

RFP AAC-18-007 Applicable Clauses

MDA CLAUSES INCORPORATED BY FULL TEXT

C-02 Enterprise-wide Contractor Manpower Reporting Application (eCMRA)

The contractor shall report ALL contractor labor hours (including subcontractor labor hours) required for performance of services provided under this contract for the Missile Defense Agency via a secure data collection site. The contractor is required to completely fill in all required data fields using the following web address: <http://www.ecmra@mda.mil>.

Reporting inputs will be for the labor executed during the PoP for each Government fiscal year (FY), which runs October 1 through September 30. While inputs may be reported at any time during the FY, all data shall be reported no later than October 31 of each calendar year. Contractors may direct questions to the help desk at <http://www.ecmra@mda.mil>.

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 law Employer's Liability including all occupational disease when not covered by Workmen's Compensation above	As required by Federal and State \$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 (Jun 2013)

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 must 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 must be submitted to MDA for review and approval prior to release to the public. Subcontractor public information materials must be submitted for approval through the prime contractor to MDA.

c. Upon request, the Contracting Officer's Representative (COR) will provide the contractor the MDA Form 003, "Security and Policy Review" or any superseding MDA form. The contractor must complete Sections A-C and E-H of the Form 003 (or comply with the instructions of any superseding form) and submit it to the COR with the materials to be cleared. 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.

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d. The contractor must submit the following to the COR at least 60 days in advance of the proposed release date:

- (1) the completed Form 003 and one (1) electronic copy of the material to be reviewed. File size must not exceed 25MB; and,
- (2) a written statement, including:
  - (a) to whom the material is to be released;
  - (b) the desired date for public release;
  - (c) a 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 must have captions.

f. Outlines, rough drafts, marked-up copy (with handwritten notes), incorrect distribution statements, For Official Use Only (FOUO) information, export controlled, or International Traffic in Arms Regulations (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. The COR will notify the contractor of the agency's final decision regarding the status of the request.

j. Once information has been cleared for public release, it is in the public domain and must 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.

### H-09 ORGANIZATIONAL CONFLICT OF INTEREST (Jun 2012)

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 4 of this contract.

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c. **Access to and Use of Nonpublic Information:** If the Contractor, in performance of this contract, obtains access to nonpublic 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) release such information.

d. **Access to and Protection of Proprietary Information:** The Contractor agrees to exercise diligent effort to protect proprietary information from misuse or unauthorized disclosure in accordance with the provisions of FAR 9.505-4. The Contractor may be required to enter into a written non-disclosure agreement with the third party asserting proprietary restrictions.

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 if necessary to neutralize a resulting organizational conflict of interest; 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-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.

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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-10 CONTROL OF ACCESS TO MDA SPACES AND INFORMATION SYSTEMS (SEP 2013)

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 facilitating the employee's return of all government issued credentials, e.g., badges, common access cards (CACs), SIPRNet tokens. 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 Government issued credentials pursuant to the visit authorization request/letter; and,
- (3) terminate the MDA LAN account/access privileges.

c. In addition to actions related to MDA access control, the contractor shall maintain accountability for Government issued credentials provided under this contract. Government issued credentials are the property of the U.S. Government and shall not be retained by cardholders upon expiration, replacement, or when the DoD affiliation of employees has been terminated. The contractor shall coordinate with the COR to ensure government issued credentials are retrieved in accordance with local command or installation procedures. Unauthorized possession of an official credential, like a CAC, can be prosecuted criminally under section 701, title 18, United States Code.

d. 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-12 CONTROL OF ACCESS TO MDA SPACES AND INFORMATION SYSTEMS (SEP 2013)

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### 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

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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 (AUG 2014)

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

1. DoD Official. Serves in DoD in one of the following positions: Program Director, Deputy Program Director, Program Manager, Deputy Program Manager, Procuring Contracting Officer, Administrative Contracting Officer, or Contracting Officer's Representative.

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

3. 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).

4. 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 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 relying on its own corporate best practices and the terms and conditions of this contract. Consequently, the Government assumes no responsibility for the distribution of such technical data nor will the Government have any liability, including third party liability, for such technical data should it be inaccurate, incomplete, improperly marked or otherwise defective. Therefore, such a distribution shall not violate 18 United States Code § 1905.

c. All technical documents prepared under this contract shall be marked with the following distribution statement, warning, and destruction notice identified in sub-paragraphs below. When it is technically not feasible to use the entire WARNING statement, an abbreviated marking may be used, and a copy of the full statement added to the "Notice To Accompany Release of Export Controlled Data" required by DoD Directive 5230.25.

DISTRIBUTION STATEMENT D – Distribution authorized to the Department of Defense and U.S. DoD contractors only with a need to know, as of 20 July 2016. Other requests shall be referred to MDA/DT."

Questions regarding distribution shall be directed to the PM or COR of the Directorate for Test office, MDA/DT, Bldg, 5224, Martin Road, Redstone Arsenal, AL 35898 or higher DoD authority.

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

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### 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-41 COST ESTIMATING METHODS (MAR 2015)

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 2 calendar days or as designated by the PCO. 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 or as designated by the PCO. 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

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minimum of one hundred eighty (180) calendar days.

### CLAUSES INCORPORATED BY REFERENCE

52.203-6	Restrictions On Subcontractor Sales To The Government	SEP 2006
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	
52.209-6	Protecting the Government's Interest When Subcontracting	OCT 2015
	With Contractors Debarred, Suspended, or Proposed for Debarment	
52.215-12	Subcontractor Certified Cost or Pricing Data	OCT 2010
52.215-13	Subcontractor Certified Cost or Pricing Data-- Modifications	OCT 2010
52.244-2	Subcontracts	OCT 2010
52.244-2 Alt 1	Subcontracts (Oct 2010) -0 Alternate 1	JUN 2007

### CLAUSES INCORPORATED BY FULL TEXT

#### 252.203-7997 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS (DEVIATION 2016-O0003)(OCT 2015)

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) Use of funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in sections 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

#### 252.225-7048 EXPORT-CONTROLLED ITEMS (JUNE 2013)

(a) Definition. "Export-controlled items," as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes--

(1) "Defense items," defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120; and

(2) "Items," defined in the EAR as "commodities," "software", and "technology," terms that are also defined in the EAR, 15 CFR 772.1.

(b) The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.



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(c) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(d) Nothing in the terms of this contract adds, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive orders, and regulations, including but not limited to—

(1) The Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, et seq.);

(2) The Arms Export Control Act (22 U.S.C. 2751, et seq.);

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.);

(4) The Export Administration Regulations (15 CFR Parts 730-774);

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and

(6) Executive Order 13222, as extended.

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