

**1.0 QUALIFICATIONSS OF PERSONNEL**

- 1.1 Seller shall employ only qualified and competent persons in the performance of this Contract. At any time and for any reason, Boeing may require Seller to withdraw the services of any person and, in addition, request that seller promptly provide replacements for such persons satisfactory to Boeing. In addition to the other indemnification provisions within this Contract, Seller specifically agrees to indemnify and hold harmless Boeing, from and against any liabilities, claims, charges, or suits for alleged losses, costs, damages or expenses arising from Boeing's exercise of its rights under this Article.

**2.0 ETHICAL PRACTICES**

- 2.1 Seller agrees to instruct all of its employees as to the confidential nature of their conditions of employment, including but not limited to compensation and benefits, and that statements regarding these conditions are not to be made at any time to employees of Boeing.
- 2.2 Seller understands that the personnel it provides pursuant to this Contract may be assigned work which affords access to the trade secrets or other proprietary information of Boeing. Seller, therefore, agrees that it will not require its personnel provided hereunder to reveal to or discuss with Seller the details of their assignment with Boeing except when such disclosure is required for Seller's performance of this Contract.
- 2.3 Seller agrees that it will not, during the existence of this Contract, induce or attempt to induce any employees of Boeing, or any employees of companies under contract with Boeing, to leave their present employment and become employees of Seller or any related entity.

**3.0 TIMEKEEPING**

- 3.1 Throughout the period of performance of this Contract, Seller shall maintain a timekeeping system, satisfactory to Boeing, sufficient to reflect properly the hours worked hereunder by Seller's employees and the nature of the work performed.
- 3.2 Overtime Hours. Overtime hours shall mean those hours worked in excess of forty (40) hours during the Seller's standard workweek or thirty-two (32) hours in a period that an Boeing holiday occurs.  
  
For Sellers providing services in California, the above definition of overtime does not apply. Instead, overtime hours shall mean those hours worked in excess of eight (8) hours of work for any twenty-four (24) hour period.  
  
Furthermore, overtime payments for hours worked in excess of eight (8) hours need not be paid if Seller has no obligation to make those payments.

**4.0 HOLIDAYS AND VACATIONS**

- 4.1 Boeing shall not be obligated to make any payments to Seller for days designated by Boeing as holidays or shutdown periods, except for authorized work performed thereon. Seller's personnel working at Boeing facilities shall arrange any earned vacation time periods with the cognizant Boeing manager.

**5.0 PAYMENT**

- 5.1 Upon receipt of an accurate and properly executed invoice, Boeing will pay Seller for the labor performed hereunder at the rates specified in this Contract. Such rates include all wages, overhead, general and administrative expenses and all other indirect costs and profit to be recovered or charged by Seller under this Contract as defined below. Average straight time wages paid by Seller to its employees utilized in performance hereof shall not be less than the minimum wage of each appropriate labor classification.

**5.2 Hourly Rate**

- 5.2.1 The amounts shall be computed by multiplying the appropriate hourly rates prescribed in this Contract by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Boeing Purchasing Representative). Seller shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by Boeing. Promptly after receipt of each substantiated voucher, Boeing shall, except as otherwise provided in this Contract, and subject to the terms below, pay the voucher.

5.2.2 Unless this Contract prescribes otherwise, the hourly rates in this Contract shall not be varied by virtue of Seller having performed work on an overtime basis. If no overtime rates are provided in this Contract and overtime work is approved in advance by the Boeing Purchasing Representative, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes Clause of this Contract. If this Contract provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Boeing Purchasing Representative.

### 5.3 Materials and Subcontracts

5.3.1 Allowable costs of direct materials shall be determined by Boeing in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this Contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with Seller's usual accounting practices consistent with Subpart 31.2 of the FAR. Seller shall be reimbursed for items and services purchased directly for the contract only when cash, checks or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this Clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

5.3.2 The cost of subcontracts that are authorized under this Contract shall be reimbursable costs under this Clause; provided that the costs are consistent with Subparagraph 5.3.3 below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the Subcontractor in the same manner as for items and services purchased directly for the Contract under Subparagraph 5.3.1 above; however, this requirement shall not apply to a Seller that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under Subparagraph 5.2.1 above.

5.3.3 To the extent able, Seller shall –

5.3.3.1 Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

5.3.3.2 Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, Seller shall promptly notify the Boeing Purchasing Representative and give the reasons. Credit shall be given to Boeing for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of Seller, or would have accrued except for the fault or neglect of the Seller. The benefits lost without fault or neglect on the part of Seller, or lost through fault of Boeing shall not be deducted from gross costs.

5.4 Invoices for reimbursement of the cost of transportation furnished by Seller shall be paid only if authorized herein and supported by documentary evidence satisfactory to Boeing. Boeing shall be liable for payment of overtime if specifically authorized by Boeing and for premium rates on such overtime if premium rates are set forth herein.

5.5 In the event that this Contract is a Labor-Hour type Contract, the provisions above that govern reimbursement for materials furnished are considered to have been deleted.

5.6 Total Cost. It is estimated that the total cost to Boeing for the performance of this Contract shall not exceed the purchase/order contract total which constitutes the ceiling price set forth in this Contract and Seller agrees to use its best efforts to perform the work specified in this Contract and all obligations under this Contract within such ceiling price. If at any time Seller has reason to believe that the hourly rate payments and material costs that will accrue in performing this Contract in the next succeeding thirty (30) days, if added to all other payments and costs previously accrued, will exceed eighty-five (85) percent of the ceiling price in this Contract, Seller shall notify the Boeing Purchasing Representative giving a revised estimate of the total price to Boeing for performing this Contract with supporting reasons and documentation. If at any time during performing this Contract, Seller has reason to believe that the total price to Boeing for performing this Contract will be substantially greater or less than the then stated ceiling price, Seller shall so notify the Boeing Purchasing Representative, giving a revised estimate of the total price for performing this Contract, with supporting reasons and documentation. If at any time during performing this Contract, Boeing has reason to believe that the work to be required in performing this Contract will be substantially greater or less than the stated ceiling price, the

Boeing Purchasing Representative will so advise Seller, giving the then revised estimate of the total amount of effort to be required under the contract.

- 5.7 Ceiling Price. Boeing shall not be obligated to pay Seller any amount in excess of the ceiling price in this Contract, and Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in this Contract, unless and until the Boeing Purchasing Representative shall have notified Seller in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Contract. When and to the extent that the ceiling price set forth in this Contract has been increased, any hours expended and material costs incurred by Seller in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- 5.8 Refunds. Seller agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by Seller or any assignee, that arise under the materials portion of this Contract and for which Seller has received reimbursement, shall be paid by Seller to Boeing. Upon written request by Boeing, Seller and each assignee, under an assignment entered into under this Contract and in effect at the time of final payment under this Contract, shall execute and deliver an assignment to Boeing of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to Boeing. If Boeing makes such request prior to final payment, the required assignment shall be a condition precedent to Boeing's obligation to make a final payment under this Contract.

## **6.0 RECORDS AND AUDIT**

- 6.1 Seller shall maintain detailed, complete and accurate records of labor furnished in connection with performance hereunder, and Boeing shall be permitted to inspect and audit such records at all reasonable times.
- 6.2 At any time before final payment under this Contract, Boeing may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by Boeing not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by Seller as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by Seller with all terms of this Contract (including, without limitation, terms relating to patents), Boeing shall promptly pay any balance due Seller. The completion invoice or voucher, and substantiating material, shall be submitted by Seller as promptly as practicable following completion of the work under this Contract.

## **7.0 INSURANCE**

- 7.1 If, in the performance of this Purchase Order/Contract, Seller's employees, with or without equipment, are required to enter premises owned or controlled by Boeing or the Government, Seller shall maintain Workmen's Compensation, Comprehensive Public Liability and Property Damage including Automobile Public Liability and Property Damage coverage in amounts, form and with carriers satisfactory to Boeing, and shall on request provide certificates covering such insurance with, or shall submit for inspection such policies to Boeing.

## **8.0 CHANGES**

- 8.1 Boeing may, at any time, exclusively by a written order signed by its authorized Purchasing Representative, and without notice to sureties, make changes within the general scope of this Contract which affect, among other things, the services to be performed, and the time and place of performance thereof. If any such change causes an increase or decrease in the cost of this Contract, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly. Any claim by Seller for adjustment under this Article must be asserted in writing to Boeing's Purchasing Representative not later than thirty (30) days after the date of receipt by Seller of the written change authorization, or within such extension as Boeing may grant in writing. Boeing may, in its sole discretion, consider any such claim regardless of when asserted. Such claim shall be in the form of a complete change proposal fully supported by factual information. Pending any such adjustment, Seller will diligently proceed with the Contract as modified. Boeing shall have the right to examine any of Seller's pertinent books and records for the purpose of verifying Seller's claim.

**9.0 TERMINATION**

9.1 By written notification, Boeing may terminate this Contract in whole or in part at any time and for any reason. In the event of termination, Boeing shall be liable for payment to Seller only for services performed by Seller to the effective date of termination, and then only in accordance with the payment provisions of this Contract. This provision supersedes Article 8, Termination for Convenience, of Form DAC 26-800, General Terms and Conditions – Commercial/FAR.

**10.0 INDEPENDENT CONTRACTOR**

10.1 Seller is an independent contractor for all purposes. In no event shall Seller, its agents, representatives, or personnel that it supplies to Boeing under this Contract be deemed to be employees of Boeing. Seller's employees shall be paid exclusively by Seller for all services performed and Seller shall be responsible for and shall actually comply with all requirements and obligations relating to such employees under local, state or federal law (or foreign law as applicable) including, but not limited to, minimum wage, social security, unemployment insurance, state and federal income tax, and workmen's compensation. Boeing has no responsibility for withholding any portion of salary or wages due employees of Seller to comply with any of the aforementioned taxes or obligations.

**11.0 PERSONAL INJURY OR PROPERTY DAMAGE**

11.1 Seller will indemnify and hold harmless Boeing from and against any and all loss, damage, cost and expense to Boeing because of death or injury to Boeing's or Seller's employees, agents or representatives, or to third persons, or because of damage to property, which arises from Seller's performance hereunder.

**12.0 NONDISCLOSURE**

12.1 Seller shall not, without the written consent of Boeing, either during or after the performance of the work required hereunder, use, other than for such performance, or disclose to any person other than a duly authorized representative of Boeing any information, data, material or exhibit created, developed, produced or otherwise obtained in the course of the work required hereunder, or any information contained in reports, drawings, documents, or other records furnished to Seller by Boeing. Seller further agrees that it will not divulge any matter, the disclosure of which would be detrimental to the interests of Boeing. Nothing contained herein shall prevent Seller from making proper use of its experience gained in the performance of the work required hereunder. The restriction of this Article shall not apply to information in the prior possession of Seller or acquired by Seller from a source other than Boeing that has the right to disclose such information to Seller, nor shall it limit any rights the Government may have in information.

**13.0 PATENT RIGHTS AND COPYRIGHT**

13.1 Whenever an invention or discovery is made by Seller or its employees either solely or in collaboration with others, including employees of Boeing, under or relating to this Contract, Seller promptly shall give Boeing written notice thereof and shall furnish Boeing with complete information thereon including, at minimum; (1) a complete written description of each such invention; and (2) information concerning the date and identity of any public use, sale or publication of such invention made by or known to Seller or of any contemplated publication by Seller or its employees.

13.2 As used herein, the term (1) "invention" or "invention or discovery" includes any process, machine, manufacture, design or composition of matter or any new and useful improvement thereof which is or may be patentable under the Patent Laws of the United States or of any foreign country; and (2) "made", when used in relation to any invention or discovery, means the conception of or first actual or constructive reduction to practice of such invention.

13.3 Rights in any inventions or discoveries made by Seller or its employees under this Contract, including title to and rights under any patent application or patent which may issue thereon, shall reside solely with Boeing, together with the exclusive power to determine whether or not and where a patent application shall be filed, and disposition of any rights thereunder. Seller agrees that it will, and warrants that all of its employees who may be the inventors of any such invention will, execute all documents and do all things necessary or proper to vest in Boeing the rights granted to it under this Article and to enable Boeing to apply for and prosecute any patent application, in any country, covering such invention, where Boeing has the right under this Article to file such application.



## LABOR-HOUR AND TIME-AND-MATERIALS SPECIAL TERMS AND CONDITIONS

- 13.4 Seller agrees to grant to Boeing a nonexclusive royalty-free license under any patents owned or controlled by Seller which relate to and are required by Boeing to practice any of the work or the results of the work of Seller or its employees under this Contract.
- 13.5 Seller agrees it will not, and warrants that its employees will not, disclose to any third party, without the written consent of Boeing, any invention or discovery made under or relating to this Contract or any information acquired from Boeing under this Contract, including trade secrets, business plans and confidential or other information which may be proprietary to Boeing.
- 13.6 To the extent any works created by Seller or its employees under this Contract are not works made for hire for Boeing under U.S. Copyright law, Seller hereby assigns and shall cause its employees to assign to Boeing all rights in the copyrights covering such works for the entire term of the copyright.
- 13.7 Seller shall obtain patent agreements to effectuate the provisions of this Article from all persons who perform any part of the work under this Contract, except such clerical and manual labor personnel as will have no access to technical data.

### 14.0 GOVERNMENT CONTRACT PROVISIONS

- 14.1 If this Purchase Order/Contract is governed by Form DAC 26-800, General Terms and Conditions - Commercial/FAR, the following FAR clause(s) are added to Article 33, Paragraph a, thereof;  
(48) 52.203-3 Gratuities
- 14.2 Service Contract Act of 1965 (as applicable).