

B-01 NOTIONAL CLIN VALUES

Prescription: May insert substantially the same clause in IDIQ solicitations and contracts. Tailor the clause to add the CLINS and to show either task or delivery orders as appropriate.

B-01 NOTIONAL CLIN VALUES (JUL 2011)

Contract Line Item Numbers (CLINs) XXXX through XXXX on the base contract document provide estimated values that are established in Section B as notional place holder values assigned by the Government to facilitate issuance of Task/Delivery Orders. These estimated CLIN values are not binding. The notional CLIN values identified in Section B may be adjusted by the Contracting Officer on a unilateral basis in administrative modifications to this contract. In no event shall the sum total of all Task/Delivery orders issued exceed the ceiling amount established in the contract.

C-01 SCOPE OF WORK

Prescription: May insert substantially the same clause in solicitations and contracts. Tailor the clause and its title to the specific action. May include SOO/SOW paragraph numbers and CLINs when appropriate

C-01 SCOPE OF WORK (MAY 2005)

The Contractor shall perform the work specified in the Statement of Objectives/ Statement of Work (SOO/SOW) or other Attachments and Exhibits in Section J of this contract. The Contractor shall provide all necessary materials, labor, equipment and facilities incidental to the performance of this requirement.

D-01 PACKAGING AND MARKING OF TECHNICAL DATA

Prescription: May insert substantially the same clause in solicitations and contracts if the contract requires packaging and marking instructions for technical data items.

D-01 PACKAGING AND MARKING OF TECHNICAL DATA (APR 2009)

Technical data items shall be preserved, packaged, packed, and marked in accordance with the best commercial practices to meet the packaging requirements of the carrier and insure safe delivery at destination. Classified reports, data and documentation shall be prepared for shipment in accordance with the current National Industrial Security Program Operating Manual (NISPOM), DOD 5220.22-M.

D-02 PACKAGING AND MARKING OF HARDWARE ITEMS

Prescription: May insert substantially the same clause in solicitations and contracts if the contract requires packaging and marking instructions for hardware items. Tailor the clause to select the COR or the PCO or both as appropriate to the procurement.

D-02 PACKAGING AND MARKING OF HARDWARE ITEMS (APR 2009)

a. The contractor shall utilize best commercial practices for the preservation, packaging, marking and labeling of any hardware delivered under this contract to insure safe delivery at final destination. However, the contractor should also note the requirements of DFARS 252.211-7003, Item Identification and Valuation, if applicable.

b. Packaging and marking of hazardous materials shall comply with Title 49 of the Code of Federal Regulation and the International Maritime Dangerous Goods.

c. MARKING INSTRUCTIONS FOR MISSILE DEFENSE AGENCY (MDA) REQUIREMENTS – Request for marking instructions shall be submitted electronically at least 90 days prior to required delivery date, to (specialist enter either COR or PCO or both as appropriate to the acquisition).

Missile Defense Agency, MDA/XX
Address
City, State, and zip code
(INSERT E-mail Address)

F-02 MILESTONE EVENTS

Prescription: May insert substantially the same clause in solicitations and contracts that require milestones.

F-02 MILESTONE EVENTS (APR 2009)

The Contractor shall successfully accomplish the following milestone events within the period specified to assure completion of contract requirements:

Milestone Events	Months After Contract Award
[Fill in Milestones]	[Fill in as appropriate]

G-01 CONTRACT ADMINISTRATION

Prescription: May insert substantially the same clause in solicitations and contracts. Delete subparagraph (c) when 52.219-9 has not been included.

G-01 CONTRACT ADMINISTRATION (SEP 2010)

Notwithstanding the Contractor’s responsibility for total management during the performance of this contract, the administration of the contract will require maximum coordination between the Government and the Contractor. The following individuals will be the Government points of contact during the performance of this contract:

a. CONTRACTING OFFICERS

All contract administration will be effected by the Procuring Contracting Officer (PCO) or designated Administrative Contracting Officer (ACO). Communication pertaining to the contract administration should be addressed to the Contracting Officer. Contract administration functions (see FAR 42.302 and DFARS 242.302) are assigned to the cognizant contract administration office. No changes, deviations, or waivers shall be effective without a modification of the contract executed by the Contracting Officer or his duly authorized representative authorizing such changes, deviations, or waivers.

The point of contact for all contractual matters is:

Name:
Organizational Code: MDA/XXX
Telephone Number:
E-Mail Address: _____@mda.mil

b. CONTRACTING OFFICER'S REPRESENTATIVE/CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

Neither the Contracting Officer's Representative (COR) nor the Contracting Officer's Technical Representative (COTR) is authorized to change any of the terms and conditions of the contract. The Contractor is advised that only the Contracting Officer can change or modify the contract terms or take any other action which obligates the Government. Then, such action must be set forth in a formal modification to the contract. The authority of the COR and the COTR is strictly limited to him/her, without redelegation, to the specific duties set forth in his/her letter of appointment, a copy of which is furnished to the Contractor. Contractors who rely on direction from other than the Contracting Officer, a COR or a COTR acting outside the strict limits of his/her responsibilities as set forth in his/her letter of appointment do so at their own risk and expense. Such actions do not bind the Government contractually. Any contractual questions shall be directed to the Contracting Officer.

The COR under this contract is:

Name:
Organizational Code: MDA/XXX
Telephone Number:
E-Mail Address: _____@mda.mil

The COTR under this contract is:

Name:
Organizational Code: MDA/XXX
Telephone Number:
E-Mail Address: _____@mda.mil

c. CONTRACTING OFFICIAL FOR eSRS

FAR 52.219-9, Small Business Subcontracting Plan (April 2008) requires the use of the Electronic Subcontracting Reporting System (eSRS) for subcontract reporting. The contracting official for eSRS under this contract is:

Name:
Organizational Code: MDA/XXX
Telephone Number:
E-Mail Address: _____@mda.mil

For detailed information regarding eSRS visit <http://www.acq.osd.mil/dpap/pdi/eb/index.html>.

G-05 SUBMISSION OF PAYMENT REQUESTS USING WIDE AREA WORK FLOW – RECEIPT AND ACCEPTANCE (WAWF-RA)

Prescription: Insert substantially the same clause in solicitations and contracts. PCO should select the appropriate subparagraph b depending on contract type.

G-05 SUBMISSION OF PAYMENT REQUESTS USING WIDE AREA WORK FLOW – RECEIPT AND ACCEPTANCE (WAWF-RA) (SEP 2009)

a. Requirement for Electronic Payment Requests by WAWF-RA

1. The Contractor shall submit all payment requests electronically in accordance with FAR Part 32. As prescribed in DFARS clause 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, contractors shall submit all payment requests in electronic form unless the exception in the DFARS clause applies. Paper copies will no longer be processed for payment.

2. To facilitate electronic submission, contractors shall submit all payment requests through the Wide Area Work Flow-Receipt and Acceptance (WAWF-RA) System as described at <http://www.dfas.mil/ecommerce/wawf/info.html> using the appropriate Service Acceptor's DoDAAC (MDA/NCR is HQ0006; MDIOC is H95001, MDA/HSV is HQ0147). When using WAWF-RA, the contractor must include the Contracting Officer's Representative's (COR) e-mail in the invoice submission template in order to notify the COR that a WAWF document has been submitted for approval.

3. In accordance with Appendix F of the DFARS, at the time of each delivery of supplies or services under this contract, the contractor shall prepare and furnish to the Government the WAWF-RA electronic form in lieu of a paper copy Material Inspection and Receiving Report (MIRR), DD Form 250.

4. When requesting final payment, the Contractor must establish compliance with all terms of the contract by submitting a Final Receiving Report through WAWF-RA, or Letter of Transmittal, as applicable.

5. The WAWF Training Links are located on the Internet at <http://www.dfas.mil/ecommerce/wawf/training.html>.

6. Questions regarding the use of the system are to be directed to the WAWF Help Desk:

DISA DECC Ogden
Electronic Business Service Desk
CONUS ONLY: 1-866-618-5988
COMMERCIAL: 801-605-7095
DSN: 338-7095
FAX COMMERCIAL: 801-605-7453
FAX DSN: 388-7453
cscassig@csd.disa.mil

b. Submission of Invoices under Fixed Price Type Contracts

1. "Invoice" as used in this paragraph does not include the contractor's requests for progress payments.

2. The use of WAWF-RA electronic form and invoice are in accordance with DFARS Appendix F.

3. In addition to the requirements of the Prompt Payment clause of the contract, the contractor shall cite on each invoice the contract line item (CLIN); the contract subline item number (SUBCLIN), if applicable; the accounting classification reference number (ACRN), and the payment terms.

4. The contractor shall prepare either:

a separate invoice for each activity designated to receive the supplies or services; or,

a consolidated invoice covering all shipments delivered under an individual order.

5. If acceptance is at origin, the contractor shall submit the WAWF-RA electronic form or other acceptance verification directly to the designated payment office.

6. If acceptance is at destination, the consignee will forward acceptance verification to the designated payment office.

OR

b. Submission of Vouchers under Time and Materials and Cost Type Contracts

1. Contractors approved under the Defense Contract Audit Agency's (DCAA) direct billing program may submit the first and subsequent interim vouchers directly to the disbursing office. Contractors participating in the direct billing program must provide a copy of the first interim voucher to the cognizant DCAA office within 5 days of its submission to the disbursing office.

2. Upon written notification to the contractor, DCAA may rescind the direct submission authority. Upon receipt of the notice to rescind the direct submission authority, the contractor will immediately begin to submit invoices for the affected contracts to DCAA.

3. When authorized by the DCAA in accordance with DFARS 242.803(b) (i) (C), the contractor may submit interim payment requests. Such authorization does not extend to the first and final vouchers. Vouchers requesting interim payments shall be submitted no more than once every two weeks. For indefinite delivery type contracts, interim payment requests shall be submitted no more than once every two weeks for each delivery order. There shall be a lapse of no more than 90 calendar days between performance and submission of an interim payment request.

4. The contractor agrees to segregate costs incurred under this contract at the level of performance, either task or subtask, or CLIN or SUBCLIN, rather than on a total contract basis, and to submit vouchers reflecting costs incurred at that level. Vouchers shall contain summaries of work charged during the period covered, as well as overall cumulative summaries for all work invoiced to date, by line item, subline item, task or subtask. Delivery orders will be segregated by individual order.

5. Prior to final voucher submission, the contractor must submit the final report/final deliverable to the contracting officer's representative (COR) for approval. The COR will provide to the contractor an e-mail stating acceptance of the final report/final deliverable. The contractor must attach the approval to the final voucher in WAWF and forward to the cognizant DCAA office and ACO for approval.

G-06 ALLOTMENT OF FUNDS

Prescription: May insert substantially the same clause in incrementally funded cost reimbursement solicitations and contracts.

G-06 ALLOTMENT OF FUNDS (MAY 2005)

Pursuant to FAR 52.232-22, "Limitation of Funds," the total amount of funds presently available for payment and allotted to this contract (which covers all items, including fee payable), and the estimated period of performance said funds cover, are as follow:

CLIN 0001:	\$TBD
Estimated funds exhaustion date:	Insert Date

G-08 PAYMENT OF FIXED FEE (ORDERING – LEVEL OF EFFORT)

Prescription: May insert substantially the same clause in cost-plus-fixed fee level-of-effort solicitations and contracts when basing fixed fee payments on percentage of Direct Productive Labor Hours performed.

G-08 PAYMENT OF FIXED FEE (ORDERING – LEVEL OF EFFORT) (OCT 2009)

The Government will make payments to the Contractor when requested as work progresses in accordance with Federal Acquisition Regulation (FAR) 52.216-7. The Contractor shall invoice the fee separately and submit such

invoices to the MDA Contracting Officer's Representative (COR) for verification of the percentage of Direct Productive Labor Hours (DPLHs) performed for the billing period. Each invoice for DPLHs shall contain a statement by the Contractor as to the cumulative percentage of DPLHs invoiced. Each invoice for fee shall contain a statement by the Contractor as to the cumulative percentage of fee invoiced. Fee shall be payable, subject to other provisions of FAR 52.216-8, "Fixed Fee," in amounts commensurate with the percentage of work performed. In no case shall the cumulative amount of the fee invoiced, when expressed as a percentage of the total fixed fee for the applicable CLIN, exceed the cumulative percentage of DPLHs performed for that CLIN (as verified by the MDA COR) at the end of the billing period.

G-10 SEGREGATION OF COSTS

Prescription: May insert substantially the same clause in solicitations and contracts when segregation of costs is required.

G-10 SEGREGATION OF COSTS (MAY 2005)

For CLIN(s) 0001, 000X and 000X, and their respective Option CLINs, vouchers shall contain actual hours and costs by cost element (cost elements shall be at the lowest level of identification/ discrimination consistent with the Contractor's cost accounting system) and overall cumulative summaries of all work vouchered to date.

G-11 PERFORMANCE-BASED PAYMENTS

Prescription: May insert substantially the same clause in solicitations and contracts containing FAR Clause 52.232-32, Performance-Based Payments

G-11 PERFORMANCE-BASED PAYMENTS (APR 2011)

a. This clause applies to CLINs 000X - 000Xs. Pursuant to FAR Clause 52.232-32, Performance-Based Payments, the Government and the Contractor have agreed to utilize the Performance-Based payments process to liquidate the dollars associated with the aforementioned CLINs. The liquidation rate will be in accordance with FAR 32.1004. Upon successful completion of each performance event/milestone as identified under Section F, the Contractor may submit an invoice in the amount identified for each performance event/milestone.

b. The contractor shall use commercial invoices to make payment requests for completed performance events/milestones. The information cited on the commercial invoice shall be in accordance with FAR 52.232-32(1) and (m). Invoices may be in contractor format except for the last program milestone for which the contractor shall submit a final DD250. This will close out this program and allow for liquidation of the remaining amount. The Government shall approve payment of each invoice within 10 days after receipt of the invoice or else provide rationale as to why approval has not been granted within that timeframe.

c. Additional ACRNs will be assigned when new accounting classifications are available. When adding new ACRNs, the above payment instructions shall apply, unless specific revised payment instructions are provided as part of a contract modification.

G-13 NOTICE OF THE GOVERNMENT'S USE OF OUTSIDE CONTRACTORS TO REVIEW SUBMITTED INVOICES, PAYMENT REQUESTS, AND MATERIAL INSPECTION AND RECEIVING REPORTS (MAY 2009)

Prescription: Insert substantially the same clause in solicitations and contracts when contractors may be used in the review of invoices, payment requests, and material inspection and receiving reports.

G-13 NOTICE OF THE GOVERNMENT'S USE OF OUTSIDE CONTRACTORS TO REVIEW SUBMITTED INVOICES, PAYMENT REQUESTS, AND MATERIAL INSPECTION AND RECEIVING REPORTS (MAY 2009)

The Government may utilize support contractors to assist the Government in the review and evaluation of the offeror's invoices, payment requests, material inspection and receiving reports, and similar requests for payment or evidence of delivery. These contractors will be provided access to these and other records which may contain the proprietary information of the offeror, to include awarded contracts, to support Government officials in reviewing and reconciling invoices, payment records, and the Government's financial and budgetary records, and in facilitating the timely payment of submitted invoices.

The support contractors are prohibited from obtaining proprietary information to which their employees will have access in the performance of their responsibilities, and are required to promptly notify the contracting officer of any breach of their employees' non-disclosure obligations. Each of the contractor employees has also been required to execute a non-disclosure agreement which acknowledges their responsibilities to only use proprietary information in performance of the above tasks and for no other reason; that they will not share proprietary information with their employers; that they will not use such information for personal or other benefit; and that they will promptly notify their employers of any breaches of their responsibilities.

Unless the offeror specifically objects in writing, the offeror agrees, by the submission of a proposal, to allow the Government's support contractors to have access to the offeror's proprietary information for the purposes described above.

AWARD FEE

Prescription: May use in solicitations and contracts with award fee. Complete to add the AFP attachment number and the award fee periods.

G-14 AWARD FEE (Nov 2010)

This contract provides for the payment of the Award Fee as described in the Award Fee Plan contained in Attachment____. The table below provides a summary of the maximum award fee; award fee pool allocations by period and fee earned by period.

Period Date	Pool Allocation	Fee Earned	Cumulative Fee Earned	Unearned Fee	% of FDO Determination for AF
Period 1 (date to date)	\$_____	\$_____	\$_____	\$_____	_____
Period 2 (date to date)	\$_____	\$_____	\$_____	\$_____	_____

H-AEGIS-01 LEVEL OF EFFORT

Prescription: May use substantially the clause in Aegis solicitations and contracts when appropriate. PCO should tailor to the specific acquisition.

H-AEGIS-01 LEVEL OF EFFORT (FEB 2011)

a. The contractor agrees to provide the total level of effort specified in this clause in the performance of the work described in Section B and the statement of work of this contract. The total level of effort for the performance of this contract shall be _____ total man-hours of direct labor, including subcontractor direct labor for those subcontractors specifically identified in the contractor's proposal as having hours included in the proposed level of effort. The following table breaks out the hours identified above by CLIN:

CLIN	HOURS
0001	TBD
0003	TBD
0006	TBD
0008	TBD
0010	TBD

b. Of the total man-hours of direct labor set forth above, it is estimated that zero (0) man-hours are uncompensated effort.

Uncompensated effort is defined as hours provided by personnel in excess of 40 hours per week without additional compensation for such excess work. All other effort is defined as compensated effort. If no effort is indicated in the first sentence of this paragraph, uncompensated effort performed by the contractor shall not be counted in fulfillment of the level of effort obligations under this contract.

c. Effort performed in fulfilling the total level of effort obligations specified above shall only include effort performed in direct support of this contract and shall not include time and effort expended on such things as local travel to and from an employee's usual work location, uncompensated effort while on travel status, truncated lunch periods, work (actual or inferred) at an employee's residence or other non-work locations (except as provided in paragraph (j) below), or other time and effort which does not have a specific and direct contribution to the tasks described in Section B and the statement of work.

d. The level of effort for this contract shall be expended at an average rate of approximately _____ hours per week. It is understood and agreed that the rate of man-hours per month may fluctuate in pursuit of the technical objective, provided such fluctuation does not result in the use of the total man-hours of effort prior to the expiration of the term hereof, except as provided in the following paragraph.

e. If, during the terms hereof, the contractor finds it necessary to accelerate the expenditure of direct labor to such an extent that the total man-hours of effort specified above would be used prior to the expiration of the term, the contractor shall notify the contracting officer in writing setting forth the acceleration required, the probable benefits which would result, and an offer to undertake the acceleration at no increase in the estimated cost or fee together with an offer, setting forth a proposed level of effort, cost breakdown, and proposed fee, for continuation of the work until expiration of the term hereof. The offer shall provide that the work proposed will be subject to the terms and conditions of this contract and any additions or changes required by then current law, regulations, or directives, and that the offer, with a written notice of acceptance by the Contracting Officer, shall constitute a binding contract. The contractor shall not accelerate any effort until receipt of such written approval by the contracting officer. Any agreement to accelerate will be formalized by contract modification.

f. The Contracting Officer may, by written order, direct the contractor to accelerate the expenditure of direct labor such that the man-hours of effort specified in paragraph (a) above would be used prior to the expiration of the term. This order shall specify the acceleration required and the resulting revised term. The contractor shall acknowledge this order within five days of receipt.

g. If the total level of effort specified in paragraph (a) above is not provided by the contractor during the period of the contract, the Contracting Officer, at its sole discretion, shall either (i) reduce the fee of this contract as follows:

$$\text{Fee Reduction} = \text{Fee (Required LOE - Expended LOE) / Required LOE}$$

Or (ii) subject to the provisions of the clause of this contract entitled “Limitation of Cost” (FAR 52.232-20) or “Limitation of Funds” (FAR 52.232-22) as applicable, require the contractor to continue to perform the work until the total number of man-hours of direct labor specified in paragraph (a) above shall have been expended, at no increase in the fee of this contract.

h. The contractor shall provide and maintain an accounting system, acceptable to the Defense Contract Management Agency (DCMA) and the Defense Contract Audit Agency (DCAA), which collects costs incurred and effort (compensated or uncompensated, if any) provided in fulfillment of the level of effort obligations for this contract. The contractor shall indicate on each invoice the total level of effort claimed during the period covered by the invoice, separately identifying compensated effort and uncompensated effort, if any.

i. Within 45 days after completion of the work under each separately identified period of performance hereunder, the contractor shall submit the following information in writing to the contracting officer with copies to the cognizant DCMA and DCAA office to which vouchers are submitted: (1) the total number of man-hours of direct labor expended during the applicable period; (2) a breakdown of this total showing the number of man-hours expended in each direct labor classification and associated direct and indirect costs; (3) a breakdown of other costs incurred; and (4) the contractor’s estimate of the total allowable cost incurred under the contract for the period. Within 45 days after completion of the work under the contract, the contractor shall submit, in addition, in the case of a cost overrun; (5) the amount by which the estimated cost of this contract may be reduced to recover excess funds and, in the case of an underrun in hours specified as the total level of effort; and (6) a calculation of the appropriate fee reduction in accordance with this clause. All submissions shall include subcontractor information.

j. Unless the contracting officer determines that alternate worksite arrangements are detrimental to contract performance, the contractor may perform up to 10% of the hours at an alternative worksite, provided the contractor has a company approved alternative worksite plan. The primary worksite is the traditional “main office” worksite. An alternative worksite means an employee’s residence or telecommuting center. A telecommuting center is a geographically convenient office setting as an alternative to an employee’s main office. The Government reserves the right to review the contractor’s alternative worksite plan. In the event performance becomes unacceptable, the contractor will be prohibited from counting those hours performed at the alternative worksite in fulfilling the total level of effort obligations of the contract. Regardless of work location all contract terms and conditions, including security requirements and labor laws, remain in effect. The Government shall not incur any additional cost nor provide additional equipment for contract performance as a result of the contractor’s election to implement an alternative worksite plan.

k. Notwithstanding any of the provisions in the above paragraphs, the contractor may furnish man-hours up to five percent in excess of the total man-hours specified in paragraph (a) above, provided that the additional effort is furnished within the term hereof, and provided further that no increase in the estimated cost or fee is required.

NOTE FOR PURPOSES OF THIS SOLICITATION, THE GOVERNMENT ESTIMATES THE LOE FOR EACH CLIN TO BE AS FOLLOWS:

CLIN	HOURS
0001	TBD
0003	TBD
0006	TBD
0008	TBD
0010	TBD

H-01 LEVEL OF EFFORT (LOE) AND COMPLETION ORDERS – FEE DETERMINATION

Prescription: May insert substantially the same clause in fixed fee-type level-of-effort and completion task order solicitations and contracts to explain how the contractor’s fee is determined. Tailor as appropriate to either LOE or Completion.

H-01 LEVEL OF EFFORT (LOE) OR COMPLETION ORDERS – FEE DETERMINATION (APR 2009)

a. In the performance of LOE-type Task Orders issued pursuant to Special Provision, "TASK ORDERS," the Contractor shall provide Direct Productive Labor Hours (DPLH) level of effort as set forth in Section B above within the time period as set forth in Section F hereof:

b. Direct Productive Labor Hours are defined as actual PRIME AND SUBCONTRACTOR (INCLUDING CONSULTANTS) work hours exclusive of vacation, holiday, sick leave and other absences.

c. It is understood and agreed that the Contractor may, without notice to the Government, increase or decrease the approved number of labor hours for each labor category by no more than 10% to the extent that the ceiling price and maximum DPLH for the Task Order are not exceeded. If for any labor category the DPLH delivered are greater than 110% of the DPLH specified for that labor category in the Task Order, then the DPLH in excess of 110% for that labor category are non-fee bearing. The Contracting Officer shall reduce the fixed fee of the Task Order by an amount equal to the fee per hour for each non-fee bearing hour. The computed fee per hour for this Task Order is \$_____, which represents the fixed fee divided by the total DPLH.

d. In accordance with FAR 16.306(d)(2), entitlement to the total fixed fee is subject to certification by the contractor to the Contracting Officer that he has exerted the total DPLH level of effort, has provided the reports called for, and the effort performed and reports provided are considered satisfactory by the Government.

e. The contractor may include in provisional vouchers fixed fee based on the percentage of level of effort hours exerted to the total level of effort hours stipulated in Section B, subject to the withholding reserve of the contract clause titled "Fixed Fee."

f. Nothing in this provision shall be construed to constitute authorization for the work not in accordance with the LIMITATION OF FUNDS provision of the contract.

OR

a. For completion task orders, the fixed fee shall be prorated based on the percentage of work completed. If, at the end of each task order period of performance, the Contractor has not completed the task, the fee may be reduced to reconcile the fee entitlement. No additional fee shall be paid on any cost overrun.

b. Nothing in this provision shall be construed to constitute authorization for the work not in accordance with the "LIMITATION OF FUNDS" provision of the contract. In addition, nothing in this provision shall be construed to diminish the rights of the parties pursuant to the "LIMITATION OF FUNDS" provision of this contract. Nothing in this provision shall be construed to authorize the Contractor to start work under any task order issued under this contract without authorization from the Contracting Officer.

H-02 LEVEL OF EFFORT

Prescription: May insert substantially the same clause in fixed fee, level-of-effort (broad SOO based) solicitations and contracts to explain how the contractor's fee is determined.

H-02 LEVEL OF EFFORT (APR 2009)

a. In the performance of this contract, the Contractor shall provide Direct Productive Labor Hours (DPLH) level of effort as set forth in Section B above within the time period as set forth in Section F hereof:

b. Direct Productive Labor Hours are defined as actual PRIME AND SUBCONTRACTOR (INCLUDING CONSULTANTS) work hours exclusive of vacation, holiday, sick leave and other absences.

c. In accordance with FAR 16.306(d)(2), entitlement to the total fixed fee is subject to certification by the contractor to the Contracting Officer that he has exerted the total DPLH level of effort, has provided the reports called for, and the effort performed and reports provided are considered satisfactory by the Government.

d. The contractor may include in provisional vouchers fixed fee based on the percentage of level of effort hours exerted to the total level of effort hours stipulated in Section B, subject to the withholding reserve of the contract clause titled "Fixed Fee."

e. Nothing in this provision shall be construed to constitute authorization for the work not in accordance with the LIMITATION OF FUNDS provision of the contract.

H-03 DELIVERY/TASK ORDERS

Prescription: May insert substantially the same clause in IDIQ solicitations and contracts. Tailor to either Delivery or Task Orders as appropriate.

H-03 DELIVERY/TASK ORDERS (DEC 2010)

a. General. The delivery/task order procedures in this clause shall apply to CLIN 0001, 00XX, and if exercised Option CLIN XXXX. The Government may order up to the maximum Direct Productive Labor Hours (DPLHs) specified in the Schedule. For purposes of this contract, the term "Delivery/Task Order" is synonymous and interchangeable with the word "order" as used in Section I FAR/DFARS clauses 252.216-7006, 52.216-19 and 52.216-22. All Delivery/Task Orders are subject to the terms and conditions of this contract. In the event of a conflict between a Delivery/Task Order and this contract, the contract shall prevail.

b. Ordering. Delivery/Task Orders will be issued in written form by the Contracting Officer. Normally, prior to issuing a Delivery/Task Order, the Contracting Officer will request, and the Contractor shall provide a Delivery/Task Plan for accomplishing the work.

(1) Draft Delivery/Task Order. The Contracting Officer will issue a draft Delivery/Task Order to the Contractor with a request to the Contractor to submit a plan for accomplishing the task. The draft Delivery/Task Order will include the following information:

- (a) contract number, CLIN and SOO/SOW reference;
- (b) description of the task to be performed;
- (c) a period of performance for the task;
- (d) description of the deliverables (as appropriate); and
- (e) specify either LOE or completion and number of DPLH.

NOTE: Issuance of a draft Delivery/Task Order does not authorize performance of this task.

(2) Task Plan. The Contractor shall submit a Delivery/Task Plan within thirty (30) calendar days after receipt of a draft Delivery/Task Order. The Delivery/Task Plan shall include:

- (a) a brief description of the method and approach to accomplish the Delivery/Task Order;
- (b) estimated level of effort, in DPLHs by labor category, required to perform the task in the period of performance specified by the Delivery/Task Order. (DPLHs to be delivered by the Contractor shall include all reimbursable labor hours worked regardless of source, prime or authorized subcontractor);
- (c) the Contractor's cost estimate, including all travel and other travel costs, with supporting rationale to perform the Delivery/Task Order; and
- (d) upon completion of negotiations, a certificate of Current Cost and Pricing Data, as required by FAR 15.403-4, shall be submitted to the Contracting Officer.

(3) Delivery/Task Order Issuance. Within thirty (30) calendar days after receipt of the Delivery/Task Plan, the Contracting Officer will provide either an executed Delivery/Task Order, or advise the Contractor of changes required to the Delivery/Task Plan. Once the Contractor and Contracting Officer have agreed on the contents of the Delivery/Task Plan, the Contracting Officer will issue the Delivery/Task Order, which includes the following:

- (a) Contracting Officer signature and date of order;
- (b) Contract number, CLIN, order number and SOW reference;
- (c) Description of the Task to be performed;
- (d) For LOE tasks, the maximum number of labor hours by labor category and total cost-plus-fixed fee ceiling to be expended on the task; for completion tasks, the estimated labor hours and cost-plus-fixed-fee;
- (e) The period of performance for the task; and
- (f) Deliverables including applicable CDRLs.

(4) Alternate Procedure. When time will not permit the preparation of a Delivery/Task Plan before commencement of work, the Contracting Officer may issue a Delivery/Task Order specifying a maximum DPLH and estimated cost not to be exceeded pending agreement on the Delivery/Task Plan.

(a) The Contractor shall begin performance promptly and submit a Delivery/Task Plan within ten (10) calendar days after receipt of the Delivery/Task Order.

(b) Within ten (10) calendar days after receipt of the Delivery/Task Plan, the Contracting Officer will provide either a written Notice of Approval, issue a modification to the Delivery/Task Order, or advise the Contractor of changes required to the Delivery/Task Plan.

(c) Until such time as a Delivery/Task Plan is approved, the Contractor shall limit the expenditure of DPLHs and costs at a rate such that the Delivery/Task Order maximum DPLHs and ceiling price will not be exceeded prior to the completion of the task.

c. Delivery/Task Order Modifications. Delivery/Task Orders normally will be modified using the standard procedures for issuing Delivery/Task Orders. In emergency circumstances, Delivery/Task Orders may be modified orally by the Contracting Officer; oral modifications will be confirmed by issuance of a written Delivery/Task Order modification within five working days from the time of the oral communication modifying the order.

d. Performance. Subject to the contract terms and conditions, and unless otherwise directed by the Contracting Officer, the Contractor shall initiate performance on new Delivery/Task orders promptly upon receipt of a signed Delivery/Task Order. Performance of work on new Delivery/Task orders prior to execution of an approved Delivery/Task Order is not authorized and is at the Contractor's own risk.

e. Cost and Labor Hour Limitation.

(1) The Contractor shall incur costs under this contract only in the performance of Delivery/Task Orders and modifications to orders issued by the Contracting Officer. No other costs are authorized without the express written consent of the Contracting Officer. The Contractor will not be paid for expenditures above the maximum DPLHs for LOE tasks or the cost-plus-fixed-fee ceiling of any individual Delivery/Task Order (LOE or Completion).

(2) To allow the Contractor the flexibility to utilize the optimum labor mix in performing each LOE Delivery/Task Order, the Contractor may, without notice to the Government, increase or decrease the approved number of hours by no more than 10% for any labor category unless otherwise stated in the Delivery/Task Order. These adjustments are allowable only to the extent that the maximum DPLHs (LOE) and ceiling price for the Delivery/Task Order are not exceeded.

H-05 AUTHORIZED TRAVEL AND TRAVEL COSTS AS SPECIFIED UNDER A TRAVEL CLIN

Prescription: May insert substantially the same clause in all solicitations and contracts requiring directly billed travel. Note that the travel paragraph may be tailored to remove the PCO as appropriate, but the extended travel paragraph may not be tailored.

H-05 AUTHORIZED TRAVEL AND TRAVEL COSTS AS SPECIFIED UNDER A TRAVEL CLIN (APR 2009)

a. Travel. All contractor travel (non-local) that is directly billed under this contract as a specific travel CLIN (other than extended commuting travel as defined under paragraph c. below) must be approved in advance in writing by the COR and/or by the Procuring Contracting Officer (PCO) using MDA Form 110.

b. Extended Commuting Travel.

(1) All contractor extended commuting travel under this contract must be approved by the COR and by the PCO using MDA Form 110. Such approval will be granted only after review and government acceptance of contractor documentation showing that extended commuting travel is the most effective means of fulfilling the government's requirements – cost and other factors considered.

(2) Extended commuting travel may be authorized for up to 90 days at a time and must be authorized in advance as stated in b. (1) above.

c. Definition: Extended Commuting Travel – travel that occurs regularly in the performance of this contract where an individual or individuals travel back and forth from their normal place, or city of employment to another location or locations over a 30 day (or longer) period.

H-06 INSURANCE

Prescription: IAW FAR 28.307, insert substantially the same clause in all cost-reimbursement solicitations and contracts.

H-06 INSURANCE (Apr 2009)

In accordance with FAR Part 28.307-2, Liability, the Contractor shall maintain the types of insurance and coverage listed below:

TYPES OF INSURANCE	MINIMUM AMOUNT
Workmen's Compensation and all occupational disease	As required by Federal and State law
Employer's Liability including all occupational disease when not covered by Workmen's Compensation above	\$100,000 per accident
General Liability (Comprehensive) Bodily Injury	\$500,000 per occurrence
Automobile Liability (Comprehensive)	
Bodily Injury per person	\$200,000
Bodily Injury per accident	\$500,000
Property Damage per accident	\$ 20,000

H-08 PUBLIC RELEASE OF INFORMATION

Prescription: May insert substantially the same clause in solicitations and contracts. FYI, the current version of the form referenced in c.(1) is the MDA Form 003, **SECURITY AND POLICY REVIEW** Request for Public Release Review.

H-08 PUBLIC RELEASE OF INFORMATION (APR 2009)

- a. The policies and procedures outlined herein apply to information submitted by the Contractor and his subcontractors for approval for public release. Prior to public release, all information shall be cleared as shown in the "National Industrial Security Program Operations Manual" (DoD 5220.22-M). At a minimum, these materials may be technical papers, presentations, articles for publication and speeches or mass media material, such as press releases, photographs, fact sheets, advertising, posters, compact discs, videos, etc.
- b. All materials which relate to the work performed by the contractor under this contract shall be submitted to MDA for review and approval prior to release to the public. Subcontractor public information materials shall be submitted for approval through the prime contractor to MDA.
- c. The MDA review and approval process for contractors working under an MDA contract starts with the contracting officer's representative (COR).
 - (1) The contractor shall request a copy of MDA form "Security and Policy Review Worksheet for Public Release Review" (.pdf format) or any superseding form from the MDA.
 - (2) The contractor shall complete Blocks 1, 2, 3 and 6 of Worksheet (or comply with the instructions of any superseding form) and submit it with materials to be cleared to the COR (see paragraph j. below). If the information was previously cleared, provide the Public Release Case Number if available and a copy of the previous document highlighting the updated information.
 - (3) The COR may affirm "public releaseability" by signing the Statement of Certification in Block 7 of the Worksheet.
 - (4) The COR will forward the Worksheet with the materials to be cleared to the MDA designated point of contact for Block 8 approval and submission of package to MDA/PA.
 - (5) The COR will notify the contractor of the agency's final decision regarding the status of the request.
- d. The contractor shall submit the following to the COR at least 60 days in advance of the proposed release date:
 - (1) Security and Policy Review Worksheet and one (1) electronic copy of the material to be reviewed..
 - (2) Written statement, including:
 - (a) To whom the material is to be released
 - (b) Desired date for public release
 - (c) Statement that the material has been reviewed and approved by officials of the contractor or the subcontractor, for public release, and
 - (d) The contract number.
- e. The items submitted must be complete. Photographs shall have captions.
- f. Outlines, rough drafts, marked-up copy (with handwritten notes), incorrect distribution statements, FOUO information, export controlled or ITAR information will not be accepted or cleared.
- g. Abstracts or abbreviated materials may be submitted if the intent is to determine the feasibility of going further in preparing a complete paper for clearance. However, clearance of abstracts or abbreviated materials does not satisfy the requirement for clearance of the entire paper.
- h. The MDA Director of Public Affairs (MDA/PA) is responsible for coordinating the public release review. MDA/PA will work directly with the COR if there are questions or concerns regarding submissions. MDA/PA will not work with contractors who have not gone through their COR.

i. Once information has been cleared for public release, it is in the public domain and shall always be used in its originally cleared context and format. Information previously cleared for public release but containing new, modified or further developed information must be submitted again for public release following the steps outlined in items a. through h. above.

j. Due to time and screening constraints, it is recommended that all "public release" packages submitted to MDA be forwarded by a commercial overnight delivery service, addressed as follows:

Missile Defense Agency/XX*
Attn: COR First name, Last name*
COR Mailing Address*
City, State, Zip code*

* Insert name and address of COR

H-09 ORGANIZATIONAL CONFLICT OF INTEREST (Mar 2010)

Prescription: When this clause is used include Policy Memorandum 51 in Section J and tailor paragraph b.(2) of the clause to include the appropriate attachment number.

H-09 ORGANIZATIONAL CONFLICT OF INTEREST (Mar 2010)

a. Purpose: The primary purpose of this clause is to aid in ensuring that:

(1) the Contractor's objectivity and judgment are not biased because of its present or planned interests which relate to work under this contract;

(2) the Contractor does not obtain unfair competitive advantage by virtue of its access to non-public information regarding the Government's program plans and actual or anticipated resources; and

(3) the Contractor does not obtain unfair competitive advantage by virtue of its access to proprietary information belonging to others.

b. Scope: Organizational Conflict of Interest (OCI) rules, procedures and responsibilities as described in FAR Subpart 9.5 shall be applicable to this contract and any resulting subcontracts.

(1) The general rules in FAR 9.505-1 through 9.505-4 and the restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors-in-interest (hereinafter collectively referred to as "Contractor") in the activities covered by this contract as prime Contractor, subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity.

(2) The Missile Defense Agency's OCI policy is in Attachment X of this contract.

c. Access to and Use of Government Information: If the Contractor, in performance of this contract, obtains access to Government information, or other program related information, such as plans, policies, reports, studies, financial plans, or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer, it shall not:

(1) use such information for any private purpose;

(2) compete for work based on such information until one year after such information is released or otherwise made available to the public;

(3) submit an unsolicited proposal to the Government based on such information;

(4) release such information.

d. Access to and Protection of Proprietary Information: The Contractor agrees to treat proprietary data in accordance with the provisions of FAR 9.505-4. The Contractor shall enter into a written agreement for the protection of the proprietary data of others and exercise diligent effort to protect such proprietary data from unauthorized use or disclosure.

e. Subcontracts: The Contractor shall include this clause in consulting agreements, teaming agreements, subcontracts, or other arrangements for provision of services or supplies of any tier. The terms "contract", "Contractor", and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

f. Representations and Disclosures:

(1) The Contractor represents that it has disclosed to the Contracting Officer, prior to award, all facts relevant to the existence or potential existence of organizational conflicts of interest as that term is used in FAR Subpart 9.5. To facilitate disclosure and Contracting Officer approval, the Contractor shall complete an OCI Analysis/Disclosure Form for each MDA, Ballistic Missile Defense (BMD), and BMD-related contract or subcontract (form shall be requested from the Procuring Contracting Officer).

(2) The Contractor represents that if it discovers an organizational conflict of interest or potential conflict of interest after award, a prompt and full disclosure shall be made in writing to the Contracting Officer. This disclosure shall include a description of the action the Contractor has taken or proposes to take in order to avoid or mitigate such conflicts.

g. Remedies and Waiver:

(1) For breach of any of the above restrictions or for non-disclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate this contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract. If, however, in compliance with this clause, the Contractor discovers and promptly reports an organizational conflict of interest (or the potential thereof) subsequent to contract award, the Contracting Officer may terminate this contract for convenience if such termination is deemed to be in the best interest of the Government or take other appropriate actions.

(2) The parties recognize that this clause has potential effects which will survive the performance of this contract and that it is impossible to foresee each circumstance to which it might be applied in the future. Accordingly, the Contractor may at any time seek a waiver from the Director, MDA, (via the Contracting Officer) by submitting a full written description of the requested waiver and the reasons in support thereof.

h. Government Indemnity: The Contractor shall hold the Government harmless and indemnify the Government as to any cost or loss resulting from the unauthorized use or disclosure of third party information data or software by the Contractor, its employees, subcontractors or agents.

OCI ANALYSIS/DISCLOSURE FORM

1. <i>Contract Number</i>	2. <i>Program Title</i>		
3. <i>Contractor Name and Address</i>		4. <i>Telephone Number and POC</i>	

5. <i>Type of work to be performed under this solicitation:</i>		
(a) Providing Systems Engineering and Technical Direction () (b) Preparing Specifications or Work Statements () (c) Providing Technical Evaluation or Advisory & Assistance Services (x)		
<i>Other MDA or BMD-related work requiring analysis and determination:</i>	6. <i>Contract Number and Program Title</i>	
7. <i>Brief Summary/Description of work performed under Block 6 action:</i>		
8. <i>Relationship between requirements of Block 1 action and work performed under Block 6 action (If None, State Why):</i>		
9. <i>Offeror/Contractor OCI Evaluation and Assessment (If either answer is yes, attach a copy of the SOW and complete Block 10):</i>		
(a) Does Actual OCI exist? () Yes () No (b) Does Potential OCI exist? () Yes () No		
10. <i>Summary of actual/potential OCI, including actions planned to avoid, neutralize, or mitigate conflict or potential conflict:</i>		
11. <i>Typed Name of Responsible Official</i>	12. <i>Signature</i>	13. <i>Date</i>
14. <i>Typed Name of Contracting Officer</i>	15. <i>Approval Signature</i>	16. <i>Date</i>

INSTRUCTIONS FOR COMPLETING OCI ANALYSIS/DISCLOSURE FORM

Blocks 3 and 4: Self-explanatory.

Block 6: Fill in the number and the short, official title by which the contract or subcontract requiring analysis and determination is formally known. This is work that has already been awarded, is being performed by your company, and requires a comparison with that work described in Blocks 1-5.

NOTE: One OCI Analysis/Disclosure Form shall be submitted for EACH BMD or BMD-related contract or subcontract currently being performed.

Block 7: Provide a brief, but specific, narrative summary of the SOW and work performed on the contract or subcontract listed in Block 6, including the period of performance and the value.

Block 8: Provide a brief, but specific, narrative summary of ANY relationship between the work to be performed under the action listed in Block 1 and the previous work performed under the action listed in Block 6. Please be as specific as possible by citing the specific RFP/SOW paragraph where possible.

Block 9: Place an "X" in the appropriate () for your responses.

Block 10: If you answer yes either to 9(a) or to 9(b), provide a summary of the actual or potential OCI.

Blocks 11, 12, and 13: Provide the name of your company official with responsibility for and/or authority to discuss and commit the company on matters relating to OCI issues. That official should then sign and date each form.

H-10 ENABLING CLAUSE FOR BMD INTERFACE SUPPORT

Prescription: May insert substantially the same clause in solicitations and contracts that require Technical Interface/Integration with other MDA contractors. Companion coverage for award/incentive provisions is necessary if MDA wishes to incentivize performance of this requirement.

H-10 ENABLING CLAUSE FOR BMD INTERFACE SUPPORT (APR 2009)

a. It is anticipated that, during the performance of this contract, the Contractor will be required to support Technical Interface/Integration Meetings (TIMS) with other Ballistic Missile Defense (BMD) Contractors and other Government agencies. Appropriate organizational conflicts of interest clauses and additional costs, if any, will be negotiated as needed to protect the rights of the Contractor and the Government.

b. Interface support deals with activities associated with the integration of the requirements of this contract into BMD system plans and the support of key Missile Defense Agency (MDA) program reviews.

c. The Contractor agrees to cooperate with BMD Contractors by providing access to technical matters, provided, however, the Contractor will not be required to provide proprietary information to non-Government entities or personnel in the absence of a non-disclosure agreement between the Contractor and such entities.

d. The Contractor further agrees to include a clause in each subcontract requiring compliance with paragraph c. above, subject to coordination with the Contractor. This agreement does not relieve the Contractor of its responsibility to manage its subcontracts effectively, nor is it intended to establish privity of contract between the Government and such subcontractors.

e. Personnel from BMD Contractors or other Government agencies or Contractors are not authorized to direct the Contractor in any manner.

f. This clause shall not prejudice the Contractor or its subcontractors from negotiating separate organizational conflict of interest agreements with BMD Contractors; however, these agreements shall not restrict any of the Government's rights established pursuant to this clause or any other contract.

H-11 MDA VISIT AUTHORIZATION PROCEDURES

Prescription: May insert substantially the same clause in solicitations and contracts that require contractors to visit MDA facilities.

H-11 MDA VISIT AUTHORIZATION PROCEDURES (AUG 2011)

a. The Contractor shall submit all required visit clearances in accordance with current NISPOM regulations. Visit clearances shall identify the contract number.

For Visit Requests to the National Capital Region send to:

JPAS SMO Code: DDAAU4
Missile Defense Agency
Attn: Access Control Center
5700 18th Street, Bldg 245
Fort Belvoir, VA 22060-5573
571-231-8249
571-231-8099 FAX
ACC@MDA.mil

For Visit Requests to Huntsville, AL send to:

Missile Defense Agency,
JPAS SMO Code: DDAAUH
Attn: Visitor Control
Bldg 5224 Martin Road
Redstone Arsenal, AL 35898
256-450-3215
256-450-3222 FAX
MDAvisitorcontrolincomingsv@mda.mil

b. The COR is authorized to approve visit requests for the Contracting Officer.

H-12 CONTROL OF ACCESS TO MDA SPACES AND INFORMATION SYSTEMS

Prescription: May insert substantially the same clause in solicitations and contracts that require contractors to have access to MDA facilities or systems.

H-12 CONTROL OF ACCESS TO MDA SPACES AND INFORMATION SYSTEMS (APR 2011)

a. To maintain the security of the MDA spaces and information systems, the Contractor shall notify the COR in writing whenever a prime or subcontractor employee included on the current Visit Authorization Request/Letter no longer supports this contract. This requirement shall apply to both Contractor and employee initiated termination of services and to temporary suspension of services.

b. The contractor will cooperate with COR in taking the following actions (facilitating the employee's return of all badges, keycards, and passes). Specifically, upon notification, the COR will work with the organization's Security Operations Center and the MDA Service Desk to ensure timely action to:

- (1) remove the employee from the current Visit Authorization Request/Letter;
- (2) cancel the MDA badge, keycard and Pentagon Pass issued pursuant to the Visit Authorization Request/Letter; and
- (3) terminate the MDA LAN account/access privileges.

c. The contractor shall identify the reason for and date of termination or expected period of suspension and submit the notification to the COR within five (5) working days prior to service discontinuation. For unplanned termination or suspension of services, notification shall be made on the same working day as the termination/suspension action.

H-14 PERSONNEL QUALIFICATIONS

Prescription: May insert substantially the same clause in solicitations and contracts that require key personnel.

H-14 PERSONNEL QUALIFICATIONS (MAY 2005)

a. The Contractor shall promptly notify the Contracting Officer and Contracting Officer's Representative prior to making any changes in key staff. If replacing key staff the Contractor shall adhere to the following: (1) replacement person's qualifications are equal to or better than the qualifications of the person being replaced; or (2) the added person's qualifications are equal to or better than the core capabilities of this contract. Key staff positions are defined as: [INSERT list of key personnel, e.g. Program Manager, Deputy Program Manager, Lead Engineer, etc.].

b. All Contractor notifications must provide the name and departure date for the incumbent leaving, a complete resume for the proposed substitute, and any other pertinent information requested by the Contracting Officer. The Government shall be provided the opportunity to review the proposed substitution regarding qualifications, security matters or any other concerns which could, in its opinion, affect performance under this contract.

c. This clause does not, in any way, abrogate the contractor's authority to hire or assign personnel as it sees fit, or its responsibility to fill key positions with qualified personnel.

H-15 EXERCISE OF OPTIONS

Prescription: May insert substantially the same clause in solicitations and contracts that contain options.

H-15 EXERCISE OF OPTIONS (MAY 2005)

Any option under this contract shall be exercised by a unilateral contract modification signed by the Contracting Officer. Specific contract line items or sub-line items delineating a description of the supplies or services, quantity requirements, and a corresponding delivery schedule for the exercised options shall be identified in the unilateral contract modification. The Government may exercise from time to time, either in whole or in part, some or all the option line items. An option shall be exercised by issuance, within 30 days prior to the end of the current contract period, of a unilateral modification for the subsequent option requirements.

H-16 CONTRACTOR ACCESS TO PLANNING, PROGRAMMING, BUDGETING AND EXECUTION (PPBE) DATA

Prescription: Insert the following clause in solicitations and contracts when contractor personnel supporting their program require access to Planning, Programming, Budgeting and Execution Data (see MDA Directive 7045.01).

H-16 CONTRACTOR ACCESS TO PLANNING, PROGRAMMING, BUDGETING AND EXECUTION (PPBE) DATA (APR 2009)

a. In order to perform the requirements of this contract, the Contractor shall be required to receive, review, analyze, and prepare (hereinafter shall be referred to as "process") reports/data which contain Government Planning, Programming, Budgeting, and Execution (PPBE) data. However, the Missile Defense Agency is authorized to release PPBE data to the Contractor only after compliance with the provisions of this clause has been met. Additionally, the Contractor is also required to comply with the provisions of MDA Directive 7045.01, "Contractor Access to Planning, Programming, Budgeting, and Execution (PPBE) Data" where applicable.

b. The prime Contractor shall provide the following information to the Contracting Officer within fifteen (15) days from the date of this contract:

(1) Affiliates (parent company, subsidiaries, joint ventures, and partnerships, etc.):

- (a) Company's name and complete address;
- (b) Affiliation; and
- (c) Nature of the company's business.

(2) Agents, consultants, and subcontractors related to this contract:

- (a) Company's name and complete address;
- (b) Relationship; and
- (c) Nature of the company's business.

The Contracting Officer shall be immediately notified in writing in the event of any changes in b (1) or (2) above throughout the performance of this contract. With regard to competing on future MDA procurements, the Contractor must abide by the Organizational Conflict of Interest provisions of this contract.

c. PPBE data is defined as: Current or future Planning, Programming, Budgeting and Execution (PPBE) data regarding any activity relating to the MDA Program or any of its projects regardless of the funding source or date of the document.

(1) Planning data defines the national military strategy; integrates the military forces necessary to accomplish that strategy; prioritizes the resources for effectively accomplishing the mission; and provides decision options.

(2) Programming data reflects the systematic analysis of missions and objectives to be achieved, alternative methods, and effective allocation of limited resources.

(3) Budgeting data are detailed financial estimates of the MDA Program or any of its related projects.

(4) Execution data relates to the recording of expenditures that document how the funds were spent.

d. The following list of documents (which is exemplary but not all inclusive) obtained from DOD Directive 7045.14, "The Planning, Programming and Budgeting System (PPBS)", May 22, 1984 and other sources are considered PPBE documents:

(1) PLANNING

- (a) Strategic Planning Guidance (SPG)
- (b) Fiscal Guidance (when separate from SPG or Joint Planning Guidance)
- (c) Directors' Intent
- (d) Technical Planning Guide

(2) PROGRAMING

- (a) Program Objective Memoranda (POM)
- (b) Joint Programming Guidance (JPG)
- (c) Future Year Defense Program (FYDP) documents (POM Defense Program, Procurement & RDT&E

Annexes)

- (d) Program Change Proposals (PCPs)
- (e) POM Issue Papers
- (f) Proposed Program Reductions (Or Program Offsets)
- (g) Tentative Issue Decision Memoranda
- (h) Program Decision Memoranda

(3) BUDGETING

- (a) Future Year Defense Program (FYDP) documents for September Budget Estimate Submission (BES) & President's BES including Procurement (P-1), RDT&E (R-1), and Construction (C-1) Program Annexes
- (b) Financial Control Board (FCB) Documentation
- (c) Classified P-1, R-1, and C-1 Program Annexes
- (d) Program Budget Decisions/Defense Management Review Decisions/Management Initiative Directives

(MID)

- (e) Reports Generated by the Comptroller Information System (CIS)
- (f) Budget Change Proposals (BCPs)

(4) EXECUTION

- (a) DD Form 1414 Base for Reprogramming
- (b) DD Form 1416 Report of Programs
- (c) Contract Award Reports
- (d) DD COMP (M) 1002 Appropriation Status by Fiscal Year Program
- (e) FCB Execution Review Documentation

e. The Contractor shall be responsible for informing its personnel (hereinafter includes persons employed by the Contractor as an agent, consultant, or subcontractor) of the provisions of this clause and providing original MDA PPBE certifications, "PPBE Non-Disclosure Agreements" (MDA Form 99), to the Contracting Officer within fifteen (15) days after the award of this contract. A "PPBE Non-Disclosure Agreement" shall be obtained from each Contractor employee involved in the performance of this contract that requires access to such data. Each individual shall be required to agree to:

(1) Read and comply with the applicable provisions of this clause, the non-disclosure agreement, and the provisions of MDA Directive 7045.01.

(2) Handle PPBE data as for official use only.

(3) Ensure PPBE data entrusted to them will ONLY be used in accordance with applicable MDA governing regulations, for the purpose for which it was provided, and within the scope of the Statement of Work.

(4) Not divulge PPBE data (obtained directly or indirectly in the performance of this contract unless directed by the Contracting Officer) to any individual, except to Government personnel whom they know to have a "need-to-know" and non-Government person(s) whom they know to have MDA PPBE authorization. Even though data becomes part of the public domain, contractor personnel are bound by the provisions of this clause not to confirm or deny questions regarding PPBE data. Inquiries by unauthorized persons should be referred to the Contracting Officer's Representative or the Contracting Officer. (Verification of contractor personnel authorized access to PPBE data can be obtained only from the Contracting Officer.)

(5) Not transport (by any medium), maintain, or process PPBE data outside a Government facility unless the removal or preparation of such data at the facility is accomplished in accordance with a company's facility plan approved by MDA. (Verification of MDA PPBE-approved contractor facilities and individuals can be obtained from the Contracting Officer.) Authorization to transport PPBE data shall be provided by the Contracting Officer.

(6) Notify the Contracting Officer promptly if any non-Government person(s) or company(s) requests access to PPBE data.

f. The Contractor shall be responsible for immediately notifying the Contracting Officer in writing of any changes in its personnel with access to PPBE data, such as departures, new employees, or employees who no longer need access to such data under this contract.

g. Contractor personnel who have been granted access to PPBE data shall process, when possible, such data in Government workspaces using equipment furnished by the Government. However, if a contractor anticipates processing PPBE data in a Government facility on Contractor-owned equipment, prior written approval from the Contracting Officer must be obtained. The Contractor's written request should describe the equipment being used and a brief justification. After approval by the Contracting Officer, the request must be endorsed by the appropriate MDA office before bringing the equipment into the facility:

(1) Information Management and Technology Operations - all information technology equipment to include telefax and reproduction machines.

(2) Infrastructure and Environment Directorate – all other equipment and furniture.

h. Processing PPBE data at the Contractor's facility shall be performed only when absolutely essential and processing in Government workspaces is impractical. Prior to the processing of any such data outside of a Government facility or removal of PPBE data from a Government facility, the Contractor shall submit a written plan to the Contracting Officer outlining the procedures for maintaining and safeguarding such data at its facility. The Contractor shall submit its own plan or a plan which meets the general requirements identified in MDA Directive 7045.01. The plan shall be approved in writing by the Contracting Officer prior to removal of any PPBE data from a Government facility or the processing of any such data in the contractor's facility. A Contractor may submit a separate plan for each of its facilities that need to maintain such data or one plan as long as any differences between the procedures followed at each facility are clearly distinguishable in the plan. If an agent, consultant, or subcontractor requires the processing of PPBE data at its facility(s), they also must submit a separate facility plan through the prime Contractor for approval by the Contracting Officer.

NOTE: A plan is not required for Contractor personnel who have been given prior access to PPBE data to transport, process, or maintain such data at a Government or an MDA-approved contractor facility. (Verification of MDA approved Contractor facilities and authorized personnel can be obtained only from the Contracting Officer.)

i. If the Contractor is not required to process PPBE data at its facility(s), the contractor shall inventory all Government documents in its possession. The contractor shall notify the Contracting Officer in writing of such documents and request the method of document disposal. If the requirement to process such data at the contractor's facility(s) changes in the future, compliance with paragraph h above shall be required.

j. The Contractor shall provide training for all employees who require access to PPBE data on the proper handling and disclosure of such data. The contractor shall be responsible for ensuring that persons in their employment that have been granted access to PPBE data understand the consequences of divulging such data. Revealing PPBE data to unauthorized persons may provide other companies with an unfair advantage in future competitions or jeopardize national security interests.

k. In the event the Contractor or any of its employees, agents, subcontractor employees, or consultants fail to comply with the provisions of this clause, such noncompliance shall be deemed a material breach of the contract for which the Government reserves the right to terminate the contract for default and/or resort to such other rights and remedies, as provided for under this contract or under Federal laws. Noncompliance with the provisions of this clause may also adversely affect the evaluation of a Contractor's reliability in future acquisitions.

H-20 SENSITIVE INFORMATION TECHNOLOGY WORK

Prescription: May insert substantially the same clause in solicitations and contracts that require contractors to work on sensitive Information Technology systems.

H-20 SENSITIVE INFORMATION TECHNOLOGY WORK (JUL 2011)

a. DoD 5200.2-R, DoD Personnel Security Program, requires Contractor personnel, who perform work on sensitive Information Technology (IT)/Automated Data Processing (ADP) systems (hereafter referred to as IT), to be assigned to positions which are designated at one of three sensitivity levels (IT-I, IT-II or IT-III). These designations equate to Critical Sensitive, Non-Critical Sensitive, and Non-Sensitive. Working On-Site in any MDA Facility requires a minimum Sensitivity of IT-II. The following investigations are required:

IT-I designated positions require a Single Scope Background Investigation (SSBI).

IT-II designated positions require a National Agency Check with Law and Credit (NACLC).

IT-III positions associated with MDA are found only at contractor's facilities. See below for requirement.

b. The required investigation will be completed prior to the assignment of individuals to sensitive duties associated with the position.

c. For IT-III positions at the Contractor's facility, the Contractor will forward their employee information (completed SF 85P, Questionnaire for Positions of Public Trust), and two (2) DD Forms 258 (Fingerprint cards) either electronically or on magnetic media to: Missile Defense Agency, Security and Emergency Management; ATTN: Personnel Security, 5700 18th Street, Bldg 245, Fort Belvoir, VA 22060-5573.

d. MDA retains the right to request removal of Contractor personnel, regardless of prior clearance or adjudication status, whose actions, while assigned to this contract, clearly conflict with the interests of the Government. The reason for removal will be fully documented in writing by the Contracting Officer. When and if such removal occurs, the Contractor will within 30 working days assign qualified personnel to any vacancy(ies) thus created.

H-23 CONTRACTOR EMPLOYEE OUT-PROCESSING

Prescription: May insert substantially the same clause in solicitations and contracts that require on-site contractor employees.

H-23 CONTRACTOR EMPLOYEE OUT-PROCESSING (MAY 2005)

Prior to the departure of on-site contractor employees, the departing employee shall complete an out-processing checklist for MDA on-site contractor employees as required by MDA Directive Number 5000.01, and return the completed checklist, with all required signatures, to the cognizant Contracting Officer's Representative (COR). The COR will provide the completed form to the Contracting Officer to be retained in the official contract file by the Contracting Officer.

H-26 TASK AND DELIVERY ORDER OMBUDSMAN

Prescription: Insert in all Multiple Award IDIQ solicitations and contracts. Tailor to either task or delivery order as appropriate.

H-26 *TASK/DELIVERY* ORDER OMBUDSMAN (JUL 2011)

The task/delivery order ombudsman's role is to review complaints from contractors awarded multiple award indefinite-quantity contracts to ensure they are afforded a fair opportunity to be considered for orders, as detailed in the contract. Our task and delivery order Ombudsman is the Competition Advocate. You may contact Competition Advocate by mail at Missile Defense Agency/DACP, 5700 18th Street, Bldg 245, Fort Belvoir, VA 22060-5573 or by E-mail at Competiton_Advocate@mda.mil.

H-27 FOREIGN PERSONS

Prescription: Use in all SBIR/STTR contracts. Clause may also be used in BAAs as appropriate. May be used when foreign persons are allowed but with restrictions.

H-27 FOREIGN PERSONS (Jun 2010)

1. "Foreign National" (also known as Foreign Persons) as used in this clause means any person who is NOT:

- a. a citizen or national of the United States; or
- b. a lawful permanent resident; or
- c. a protected individual as defined by 8 U.S.C.1324b(a)(3).

"Lawful permanent resident" is a person having the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed.

"Protected individual" is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C.1160(a) or 8 U.S.C.1255a(a)(1), is admitted as a refugee

under 8 U.S.C.1157, or is granted asylum under section 8 U.S.C.1158; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period."

2. Prior to contract award, the contractor shall identify any lawful U.S. permanent residents and foreign nationals expected to be involved on this project as a direct employee, subcontractor or consultant. For these individuals, in addition to resumes, please specify their country of origin, the type of visa or work permit under which they are performing and an explanation of their anticipated level of involvement on this project. You may be asked to provide additional information during negotiations in order to verify the foreign citizen's eligibility to participate on a contract. Supplemental information provided in response to this clause will be protected in accordance with Privacy Act (5 U.S.C. 552a), if applicable, and the Freedom of Information Act (5 U.S.C. 552(b)(6)). After award of the contract, the Contractor shall promptly notify the Contracting Officer and Contracting Officer's Representative with the information above prior to making any personnel changes involving foreign persons. No changes involving foreign persons will be allowed without prior approval from the Contracting Officer. This clause does not remove any liability from the contractor to comply with applicable ITAR and EAR export control obligations and restrictions. This clause shall be included in any subcontract."

H-28 DISTRIBUTION CONTROL OF TECHNICAL INFORMATION

Prescription: Insert in solicitations and contracts. If there is a DD254 the PCO should tailor the distribution statements located in paragraph c in accordance with the DD254 and General Counsel recommendations. Complete the statement by adding the contract number.

H-28 DISTRIBUTION CONTROL OF TECHNICAL INFORMATION (May 2012)

a. The following terms applicable to this clause are defined as follows:

1. Technical Document. Any recorded information (including software) that conveys scientific and technical information or technical data.

2. Scientific and Technical Information. Communicable knowledge or information resulting from or pertaining to the conduct or management of effort under this contract. (Includes programmatic information).

3. Technical Data. As defined in DFARS 252.227-7013.

b. Except as otherwise set forth in the Contract Data Requirements List (CDRL), DD Form 1423, or paragraph d. below, the distribution of any technical documents prepared under this contract, in any stage of development or completion, is prohibited outside of the contractor and applicable subcontractors under this contract unless authorized by the Contracting Officer in writing. However, distribution of technical data is permissible to DOD officials having a "need to know" in connection with this contract or any other MDA contract provided that the technical data is properly marked according to the terms and conditions of this contract. When there is any doubt as to "need to know" for purposes of this paragraph, the Contracting Officer or the Contracting Officer's Representative will provide direction. Authorization to distribute technical data by the Contracting Officer or the Contracting Officer's Representative does not constitute a warranty of the technical data as it pertains to its accuracy, completeness, or adequacy. The contractor shall distribute this technical data at its own risk. The Government assumes no responsibility for such technical data nor will the Government have any liability for such technical data should it prove to be inaccurate, incomplete, improperly marked or otherwise defective.

c. Except as otherwise set forth in the CDRL or otherwise directed by the government (e.g., paragraph d. below) all technical documents prepared under this contract shall be marked with the following distribution statement, warning, and destruction notice:

1. **DISTRIBUTION STATEMENT** Distribution of this document, except to DOD officials having a “need to know*” in connection with this contract or any other MDA contract, is prohibited outside of contract number (PCO add contract number) unless expressly authorized by the Contracting Officer in writing. This document shall not be distributed to DOD officials unless it has been properly marked in accordance to the terms and conditions of this contract.

*When there is any doubt as to “need to know” for purposes of this statement, the Contracting Officer or the Contracting Officer’s Representative will provide direction.

2. **WARNING** - This document/software contains technical data/software whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751 et seq.) or the Export Administration Act of 1979, as amended, (Title 50, U.S.C., App 2401 et seq). Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DOD Directive 5230.25.

3. **DESTRUCTION NOTICE** - For classified documents, follow the procedures in DOD 5220.22M, National Industrial Security Program Operating Manual, Chapter 5, Section 7, or to DoDM 5200.01-V3, DoD Information Security Program, Enclosure 3, Section 17. For unclassified, limited documents, destroy by any method that will prevent disclosure of contents or reconstruction of the document.

d. As a part of the review of preliminary or working draft technical documents, the Government will determine if a distribution statement less restrictive than Distribution Statement D would provide adequate protection. If so, the Government's concurrence/comments will provide specific instructions on the distribution statement to be marked on the final technical documents before primary distribution.

e. The Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts.

H-29 COMMERCIAL COMPUTER SOFTWARE LICENSE

Prescription: Use in all solicitations and contracts that contain 252.227-7014 or when software development is part of the effort.

H-29 COMMERCIAL COMPUTER SOFTWARE LICENSE (Feb 2012)

a. Unless otherwise approved by the PCO, commercial computer software licenses shall designate the U.S. Government as a contingent licensee, able to replace the Contractor as the primary licensee upon notifying the licensor. A copy of the negotiated license shall be furnished to the PCO. The terms of the licenses cannot be inconsistent with Federal procurement law and must satisfy user needs. This includes the Contractor's / subcontractor's needs for the software to perform this contract and the Government's needs for the software to accomplish the Government's ultimate objectives. At a minimum, this shall include the rights to make an archive copy of the software, to relocate the computer on which the software resides, to re-host the software on a different computer, to permit access by support contractors, and to permit the Government to transfer the license to another contractor.

b. Nothing in this clause shall take precedence over any other clause or provision of this contract. Government concurrence, as defined in paragraph a above, does not in any way affect the Government's technical data rights as established by the terms and conditions of this contract.

H-30 CONTRACTUAL TERMS & CONDITIONS

Prescription: Use in every solicitation and contract.

H-30 CONTRACTUAL TERMS & CONDITIONS (Jun 2010)

The terms and conditions herein constitute the entire contract and understanding of the parties and shall supersede all other communications, negotiations, arrangements and agreements, either oral or written, with respect to the subject matter hereof. All proposal documentation including, but not limited to, red line contract terms and conditions, red line statements of work and/or ground rules and assumptions are hereby void and carry no force or affect as it pertains to the interpretation or operation of the language of the instant contract nor should such language be used to provide meaning to any of the terms or conditions contained herein.

H-31 TECHNICAL COGNIZANCE

Prescription: May insert substantially the same clause in solicitations and contract. Tailor appropriately when only a COR or a COTR is appointed. See PGI 201.602-2(i).

H-31 TECHNICAL COGNIZANCE (JUN 2011)

a The Add Technical Office is the cognizant Government technical organization for this contract and will provide technical instruction as defined herein. Technical instructions shall be exercised by designated/appointed Contracting Officer's Technical Representatives (COTRs):

Title/Position	Authority	Office Symbol
To Be Included at Contract Award		

b. Technical instruction, as defined in this clause is the process by which the progress of the Contractor's technical efforts are reviewed and evaluated and guidance for the continuation of the effort is provided by the Government. It also includes technical discussions and, to the extent required and specified elsewhere in this contract, defining interfaces between contractors; approving plans; approving Contract Data Requirements List (CDRL) submissions; approving schedules for preliminary and critical design reviews; participating in meetings; providing technical and management information; and responding to request for research and development planning data on all matters pertaining to this contract. The Contractor agrees to accept technical instruction only in the form and procedure set forth herein below.

c. Except for routine discussions having an impact on Contractor performance, technical instruction described above shall only be authorized and binding on the Contractor if provided in writing from the applicable Government official designated above. The technical instruction shall refer to the applicable paragraph(s) of the Statement of Work (SOW) and shall not effect or result in a change within the meaning of the "CHANGES" clause, or any other change in the SOW, price, schedule, or the level of effort required by the contract. All commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract must be executed by the Procuring Contracting Officer (PCO). It is emphasized that such changes are outside the authority of the COTR designated above. The COTR is not authorized to issue any instruction which authorizes a change in the contract requirements. Notwithstanding any provision to the contrary in any technical instruction, the estimated cost of this contract, and, if this contract is incrementally funded, the amount of funds allotted, shall not be increased or deemed to be increased by issuance thereof.

d. A COTR serves as a liaison for technical aspects of the contract and maintains direct communications with both the Contractor and the PCO. A COTR provides surveillance and monitoring of Contractor performance and may provide technical instruction as specified above or as otherwise limited or specified in the appointment or in the contract. A COTR's designation cannot be re-delegated unless authorized in writing by the PCO.

e. The Contracting Officer's Representative (COR) is authorized to perform specific administrative functions on this contract. The COR monitors and reports contractor performance, inspections and acceptance, security issues, property disposal, tracking of budget and funding issues, approval of invoices (if applicable), and other approvals and administrative functions as delegated by the PCO. These administrative functions shall be exercised by designated/appointed CORs:

Title/Position	Authority	Office Symbol
To Be Included at Contract Award		

f. The COR has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract. This individual is not authorized to issue any instruction which authorizes the Contractor to either exceed or perform less than the contract requirements. Notwithstanding any provision to the contrary in any COR instruction, the estimated cost of this contract, and, if this contract is incrementally funded, the amount of funds allotted, shall not be increased or deemed to be increased by issuance thereof. A COR's designation cannot be re-delegated unless authorized in writing by the PCO.

g. Government personnel, Government Contractor Support Services (CSS) contractors and Federally Funded Research and Development Companies (FFRDCs) personnel will frequently be present at Integrated Product Team (IPT) meetings and Contractor facilities. The Government IPT members, their CSS support and FFRDCs may communicate with the Contractor on technical issues; review designs/documents/work products; and provide clarification, opinion, and advice on contract requirements. The Contractor shall not construe advice, opinions, reviews, and clarifications from the Government IPT members, their CSS support or FFRDCs as changes to the terms and conditions of the contract. A PCO is the only individual authorized to change the terms and conditions of the contract.

H-32 TRANSITION OUT

Prescription: May use substantially the same clause in solicitations and contracts.

H-32 TRANSITION OUT (Nov 2010)

a. It is the intent of the Government to provide for an orderly transition during an off-ramp activity related to the end of the contract in order to assure uninterrupted effort throughout the assumption of follow-on Contractor responsibility. When notified, the Contractor shall work closely with the Government to develop a proposal to transition to either the Government or another contractor. The Government will provide the specifics of what the transition includes at the time of the request for change.

b. The transition requirements may include the following:

1) A transition-out period, which will be mutually agreed upon following notification by the Government of an intent to transfer lab equipment, documentation or system test resources.

2) A requirement for the Contractor to work closely with the contractor receiving the lab(s), equipment, and supporting documentation during the transition-out period to allow the receiving contractor time to establish laboratory capability.

c. The Contractor shall execute an Associate Contractor Agreement (ACA) IAW Section H Clause “PROGRAM SYNCHRONIZATION”, attend program reviews, participate in working groups, briefings, and on-site communications, and provide full disclosure of technical, cost, and programmatic information between Contractors/teams associated with meeting the various on-going requirements.

H-33 PROGRAM SYNCHRONIZATION

Prescription: May use substantially the same clause in solicitations and contracts.

H-33 PROGRAM SYNCHRONIZATION (Nov 2010)

a. The Missile Defense Agency (MDA) requires the synchronized integration of platforms, sensors, and other components of the BMDS which were or are under separate development by multiple contractors. MDA uses the concept of End-to-End (EtE) performance to serve as the organizing principle that aligns and synchronizes these efforts to achieve the desired operational end-state for the BMDS. Synchronization is defined as the logical alignment of management, design, development, integration, modification, verification and validation, and test activities and processes such that sensors, data links, command and control (C2), and interceptors smoothly and optimally integrate within well-defined and commonly understood requirements and interfaces.

b. During the performance of this contract, the Contractor shall provide technical data and other information (to include limited and restricted rights data as defined by DFARS 252.227-7013 and 252.227-7014 or information protected under the Freedom of Information Act Exemption 4) to other Ballistic Missile Defense (BMD) Contractors and Government agencies to facilitate MDA objectives.

c. Pursuant to paragraphs (a) and (b) above the Contractor shall negotiate appropriate Associate Contractor Agreements (ACAs) and Non-Disclosure Agreements (NDAs) with other Contractors as necessary to implement the exchanges of technical data and other information required, ensure total system EtE performance, and also to protect technical data and other information from unauthorized disclosure or use. These agreements must not restrict any of the Government’s rights established pursuant to this or any other contract. A copy of each ACA and amendments to ACAs shall be provided to the PCO in order for the Government to document the flow of information.

d. When associate contracts have been entered into or modified as described in this clause, the associate contractors and general information on the purpose of the associate contracts will be incorporated into this clause as shown below:

Company Name	Contract # and Description	ACA Purpose
XXX	Complete as Appropriate	

e. The ACAs shall, at a minimum, include the following general information: (1) Identify the associate contractors and their relationships; (2) Identify the program involved and the relevant Government contracts of the associate contractors; (3) Describe the associate contractor interfaces by general subject matter; (4) Specify the categories of information to be exchanged or support to be provided; (5) Include the expiration date (or event) of the ACA; and (6) Identify potential conflicts between relevant Government contracts and the ACA; include agreements on protection of technical data or other information and restrictions on employees.

f. The Contractor’s performance with respect to integration support, cooperation, and the exchange and sharing of information with other BMD contractors, shall comply with security classification requirements as outlined in the DD Form 254 incorporated into this contract.

g. Nothing in this clause shall take precedence over any other clause or provision of this contract nor does it in any way effect the Government’s technical data rights.

H-34 AS IS GOVERNMENT FURNISHED DATA/DOCUMENTATION

Prescription: May use when Government furnished data/documentation will be provided in an as is condition.

H-34 AS IS GOVERNMENT FURNISHED DATA/DOCUMENTATION (Nov 2010)

All technical data (as defined in DFARS 252.227-7013 and DFARS 252.227-7014) furnished by the Government is in an "as is" condition without any warranty as to its accuracy, completeness, or adequacy. The contractor shall use this technical data at its own risk. The Government assumes no responsibility for such furnished data/documentation nor will the Government have any liability for equitable adjustments to the terms and conditions of this contract should such data/documentation prove to be inaccurate, incomplete, or otherwise defective

H-35 INCORPORATING COMMERCIAL AND OPEN SOURCE SOFTWARE

Prescription: May include in solicitations and contracts when 252.227-7014 is included. When this clause is used, also include H-29 COMMERCIAL COMPUTER SOFTWARE LICENSE (JUN 2010)

H-35 INCORPORATING COMMERCIAL AND OPEN SOURCE SOFTWARE (Nov 2010)

a. DFARS 252.227-7014(d) requires the written approval of the PCO before the Contractor may incorporate any copyrighted computer software in the software to be delivered under this contract.

b. A request for approval to incorporate Commercial Computer Software should be accompanied by a license that conforms with the requirements of the Commercial Computer Software Licenses clause of this contract.

c. A request for approval to incorporate Open Source Software must be accompanied by the applicable license, a detailed description of the source of the software and how it has been or will be used, and a legal analysis of the restrictions imposed and potential risks and liabilities.

d. Nothing in this clause shall take precedence over any other clause or provision of this contract. Government concurrence, as defined in paragraph a above, does not in any way affect the Government's technical data rights as established by the terms and conditions of this contract.

H-36 CONTRACTOR IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT'S USE, RELEASE, OR DISCLOSURE OF NON-COMMERCIAL TECHNICAL DATA OR COMPUTER SOFTWARE

Prescription: May insert substantially the same clause in solicitations and contracts.

H-36 CONTRACTOR IDENTIFICATION AND ASSERTION OF RESTRICTIONS ON THE GOVERNMENT'S USE, RELEASE, OR DISCLOSURE OF NON-COMMERCIAL TECHNICAL DATA OR COMPUTER SOFTWARE (DEC 2011)

a. The contractor and its subcontractors shall provide a completed Attachment in accordance with DFARS 252.227-7017 entitled "Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software" that is signed and dated by a responsible official of the Contractor. This Attachment is incorporated herein by reference as if fully set forth. The Attachment identifies and provides information pertaining to technical data (including computer software documentation) and computer software that the contractor and subcontractors claim to qualify for delivery with less than Unlimited Rights. The contractor agrees not to withhold delivery of the technical data or software based on its claims. The Government shall investigate the validity of the contractor's claims and therefore reserves all its rights regarding the technical data/software in question, to include those rights set forth in: DFARS 252.227-7013, Rights in Technical Data - Noncommercial Items; DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation; DFARS 252.227-7019, Validation of Asserted Restrictions--Computer Software; DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered To the Government; and, DFAR 252.227-7037, Validation Of Restrictive Markings On Technical Data clauses until a determination is made.

b. The contractor shall have, maintain, and follow written procedures sufficient to assure that restrictive markings/legends are used only when authorized by the terms of this contract and shall maintain records sufficient to justify the validity of any restrictive markings/legends on any technical data or computer software or computer software documentation delivered under this contract. The Contractor agrees that the Government has Unlimited Rights as defined by DFARS 252.227-7013 and 252.227-7014 in any deliverable technical data or computer software or computer software documentation not listed in the Attachment and that such data or software will not be subject to any restrictive markings or legends.

H-37 INSERTION OF LIMITED OR RESTRICTED RIGHTS

Prescription: May insert substantially the same clause in solicitations and contracts.

H-37 INSERTION OF LIMITED OR RESTRICTED RIGHTS (DEC 2010)

a. Hardware items which are subject to Limited Rights in their associated technical data as defined in DFARS 252.227-7013 and software items which are subject to Restricted Rights as defined in DFARS 252.227-7014 shall not be incorporated into the design of any systems, or models/simulations thereof under this contract without the prior written authorization of the PCO. The Contractor's request shall include a rough order of magnitude (ROM) estimate to perform development if the data or software cannot be used as requested. If the PCO does not provide a decision within 30 days of the request, the request is considered denied. In the event the PCO authorizes inclusion of the Limited Rights technical data and/or Restricted software, such data or software will be added as an attachment within Section J.

b. Using Government assets in an Independent Research and Development (IRAD) project may be authorized on a case by case basis. The Contractor's request shall include an offer of consideration for use of such Government assets. The Government will evaluate the request, including the Contractor's offer of consideration, and either approve, deny, or offer an alternative form of consideration. Any such consideration will be mutually agreed to by the parties prior to use of Government assets. Consideration should include, at a minimum, specially negotiated rights granting the Government a license for Government Purpose Rights IAW DFARS 252.227-7013 and 252.227-7014 in the subject IRAD project. When the Contractor requests the use of Government assets for an IRAD project, the request shall include the purpose of the IRAD project and the potential benefit to the Government. The Contractor will be required to execute a bailment agreement prior to the transfer or use of Government assets.

H-38 FEE/PROFIT LIMITATIONS

Prescription: May used in IDIQ solicitations and contracts when applicable. May tailor the clause as necessary to delete either paragraph to fit the procurement.

H-38 FEE/PROFIT LIMITATIONS (DEC 2010)

a. Fee/Profit will be proposed and negotiated for each task order proposal on an individual basis based upon the level of risk the Contractor will incur during the performance of the effort. The fee/profit shall not exceed the maximum amounts as specified in Section B of this contract.

b. No Fee/Profit on Material and Other Direct Costs (ODC). With the exception of nominal material handling, the Contractor is not entitled to fee/profit on any ODC and/or material. Examples of ODC include, but are not limited to: travel, renewable licenses, leases, consultants, special tooling, and royalties. Examples of material include but are not limited to: equipment, hardware and spares/repair parts. In calculating total fee/profit, the Contractor shall exclude ODC and material costs from its total cost pool. This limitation shall flow down to subcontractors.

H-39 COMPLIANCE WITH FAR 52.219-14, LIMITATION ON SUBCONTRACTING

Prescription: Insert in all solicitations and contracts that include 52.219-14.

H-39 COMPLIANCE WITH FAR 52.219-14, LIMITATION ON SUBCONTRACTING (FEB 2012)

a. The period of time used to determine compliance with FAR 52.219-14, Limitation on Subcontracting, will be the base contract period of performance or ordering period in the case of an Indefinite-Delivery Indefinite-Quantity (IDIQ) contract. Small business contractors do not have to comply with the percentage of the cost of contract performance incurred for each individual order placed under an IDIQ. In the case of Options, the Option periods will be used to determine compliance.

b. A concern is defined at FAR 19.001. For the purpose of making affiliation findings see FAR 19.101.

c. Pursuant to 13 CFR Section 121.103(h), a joint venture may or may not be in the form of a separate legal entity.

d. In accordance with 13 CFR Section 125.6(i), if the contractor is a joint venture and meets the following requirements, compliance with the "50% rule" will apply to the cooperative effort of the joint venture, not its individual members:

- (1) The joint venture contractor is exempt from affiliation under 13 CFR Section 121.103(h)(3); and,
- (2) The joint venture contractor qualifies as a small business concern.

H-40 INDEMNIFICATION AGAINST UNUSUALLY HAZARDOUS RISKS

May use in solicitations and contracts.

H-40 INDEMNIFICATION AGAINST UNUSUALLY HAZARDOUS RISKS (APR 2012)

The legal authority to indemnify contractors for unusually hazardous risks for research, development and testing activities is 10 USC 2354. Previous indemnification from other contracts does not carry over to this resulting contract. The Contractor may request indemnification for effort under this contract at any time. Contractor requests for indemnification must be prepared in accordance with the requirements of FAR 50.104-3. The MDA will fairly process request(s) in good faith to the applicable approving authority within the Department of Defense. The MDA will not, however, make adjustments to the estimated cost or schedule of this contract if indemnification is not granted through this process.

H-41 COST ESTIMATING METHODS

Prescription: May use in solicitations and contracts.

H-41 COST ESTIMATING METHODS (MAY 2012)

The following cost estimating methods shall be used as requested by the Government:

a. Planning Estimate - The purpose of a planning estimate is to support Government planning. Planning estimates may only be requested by the PCO. A planning estimate shall be provided to the Government in 1-2 calendar days. This estimate is very limited in scope, involves minimal pricing ground rules and assumptions from the Government, and is generally comprised of ranges/parametrics. Documentation provided shall be high level scope and funding estimates by Government fiscal year sent via email.

b. Rough Order of Magnitude (ROM) - The purpose of a ROM estimate is to support Government budgetary decisions and potential authorization of unpriced actions in the event there is insufficient time for a Not-to-Exceed (NTE) estimate. ROM estimates may only be requested by the PCO. ROM estimates shall be provided to the Government within 5 calendar days. This non-binding estimate is limited in scope, involves limited analysis, and develops a high level baseline to include a high level SOW, schedule, and equipment lists. The ROM estimate is not generated based on formal Basis of Estimates (BOEs) and by design provides limited supporting rationale. Subcontractor input will be included if schedule allows. Documentation provided shall include scope and funding estimates by Government fiscal year in a briefing package submitted by contracts letter to the Government.

c. Not-to-Exceed (NTE) - The purpose of an NTE estimate is to support critical Government budgetary decisions, and a binding basis on which to issue unpriced actions. NTEs may only be requested by the PCO. NTE estimates shall be provided to the Government within 10 calendar days or as designated by the PCO. This estimate involves more in depth analysis, develops a baseline to include a statement of work, schedule, and required equipment lists. The NTE estimate shall be based on Basis of Estimate (BOEs) and estimated materials (as required), including supporting rationale. Applicable subcontractor input shall be included as required. Documentation required shall include scope and funding estimates by Government fiscal year in a briefing package submitted by contracts letter to the Government. The Contractor's NTE must be valid for a minimum of one hundred eighty (180) calendar days.

H-42 FOREIGN PERSONS

Prescription: May use when all entities that make up the contractor's team must be citizens of the USA.

H-42 FOREIGN PERSONS (May 2012)

1. "Foreign National" (also known as Foreign Persons) as used in this clause means any person who is NOT:
 - a. a citizen or national of the United States; or
 - b. a lawful permanent resident; or
 - c. a protected individual as defined by 8 U.S.C.1324b(a)(3).

"Lawful permanent resident" is a person having the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed.

"Protected individual" is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C.1160(a) or 8 U.S.C.1255a(a)(1), is admitted as a refugee under 8 U.S.C.1157, or is granted asylum under section 8 U.S.C.1158; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period."

2. All employees of all entities that make up the contractor's team, whether subcontractors, consultants, or anyone who works with or on behalf of the contractor will be citizens of the U.S.

K-02 CONTRACTOR POINT OF CONTACT FOR ELECTRONIC DOCUMENT ACCESS (EDA)

Prescription: May insert substantially the same provision in solicitations.

K-02 CONTRACTOR POINT OF CONTACT FOR ELECTRONIC DOCUMENT ACCESS (EDA) (MAY 2005)

a. DoD Electronic Document Access (EDA) facilitates information sharing among DOD communities and provides secure access to single-source DOD official documents to authorized registered users. EDA combines Internet and Web technologies with electronic document management to eliminate paper copies.

b. All offerors are hereby notified that contract distribution will be performed electronically on subject contract via the EDA website located at: <http://eda.ogden.disa.mil>. Upon posting, an electronic notification will automatically be forwarded to the appointed POC. There will no longer be hard copy paper distribution of contract documentation and payment of contract invoices.

c. Access to the EDA website is restricted to registered users. All offerors must provide a company-appointed EDA point of contact (POC) and alternate EDA POC, if possible.

(1) Name of Company EDA POC: _____

E-Mail Address: _____

Telephone Number: _____

(2) Name of Company Alternate EDA POC: _____

E-Mail Address for Alternate EDA POC: _____

Telephone Number for Alternate EDA POC: _____

d. The above POCs must both register on-line to become EDA partners. Instructions on becoming an EDA partner are identified at the above website. To eliminate registration delays, please refer to the on-line Vendor/Contractor Registration Instructions at the EDA website for registration. Once at the website you can either "proceed" if you have already registered in the EDA system, or utilize "register" if you are a new user.

K-03 CONTRACT AUDIT

Prescription: May insert substantially the same provision in solicitations where the Government may require an audit of the Offeror's proposal.

K-03 CONTRACT AUDIT (MAY 2005)

Designate below the Offeror's personnel whom the Government may contact for prompt action on matters pertaining to contract audits:

NAME: _____

TITLE: _____

TELEPHONE NO.: _____
(including area code and extension)

K-04 CONTRACT ADMINISTRATION

Prescription: May insert substantially the same provision in solicitations.

K-04 CONTRACT ADMINISTRATION (MAY 2005)

Designate below the Offeror's personnel whom the Government may contact for prompt action on matters pertaining to administration of the contract.

NAME: _____

TITLE: _____

TELEPHONE NO.: _____
(including area code and extension)

K-05 IDENTIFICATION OF CONGRESSIONAL DISTRICT(S)

Prescription: May insert substantially the same provision in solicitations with an expected contract award of \$5.5 million or greater.

K-05 IDENTIFICATION OF CONGRESSIONAL DISTRICT(S) (MAY 2005)

The Offeror is requested to provide the U.S. Congressional District number and other pertinent information associated therewith for the areas given below:

(Note - continuation sheets may be used if adequate space is not available in the spaces set forth below.)

a. U.S. Congressional District for the Contractor: _____.

b. Corporate Office, if different from paragraph a. above:

U.S. Congressional District for this office: _____

c. If the location for contractor performance is different from the addresses in (a) and (b), then the applicable U.S Congressional District for the performance location is: _____

d. First Tier Subcontractors:

(1) Address used for subcontractor's proposal:

Name: _____

Address: _____

U.S. Congressional District for this office _____

(2) If subcontractor's place of performance is different than provided in Block d. (1) above:

Address: _____

U.S. Congressional District for this office _____

L-01 MDA SUPPLEMENTAL SUBCONTRACTING PLAN REQUIREMENTS

Prescription: Insert in all solicitations over \$550K. Paragraph e is not used when small business utilization and commitment is a source selection factor or sub-factor and similar language is included elsewhere in the proposal preparation instructions.

L-01 MDA SUPPLEMENTAL SUBCONTRACTING PLAN REQUIREMENTS (Oct 2009)

In addition to the content requirements specified in the small business subcontracting plan clauses incorporated herein, plans submitted for consideration by the contracting officer shall include the following.

- a. Percentage goals expressed in terms of total contract value.
- b. Individual descriptions and dollar amounts of the planned use of Alaska Native Corporations, Indian tribes and AbilityOne (formerly Javits-Wagner-O'Day) organizations that are included in the proposed small disadvantaged business and small business goals/dollars.
- c. A statement that block 15. of the Individual Subcontract Report and Summary Subcontract Report will contain the email addresses of both the contracting officer and the Missile Defense Agency (MDA) Office of Small Business Programs (subcontracting-oversight@mda.mil) in addition to any contractor representatives.
- d. A description of the process the prime contractor will use to ensure timely and accurate small business subcontract reporting for all tiers.
- e. A description of the specific initiatives and tools (e.g. mentor protégé program) that will be employed under the contract to enhance small business utilization and capabilities both in the instant acquisition and to meet future requirements to be supported by the BMDS small business industrial base. Some areas of importance to MDA include:
 - (1) Expanding the pool of qualified small businesses to reap the benefits of increased competition for production of components and piece parts in MDA acquired systems.
 - (2) Engaging small businesses to serve as second sources in order to mitigate the risks of single point failures in the supply chain and increase the quality of supplies or services.
 - (3) Leveraging investments in the MDA Small Business Innovation Research/Small Business Technology Transfer programs to transition appropriate technologies into operational or planned systems.