

**PRIME CONTRACT F33657-03-C-2018
F-16C/D Peace Sky Polish Fighter Program
Supplement to Appendix A 27th Series**

For all subcontracts issued under the subject Prime Contract, incorporate the following terms and conditions, applicable as noted, in addition to those other terms and conditions (such as provided in Appendix A 27th Series) to be used for subcontracts issued under such Prime Contract. The language of the incorporated clause(s) should be modified so that "Government" and "Contracting Officer" mean Buyer, "Contractor" means Seller, "Contract" means Purchase Order, and "Subcontractor" means Seller's Subcontractors.

Delete the following clauses:

1. 52.215-10, "PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA."
2. 52.215-12, "SUBCONTRACTOR COST OR PRICING DATA."
3. CAS requirements were not imposed on the Buyer in the basic prime contract. As such, the CAS requirements in Appendix J do not need to be imposed through contract on the suppliers for work performed pursuant to the basic prime contract. If, at some time in the future, CAS requirements are imposed on the prime contract, a new Special Instruction will be published advising of the same.

Add the following clauses:

1. Add the following after FAR 52.215-11, "PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATIONS (OCT 1997):

"If Buyer is subject to any liability or expense, including without limitation Government withholding of payments, as the result of: 1) Seller's or its lower tier subcontractors' submission and/or certification of alleged or actual defective cost or pricing data, as set forth in this clause or 2) their furnishing, as prospective subcontractors, alleged or actual defective cost or pricing data, which data was certified or required to be certified by Buyer to be accurate, complete and current as of the date specified by Buyer in its Certificate of Current Cost or Pricing Data, and which data Seller was given timely notice by Buyer to furnish and/or update prior to such date specified in such certificate; or 3) the Government Contracting Officer's rejection of Seller's or Seller's lower-tier subcontractor's claim for exception from submission of certified cost or pricing data on the basis that the price offered by the Seller or lower-tier subcontractor is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, is a price set by law or regulation, is a commercial item; or, on any other basis set forth in FAR FAR 15.403-1 or other pertinent law or

regulation; or 4) their furnishing data of any description that is allegedly or actually inaccurate as set forth in this clause, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any damage or expense resulting from such action.

2. With reference to Paragraph 12, Appendix A, 27th Series, the following clauses related to patents, rights in data, and computer software are incorporated in the Prime Contract:

FAR 52.227-1, "AUTHORIZATION AND CONSENT" (JUL 1995)

FAR 52.227-2, "NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT" (AUG 1996)

FAR 52.227-12, "PATENT RIGHTS – RETENTION BY CONTRACTOR (LONG FORM)"(JAN1997)

FAR 52.227-21, TECHNICAL DATA DELCARATION, REVISION, AND WITHHOLDING OF PAYMENT – MAJOR SYSTEMS" (JAN 1997) (Tailored). Contracting Officer" means "Lockheed Martin." "Government" means "Lockheed Martin" in paragraph (b)(2) and "Lockheed Martin or Government" in paragraph (d).

DFARS 252.227-7013, "RIGHTS IN TECHNICAL DATA – NONCOMMERCIAL ITEMS" (NOV 1995) – ALT I (JUN 1995); 252.227-7014, "RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION" (JUN 1995); 252.227-7016, "RIGHTS IN BID OR PROPOSAL INFORMATION" (JUN 1995); 252.227-7019, "VALIDATION OF ASSERTED RESTRICTIONS – COMPUTER SOFTWARE" (JUN 1995); 252.227-7025, "LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS" (JUN 1995); 252.227-7030, "TECHNICAL DATA – WITHHOLDING OF PAYMENT" (MAR 2000); 252.227-7036, "DECLARATION OF TECHNICAL DATA CONFORMITY" (JAN 1997); 252.227-7037, "VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA" (SEP 1999) and 252.227-7039, "PATENTS – REPORTING OF SUBJECT INVENTIONS" (APR 1990).

3. FAR 52.237-2, "PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION" (APR 1984) (applicable for work to be performed on Government installations).
4. DFARS 252.225-7007, "BUY AMERICAN ACT – TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM," (OCT 2002).
5. AFMC 5352.227-9000 "EXPORT-CONTROLLED DATA RESTRICTIONS (AFMC)" (JUL 1997):

“CO” means “Buyer”

- (a) For purposes of this clause,
 - (1) Foreign person is any person who is not a citizen or national of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, international organizations, and foreign governments;
 - (2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation or person;
 - (3) Foreign sources are those sources (vendors, subcontracts, and suppliers) owned and controlled by a foreign person.
 - (b) The Contractor shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.
 - (c) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export controlled data and information.
 - (d) Equipment and technical data generated or delivered under this contract are controlled by the International Traffic and Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (See 22 CFR Section 125). The Contractor shall notify the Contracting Officer and obtain written approval of the Contracting Officer prior to assigning or granting access to any work, equipment, or technical data generated or delivered under this Contract to foreign persons or their representatives. The notification shall include the name and country or origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).
6. AFMC 5352.227-9002, “VISIT REQUESTS BY FOREIGN-OWNED OR CONTROLLED FIRMS (AFMC)” (JUL 1997), subparagraphs (b) and (c):
- (b) Subcontractors which are foreign-owned or controlled and require access to a U.S. Government installation shall have their prime Contractor submit a visit request to the security police office of the base being visited at least two weeks before the scheduled meeting.

- (c) Canadian Contractors and Canadian government employees may directly arrange visits by having their security office submit a visit request to the security police office of the base being visited at least two weeks before the scheduled meeting.

- 7. In addition, the following clauses also apply to cost-reimbursement, time-and-materials, or labor-hour subcontracts (as applicable):
 - FAR 52.222-2, "PAYMENT FOR OVERTIME PREMIUMS" (JUL 1990);
 - FAR 52.243-2, "CHANGES – COST-REIMBURSEMENT" (AUG 1987);
 - FAR 52.243-3, "CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS" (SEP 2000);
 - FAR 52.245-5, "GOVERNMENT-PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS)" (JAN 1986);
 - FAR 52.246-6, "INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR" (MAY 2001);
 - FAR 52.247-67, "SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT" (JUN 1997);
 - FAR 52.249-6, "TERMINATION (COST-REIMBURSEMENT)" (SEP 1996).

Modify the following clauses:

- 1. DFARS 252.225-7027, "RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES (MAR 1998)." For purposes of subparagraph (b)(1), Countries listed in the Prime Contract are the following: Poland.

Special Clauses:

- 1. YPK-I002 EXPORT-CONTROLLED DATA RESTRICTIONS (MAR 2003)
"CO" means "Buyer"
 - (a) For the purpose of this clause,
 - (1) Foreign person is any person who is not a citizen or national of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, international organizations, and foreign governments;
 - (2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation or person;
 - (3) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.
 - (b) **The Contractor shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.**

(c) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export controlled data and information.

(d) Equipment and technical data generated or delivered under this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). The Contractor shall notify the Contracting Officer and obtain written approval of the Contracting Officer prior to assigning or granting access to any work, equipment, or technical data generated or delivered under this contract to foreign persons or their representatives. The notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

2. YPK-H006 USE OF OTHER GOVERNMENT PROPERTY (JAN 2003)

a. In the performance of the requirements under this Contract, the Contractor may use and may authorize its subcontractors to use, on a no-charge basis, the Government-owned Special Tooling such as jigs, dies, fixtures, special gauges, other manufacturing aids and Special Test Equipment, heretofore acquired or manufactured or authorized for acquisition or manufacture by the Contractor and/or its subcontractors or heretofore furnished to the Contractor and/or its subcontractors as Government Furnished Property and presently in its or their possession which shall have been determined by the appropriate Administrative Contracting Officer (ACO) to be available for the performance of the work called for by this Contract in accordance with FAR 52.245-02 of Section I of this Contract entitled, "Government Property (Fixed-Price Contracts)." It is however, hereby provided that use of the foregoing shall not interfere with the proper performance of work under the Contract(s) for which they were originally produced, acquired or furnished. Subject to the provisions of Paragraph (a) above, any of the aforementioned items of Special Tooling and/or Special Test Equipment presently in the possession of the Contractor and/or subcontractors may be modified as necessary for the performance of this Contract as approved by the ACO.

3. YPK-H021 LIMITED RISK OF LOSS (JAN 2003)

The Contractor may authorize, without any requirement for additional approval, the flow down to its subcontractors the Limited Risk of Loss provisions of FAR 52.245-02, Alternate I (APR 1984). Such authorization shall be limited to subcontractors having a current USG-approved Property Control System.