

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 1 of 9

F04611-02-2-0003

Buyer's prime contract number displayed above contains and/or requires inclusion in subcontracts of the clauses set forth below. Seller assumes all the obligations of Buyer under such clauses with respect to this purchase contract, wherein "all contracts" and "agreement" means this purchase contract, "subawards" means Seller's subcontracts, "recipients" means Buyer and Seller, "Agreements Officer" means Buyer and "subrecipients", "Subcontractor" and "Contractor" means Seller

3.51 PROPERTY – INCORPORATED BY REFERENCE (JUN 2001)

- (a) Recipients may purchase real property or equipment in whole or in part with federal funds under an award only with the prior approval of the agreements officer (except that additional approval is not required for such items included in the proposed/negotiated budget at the time of award).
- (b) Equipment is defined as tangible nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000.00 or more per unit.
- (c) Title to all real property and equipment purchased by the recipient or members under this agreement is vested in the recipient subject to the conditions that the recipient:
 - (1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.
 - (2) Not encumber the property without approval of the agreements officer.
 - (3) Use and dispose of the property in a accordance with DoDGARs 34.21, subparagraph (d) and (e).
- (d) At the end of this agreement, title to the following items shall remain vested with the recipient. Disposition of this property shall be at the discretion of the recipient.

All forgings
All weld wire
All other raw material
Scrap as defined by SM-08, PMP 5.17 "Approved Scrap Procedure"

3.51 PROPERTY MANAGEMENT - INCORPORATED BY REFERENCE (JUN 2001)

The recipient's property management system shall comply with DoDGARS 34.23.

6.021 INVENTIONS – INCORPORATED BY REFERENCE (APR 2000)

- (a) The clause entitled "Patent Rights (Small Business Firms and Nonprofit Organizations (37 CFR 401.14)" is hereby incorporated by reference and is

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 2 of 9

modified as follows: replace the word “contractor” with “recipient”; replace the words “agency,” “Federal Agency” and “funding Federal Agency” with “government”; replace the word “contract” with “agreement” delete paragraphs (g)(2), (g)(3) and the words “to be performed by a small business firm or domestic nonprofit organization” from paragraph (g)(1). Paragraph (L), Communications, point of contract on matters relating to this clause will be the servicing Staff Judge Advocate’s office identified in the article entitled Administrative Responsibilities.

- (b) The recipient shall file Invention (Patent) Reports as of the close of each performance year and at the end of the term for this agreement. Annual reports are due 60 days after the end of each year of performance and final reports are due 90 days after the expiration of the final performance period. The recipient shall use DD Form 882, Report of Inventions and Subcontracts, to file an invention’s report. Negative reports are also required. The recipient shall submit the original and one copy to the servicing Staff Judge Advocate’s office, one copy to the agreements and administration office, and one copy to the agreements officer, if different from the agreements administration office.

6.022 DATA RIGHTS (AUG 2001) (applies to subcontracts for experimental, development, or research work)

- (a) Definitions

“Government purposes”, as used in this article, means any activity in which the United States Government is a party, including cooperative agreements with international or multinational defense organizations, or sales or transfers by the United States Government to foreign governments of international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

“Government purpose rights:, as used in this article, means the right to –

- (1) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
- (2) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

“Unlimited rights”, as used in this article, means rights to use, modify, reproduce, perform, display, release, or disclose data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

“Data”, as used in this article, means recorded information, regardless of form or

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 3 of 9

method or recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the article entitled Inventions.

“Practical application”, as used in this article, means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(b) Allocation of Principal Rights

- (1) Ownership rights to data generated under this agreement shall vest in the recipient. This agreement shall be performed with mixed Government and recipient funding and the parties agree that in consideration for Government funding, the recipient intends to reduce to practical application items, components and processes developed under this agreement.
- (2) The recipient agrees to retain and maintain in good condition until 5 years after completion or termination of this agreement, all data received under this agreement. In the event of exercise of the Government’s march-in rights as set forth under the Article entitled Inventions, the recipient agrees, upon written request from the Government, to deliver at no additional cost to the Government, all data necessary to achieve practical application that was generated under this agreement within 60 days from the date of the written request. The Government shall have unlimited rights to this delivered data.
- (3) With respect to data delivered pursuant to Part 7 of this agreement, Technical and Financial Reporting, the Government shall receive Government purpose rights.

(c) Marking of Data

- (1) Pursuant to subparagraph (b)(3) above, any data delivered under this agreement shall be marked with the following legend:

Government Purpose Rights
Agreement No.:
Recipient’s Name:
Recipient’s Address:

The Government may use, modify, reproduce, release, perform, display or disclose these data within the Government without restriction, and my release or disclose outside the Government and authorize persons to whom such release or disclosure has been made to use, modify,

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 4 of 9

reproduce, release, perform, display or disclose that data for United States Government purposes, including competitive procurement.

(2) Any trade secrets and commercial or financial information the recipient wishes to protect from release under Freedom Of Information Act (FOIA) requirements must be marked with a legend identifying it as privileged or confidential information.

(d) Lower Tier Agreements.

The recipient shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

6.030 FOREIGN ACCESS TO TECHNOLOGY (APR 2000) (applies to subcontracts for experimental, development, or research work)

(a) Definitions

“Foreign firm or Institution” means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign governments, and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

“Know-how” means all information including, but not limited to, discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

“Technology” means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

(b) General

The parties agree that research findings and technology developments in liquid rocket propulsion technology may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this agreement by foreign firms or institutions must be carefully controlled. The controls contemplated in this article are in addition to, and are not intended to change or supersede, the provisions of the international Traffic in Arms Regulation (22 CFR pt. 120 et Seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 5 of 9

Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

- (c) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.
- (1) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:
- (i) Sales of products or components, or
 - (ii) Licenses of software or documentation related to sales of products of components, or
 - (iii) transfer to foreign subsidiaries of the recipient (recipient participants) for purposes related to this agreement, or
 - (iv) Transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this agreement.
- (2) The recipient shall provide timely notice to the Government of any proposed transfer from the recipient of technology developed under this agreement to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the recipient, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the recipient.
- (3) In any event, the recipient shall provide written notice to the agreements officer and Government program manager of any proposed transfer to a foreign firm or institution at least 60 days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within 30 days of receipt of the recipient's written notification, the agreements officer shall advise the recipient whether it consents to the proposed transfer. In cases where the Government does not concur or 60 days after receipt and the Government provides no decision, the recipient may utilize the procedures under the article entitled Claims, Disputes and Appeals. No transfer shall take place until a decision is rendered.
- (4) Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is not approved by the Government, but the transfer is made nonetheless, the recipient shall

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 6 of 9

(a) refund to the Government the funds paid for the development of the technology and (b) negotiate a license with the Government to the technology under terms that are reasonable under the circumstances.

- (d) Lower Tier Agreements. The recipient shall include his article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.
- (e) This article shall remain in effect during the term of the agreement and for 5 years thereafter.

8.010 USING TECHNICAL INFORMATION RESOURCES (APR 2000)

To the extent practical, the recipient will use the technical information resources of the Defense Technical Information Center (DTIC) and other Government or private facilities to investigate recent and on-going research and avoid needless duplication of scientific and engineering effort.

8.020 ADMINISTRATIVE REQUIREMENTS FOR SUBAWARDS AND CONTRACTS (APR 2000)

DoDGARs Part 32 applies if Seller is a universities or other nonprofit organizations, DoDGARs Part 33 applies if Seller is a state and local governments, and DoDGARs Part 34 applies if Seller is a for-profit entities.

9.013 ASSURANCES (FEB 2001)

- (a) By signing or accepting funds under the agreement, the recipient assures that it will comply with applicable provisions of the following National policies on:
- (1) Prohibiting discrimination:
 - (i) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195;
 - (ii) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR part 90;
 - (iii) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56;
 - (2) The Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S. 1251, et seq.), as implemented by Executive Order 11738 (3 CFR, 1971-1975 Comp., p. 799).

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 7 of 9

- (b) The recipient shall obtain assurances of compliance from contractors and recipients at lower tiers.

9.020 U.S. FLAG AIR CARRIERS (NOV 1999)

Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138492. (See General Services Administration amendment to the Federal Travel Regulations, Federal Register (Vol 63, No. 219, 63417-63421).)

Appendix A Part 34 - Contract Provisions

1. Equal Employment Opportunity - Seller shall comply with E.O. 11246 (3 CFR, 1964-1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966-1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subawards in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the responsible DoD Component.
3. Contract Work Hours and Safety Standards Act (40 U.S.C.327-333) - all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 8 of 9

construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement - Contracts, grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
5. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended -Contracts and subawards of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).
6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) -Contractors who apply or bid for an award of \$100,000 or more shall file the required certification.

Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. FAR 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Apr 1991).
8. Debarment and Suspension (E.O.s 12549 and 12689) - Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards

Common Terms and Conditions Guide
Section 5 – Government Contract Requirements

Clause Number: 5045
Effective: 10/15/2002
Page: 9 of 9

that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

Part 34.31

All negotiated contracts in excess of the simplified acquisition threshold shall include a provision permitting access of the Department of Defense, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor that are directly pertinent to a specific program, for the purpose of making audits, examinations, excerpts, and transcriptions.

All contracts, including those for amounts less than the simplified acquisition threshold, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.