

SECTION 7

CLAUSES APPLICABLE TO TIME-AND-MATERIAL AND LABOR-HOUR SUBCONTRACTS

(Section 7 clauses are applicable to all Time-And-Material And Labor-Hour type subcontracts unless specifically deleted in the subcontract. If this Section is referenced in the subcontract, Section 3 shall also be applicable)

7-1 INVOICES (Time and Material & Labor-Hour)

All invoices submitted by Subcontractor hereunder shall: (i) be supported by evidence of actual payment and by individual daily job timecards, or such other substantiation approved by Lockheed Martin; (ii) indicate any assignments.

7-2 PAYMENT (Time and Material & Labor-Hour)

Clause 3-1 shall not apply. In addition to the requirements of Clause 1-29:

(a) Payment to Subcontractor shall be made upon the basis of invoices submitted to Lockheed Martin which shall be in such form and detail as Lockheed Martin may require. Lockheed Martin shall make payment within thirty (30) days after receipt and approval of such invoices.

(b) Payment for labor shall be based upon the amounts computed by multiplying the appropriate hourly rate, or rates, set forth in this subcontract by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. The hourly rates specified in this subcontract are the rates at which Lockheed Martin shall be invoiced for labor hereunder and are not necessarily the rates which Subcontractor shall pay its employees.

(c) Unless otherwise set forth in this subcontract, five percent (5%) of the amount due under paragraph (a) above shall be withheld from each payment by Lockheed Martin but the total amount withheld shall not exceed \$50,000. Such amounts withheld shall be retained until clause 3-2, Release Provisions and Closure Requirements, has been satisfied.

(d) Unless provisions of this subcontract otherwise specify, the hourly rate or rates set forth in this subcontract shall not be varied by virtue of Subcontractor having performed work on an overtime basis. If no overtime rates are provided in this subcontract and overtime work is approved in advance by Lockheed Martin, overtime rates will be negotiated. If this subcontract provides rates for overtime, the premium portion of such rates will be reimbursable only to the extent that overtime is approved by Lockheed Martin.

(e) Payment for materials shall be based upon the allowable costs of direct materials as determined by Lockheed Martin in accordance with FAR, Subpart 31.2 and, as appropriate, DOD FAR Supplement Subpart 231.2 or NASA FAR Supplement 18-31.2, in effect on the date of this subcontract. If the subcontract is with an educational institution, FAR Subpart 31.3 shall apply; and if with a non-profit organization other than an educational institution, FAR Subpart 31.7 shall apply. Reasonable and allocable material handling costs may be included in the charge for material at cost to the extent they are clearly excluded from hourly rates. Subcontractor shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to Lockheed Martin. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(f) Payment for subcontracted effort shall be based upon the cost of lower-tier subcontracts which are authorized pursuant to the Subcontracts clause, provided such costs are consistent with paragraph (g) below. Reimbursable costs in connection with lower-tier subcontracts shall be limited to the amounts actually paid by Subcontractor to lower-tier subcontractors and shall not include any costs arising from the letting, administration or supervision of performance of lower-tier subcontracts, which costs are included in the hourly rate or rates payable under (b) above. The requirement of payment prior to reimbursement shall not apply if Subcontractor is a Small Business concern.

(g) Subcontractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing required delivery of satisfactory materials, and shall take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify Lockheed Martin to that effect, and give the reason therefor. Credit shall be given to Lockheed Martin for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of Subcontractor, or would have so accrued except for the fault or neglect of Subcontractor. Such benefits lost through no fault or neglect of Subcontractor, or lost through fault of Lockheed Martin, shall not be deducted from gross costs.

(h) At any time or times prior to final payment under this subcontract, Lockheed Martin may cause to be made such audit of the invoices or vouchers and substantiating material and records as Lockheed Martin deems necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts which are found by Lockheed Martin not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayment, on preceding invoices or vouchers.

(i) Notwithstanding final payment under this subcontract, if any amount actually paid by Lockheed Martin to Subcontractor is disallowed to Lockheed Martin by the Contracting Officer, or by the General Accounting Office, as an item of cost under the prime contract, or if Lockheed Martin is required because of any action of the Government to refund or credit to the Government any amount with respect to an item of cost for which it has reimbursed Subcontractor, including any amounts offset pursuant to FAR 52.203-7 or the Anti-Kickback Act (41 USC 51-58), Subcontractor shall, on demand made by Lockheed Martin after such disallowance or after Lockheed Martin shall have made such refund or given such credit, promptly repay to Lockheed Martin the amount which Lockheed Martin has paid to Subcontractor with respect to any such item or items, provided, however, that to the extent such disallowance or such refund or credit is the result of the performance by Subcontractor of work authorized by Lockheed Martin but not authorized by the prime contract, Subcontractor shall not be required to repay to Lockheed Martin the amount which Lockheed Martin has paid to Subcontractor with respect to the performance of such work. In the event Lockheed Martin shall recover any amount so disallowed or so refunded or credited by it to the Government with respect to any such item or items, Lockheed Martin shall pay the amount of such recovery to Subcontractor if the same shall not theretofore have been repaid to Subcontractor.

7-3 PERFORMANCE OF PERSONNEL

(a) Lockheed Martin may at any time and for any reason request that Subcontractor remove from Lockheed Martin's premises any of Subcontractor's personnel. Subcontractor agrees to promptly comply with such requests.

(b) All work under this subcontract shall be performed in a skillful and workmanlike manner by experienced, responsible and capable personnel. Lockheed Martin may, in writing, require Subcontractor to remove from performance of work under this subcontract any employee of Subcontractor or

Subcontractor's lower-tier subcontractors, which Lockheed Martin deems incompetent, careless or otherwise objectionable. Subcontractor agrees to promptly comply with such requests.

7-4 LIENS

Subcontractor shall pay promptly, when due, all wages of laborers and employees as well as all bills for materials used in the performance of this subcontract, together with all claims of any subcontractor and all statutory withholdings. Subcontractor further agrees to indemnify Lockheed Martin and hold it harmless from and against any and all liens including subcontractors' liens, claims for labor, services and materials, and subcontractor agrees to forthwith discharge and pay any and all liens and claims. If a lien is filed against Lockheed Martin property, subcontractor shall (1) pay such lien and obtain a recorded Release of Lien; or (2) post a Release Bond to lift the lien from Lockheed Martin's property within five (5) working days of notification by Lockheed Martin. Failure to do so shall be deemed to be a material breach of this subcontract and Subcontractor shall be liable to Lockheed Martin for all expenses (including attorney's fees) as a result of its failure. Lockheed Martin at its discretion may withhold any monies due subcontractor and use said money to satisfy any lien or past-due amounts.

7-5 USE OF LOCKHEED MARTIN'S DATA

Subcontractor shall not reproduce, use, or disclose any data, designs, or other information belonging to or supplied by or on behalf of Lockheed Martin, except as necessary in the performance of subcontracts for Lockheed Martin (or the Government on Lockheed Martin's written notice that the Government has rights therein). Upon Lockheed Martin's request, such data, designs, or other information, and any copies thereof, shall be returned to Lockheed Martin. Lockheed Martin shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work created by Subcontractor under this subcontract. Notwithstanding any other provision of this subcontract, to the extent the Government has received from Lockheed Martin the right to authorize such use by Subcontractor, Subcontractor may utilize Lockheed Martin's data and information in the manufacture of supplies for direct sale to the Government; provided, however, that Subcontractor shall (a) give Lockheed Martin prior written notice of each such proposed use, (b) prominently identify, to the extent possible, each article as being manufactured by Subcontractor in the performance of subcontracts for the Government, and (c) make no claim against Lockheed Martin which arises out of use by Subcontractor of such data and information. Where Lockheed Martin's data, designs, or other information are furnished to Subcontractor's suppliers for procurement of supplies by Subcontractor for use in the performance of Lockheed Martin's subcontracts, Subcontractor shall insert the substance of this provision in its subcontracts. "Government" as used in this clause means the United States Government.

7-6 ABSTRACTS OF NEW TECHNOLOGY

The Subcontractor agrees to submit an Abstract of New Technology, in a format acceptable to Lockheed Martin, describing each item reportable as a subject invention under the Patent Rights Clause. The abstract shall be considered a part of the technical disclosure of each reportable item and may be prepared by the originator (inventor).

Clause Number	FAR Citation	Clause Title	Notes
7-7	FAR 52.243-3	Changes	Delete the first sentence of paragraph (d).

LMMS FAR-1

7-8 FAR Subcontracts
52.244-3

7-9 FAR 52.249-6 Termination
Alt. IV

in paragraph (f) the term "1 year" is changed to "6 months" and paragraph (j) is deleted.