Addendum 518
Rev. 2
(
7/14
)

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Additional Terms and Conditions
E-2D Full Rate Production (FRP)
(Prime Contract No. N00019-12-C-0063)

All of the additional terms and conditions set forth below are incorporated in and made part of this Purchase Order. Any conflict between any of the conditions contained in this form and those appearing on Northrop Grumman Purchase Order Terms and Conditions shall be resolved in favor of the conditions in this form.

I. Changes to Terms And Conditions

A. Delete the clauses entitled, “Warranty” and substitute the following:

WARRANTY (NAVAIR 5252.246-9535)

(a) Definitions:

(1) Defects: As used herein means any condition or characteristic in any supplies furnished by Seller under this Order that is not in compliance with the requirements of this Order.

(2) Correct: As used herein means to eliminate the defects. Corrective action may include repair, replacement, redesign and development and qualification of a modification to eliminate the defect and retrofit of such modification.

(3) Organic Repair: As used herein means organizational, intermediate, or depot level repair actions performed by any Navy or other Department of Defense activity.

(4) Essential Performance Requirements: As used herein means any operational capability, or other characteristic identified as an essential performance requirement necessary for the supplies to fulfill the military requirements for which they were designed. Essential performance requirements are set forth in the Schedule.

(b) Warranty:

(1) Notwithstanding inspection and acceptance by Buyer or any provision of this Order concerning the conclusiveness thereof, the Seller warrants that all supplies furnished under this Order:

(i) shall conform to the design and manufacturing requirements in the Order and amendments thereto;

(ii) shall be free from all defects in material and workmanship, at the time of acceptance; and,

(iii) shall conform to the essential performance requirements set forth in the Schedule.

(2) With respect to Buyer or Government-furnished property, Seller's warranty shall extend only to its proper installation, unless Seller
performs some modification or other work on such property in which case Seller's warranty shall extend to such modification or other work.

(3) This warranty will not be voided by organic repair.

(c) Remedies:

(1) Corrective Actions: In the event of a breach of the Warranty in paragraph (b) above, Buyer, at its election, may require Seller to take all actions necessary to correct the breach at no additional cost to Buyer including:

(i) Perform analyses of causes of defects or failures resulting in a breach of warranty provisions under this Order, propose corrective actions for such causes including schedules for performing such corrective actions, and, if so directed by Buyer, perform the corrective actions proposed as a result of such analyses;

(ii) Correct, at the original point of delivery or at Seller's plant, defective or nonconforming supplies;

(iii) Furnish, at the original point of delivery or at Seller's plant, such materials or parts and installation instructions as may be required to complete successfully the corrective action; and

(iv) Prepare and furnish new or revised data and reports directly associated with the corrective action.

(2) Equitable Adjustment:

(i) If Buyer elects not to require Seller to take corrective action for any breach of warranty under this clause, Buyer shall be entitled to an equitable reduction in the price of such supplies.

(ii) If Buyer performs or has performed the corrective action, Buyer shall be entitled to the reimbursement of reasonable costs incurred to correct the deficiency.

(3) When supplies require correction or replacement pursuant to this clause, Buyer will bear the cost of the transportation to the port of CONUS entry. Seller will bear the transportation costs between the CONUS port of entry and the site where correction or replacement action occurs and subsequent return to that port of entry.

(d) Notification and Correction Procedures:

(1) Except as the notification period may be extended by operation of paragraph (d)(4) herein, Seller shall be notified in writing by Buyer of any breach of the warranty set forth in paragraph (b) above, including a description of the breach, within 210 days after acceptance of nonconforming or defective supplies by the Government, or within two (2) years of acceptance by Buyer,
whichever is earlier.

(2) Within sixty (60) days of such notification, Seller shall submit to Buyer a written plan with recommended actions and a proposed schedule to remedy the breach.

(3) Seller warrants that all corrective action pursuant to the Remedies section of this clause shall be completed and supplies tendered for redelivery to Buyer within either (i) sixty (60) calendar days from the date of Seller receipt of uncorrected supplies at the Seller's plant or original point of delivery or (ii) a schedule pursuant to a plan of action approved in writing by Buyer. If the Seller is unable to provide corrective action within the applicable time frame, Seller shall request an extension, in writing, from Buyer.

(4) Notification Period for Board of Inspection and Survey Trials. If Board of Inspection and Survey (BIS) Trials are conducted or will be conducted under this or any prior Order with respect to aircraft of the type or types to be delivered under this Order, the period of notification of a breach of the warranties in paragraph (b) shall be one (1) year from the date the last aircraft which includes a component manufactured by the Seller of the type being acquired completes trials, or two (2) years from the date the first such aircraft which includes Seller’s component is accepted for such trials, whichever is later. For the purpose of this clause, aircraft with different Government model letter designations shall, unless otherwise provided in this Order, be considered aircraft of different types.

(5) Warranty for Corrected or Replaced Supplies. Any supplies or components replaced pursuant to this warranty are subject to the provisions of this clause, including those on remedies and notification, in the same manner as supplies or components initially delivered. For supplies or components corrected under this clause by repair, Seller shall be notified in writing of any breach of the warranty set forth in paragraph (b) above (including a description of the breach) within 210 days after receipt by the Government of the corrected supplies, or within two (2) years after receipt by Buyer, whichever is earlier.

(6) Seller shall, notwithstanding any dispute regarding the existence of a breach of warranty, comply with Buyer's direction to correct the breach. If after Seller undertakes correction, it is determined that a breach of warranty did not occur, the price and other affected provisions of this Order will be equitably adjusted to compensate Seller for actions taken pursuant to this clause.
(e) Marking:

(1) All warranted supplies furnished under this Order shall be identified as such by marking each weapon replaceable assembly (WRA) in accordance with MIL-STD-130 and each shipping container in accordance with MIL-STD-129L.

(2) For supplies accepted conditionally or under special conditions, the applicable log book or aeronautical equipment service record card shall specify any exceptions to acceptance, including work to be completed, material to be installed and defects or nonconformances to be corrected.

(3) All warranty markings shall be indelible, legible and include, as a minimum, the following:

(i) "WARRANTED ITEM" in bold letters at least twice as large as those used to provide additional information;

(ii) NSN, manufacturer's part number, serial number or other item identifier;

(iii) prime contract number and Order number;

(iv) manufacturer or entity providing the warranty;

(v) date or time for expiration of the warranty;

(vi) a statement that organic repair will not void the warranty; and

(vii) shipping location and point of contact for warranty repairs.

(f) Warranty Administration:

The Seller shall provide administration for all warranty claims.

(g) Miscellaneous:

(1) The rights and remedies of Buyer and Seller provided in this clause are in addition to, and do not limit, any rights and remedies Buyer and Seller may have under any other clause or provision of this Order.

(2) Buyer's right under this Order because of latent defects, fraud, or such gross mistakes as amount to fraud are not limited by this clause.

B. The following changes are made to the clause entitled, “FAR and DFARS Provisions/Clauses”:

1. Add the following FAR clauses:

   52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES
   52.222-19 CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES
   52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING
   52.243-7 NOTIFICATION OF CHANGES

(Under paragraph b, the notification period is 60 days,)
52.245-9  USE AND CHARGES

2.  Delete the following DFARS clauses:
252.222-7999  ADDITIONAL REQUIREMENTS AND RESPONSIBILITIES RESTRICTING THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEVIATION NO. 2010-O0004)
252.225-7014  PREFERENCE FOR DOMESTIC SPECIALTY METALS AND ALTERNATE I
   *Note: Applicable to orders issued under prime contracts awarded before January 28, 2008.*
252.225-7014  PREFERENCE FOR DOMESTIC SPECIALTY METALS (DEVIATION NO. 2008-O0002) AND ALTERNATE I (DEVIATION NO. 2008-O0002)
   *NOTE: Applicable to Orders issued under prime contracts awarded on or after January 28, 2008 and before July 29, 2009.*

3.  Add the following DFARS clauses:
252.204-7000  DISCLOSURE OF INFORMATION
252.204-7005  ORAL ATTESTATION OF SECURITY RESPONSIBILITIES
252.211-7003  ITEM IDENTIFICATION AND VALUATION
   *(Items requiring Unique Item Identification shall be identified on the resultant Order)*
252.222-7006  RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS
252.228-7001  GROUND AND FLIGHT RISK

II.  ADDITIONAL CONDITIONS
1.  COMPLIANCE WITH RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS CLAUSE
   Seller must comply with the provisions of DFARS 252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals and is required to notify all subcontractors at all levels to comply with the provisions of this clause through inclusion of DFARS 252.225-7009 in its Subcontracts and Purchase Orders. Seller and its subcontractors must deliver compliant hardware pursuant to the requirements of this Order.
2. **RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DFARS 252.222-7006)**
(Applicable to all subcontracts, task orders and Purchase Orders at every tier in excess of $1 million that utilize FY10 funds except for commercial items and commercially available off-the-shelf items.)

Seller agrees not to –

a. Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

b. Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration any claim under title VII of the Civil Rights Act of 1964 or any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

Seller agrees to flow down this provision in all subcontracts, task orders and Purchase Orders at every tier that will be funded with in excess of $1 million of Fiscal Year 2010 funds, except for those for commercial items, including commercially available off-the-shelf items.

Failure to comply with this provision will be considered a material breach and, at the sole discretion of Buyer, may result in termination for default or cause.

3. **PROVISIONAL ACCEPTANCE**

a. If at the delivery date stated herein the supplies are not complete or otherwise are not in conformity with the requirements of this Order, Buyer may, nevertheless, direct their delivery and may provisionally accept them upon such inspection of the supplies as Buyer shall deem appropriate. Provisionally accepted supplies shall be completed or otherwise brought into conformity with Order requirements by Seller at Seller's expense and as directed by Buyer. Alternatively, Buyer may elect to either perform such work at Seller's expense or to retain the non-conforming supplies, in which event the price shall be equitably reduced.

b. If supplies are otherwise ready for delivery hereunder prior to completion of the qualification tests required by this order or by any prior order with Seller for supplies of the type to be delivered hereunder, Buyer may nevertheless direct the Seller to deliver such supplies and may provisionally accept such supplies upon (1) satisfactory completion by Seller of the acceptance tests
for the supplies concerned, and (2) such other inspection of the supplies as Buyer may deem appropriate. In the event that supplies have been provisionally accepted hereunder, Seller shall, as a condition precedent to final acceptance, be obligated to complete such qualification tests successfully and to incorporate in all such supplies at no increase in Order price, (1) all corrections of a type required to pass qualification tests, and (2) replacement for non-approved, non-standard parts.

c. Pending final acceptance of supplies which have been provisionally accepted, Buyer may, in his/her discretion, withhold such portion of the Order price as may be appropriate.

d. Nothing in this clause shall affect the Seller's obligation under other clauses of this Order.

4. **CONTRACTOR EMPLOYEES (NAVAIR 5252.211-9510)**
   a. In all situations where Seller personnel status is not obvious, all Seller personnel are required to identify themselves to avoid creating an impression to the public, agency officials, or Congress that such Seller personnel are Government officials. This can occur during meeting attendance, through written (letter or email) correspondence or verbal discussions (in person or telephonic), when making presentations, or in other situations where their contractor status is not obvious to third parties. This list is not exhaustive. Therefore, the Seller employee(s) shall:

   (1) Not by word or deed give the impression or appearance of being a Government employee;

   (2) Wear appropriate badges visible above the waist that identify them as contractor employees when in Government spaces, at a Government-sponsored event, or an event outside normal work spaces in support of the Order;

   (3) Clearly identify themselves as contractor employees in telephone conversations and in all formal and informal written and electronic correspondence. Identification shall include the name of the company for whom they work;

   (4) Identify themselves by name, their company name, if they are a subcontractor the name of the prime contractor their company is supporting, as well as the Government office they are supporting when participating in meetings, conferences, and other interactions in which all parties are not in daily contact with the individual contractor employee; and

   (5) Be able to provide, when asked, the full number of the contract/order under which they are performing, and the name of the Contracting Officer’s Representative.

   b. If wearing a badge is a risk to safety and/or security, then an alternative means
of identification maybe utilized if endorsed by the Contracting Officer’s Representative and approved by the Contracting Officer of the controlling prime contract.

c. The Contracting Officer of the controlling prime contract will make final determination of compliance with regulations with regard to proper identification of Seller employees.

5. **INVENTION DISCLOSURES AND REPORTS (NAVAIR 5252.227-9501)**

a. In accordance with the requirements of the Patent Rights clause of this contract, the contractor shall submit “Report of Inventions and Subcontracts” (DD Form 882) along with written disclosure of inventions to the designated Contract Administrator.

b. The Contract Administrator will forward such reports and disclosures directly to the appropriate Patent Counsel, designated below, for review and recommendations, after which the reports will be returned to the Contract Administrator.

Name and address of Patent Counsel:
Office of Counsel, Code K00000D
Naval Air Warfare Center Weapons Division
1 Administration Circle, Stop 1009
China Lake, California  93555-6100

c. The above designated Patent Counsel will represent the Procurement Contracting Officer with regard to invention reporting matters arising under this contract.

d. A copy of each report and disclosure shall be forwarded to the Procuring Contracting Officer.

e. The Seller shall furnish the Contracting Officer a final report within three (3) months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

6. **NOTICE REGARDING THE DISSEMINATION OF EXPORT-CONTROLLED TECHNICAL DATA (NAVAIR 5252.227-9507)**

a. Export of information contained herein, which includes release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms Regulations (ITARS), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.

b. For violation of export laws, the contractor, its employees, officials or agents are subject to:
(1) Imprisonment and/or imposition of criminal fines; and  
(2) Suspension or debarment from future Government contracting actions.

c. The Government or Northrop Grumman Systems Corporation shall not be liable for any unauthorized use or release of export-controlled information, technical data or specifications in this Order.

7. **DISCLOSURE, USE AND PROTECTION OF PROPRIETARY INFORMATION**  
(NAVAIR 5252.227-9511)  

a. During the performance of this Order, the Government may use an independent services contractor (ISC), who is neither an agent nor employee of the Government or Northrop Grumman Systems Corporation. The ISC may be used to conduct reviews, evaluations, or independent verifications and validations of technical documents submitted to the Government or Northrop Grumman Systems Corporation during performance.

b. The use of an ISC is solely for the convenience of the Government. The ISC has no obligation to the Seller. The Seller is required to provide full cooperation, working facilities and access to the ISC for the purposes stated in paragraph (a) above.

c. Since the ISC is neither an employee nor an agent of the Government or Northrop Grumman Systems Corporation, any findings, recommendations, analyses, or conclusions of such a contractor are not those of the Government or Northrop Grumman Systems Corporation.

d. The Seller acknowledges that the Government has the right to use ISCs as stated in paragraph (a) above. It is possible that under such an arrangement the ISC may require access to or the use of information (other than restricted cost or pricing data), which is proprietary to the Seller.

e. To protect any such proprietary information from disclosure or use, and to establish the respective rights and duties of both the ISC and Seller, the Seller agrees to enter into a direct agreement with any ISC as the Government requires. A properly executed copy (per FAR 9.505-4) of the agreement will be provided to the Procuring Contracting Officer and the Buyer.

8. **ADMINISTRATION OF FAR 52.232-32, PERFORMANCE BASED PAYMENTS**  
The following information is provided concerning the establishment and administration of performance based payments. Per FAR 52.232-32, Performance Based Payment.

a. The Performance Based Billing rate for this Order is established at 90%. The Performance Based Event Schedule and Payment Plan are provided as an attachment or within the Order.

b. The attachment or Order containing the Performance Based Event Schedule
and Payment Plan provides the amounts to be paid upon successful completion of the corresponding event. These amounts were derived using a percentage factor (90%) that was applied to the price associated with each event. The attachment or Order allocates the payment associated with each event by month. However, the number of events varies from month to month based on the critical path flow. As a result, if an event is not successfully completed, the total payment associated with the month shall be adjusted across all events for the event that was not achieved. For example, if one of three events is not achieved in a particular month, the total payment for that month shall be adjusted downward by one third. This is not a reduction in performance based payments but is a means to accommodate the fact that the number of events varies across the performance period and the fact that it is necessary for the sum of payments to equal the price of the Item. Additionally, if an event is not achieved in a particular month, that event may be invoiced when completed in a future month.

1. Successful performance of each of the events is defined as follows:

   a. Successful performance of each of the events is defined within the attachment containing the Performance-Based Payment events or in the Order.

   b. In addition to the requirements of paragraph (l) of FAR 52.232-32, the form and manner of Seller requests for payment shall include:
      1. Identification of any event that has been successfully completed for which payment is being requested.
      2. A letter stating that an event has been successfully completed, signed by an authorized Seller representative with concurrence by the DCMA-St. Augustine ACO.
      3. The original copy of the Seller commercial payment request. The Seller shall not use the SF 1443, “Progress Payment Request” form for its performance based payments requests.
      4. A segregation of the amount to be paid by ACRN. There shall only be one payment request per month for all events. The segregation of the amounts to be paid by ACRN shall be attached to the payment request.
      5. Any other information as may be required by a Memorandum of Understanding signed by the Seller and Northrop Grumman.

   c. “Contracting Officer” as used in FAR 52.232-32 is the cognizant ACO at DCMA-Bethpage. The Seller shall not submit payment requests directly to Defense Finance Accounting Service.

   d. Consistent with the payment rate, the liquidation rate applicable to this Order is 90%. FAR 52.232-32 and the information provided in this Section G clause in no way limit the Government’s or Northrop Grumman’s rights pursuant to the “Inspection of Supplies-Fixed Price” clause of this Order.
f. The Seller shall maintain the following records and controls for administration of FAR 52.232-32:

1. Copies of all letters stating that an event has been successfully completed.
2. Copies of all commercial payment requests submitted and records of actual payments received.
3. Any other records and controls as may be required by a Memorandum of Understanding signed by the Seller and Northrop Grumman.

In accordance with FAR 32.1004(b)(3)(ii) and FAR 52.232-32 Performance-Based Payments (APR 2012), all financing payments made under this clause, including Performance Based Payments made to Sellers, must be commensurate with the value of the performance event or performance criterion and not be expected to result in an unreasonably low or negative level of Seller investment in the Order. In order to track Seller and subcontractor investment, all performance based payment invoices shall include an attachment showing current and cumulative payments divided into NG costs and payments made to Seller’s subcontractors, together with the name of the subcontractor and type of payment (PBP or Progress Payment). If at any time during the performance of this Order the ACO has reason to question that the Performance Based Payments will not be commensurate with the value the Government or Northrop Grumman has received under this Order, the Buyer may request an expenditure report, including payments made to subcontractors, to permit confirmation that the Seller has provided sufficient value to support the Performance Based Payment by Northrop Grumman. Failure to provide the report and/or failure to demonstrate that the performance based payment is commensurate with the value of performance received by Northrop Grumman will be a material noncompliance and will constitute a basis for suspension of Performance Based Payments in accordance with FAR 52.232-32(e)(1). Should it be determined by the ACO that the Performance Based Payment clause is in material noncompliance with the requirements of FAR 52.232-32 or FAR Subpart 32.10, the Buyer may substitute FAR 52.232-16, Progress Payments, as the financing method of this Order.

h. This clause, including the cost limitation language below, shall be incorporated in all Seller subcontracts containing a Performance Based Payment clause with appropriate substitution of Seller for CO and ACO functions and subcontractor for prime contractor. Any Seller subcontractor that desires Performance Based Payments must comply with the following requirements: With each invoice submitted, the Seller shall submit the requested payment along with actual costs incurred to date. The Seller shall submit their payment request and actual costs directly to the ACO, DCMA Bethpage/Melbourne. Should the ACO DCMA Bethpage/Melbourne desire to delegate this responsibility, the Seller may submit payment request and actual costs incurred directly to the cognizant ACO at their facility. The cognizant ACO at the Seller facility may then validate and certify that the invoice is not requesting payment in excess of
allowable costs incurred, and submit the certified invoice to Northrop Grumman for payment. If actual cost incurred data is not available the Seller shall submit other cost data identified and agreed to by the NAVAIR PCO, DCMA ACO, and DCAA cognizant representative demonstrating that the Seller is not in an advance payment state.

Notwithstanding the above, at no time will cumulative performance based payments exceed cumulative cost incurred on this contract, excluding liquidation.