996)
- I.54 52.242-2 PRODUCTION PROGRESS REPORTS (APR 1991)
- I.55 52.242-13 BANKRUPTCY (JUL 1995)
- I.56 52.243-1 CHANGES - FIXED-PRICE (AUG 1987)
- I.57 52.243-2 CHANGES - COST-REIMBURSEMENT (AUG 1987)
- I.58 52.243-7 NOTIFICATION OF CHANGES (APR 1984)
- I.59 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)
- I.60 52.245-1 GOVERNMENT PROPERTY (JUN 2007)
- I.61 52.245-9 USE AND CHARGES (JUN 2007)
- I.62 52.246-24 LIMITATION OF LIABILITY-HIGH-VALUE ITEMS (FEB 1997)
- I.63 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (MAY 2004)
- I.64 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)
- I.65 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)
- I.66 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)
- I.67 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(a) *Definition.*

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)--

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites--

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

www.dhs.gov/xoig/assets/DHS_OIG_Hotline.pdf

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract--

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

I.68 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

- (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
- (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall--

- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
- (2) Provide the ACO or designated representative ready access to the records upon request;
- (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
- (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(End of clause)

I.69 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2006) (DEVIATION) ALTERNATE II (OCT 2001)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause --

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Individual contract plan" means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

"Direct Subcontract Award" means a subcontract award that is identified with the performance of one or more specific Government contracts.

"Indirect Subcontract Award" means a subcontract award which, because of incurrence for common or joint purposes, is not identified with one or more specific Government contracts. Such subcontract awards are related to Government contract performance but remain for allocation after direct subcontract awards have been determined and identified to specific Government contracts.

- (c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.
- (d) The offeror's subcontracting plan shall include the following:
 - (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
 - (2) A statement of --
 - (i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
 - (ii) Total dollars planned to be subcontracted to small business concerns;
 - (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
 - (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
 - (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
 - (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
 - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
 - (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to --
 - (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns; and
 - (vi) Women-owned small business concerns.
 - (4) A description of the method used to develop the subcontracting goals in paragraph (d) (1) of this clause.
 - (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database's (CCR's) Dynamic Small Business Search function, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small,

HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR's Dynamic Small Business Search function, as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR's Dynamic Small Business Search function as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with --
 - (i) Small business concerns;
 - (ii) Veteran-owned small business concerns;
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns; and
 - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will --
 - (i) Cooperate in any studies or surveys as may be required;
 - (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
 - (iii) Submit the Individual Subcontract Report, and/or the Summary Subcontract Report, in accordance with paragraph (j) of this clause, using the web-based Electronic Subcontracting Reporting System (eSRS, at <http://www.esrs.gov>). The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions in eSRS as supplemented by agency regulations.
 - (iv) Ensure that its subcontractors with subcontracting plans agree to submit the Individual Subcontract Report and/or the Summary subcontract Report using eSRS.
 - (v) Provide the prime contract number, the order number, if applicable, and the prime contractor's DUNS number and to all first-tier subcontractors with subcontracting plans so they can enter this information into eSRS with their reports; and
 - (vi) Ensure that all subcontractors with subcontracting plans under the flow-down requirements of subparagraph (d)(9) above, at every tier, provide the prime contract number, the order number, if applicable, and their own DUNS number to all of their subcontractors with subcontracting plans.

- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., CCR's Dynamic Small Business Search function), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
 - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating --
 - (A) Whether small business concerns were solicited and, if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
 - (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
 - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
 - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
 - (G) If applicable, the reason award was not made to a small business concern.
 - (iv) Records of any outreach efforts to contact --
 - (A) Trade associations;
 - (B) Business development organizations;
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - (D) Veterans service organizations.
 - (v) Records of internal guidance and encouragement provided to buyers through --
 - (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
 - (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

- (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.
 - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided --
- (1) The master plan has been approved;
 - (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
 - (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with --
- (1) The clause of this contract entitled "Utilization of Small Business Concerns;" or
 - (2) An approved plan required by this clause, shall be a material breach of the contract.
- (j) The Contractor shall submit the Individual Subcontract Report and the Summary Subcontract Report as described below using the web-based eSRS (<http://www.esrs.gov>). Neither report is required from small businesses. These reports collect subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$550,000 (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in these reports. Subcontract award data reported on these forms by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors:
- (1) Individual Subcontract Report. This report is not required for commercial subcontracting plans, except as noted below. The report is required for each contract containing a subcontracting plan and must be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31 and September 30. A separate report is also required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has

been any subcontracting activity since the inception of the contract or since the inception of the previous report. The authority to accept or reject the Individual Subcontract Report resides with:

- (A) In the case of the prime contractor, it resides with the Government agency responsible for administering the prime contract; and
 - (B) In the case of a subcontractor with a subcontracting plan under the flow-down requirements in subparagraph (d)(9) above, it resides with the prime contractor or higher-tier subcontractor that awarded the subcontract.
- (2) Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted annually using eSRS for the twelve months ending September 30th, except for contracts covered by an approved commercial plan. If the reporting activity is covered by a commercial plan, the reporting activity must report annually using eSRS all subcontract awards under that plan. Reports for other than commercial plans are due 30 days after the close of each reporting period. Commercial plan reports are due 30 days after the end of the contractor's fiscal year for all Government contracts in effect during that period:
- (A) The report must be submitted on a corporate, company or subdivision (e.g. plant or division operating on a separate profit center basis), unless otherwise directed by the agency awarding the contract. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted via eSRS to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan;
 - (B) The annual report submitted by organizations having an approved commercial plan shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial plans, if any;
 - (C) The authority to accept or reject Summary Subcontract Reports in eSRS, including Summary Subcontract Reports submitted by subcontractors with subcontracting plans under the flow-down requirements in subparagraph (d) (9) above, resides with the Government agency awarding the prime contract; however, the authority to accept or reject Summary Subcontract Reports for commercial plans resides with the Contracting Officer who approved the commercial plan; and
 - (D) The contractor shall maintain a hard copy of the Summary Subcontract Report signed by its Chief Executive Officer on file for four (4) years from the ending date of the reporting period.
- (3) Contractors with approved commercial plans who wish to take advantage of eSRS' lower-tier reporting capability may voluntarily submit the semi-annual Individual Subcontract Report for one or more contracts covered by their commercial plan and may require their other-than-small subcontractors to submit a semi-annual Individual Subcontract Report for the same contract(s). No Contracting Officer or other Government official shall require a contractor with an approved commercial plan to submit the semi-annual Individual Subcontract Report if the contractor does not wish to do so.
- (4) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, using eSRS, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. eSRS will prompt contractors to submit this report when they complete their year-end Summary Subcontract Report, but it will allow them to submit it at a later date if the data is not available when the year-end Summary Subcontract Report is submitted. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

[End of Clause]

I.70 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (APR 2009)

(a) *Definitions.* As used in this clause--

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a

cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

- (b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:
 - (1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.
 - (2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.
 - (3) For long-term contracts--
 - (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
 - (ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.
- (c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardstopics/>.
- (d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.
- (e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.
- (f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.
- (g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it ☐ is, ☐ is not a small business concern under NAICS Code _____ assigned to contract number _____.

Contractor Signature: _____

Date Signed: _____

Name: _____

Title: _____

(End of clause)

I.71 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

- (a) "Hazardous material", as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).
- (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

| Material (If none, insert "None") | Identification No. |
|------------------------------------|--------------------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

- (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
 - (3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

I.72 52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) *Definition.* "Ozone-depleting substance," as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as--

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(End of clause)

I.73 52.232-16 PROGRESS PAYMENTS (JUL 2009)

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.*

- (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.
- (2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors--
 - (i) In accordance with the terms and conditions of a subcontract or invoice; and
 - (ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.
- (3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless--
 - (i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).
- (4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:
 - (i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.
 - (ii) Costs incurred by subcontractors or suppliers.
 - (iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

- (iv) Payments made or amounts payable to subcontractors or suppliers, except for -
 - (A) Completed work, including partial deliveries, to which the Contractor has acquired title; and
 - (B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.
- (5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.
- (6) The total amount of progress payments shall not exceed 80 percent of the total contract price.
- (7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by paragraphs (a)(4) or (a)(5) of this clause, the Contractor shall repay the amount of such excess to the Government on demand.
- (8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.
- (9) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.
- (b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.
- (c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:
 - (1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) of this clause).
 - (2) Performance of this contract is endangered by the Contractor's -
 - (i) Failure to make progress; or
 - (ii) Unsatisfactory financial condition.
 - (3) Inventory allocated to this contract substantially exceeds reasonable requirements.
 - (4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.
 - (5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.
 - (6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) of this clause, and that rate is less than the progress payment rate stated in paragraph (a)(1) of this clause.
- (d) *Title.*
 - (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

- (2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.
 - (i) Parts, materials, inventories, and work in process;
 - (ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;
 - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (d)(2)(ii) of this clause; and
 - (iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.
- (3) Although title to property is in the Government under this clause, other applicable clauses of this contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.
- (4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.
- (5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall
 - (i) exclude the allocable costs of the property from the costs of contract performance, and
 - (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.
- (6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not--
 - (i) Delivered to, and accepted by, the Government under this contract; or
 - (ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.
- (7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.
- (e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.
- (f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.
- (g) *Reports and access to records.*
 - (1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.
 - (2) The Contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.
 - (3) Each Contractor request for progress payment shall:

- (i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and
 - (ii) Include any additional supporting documentation requested by the Contracting Officer.
- (h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.
- (i) *Reservations of rights.*
- (1) No payment or vesting of title under this clause shall--
 - (i) Excuse the Contractor from performance of obligations under this contract; or
 - (ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.
 - (2) The Government's rights and remedies under this clause--
 - (i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and
 - (ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.
- (j) *Financing payments to subcontractors.* The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:
- (1) The amounts included are limited to--
 - (i) The unliquidated remainder of financing payments made; plus
 - (ii) Any unpaid subcontractor requests for financing payments.
 - (2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.
 - (3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments--
 - (i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;
 - (ii) Are at least as favorable to the Government as the terms of this clause;
 - (iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;
 - (iv) Are in conformance with the requirements of FAR 32.504(e); and
 - (v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if -
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
 - (4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments--

- (i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;
 - (ii) Are in conformance with the requirements of FAR 32.504(f); and
 - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if -
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments--
- (i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;
 - (ii) Are in conformance with the requirements of FAR 32.504(g); and
 - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if -
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.
- (7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.
- (8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.
- (9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.
- (k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

- (l) *Due date.* The designated payment office will make progress payments on the 30th day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.
- (m) *Progress payments under indefinite-delivery contracts.* The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

I.74 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

I.75 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (APR 2010)

(a) Definitions. As used in this clause--

"Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:
 - (i) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.
 - (ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.
 - (iii) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (iv) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
 - (v) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212(a));
 - (vi) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
 - (vii) [Reserved]
 - (viii) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
 - (ix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

I.76 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (FEB 2006)

When the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. HSBP1010C00026

DHS - Customs & Border Protection Department of Homeland Security
1300 Pennsylvania Ave, NW Procurement Directorate - NP 1310
Washington DC 20229

(End of clause)

I.77 3052.204-71 CONTRACTOR EMPLOYEE ACCESS (JUN 2006) Alternate I (JUN 2006)

(a) Sensitive Information, as used in this Chapter, means any information, the loss, misuse, disclosure, or unauthorized access to or modification of which could adversely affect the national or homeland security interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

- (c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.
- (d) The Contracting Officer may require the contractor to prohibit individuals from working on the contract if the government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.
- (e) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those contractor employees authorized access to sensitive information, the contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.
- (f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.
- (g) Before receiving access to IT resources under this contract the individual must receive a security briefing, which the Contracting Officer's Technical Representative (COTR) will arrange, and complete any nondisclosure agreement furnished by DHS.
- (h) The contractor shall have access only to those areas of DHS information technology resources explicitly stated in this contract or approved by the COTR in writing as necessary for performance of the work under this contract. Any attempts by contractor personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this contract, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract and the individual(s) involved.
- (i) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the contractor performs business for the DHS Component. It is not a right, a guarantee of access, a condition of the contract, or Government Furnished Equipment (GFE).
- (j) Contractor access will be terminated for unauthorized use. The contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.
- (k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management or maintenance of Department IT systems under the contract, unless a waiver has been granted by the Head of the component or designee, with the concurrence of both the Department's Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their designees. Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:
 - (1) The individual must be a legal permanent resident of the U. S. or a citizen of Ireland, Israel, the Republic of the Philippines, or any nation on the Allied Nations List maintained by the Department of State;
 - (2) There must be a compelling reason for using this individual as opposed to a U. S. citizen; and
 - (3) The waiver must be in the best interest of the Government.
- (l) Contractors shall identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the contracting officer.

(End of Clause)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specifications. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of Clause)

I.79 3052.219-70 SMALL BUSINESS SUBCONTRACTING PLAN REPORTING (JUN 2006)

- (a) The Contractor shall enter the information for the Subcontracting Report for Individual Contracts (formally the Standard Form 294 (SF 294)) and the Summary Subcontract Report (formally the Standard Form 295 (SF-295)) into the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>.

The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219-9.

(End of Clause)

I.80 3052.222-70 STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (DEC 2003)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of Clause)

I.81 3052.222-71 STRIKES OR PICKETING AFFECTING ACCESS TO A DHS FACILITY (DEC 2003)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing:

- (a) is directed at the Contractor or subcontractor or any employee of either; and
- (b) impedes or threatens to impede access by any person to a DHS facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

I.82 3052.223-70 REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES--APPLICABLE LICENSES AND PERMITS (JUN 2006)

The Contractor shall have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it shall obtain all requisite licenses and permits within days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of Clause)

I.83 3052.228-70 INSURANCE (DEC 2003)

In accordance with the clause entitled "Insurance--Work on a Government Installation" [or Insurance--Liability to Third Persons] in Section I, insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

- (a) Worker's compensation and employer's liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(a).
- (b) General liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(b).
- (c) Automobile liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(c).

I.84 3052.242-71 DISSEMINATION OF CONTRACT INFORMATION (DEC 2003)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. An electronic or printed copy of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of Clause)

I.85 3052.245-70 GOVERNMENT PROPERTY REPORTS (AUG 2008)

- (a) The Contractor shall prepare an annual report of Government property in its possession and the possession of its subcontractors.
- (b) The report shall be submitted to the Contracting Officer not later than September 15 of each calendar year on DHS Form 0700-5, Contractor Report of Government Property.

(End of Clause)

SECTION J LIST OF ATTACHMENTS

J.1 LIST OF ATTACHMENTS

| Attachment No. | No. of Pages | Attachment Title |
|----------------|--------------|--|
| 1 | 14 | UAS Statement of Work |
| 2 | 65 | UAS Performance Specification |
| 3 | 7 | Contract Data Requirements List (CDRLs) |
| 4 | TBD | Contract Security Classification Specification, DD Form 254 (<i>To Be incorporated via contract modification</i>) |
| 5 | 16 | Non-Disclosure Agreement Form (DHS Form 11000-6) and DHS Management Directive |