

**TEMPLATE
SBIR PHASE II CONTRACT**

PART I – THE SCHEDULE

SECTION B -- SUPPLIES OR SERVICES AND PRICES

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>QTY/UNIT</u>	<u>AMOUNT</u>
0001	Research and Development (R&D) Efforts for SBIR Topic N95-XXX entitled “_____” ACRN: AA	1 LO	\$595,373
0002	Contract Data Requirements List, CDRL, DD Form 1423, Exhibit “A”	1 LO	NSP

Estimated Cost.....\$556,423
 Fixed Fee.....\$ 38,950
 Total Estimated Cost Plus Fixed Fee.....\$595,373

NOTICE: Paragraph (c) of the FAR 52.232-22, Limitation of Funds, clause requires the Contractor to notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the contract by the Government. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

OPTION ITEMS (IF APPLICABLE)

0003	Additional R&D Efforts for SBIR Topic N95-XXX entitled “_____”	1 LO	\$153,862
0004	Contract Data Requirements List, CDRL, DD Form 1423, Exhibit “B”	1 LO	NSP

Estimated Cost.....\$143,797
 Fixed Fee.....\$ 10,065
 Total Estimated Cost Plus Fixed Fee.....\$153,862

5252.216-9200 PAYMENT OF FIXED FEE (COMPLETION TYPE) (JAN 1989) (CLIN 0001)

FIXED FEE: \$_____. The Government shall make payment to the Contractor when requested as work progresses, but no more frequently than biweekly, on account of the fixed fee, equal to ___ percent of the amounts invoiced by the Contractor under the “Allowable Cost and Payment” clause hereof for the related period, subject to the withholding provisions of paragraph (b) of the “Fixed Fee” clause. In the event of discontinuance of the work in accordance with clause of this contract entitled “Limitation of Funds,” the fixed fee shall be redetermined by mutual agreement equitably to reflect the diminution of the work performed; the amount by which such fixed fee is less than, or exceeds payments previously made on account of fee, shall be paid, or repaid by, the Contractor, as the case may be.

PRESCRIPTION: Use the 5252.216-9200 clause in all cost reimbursement completion contracts.

5252.216-9200 PAYMENT OF FIXED FEE (COMPLETION TYPE) (JAN 1989) (OPTION CLIN 0003)

FIXED FEE: \$_____. The Government shall make payment to the Contractor when requested as work progresses, but no more frequently than biweekly, on account of the fixed fee, equal to ___ percent of the amounts invoiced by the Contractor under the "Allowable Cost and Payment" clause hereof for the related period, subject to the withholding provisions of paragraph (b) of the "Fixed Fee" clause. In the event of discontinuance of the work in accordance with clause of this contract entitled "Limitation of Funds," the fixed fee shall be redetermined by mutual agreement equitably to reflect the diminution of the work performed; the amount by which such fixed fee is less than, or exceeds payments previously made on account of fee, shall be paid, or repaid by, the Contractor, as the case may be.

PRESCRIPTION: Use the 5252.216-9200 clause in all cost reimbursement completion contracts.

5252.232-9200 ALLOTMENT OF FUNDS (JAN 1989)

- (a) This contract is incrementally funded with respect to both cost and fee.
- (b) The amounts presently available and allotted to this contract for payment of fee, as provided in the Section I clause of this contract entitled "Fixed Fee", are as follows:

<u>ITEM(S)</u>	<u>ALLOTED TO FIXED FEE</u>
_____	\$ _____

- (c) The amounts presently available and allotted to this contract for payment of cost, subject to the Section I "Limitation of Funds" clause, the items covered thereby and the period of performance which it is estimated the allotted amount will cover are as follows:

<u>ITEM(S) ALLOTED TO COST</u>	<u>PERIOD OF PERFORMANCE</u>
_____	\$ _____

- (d) The parties contemplate that the Government will allot additional amounts to this contract from time to time by unilateral contract modification, and any such modification shall state separately the amounts allotted for cost and for fee, the items covered thereby, and the period of performance the amounts are expected to cover.

PRESCRIPTION: Use the 5252.232-9200 clause in all cost reimbursement, incrementally funded contracts.

SECTION C -- DESCRIPTIONS AND SPECIFICATIONS

C-325 KEY PERSONNEL

- (a) The offeror agrees to assign to this contract those key personnel listed in paragraph (d) below. No substitutions shall be made except in accordance with this clause.
- (b) The offeror agrees that during the first ____ days of the contract performance period no personnel substitutions will be permitted unless such substitutions are necessitated by an individual's sudden illness, death or termination of employment. In any of these events, the contractor shall promptly notify the Contracting Officer and provide the information required by paragraph (c) below. After the initial ____ day period, all proposed substitutions must be submitted in writing, at least fifteen (15) days (thirty (30) days, if a security clearance is to be obtained) in advance of the proposed substitutions to the contracting officer. These substitution requests shall provide the information required by paragraph (c) below.

(c) All requests for approval of substitutions under this contract must be in writing and provide a detailed explanation of the circumstances necessitating the proposed substitutions. They must contain a complete resume for the proposed substitute or addition, and any other information requested by the Contracting Officer or needed by him to approve or disapprove the proposed substitutions. All substitutions proposed during the duration of this contract must have qualifications of the person being replaced. The Contracting Officer or his authorized representative will evaluate such requests and promptly notify the contractor of his approval or disapproval thereof in writing.

(d) List of Key Personnel

Name	Contract Labor Category
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(e) If the Contracting Officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated or have otherwise become unavailable for the contract work is not reasonably forthcoming or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the Contracting Officer for default or for the convenience of the Government, as appropriate. In addition, if the Contractor is found at fault for the condition, the Contracting Officer may elect to equitably decrease the contract price or fixed fee to compensate the Government for any resultant delay, loss or damage.

(f) If the offeror wishes to add personnel to be used in a labor category he shall employ the procedures outlined in paragraph (c) above. Adding personnel will only be permitted in the event of an indefinite quantity contract, where the Government has issued a delivery order for labor hours that would exceed a normal forty-hour week if performed only by the number of employees originally proposed.

PRESCRIPTION: Use Specification C-325 when the qualifications and retention of key personnel will be a significant factor in contract performance.

C-401 SBIR CONTRACT SPECIFICATIONS/WORK STATEMENT (CLIN 0001 AND 0003)

(a) CLIN 0001 (and CLIN 0003, if the option is exercised) shall be in accordance with the contractor's proposal entitled "_____ " dated _____, which is attached to this contract. The work shall be conducted and performed in accordance with the detailed obligations to which the contractor committed itself in the above referenced proposal in response to DoD Program Solicitation _____, Topic No. _____, entitled _____.

(b) The technical volume of the contractor's proposal is attached and hereby made subject to the provisions of the FAR 52.215-8 "Order of Precedence" clause. Under the "Order of Precedence" clause, the technical volume of the contractor's proposal is hereby designated as item (f) of the clause, following "the specification" in order of precedence.

PRESCRIPTION: Use Specification C-401 in all SBIR Phase I and SBIR Phase II contracts.

C-402 SBIR CONTRACT SPECIFICATIONS/WORK STATEMENT (CLIN 0002)

CLIN 0002 shall be in accordance with the attached Contract Data Requirements List, CDRL, DD Form 1423, dated _____, Exhibit "A" of this contract.

PRESCRIPTION: Use Specification C-402 in all SBIR Phase I and SBIR Phase II contracts.

C-403 SBIR CONTRACT SPECIFICATIONS/WORK STATEMENT (CLIN 0004)

CLIN 0004, if the option is exercised, shall be in accordance with the attached Contract Data Requirements List, CDRL, DD Form 1423, dated _____, Exhibit "B" of this contract.

PRESCRIPTION: Use Specification C-403 in all SBIR Phase I and SBIR Phase II contracts.

C-405 PRINCIPAL INVESTIGATOR PRIMARY EMPLOYMENT (SBIR CONTRACT)

The primary employment of the principal investigator shall be with the contractor during the conduct of this contract. Primary employment means that more than one-half of the principal investigator's time is spent with the contractor.

PRESCRIPTION: Use Specification C-405 in all SBIR Phase I and SBIR Phase II contracts.

C-406 PLACE OF PERFORMANCE (SBIR CONTRACT)

The research or research and development work under this contract shall be performed in the United States. "United States" means the fifty states, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

PRESCRIPTION: Use Specification C-406 in all SBIR Phase I and SBIR Phase II contracts.

C-408 SUBMISSION OF AN ELECTRONIC SUMMARY OF THE FINAL REPORT (SBIR CONTRACT)

The contractor must submit an electronic summary of the final report directly to the Navy website in accordance with the attached Contract Data Requirements List, CDRL, DD Form 1423, dated _____, Exhibit "A" of this contract. In addition, the contractor shall submit a copy of the electronic summary of the final report to the SPAWAR SBIR Program Office in accordance with the attached Contract Data Requirements List, CDRL, DD Form 1423, dated _____, Exhibit "A" of this contract. This electronic summary does not count as the final report. This electronic summary is due at the same time as the final report.

PRESCRIPTION: Use Specification C-408 in all Small Business Innovative Research (SBIR) Phase I and Phase II contracts.

C-409 RESEARCH AND ANALYTICAL WORK (SBIR PHASE II CONTRACT)

The contractor shall perform at least one-half of the research and/or analytical work under this contract unless approved in advance, in writing by the contracting officer.

PRESCRIPTION: Use Specification C-409 in all SBIR Phase II contracts.

C-410 COMMERCIALIZATION ASSISTANCE PROGRAM

(a) All Navy Phase II Award recipients must attend a one-day Commercialization Assistance Program (CAP) meeting during the second year of the Phase II effort. The meeting is typically held in the Washington, D.C. area.

(b) The CAP has two objectives: (1) to facilitate DoD use of Navy-funded SBIR technology; and (2) to assist SBIR-funded firms to speed up the rate of technology commercialization through licensing, strategic alliance, or equity or debt financing. CAP is competitive 10-month program offered exclusively to SBIR Phase II award recipients. It is designed to help Phase II recipients conduct preliminary strategic planning and assist them to:

- Confirm the Navy customers needs,
- Enhance the strategies for transitioning to Phase III,
- Develop a technical briefing for the Electronic Catalog,
- Develop a business plan,

- Present the Navy Phase II Award recipient's defense and private sector opportunities to a group of over 150 high level decision makers from Fortune 500 firms, venture capital firms, DoD program managers, and DoD primes at a Commercialization Opportunity Forum.

(c) As a Phase II recipient, the contractor will be contacted with more information regarding this program or you can visit <http://www.navysbir.com/cap>.

PRESCRIPTION: Insert Specification C-406 in all SBIR Phase II contracts under the overall cognizance of the Navy SBIR Program Manager (e.g. SBIR Phase II contracts for SPAWAR, MARCOR, NAVSEA, NAVFAC, NAVSUP, SSP or ONR)

C-718 ACCESSIBILITY OF ELECTRONIC AND INFORMATION TECHNOLOGY (JUN 2001)

(a) Each Electronic and Information Technology (EIT) supply or service provided under this contract shall comply with the EIT Accessibility Standards listed below:

- ___ 36 C.F.R. § 1194.21 (Software Applications and operating systems)
- ___ 36 C.F.R. § 1194.22 (Web-based and internet information and applications)
- ___ 36 C.F.R. § 1194.23 (Telecommunications products)
- ___ 36 C.F.R. § 1194.24 (Video and multimedia products)
- ___ 36 C.F.R. § 1194.25 (Self contained, closed products)
- ___ 36 C.F.R. § 1194.26 (Desktop and portable computers)

In addition, each EIT supply or service provided under this contract shall comply with 36 C.F.R. § 1194.31 (Functional performance criteria) and 36 C.F.R. § 1194.41 (Information, documentation, and support).

(b) If the Contracting Officer determines that any supply or service delivered under this contract does not comply with the EIT Accessibility Standards, the Contracting Officer will notify the Contractor in writing accordingly. If the Contractor fails to promptly correct or replace the nonconforming products or services with conforming products or services within the delivery schedule contained in the contract, the Government will have the rights and remedies contained in the contract.

PRESCRIPTION: Use when the contractor is required to deliver Electronic and Information Technology (EIT) for which an exemption from the EIT Accessibility Standards would not apply in (1) solicitations and contracts exceeding the micro-purchase threshold, (2) requests for quotations and purchase orders exceeding the micro-purchase threshold, (3) requests for quotations and task/delivery orders under Federal Supply Schedule contracts that exceed the micro-purchase threshold, (4) requests for quotations and task/delivery orders under blanket purchase agreements issued under Federal Supply Schedule contracts that exceed the micro-purchase threshold, or (5) task/delivery orders issued under indefinite quantity contracts, when upon award, the indefinite quantity contract did not specify EIT Accessibility Standards requirements. The Contracting Officer shall consult with the program office to determine which standards listed in subsection (a) apply and shall check all applicable standards prior to issuing the solicitation.

SECTION D -- PACKAGING AND MARKING

5252.237-9203 MARKING OF REPORTS

All reports shall prominently show on the cover of the report:

- (1) name and business address of the contractor
- (2) contract number
- (3) contract dollar amount
- (4) whether the contract was competitively or non-competitively awarded

(5) sponsor:

Name

Activity

Office/Address

PRESCRIPTION: Use the SPAWAR 5252.237-9203 clause in all consulting service, study and analysis, or professional and management support contracts.

D-305 PREPARATION FOR DELIVERY

(a) Supplies shall be prepared for delivery in accordance with ASTM-D-3951, "Standard Practice for Commercial Packaging", dated 1 September 1995.

(b) The contractor shall mark all shipments under this contract in accordance with MIL-STD-129, Military Standard Marking for Shipment and Storage".

PRESCRIPTION: Use Clause D-305 in all contracts requiring commercial packaging or packing.

SECTION E -- INSPECTION AND ACCEPTANCE

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://farsite.hill.af.mil/>

<http://www.arnet.gov/far/>

I. Federal Acquisition Regulation (48 CFR Chapter 1) Clauses

<u>Reference</u>	<u>Title</u>	<u>Date</u>
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[Contracting officers shall (1) delete those clauses that do not apply to the specific contract to be awarded, and (2) insert the date for those remaining clauses.]

52.246-8	Inspection of Research and Development--Cost-Reimbursement*
52.246-9	Inspection of Research and Development (Short Form)**

* Use when the primary objective of the contract is the delivery of end items other than designs, drawings, prototype software, or reports (e.g., when the delivery of a hardware prototype is the primary objective of the contract).

** Use instead of the FAR 52.246-8 clause when the primary objective of the contract is the delivery of designs, drawings, prototype software, or reports (i.e., when the delivery of a hardware prototype is not the primary objective of the contract).

E-303 INSPECTION AND ACCEPTANCE--DESTINATION

Inspection and acceptance of the supplies/services to be furnished hereunder shall be made at destination by the _____ or his duly authorized representative after receipt of supplies/services, or completion of services at destination.

PRESCRIPTION: Use Clause E-303 in all contracts when inspection and acceptance will be at destination.

E-305 CONSTRUCTIVE ACCEPTANCE

The FAR 52.232-25 "Prompt Payment" clause is incorporated by reference in this contract. The constructive acceptance period specified in subparagraph (a)(5)(i) of the FAR 52.232-25 clause is modified to read ___ working days in lieu of seven days.

PRESCRIPTION: Insert Clause E-305 in SBIR Phase II contracts to specify the number of days allowed before constructive acceptance is assumed, if the standard 7 day period is not sufficient (see FAR 32.904(b)(1)(ii)(B)(4), FAR 32.908(c)(1) and DFARS 232.905(1) for specific guidance) and the contract is a fixed price contract without progress payments (see the FAR 52.232-16, Progress Payments, clause). FAR 32.904(b)(1)(ii)(B)(4) requires that the contracting officer must document in the contract file the justification for extending the constructive acceptance period beyond 7 days.

SECTION F -- DELIVERIES OR PERFORMANCE

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://farsite.hill.af.mil/>
<http://www.arnet.gov/far/>

[Contracting officers shall (1) delete those clauses that do not apply to the specific contract to be awarded, and (2) insert the date for those remaining clauses.]

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

<u>SOURCE</u>	<u>TITLE</u>	<u>DATE</u>
52.242-15	Stop-Work Order	
52.242-15	Stop-Work Order--Alternate I	
52.247-29	F.O.B. Origin*	
52.247-34	F.O.B. Destination*	

* As applicable

F.1 TIME AND PLACE OF DELIVERY--F.O.B. DESTINATION

<u>ITEM</u>	<u>DESTINATION</u>	<u>QTY</u>	<u>DELIVERY SCHEDULE</u>
0001	<u>Program Office</u>	1 LO	20 MONTHS AEDC*
0002	See CDRL	1 LO	See CDRL
0003	<u>Program Office</u>	1 LO	24 MONTHS AEDC
0004	See CDRL	1 LO	See CDRL

*AEDC - After Effective Date of Contract

SECTION G --CONTRACT ADMINISTRATION DATA

G-318 PATENT MATTERS POINT OF CONTACT

The Point of Contact regarding Patent Matters for this contract is:

Office of Patent Counsel
Attn: James A. Ward
SPAWARSYSCEN Code D0012
53510 Silver Gate Avenue
San Diego, CA 92152-5765

(619) 553-3001

PRESCRIPTION: Use Clause G-318 in solicitations and contracts containing the FAR 52.227-11 "Patent Rights--Retention by the Contractor (Short Form)", the FAR 52.227-12 "Patent Rights--Retention by the Contractor (Long Form)", or the FAR 52.227-13 "Patent Rights--Acquisition by the Government" clauses.

G-401 TECHNICAL POINT OF CONTACT (SBIR CONTRACT)

(a) The Point of Contact for the technical requirements of this contract (e.g., the Statement of Work) is:

Space and Naval Warfare Systems Command
Attn: M _____, Code _____
Bldg OT-__, Room. ____
4301 Pacific Highway
San Diego, Ca. 92110-3127

PH: (619) xxx-xxxx
FAX: (619) xxx-xxxx

(b) The Point of Contact for matters regarding the processes and requirements of the SBIR Program is:

Space and Naval Warfare Systems Command
Attn: Ms. Linda Whittington
Bldg C-60
4301 Pacific Highway
San Diego, Ca. 92110

PH: (858) 537-0146

(c) These technical points of contact do not have the authority to take any action, either directly or indirectly, that would change the pricing, quantity, place of performance, delivery schedule, or any other terms and conditions of the contract or to direct the accomplishment of effort which goes beyond the scope of the contractor's proposal.

PRESCRIPTION: Use Clause G-401 in all SBIR Phase I and SBIR Phase II contracts.

5252.232-9001 SUBMISSION OF INVOICES (COST-REIMBURSEMENT, TIME-AND-MATERIALS, LABOR-HOUR, OR FIXED PRICE INCENTIVE) (JUL 1992)

(a) "Invoice" as used in this clause includes contractor requests for interim payments using public vouchers (SF 1034) but does not include contractor requests for progress payments under fixed price incentive contracts.

(b) The Contractor shall submit invoices and any necessary supporting documentation, in an original and ____ copies, to the contract auditor at the following address:

unless delivery orders are applicable, in which case invoices will be segregated by individual order and submitted to the address specified in the order. In addition, an information copy shall be submitted to

Following verification, the contract auditor will forward the invoice to the designated payment office for payment in the amount determined to be owing, in accordance with the applicable payment (and fee) clause(s) of this contract.

(c) Invoices requesting interim payments shall be submitted no more than once every two weeks, unless another time period is specified in the Payments clause of this contract. For indefinite delivery type contracts, interim payment invoices shall be submitted no more than once every two weeks for each delivery order. There shall be a lapse of no more than ____ calendar days between performance and submission of an interim payment invoice.

(d) In addition to the information identified in the Prompt Payment clause herein, each invoice shall contain the following information, as applicable:

- (1) Contract line item number (CLIN)
- (2) Subline item number (SLIN)
- (3) Accounting Classification Reference Number (ACRN)
- (4) Payment terms
- (5) Procuring activity
- (6) Date supplies provided or services performed
- (7) Costs incurred and allowable under the contract
- (8) Vessel (e.g., ship, submarine or other craft) or system for which supply/service is provided

(e) A DD Form 250, "Material Inspection and Receiving Report",
____ is required with each invoice submittal.
____ is required only with the final invoice.
____ is not required.

(f) A Certificate of Performance
____ shall be provided with each invoice submittal.
____ is not required.

(g) The Contractor's final invoice shall be identified as such, and shall list all other invoices (if any) previously tendered under this contract.

(h) Costs of performance shall be segregated, accumulated and invoiced to the appropriate ACRN categories to the extent possible. When such segregation of costs by ACRN is not possible for invoices submitted with CLINS/SLINS with more than one ACRN, an allocation ratio shall be established in the same ratio as the obligations cited in the accounting data so that costs are allocated on a proportional basis.

To prevent disclosure of classified information, invoices submitted under this contract shall be so prepared that the supplies or services covered thereby can be identified only by reference to the contract. For example, the invoices may state "Contract N ____ , Item 0001, 100 EA @\$1.00 = \$100.00." The security classification shown on the contract shall not appear on the invoice.

SECTION H -- SPECIAL CONTRACT REQUIREMENTS

H-325 APPLICATION OF PATENT INDEMNITY

The FAR 52.227-3 "Patent Indemnity" clause which incorporated by reference in this contract, applies only to supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications.

PRESCRIPTION: Use Clause H-325 with the FAR 52.227-3 clause that is used when the Contracting Officer determines commercial items are to be furnished. Consult with Patent Counsel if contracting for commercial items, including, but not limited to, contracting for "commercial items" under FAR Part 12.

H-341 EMPLOYMENT OF NAVY PERSONNEL RESTRICTED

In performing this contract, the Contractor will not use as a consultant or employ (on either a full or part-time basis) any active duty Navy personnel (civilian or military) without the prior approval of the Contracting Officer. Such approval may be given only in circumstances where it is clear that no law and no DOD or Navy instructions, regulations, or policies might possibly be contravened and no appearance of a conflict of interest will result.

PRESCRIPTION: Use Clause H-341 in all SBIR Phase I and Phase II contracts.

H-356 SUBMISSION OF INTERIM AND FINAL INVENTION REPORTS AND NOTIFICATION OF ALL SUBCONTRACTS FOR EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK

(a) This contract contains the FAR 52.227-11 "Patent Rights--Retention by the Contractor (Short Form)" clause (including the DFARS 252.227-7039 "Patents--Reporting of Subject Inventions", and 252.227-7034, "Patents--Subcontracts" clauses), the FAR 52.227-12 "Patent Rights--Retention by the Contractor (Long Form)" clause, or the FAR 52.227-13 "Patent Rights--Acquisition by the Government" clause.

(b) Under these clauses, the Contractor is required to submit interim and final invention reports and notification to the Government of all subcontracts for experimental, developmental, or research work. The interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work may be submitted on DD Form 882 "Report of Inventions and Subcontracts."

(c) The Contractor shall submit interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work, including negative reports, to:

Office of Patent Counsel
Attn: James A. Ward
SPAWARSYSCEN Code D0012
53510 Silver Gate Avenue
San Diego, CA 92152-5765

(d) The Office of Patent Counsel designated above will represent the Contracting Officer with regard to invention reporting matters arising under the contract.

PRESCRIPTION: Use Clause H-356 in SBIR contracts containing the FAR 52.227-11 "Patent Rights--Retention by the Contractor (Short Form)", clause.

H-357 AGREEMENT TO LICENSE--NO IMPLIED LICENSE

(a) Except as provided in paragraph (b) below:

(1) [*Contracting officer insert name of company upon contract award*] shall obtain a license from the U.S. Government under the following U.S. patents, patent applications and all patents issuing thereon, and under all patents that may issue and patent applications that may be filed on the following invention disclosures, on reasonable terms and conditions, consistent with law, regulation, and Navy policy prior to any manufacture, use, sale, lease, license, or conveyance of any kind of any process, machine, manufacture, or composition of matter that would, absent such license, infringe any claim of such patent(s)/application(s):

[*Contracting officer insert list of patents/applications prior to the issuance of the solicitation*]

(2) Nothing in this contract shall release [*Contracting officer insert name of company upon contract award*] from any obligation of or duty under any other Government contract; nor shall it grant to or confer upon [*Contracting officer insert name of company upon contract award*] any rights, express or implied,

- (i) to any invention other than a Subject Invention,
- (ii) under any patent application or patent assigned to the U.S. Government that is dominant over a patent protecting a Subject Invention,
- (iii) under any patent application or patent assigned to the U.S. Government protecting an invention other than a Subject Invention, or
- (iv) under the U.S. patent(s)/patent application(s) identified in paragraph (a)(1) above.

(b) No license from the U.S. Government shall be required for research, development, test and evaluation to be performed by [*Contracting officer insert name of company upon contract award*] under this contract.

PRESCRIPTION: Use Clause H-357 in SBIR Phase I and Phase II contracts for (1) "research and development" contracts involving Government inventions, or (2) contracts when the contractor will build or implement any Government invention. Use of this clause will require the contract specialist, contract coordinator, cognizant technical code personnel, and/or the Office of Patent Counsel (SPAWARSYSCEN San Diego Code D0012) to determine prior to the issuance of the solicitation what, if any, licensable patents/applications the Government holds, for insertion into the list of patent/applications in paragraph (a)(1) of the clause.

H-401 RENT-FREE USE OF GOVERNMENT PROPERTY (OCT 1998)

The Contractor may use on a rent-free, noninterference basis, as necessary for the performance of this contract, the Government property accountable under contract(s) _____. The Contractor is responsible for scheduling the use of all property covered by the above referenced contract(s) and the Government shall not be responsible for conflicts, delays, or disruptions to any work performed by the Contractor due to use of any or all such property under this contract or any other contracts under which use of such property is authorized.

PRESCRIPTION: Use Clause H-401 when the contractor may use on a rent-free, noninterference basis, the Government property accountable under the contract.

H-402 GOVERNMENT-FURNISHED PROPERTY (OCT 1998)

The Government will furnish to the Contractor for use in the performance of the contract on a rent-free basis the Government-owned property listed in an attachment to this contract, subject to the provisions of the Government Property Clause of the Contract Clauses.

PRESCRIPTION: Use Clause H-402 when the contractor may use on a rent-free basis, the Government property listed in an attachment to the contract.

H-404 SBIR REPRESENTATION

The contractor, by signing this contract, represents that it is not currently being and has not previously been paid by an agency of the Federal Government for work that is essentially equivalent to the work to be provided under this contract.

PRESCRIPTION: Use Clause H-404 in all SBIR contracts.

H-405 EXERCISE OF OPTION (SBIR PHASE II CONTRACT)

The Government, at any time after effective date of contract, may require the Contractor to furnish Option Items 0003 and 0004 for delivery at the time(s) and place(s) and at the price(s) set forth herein. This option shall be exercised, if at all, by written notice signed by the Contracting Officer and sent prior to the option exercise dates listed below:

<u>ITEMS</u>	<u>OPTION EXERCISE DATE</u>
0003 and 0004	XX XXXX XXXX

PRESCRIPTION: Use Clause H-405 when the Phase II contract contains an option.

H-406 PATENTS AND COPYRIGHTS (SBIR PHASE II CONTRACTS)

(a) Copyright

To the extent permitted by statute, the contractor may copyright (consistent with appropriate national security considerations, if any) material developed with DoD support. DoD receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement.

(b) Patent Rights

Small business firms normally may retain the principal worldwide patent rights to any invention developed with Government support (see the FAR 52.227-11, Patent Rights--Retention by the Contractor (Short Form) clause and the DFARS 252.227-7039, Patents--Reporting of Subject Inventions, clause). The Government receives a royalty-free license for its use, reserves the right to require the patent holder to license others in certain limited circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. Notwithstanding the FAR 52.227-11, Patent Rights--Retention by the Contractor (Short Form) clause, to the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a period of five years to allow the contractor to pursue a patent.

PRESCRIPTION: Use Clause H-406 in all SBIR Phase II contracts.

H-407 RIGHTS IN MASK WORKS (SBIR CONTRACTS)

(a) Definitions.

As defined in 17 U.S.C. §901--

“Semiconductor chip product” is the final or intermediate form of any product--

(A) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and

(B) intended to perform electronic circuit functions.

“Mask work” is a series of related images, however fixed or encoded--

(A) having, or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

(b) The contractor grants to the Government, a non-exclusive, irrevocable, royalty free, worldwide license under any mask work generated in the performance of work under this contract:

(1) to use, modify, reproduce, release, perform, display or disclose the mask work by optical, electronic, or any other means;

(2) to import or distribute a semiconductor chip product in which the mask work is embodied; and

(3) to induce or knowingly to cause another person, contractor or subcontractor to do any of the acts described in paragraphs (b)(1) or (b)(2), for any United States Government purpose during the period commencing with the contract award and ending upon the date five years after completion of the project from which the mask work was generated, and for any purposes thereafter.

(c) The contractor shall include this clause, suitably modified to replace “contractor” with “subcontractor” in all subcontracts, regardless of tier, in which a mask work is likely to be created in the performance of the work under the subcontract. The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor’s mask works.

PRESCRIPTION: Use Clause H-407 in SBIR Phase II contracts when (1) mask works may be created under the contract, and (2) rights in mask works are required to satisfy the life-cycle objectives of the program.

5252.215-9210 INCORPORATION OF REPRESENTATIONS AND CERTIFICATIONS BY REFERENCE (NOV 1991)

All representations and certifications and other written statements made by the contractor in response to Section K of the solicitation or at the request of the contracting officer which are incident to the award of the contract or modification of this contract, are hereby incorporated by reference with the same force and effect as if they were given in full text.

PRESCRIPTION: Use the 5252.215-9210 clause in all contracts.

PART II – CONTRACT CLAUSES

SECTION I -- CONTRACT CLAUSES

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://farsite.hill.af.mil/>

<http://www.arnet.gov/far/>

I. Federal Acquisition Regulation (48 CFR Chapter 1) Clauses

Reference

Title

Date

[Contracting officers shall (1) delete those clauses that do not apply to the specific contract to be awarded, and (2) insert the date for those remaining clauses.]

52.202-1	Definitions
52.203-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203-7	Anti-Kickback Procedures
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity
52.203-12	Limitation On Payments To Influence Certain Federal Transactions
52.204-2	Security Requirements (<i>Use if DD Form 254 is an attachment to this contract</i>)
52.204-4	Printing/Copying Double-Sided on Recycled Paper
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.211-15	Defense Priority And Allocation Requirements
52.215-2	Audit and Records—Negotiation
52.215-8	Order of Precedence--Uniform Contract Format
52.215-10	Price Reduction for Defective Cost or Pricing Data
52.215-11	Price Reduction for Defective Cost or Pricing Data--Modifications
52.215-12	Subcontractor Cost or Pricing Data
52.215-13	Subcontractor Cost or Pricing Data--Modifications
52.215-14	Integrity of Unit Price
52.215-15	Pension Adjustments and Asset Reversions
52.215-17	Waiver of Facilities Capital Cost of Money (<i>Use if facilities capital cost of money is not proposed</i>)
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions
52.215-19	Notification of Ownership Changes
52.216-7	Allowable Cost And Payment
52.216-8	Fixed Fee
52.219-8	Utilization of Small Business Concerns
52.222-2	Payment For Overtime Premiums*
	* The use of overtime under paragraph (a) of the FAR 52.222-2 clause is authorized if the overtime premium does not exceed <u>zero</u> .
52.222-3	Convict Labor
52.222-19	Child Labor--Cooperation with Authorities and Remedies
52.222-21	Prohibition of Segregated Facilities
52.222-26	Equal Opportunity
52.222-35	Affirmative Action For Disabled Veterans And Veterans of the Vietnam Era
52.222-36	Affirmative Action For Workers with Disabilities
52.222-37	Employment Reports On Disabled Veterans and Veterans of the Vietnam Era
52.223-6	Drug Free Workplace
52.223-14	Toxic Chemical Release Reporting
52.225-13	Restrictions On Certain Foreign Purchases
52.227-1	Authorization And Consent
52.227-1	Authorization And Consent--Alternate I
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement
52.227-3	Patent Indemnity
52.227-10	Filing Of Patent Applications--Classified Subject Matter (<i>Use if DD Form 254 is an attachment to this contract</i>)
52.227-11	Patent Rights--Retention By The Contractor (Short Form)
52.228-7	Insurance--Liability To Third Persons
52.229-3	Federal, State and Local Taxes

52.232-9	Limitation On Withholding Of Payments
52.232-11	Extras
52.232-17	Interest
52.232-20	Limitation Of Cost <i>(Use if contract is fully funded)</i>
52.232-22	Limitation Of Funds
52.232-23	Assignment Of Claims
52.232-25	Prompt Payment
52.232-33	Payment by Electronic Funds Transfer--Central Contractor Registration*
52.233-1	Disputes
52.233-3	Protest After Award
52.233-3	Protest After Award--Alternate I
52.242-1	Notice of Intent to Disallow Costs
52.242-3	Penalties for Unallowable Costs
52.242-4	Certification of Final Indirect Costs
52.242-13	Bankruptcy
52.243-2	Changes--Cost-Reimbursement
52.243-2	Changes--Cost-Reimbursement--Alternate V
52.243-6	Change Order Accounting
52.244-2	Subcontracts
52.244-2	Subcontracts--Alternate I
52.244-5	Competition In Subcontracting
52.244-6	Subcontracts for Commercial Items
52.245-18	Special Test Equipment**
52.245-19	Government Property Furnished "As Is"***
52.246-23	Limitation Of Liability
52.247-1	Commercial Bill Of Lading Notations
52.249-6	Termination (Cost Reimbursement)
52.249-14	Excusable Delays
52.251-1	Government Supply Sources
52.253-1	Computer Generated Forms

II. Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 1) Clauses

<u>Reference</u>	<u>Title</u>	<u>Date</u>
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[Contracting officers shall (1) delete those clauses that do not apply to the specific contract to be awarded, and (2) insert the date for those remaining clauses.]

252.201-7000	Contracting Officer's Representative <i>(Use when appointment of a COR is anticipated.)</i>
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies
252.204-7000	Disclosure Of Information
252.204-7001	Commercial and Government Entity (CAGE) Code Report*
252.204-7003	Control Of Government Personnel Work Product
252.204-7004	Required Central Contractor Registration*
252.204-7005	Oral Attestation of Security Responsibilities <i>(Use if FAR 52.204-2 clause is used.)</i>
252.205-7000	Provision of Information to Cooperative Agreement Holders
252.209-7000	Acquisition From Subcontractors Subject to On-Site Inspection Under the Intermediate Range Nuclear Forces (INF) Treaty
252.209-7003	Compliance with Veterans Employment Reporting Requirements
252.209-7004	Subcontracting with Firms that are Owned or Controlled by the

	Government of a Terrorist Country
252.215-7000	Pricing Adjustments
252.223-7004	Drug Free Work Force
252.225-7012	Preference for Certain Domestic Commodities
252.225-7031	Secondary Arab Boycott of Israel
252.227-7016	Rights in Bid or Proposal Information
252.227-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions
252.227-7018	Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program
252.227-7018	Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program--Alternate I
252.227-7019	Validation of Asserted Restrictions--Computer Software
252.227-7025	Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends
252.227-7027	Deferred Ordering of Technical Data or Computer Software
252.227-7028	Technical Data or Computer Software Previously Delivered to the Government
252.227-7030	Technical Data--Withholding Of Payment
252.227-7034	Patents--Subcontracts
252.227-7036	Declaration of Technical Data Conformity
252.227-7037	Validation of Restrictive Markings on Technical Data
252.227-7039	Patents--Reporting Of Subject Inventions
252.232-7007	Limitation of Government's Obligation
252.231-7000	Supplemental Cost Principals
252.235-7010	Acknowledgement of Support and Disclaimer
252.235-7011	Final Scientific or Technical Report
252.242-7000	Postaward Conference
252.243-7001	Pricing of Contract Modifications
252.245-7001	Reports Of Government Property**
252.246-7000	Material Inspection and Receiving Report
252.251-7000	Ordering from Government Supply Sources

* As required by FAR Subpart 32.11 and DFARS Subpart 204.73, the FAR 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, clause shall be used with the DFARS 252.204-7004, Required Central Contractor Registration, clause in unclassified contracts. Exclude the DFARS 252.204-7001, Commercial and Government Entity (CAGE) Code Report, clause when the DFARS 252.204-7004, Required Central Contractor Registration, clause is used. As discussed in FAR 32.1103(d) and DFARS 204.7302, the FAR 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration, clause may be used in classified contracts, provided payment by electronic funds transfer may be made without compromising the safeguarding of classified information or national security. If payment by electronic funds transfer may compromise the safeguarding of classified information or national security, then payment by electronic funds transfer shall not be made.

** Insert the FAR 52.245-4 Government Property (Short Form), or the FAR Government Property (Cost-Reimbursement Time-And-Materials, or Labor Hour Contracts), clause issued under DAR Tracking Number 99-00008 when Government-furnished property will be provided to the contractor. The FAR 52.245-17, Special Tooling (Apr 1984) (Deviation), clause issued under DAR Tracking Number 99-00012, the FAR 52.245-18, Special Test Equipment, clause, and the FAR 52.245-19, Government Property Furnished "As Is", clause may also be used. The DFARS 252.245-7001, Reports of Government Property, clause shall also be used.

52.245-5 GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986) (DEVIATION)

(a) *Government-furnished property.* (1) The term “Contractor’s managerial personnel,” as used in paragraph (g) of this clause, means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

- (i) All or substantially all of the Contractor’s business;
- (ii) All or substantially all of the Contractor’s operation at any one plant, or separate location at which the contract is being performed; or
- (iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as “Government-furnished property”).

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor’s timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor’s written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any--

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) *Title.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor’s delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--

- (i) Issuance of the property for use in contract performance;
- (ii) Commencement of processing of the property for use in contract performance; or
- (iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as “Government property”), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)--

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3)(i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage--

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) The contractor shall notify the contracting officer upon loss or destruction of, or damage to, Government property provided under this contract, with the exception of low value property for which loss, damage, or destruction is reported at contract termination, completion, or when needed for continued contract performance. The

Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of--

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the Government property is a part; and
- (iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance

with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) *Abandonment and restoration of Contractor premises.* Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications.* All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

52.245-17 SPECIAL TOOLING (APR 1984) (DEVIATION)

(a) *Definition.* "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling, for the purpose of this clause; does not include any item acquired by the Contractor before the effective date of this contract, or replacement of such items, whether or not altered or adapted for use in performing this contract, or items specifically excluded by the Schedule of this contract.

(b) *Use of special tooling.* The Contractor agrees to use the special tooling only in performing this contract or as otherwise approved by the Contracting Officer.

(c) *Initial list of special tooling.* If the Contracting Officer so requests, the Contractor shall furnish the Government an initial list of all special tooling acquired or manufactured by the Contractor for performing this contract (but see paragraph (d) for tooling that has become obsolete). The list shall specify the nomenclature, tool number, related product part number (or service performed), and unit or group cost of the special tooling. The list shall be furnished within 60 days after delivery of the first production end item under this contract unless a later date is prescribed.

(d) *Changes in design.* Changes in the design or specifications of the end items being produced under this contract may affect the interchangeability of end item parts. In such an event, unless otherwise agreed to by the Contracting Officer, the Contractor shall notify the Contracting Officer of any part not interchangeable with a new or superseding part. Pending disposition instructions, such usable tooling shall be retained and maintained by the Contractor.

(e) *Contractor's offer to retain special tooling.* The Contractor may indicate a desire to retain certain items of special tooling at the time it furnishes a list or notification pursuant to paragraphs (c) (d), or (h) of this clause. The Contractor shall furnish a written offer designating those items that it wishes to retain by specifically listing the items or by listing the particular products, parts, or services for which the items were used or designed. The offer shall be made on one of the following bases:

(1) An amount shall be offered for retention of the items free of any Government interest. This amount should ordinarily not be less than the current fair value of the items, considering among other things, the value of the items to the Contractor for use in future work.

(2) Retention may be requested for a limited period of time and under terms as may be agreed to by the Government and the Contractor. This temporary retention is subject to final disposition pursuant to paragraph (i) of this clause.

(f) *Property control records.* The Contractor shall maintain adequate property control records of all special tooling in accordance with its normal industrial practice. The records shall be made available for Government inspection at all reasonable times. To the extent practicable, the Contractor shall identify all special tooling subject to this clause with an appropriate stamp, tag, or other mark.

(g) *Maintenance.* The Contractor shall take all reasonable steps necessary to maintain the identity and existing condition of usable items of special tooling from the date such items are no longer needed by the Contractor until final disposition under paragraph (i) of this clause. These maintenance requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (i) (4) of this clause. The Contractor is not required to keep unneeded items of special tooling in place.

(h) *Final list off special tooling.* When all or a substantial part of the work under this contract is completed or terminated, the Contractor shall furnish the Contracting Officer a final list of special tooling with the same information as required for the initial list under paragraph (c) of this clause. The final list shall include all items not previously reported under paragraph (c). The Contracting Officer may provide a written waiver of this requirement or grant an extension. The requirement may be extended until the completion of this contract together with the completion of other contracts and subcontracts authorizing the use of the special tooling under paragraph (b) of this clause. Special tooling that has become obsolete as a result of changes in design or specification need not be reported except as provided for in paragraph (d).

(i) *Disposition instructions.* The Contracting Officer shall provide the Contractor with disposition instructions for special tooling identified in a list or notice submitted under paragraphs (c), (d), or (h) of this clause. The instructions shall be provided within 90 days of receipt of the list or notice, unless the period is extended by mutual agreement. The Contracting Officer may direct disposition by any of the methods listed in subparagraphs (1) through (4) of this paragraph, or a combination of such methods. Any failure of the Contracting Officer to provide specific instructions within the 90 day period shall be construed as direction under subparagraph (i) (3).

(1) The Contracting Officer shall give the Contractor a list specifying the products, parts, or services for which the Government may require special tooling and request the Contractor to transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling that were designed for or used in the production or performance of such products, parts, or services and that were on hand when such production or performance ceased.

(2) The Contracting Officer may accept or reject any offer made by the Contractor under paragraph (e) of this clause to retain items of special tooling or may request further negotiation of the offer. The Contractor agrees to enter into the negotiations in good faith. The net proceeds from the Contracting Officer's acceptance of the Contractor's retention offer shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer.

(3) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling reported by the Contractor under this clause. The net proceeds of all sales shall either be deducted from amounts due the Contractor under this contract or shall be otherwise paid to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs any costs occasioned by compliance with such directions¹ for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(4) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or rights in any of the special tooling listed.

(j) *Storage or shipment.* The Contractor shall promptly transfer to the Government title to the special tooling specified by the Contracting Officer and arrange for either the shipment or the storage of such tooling in accordance with the final disposition instructions in subparagraph (i) (1) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. Tooling to be stored shall be stored pursuant to a storage agreement between the Government and the Contractor, and as directed by the Contracting Officer. Tooling shipped or stored shall be accompanied by operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed. To the extent that the

Contractor incurs costs for authorized storage or shipment under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(k) Subcontract provisions. In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontracts appropriate provisions to obtain Government rights comparable to the rights of the Government under this clause (unless the contractor and the Contracting Officer agree that such rights are not of substantial interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

52.245-17 Special Tooling (Apr 1984) (*Alternate I*) (*Deviation*) (*Apr 1984*)

If the Government does not intend to acquire special tooling from subcontractors and an appropriate price reduction is obtained, delete paragraph (k) from the basic clause.

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.

(b) The use in this solicitation or contract of any _____ (48 CFR _____) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

PART III -- LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J -- LIST OF ATTACHMENTS

Attachment “1” -- Financial Accounting Data Sheet

Attachment “2” -- Contract Security Classification Specification, DD Form 254, dated XX XXXX XXXX
(*IF APPLICABLE*)

Attachment “3” -- Government Furnished Property List
(*IF APPLICABLE*)

Exhibit “A” -- Contract Data Requirements List (CDRL), DD Form 1423 dated XX XXXX XXXX

Exhibit “B” -- Contract Data Requirements List (CDRL), DD Form 1423 dated XX XXXX XXXX
(*IF APPLICABLE*)

PART IV -- REPRESENTATIONS AND INSTRUCTIONS

SECTION K -- REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS OR RESPONDENTS

K-401 SMALL BUSINESS INNOVATIVE RESEARCH PROGRAM PHASE II REPRESENTATIONS

(a) *Representations.* (1) The offeror represents as part of its offer that it is, is not a small business concern.

(2) [*Complete only if the offeror represented itself as a small business concern in paragraph (a)(1) of this provision.*] The offeror represents, for general statistical purposes, as part of its offer that it is, is not a socially and economically disadvantaged small business concern.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (a)(1) of this provision.] The offeror represents, for general statistical purposes, as part of its offer that it is, is not a women-owned small business concern.

(b) *Definitions.* As used in this provision--

A "small business concern" is one that, at the time of award of a SBIR Phase II contract:

(1) Is independently owned and operated and organized for profit, is not dominant in the field of operation in which it is proposing, and has its principal place of business located in the United States;

(2) Is at least 51% owned, or in the case of a publicly owned business, at least 51% of its voting stock is owned by United States citizens or lawfully admitted permanent resident aliens;

(3) Has, including its affiliates, a number of employees not exceeding 500, and meets the other regulatory requirements found in 13 CFR Part 121. Business concerns, other than investment companies licensed, or state development companies qualifying under the Small Business Investment Act of 1958, 15 USC 661, et seq., are affiliates of one another when either directly or indirectly (i) one concern controls or has the power to control the other; or (ii) a third party or parties controls or has the power to control both. Control can be exercised through common ownership, common management, and contractual relationships. The term "affiliates" is defined in greater detail in 13 CFR Sec. 121.103. The term "number of employees" is defined in 13 CFR Sec. 121.106. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association or cooperative. A "socially and economically disadvantaged small business concern" is a small business that is at the time of award of a SBIR Phase II contract:

(1) At least 51% owned by an Indian tribe or a native Hawaiian organization, or one or more socially and economically disadvantaged individuals, and

(2) Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals. A "socially and economically disadvantaged individual" is defined as a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans, or other groups designated by SBA to be socially and economically disadvantaged.

A "women-owned small business concern" is one that, at the time of award of a SBIR Phase II contract, is at least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management of the business.

PRESCRIPTION: The prospective SBIR contractor is required to complete Provision K-401 "Small Business Innovative Research Program Phase II Representations" prior to the award of any SBIR Phase II contract to validate that the contractor's small business status has not changed since the award of the contractor's SBIR Phase I contract.

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991) (DEVIATION)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d)(1) The certification required by offerors under paragraph (b)(1) of this provision applies only to this procurement.

(2) Further, certifications are required only for awards in excess of \$100,000 made on or after December 23, 1989. Certifications are not required for contracts awarded prior to December 23, even if the contract is modified after that date.

PRESCRIPTION: The prospective SBIR contractor is required to complete the provision at FAR 52.203-11 "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (APR 1991) (Deviation)" prior to the award of any SBIR Phase II contract expected to exceed \$100,000.

52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision;

(ii) The Offeror has has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

PRESCRIPTION: The prospective SBIR contractor is required to complete the provision at FAR 52.209-5 "Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters" prior to the award of any SBIR Phase II contract expected to exceed the simplified acquisition threshold.

52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that--

- (a) It has, has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;
- (b) It has, has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

PRESCRIPTION: The prospective SBIR contractor is required to complete the provision at FAR 52.222-22 "Previous Contracts and Compliance Reports" prior to the award of any SBIR Phase I or Phase II contract that will include the FAR 52.222-26 "Equal Opportunity" clause. The FAR 52.222-26 "Equal Opportunity" clause is generally required in contracts exceeding \$10,000.

52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that (a) it has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

PRESCRIPTION: The prospective SBIR contractor is required to complete the provision at FAR 52.222-25 "Affirmative Action Compliance" prior to the award of any SBIR Phase I or Phase II contract that will include the FAR 52.222-26 "Equal Opportunity" clause. The FAR 52.222-26 "Equal Opportunity" clause is generally required in contracts exceeding \$10,000.

52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-

Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in section 313(a) and (g) of EPCRA and Section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: *(Check each block that is applicable.)*

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33, or

(v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

PRESCRIPTION: The prospective SBIR contractor is required to complete the provision at FAR 52.223-13 "Certification of Toxic Chemical Release Reporting" prior to the award of any SBIR Phase II contract expected to exceed \$100,000 (including all options), unless it has been determined in accordance with FAR 23.906(b) that to do so is not practicable. Insert the clause at FAR 52.223-14 "Toxic Chemical Reporting" when the provision at FAR 52.223-13 is used and the contract amount exceeds \$100,000 (including all options).

252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Definitions. As used in this provision--

(1) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means--

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) Prohibition on award. In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) *Disclosure*. If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include--

- (1) Identification of each government holding a significant interest; and
- (2) A description of the significant interest held by each government.

PRESCRIPTION: The prospective SBIR contractor is required to complete the provision at DFARS 252.209-7001 "Disclosure of Ownership or Control by the Government of a Terrorist Country" prior to the award of any SBIR Phase I and Phase II contract expected to be \$100,000 or more.

252.209-7002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (SEP 1994)

(a) Definitions. As used in this provision-

(1) "Effectively owned or controlled" means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror's officers or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) "Entity controlled by a foreign government"--

(i) Means--

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) "Foreign government" includes the state and the government of any country (other than the United States and its possessions and trust territories) as well as any political subdivision, agency, or instrumentality thereof.

(4) "Proscribed information" means--

(i) Top Secret information;

(ii) Communications Security (COMSEC) information, except classified keys used to operate secure telephone units (STU IIIs);

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) Prohibition on award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) *Disclosure*. The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror's immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format:

Offeror's Point of Contact for Questions about Disclosure

(Name and Phone Number with Country Code, City Code and Area Code, as applicable)

Name and Address of Offeror

Name and Address of Entity Controlled by a Foreign Government Description of Interest, Ownership Percentage, and Identification of Foreign Government

PRESCRIPTION: The prospective SBIR contractor is required to complete the provision at DFARS 252.209-7002 "Disclosure of Ownership or Control by a Foreign Government" prior to the award of any SBIR Phase I and Phase II contract when access to proscribed information is necessary for contract performance.

252.227-7017 IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUN 1995)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation--

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data--Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documents, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovative Research Program, the notification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions *	Basis for Assertion**	Asserted Rights Category ***	Name of Person Asserting Restrictions ****
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(LIST)*****

(LIST)

(LIST)

(LIST)

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government’s rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter “none” when all data or software will be submitted without restrictions.

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

(e) An offeror’s failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

PRESCRIPTION: The prospective SBIR contractor is required to complete the provision at DFARS 252.227-7017 “Identification and Assertion of Use, Release, or Disclosure Restrictions” prior to the award of any SBIR Phase I and Phase II contract that includes the clause at DFARS 252.227-7018 “Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program.” The clause at DFARS 252.227-7018 “Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program” is required when technical data or computer software will be generated during performance of a SBIR Phase I and Phase II contract.

K-303 REPRESENTATION REGARDING EMPLOYMENT OF NAVY PERSONNEL

The Contractor represents that he does, does not now employ or intend to employ any person for work under this contract who is a current civilian employee or active duty member of the United States Navy. Affirmative representations must be fully explained in writing and attached hereto. (Include the names of such persons and the Naval activity that employs them.)

PRESCRIPTION: The prospective SBIR contractor is required to complete Provision K-303 prior to the award of any SBIR Phase I and Phase II contract. This provision is to be used with the H-341 "Employment of Navy Personnel Restricted" clause.