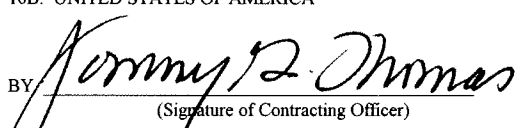


AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 14
2. AMENDMENT/MODIFICATION NO. PA01		3. EFFECTIVE DATE SEE BLOCK 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (IF APPLICABLE)
6. Issued By GENERAL SERVICES ADMINISTRATION Enterprise GWAC Center - Southwest 819 Taylor Street Ft. Worth, TX 76102		Code QTBAB	7. ADMINISTERED BY (If other than Item 6) Code	
8. Name and Address of Contractor (No., street, county, State and ZIP Code) Nortel Government Solutions, Inc. 12730 Fair Lakes Circle Fairfax, VA 22033-4901			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO. GS00Q09BGD0044	
CODE			FACILITY CODE	X 10B. DATED (SEE ITEM 13) 3/27/09
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended <input type="checkbox"/> is not extended. Offer's must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:				
(a) By completing Items 8 and 15, and returning ___ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required) N/A				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
(X)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.			
X	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).			
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF :			
	D. OTHER (Specify type of modification and authority)			
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return <u>0</u> copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)				
<p>The purpose of this modification is to update the terms and conditions under Contract No. GS00Q09BGD0044 dated March 27, 2009.</p> <p>This modification incorporates by reference your Technical proposal, dated November 17, 2006, your revised Cost/Price Proposal, dated December 19, 2008, and your revised Subcontracting Plan under Alliant Solicitation TQ2006MCB0001.</p>				
(See Page 2 for additional updates and revisions.)				
Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
		TOMMY G. THOMAS Alliant Contracting Officer		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED	
(Signature of person authorized to sign)		BY 	3-27-09	
		(Signature of Contracting Officer)		

The purpose of this modification is to:

- (1) Correct the Clinger-Cohen Act citation under Section B.2 AUTHORITY;
- (2) Clarify the CAF formula and make it optional to include CAF in Loaded Hourly Labor Rates proposed on Orders under Section B.5 CONTRACT ACCESS FEE;
- (3) Replace Section B.7.4 Time and Materials and Labor-Hour to clarify Order pricing;
- (4) Replace Section B.7.4.1 Subcontracting Payments on T&M and L-H Orders;
- (5) Replace Section B.7.4.2 Materials on T&M Orders;
- (6) Replace Section B.7.4.3 Indirect Costs Under T&M Orders;
- (7) Clarify Section B.9 LABOR SUBJECT TO THE DAVIS BACON ACT regarding flow-down clauses for Davis Bacon Act covered employees;
- (8) Clarify Section B.10 LABOR SUBJECT TO THE SERVICE CONTRACT ACT (SCA) regarding flow-down clauses for Service Contract Act covered employees;
- (9) Clarify Section C.2 SCOPE by separating out National Security Systems as an addition to the scope;
- (10) Update the GWAC Ombudsman under Section G.5 GWAC OMBUDSMAN;
- (11) Update the Contract Administrative Reporting under Section G.9.7 Contractor Administrative Reporting to be in compliance with the GWAC Management Module;
- (12) Update provisions under Section H.1 PROVISIONS INCORPORATED BY REFERENCE AT ORDER LEVEL;
- (13) Update clauses in Section I.2 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE;
- (14) Delete clauses in Section I.2 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE;
- (15) Update the Performance Based Payments clause for Orders in Section I.9 FAR 52.232-32 PERFORMANCE-BASED PAYMENTS;
- (16) Update the Contractor and Government Site loaded hourly labor rates in Section J, LIST OF ATTACHMENTS;
- (17) Delete Section J, Attachment 6: Past Performance Tables

1. Correct the Clinger-Cohen Act citation under paragraph 1, Section B.2., AUTHORITY, as follows:

“The Office of Management and Budget has designated the U.S. General Services Administration (GSA) as an Executive Agent for Governmentwide information technology (IT) acquisitions pursuant to Section 5112(e) of the Clinger-Cohen Act, 40 U.S.C. 11302(e).”

2. Replace Section B.5, CONTRACT ACCESS FEE, in its entirety as follows:

“B.5 CONTRACT ACCESS FEE

The Contract Access Fee (CAF) is $\frac{3}{4}$ of a percent (i.e., 0.0075) to be applied to the total price/cost for contractor performance as billed to the Government.

The formula is: Total CAF = Total Price or Costs * CAF Percentage.

The total CAF collected per Order will be capped at a set amount to be determined by the Alliant GWAC Program Office. For more information on this cap, please see the Alliant website (<http://www.gsa.gov/alliant>).

On all Orders, regardless of Order type, Contractors must estimate CAF in their proposals and OCOs may fund CAF as a separate Contract Line Item Number (CLIN). On Labor-Hour type Orders, OCOs may require Contractors to include CAF in their Loaded Hourly Labor Rate.

The Contractor remits the CAF to GSA in accordance with Section G.9.5.”

3. Replace Section B.7.4, Time and Materials and Labor-Hour in its entirety as follows:

“B.7.4 Time and Materials and Labor-Hour

To be considered eligible for award, the Contracting Officer determined that the evaluated price of the offeror was fair and reasonable. Section J, Attachments 2 (Government Site) and 3 (Contractor Site) of the Basic Contract provide competitive Loaded Hourly Labor Rates within CONUS for T&M and L-H type Orders only. The OCO is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price for the task is reasonable.

The OCO is authorized to establish different hourly rates suited to meet the ordering agency’s specific requirements and determine fair and reasonable pricing in accordance with FAR 15.4, Pricing, and FAR 16.601 Time and Materials Contracts when other considerations, such as geographic location or security clearances require deviation from the competitive Loaded Hourly Labor Rates in the Basic Contract.

Contractors shall explain in their Order proposals any Loaded Hourly Labor Rates that exceed the rates in the Basic Contract. Upon request of the OCO, the Contractor shall provide other than cost or pricing data to include, a cost element breakdown of each Loaded Hourly Labor Rate, including Profit, in accordance with the Contractor’s cost accounting system, as well as any other supporting information the OCO deems necessary.”

4. Replace Section B.7.4.1, Subcontracting Payments on T&M and L-H Orders in its entirety as follows:

“B.7.4.1 Payment and Proposal Requirements on T&M and L-H Orders

For payments on T&M/L-H Orders, Contractors are subject to FAR 52.232-7 Payments Under Time-and-Materials and Labor-Hour Contracts.

For proposal requirements on T&M/L-H Orders, the OCO must determine one of the following conditions and include the appropriate provision in each T&M and L-H Order solicitation:

With Adequate Price Competition:

- (1) Pursuant to FAR 52.216-29, if price is expected to be based on adequate price competition, the Contractor must provide “separate and/or blended” Loaded Hourly Labor Rates for Prime contractor labor, each Subcontractor, and/or each Division, Subsidiary, or Affiliate. The Contractor must specify whether each Loaded Hourly Labor Rate applies to the Prime contractor, each Subcontractor, and/or each Division, Subsidiary or Affiliate.
- (2) For the Department of Defense, pursuant to FAR 52.216-29 with DFARs 252.216-7002, Alternate A, if price is expected to be based on adequate price competition, the Contractor must only provide “separate” Loaded Hourly Labor Rates for Prime Contractor labor, each Subcontractor, and/or each Division, Subsidiary, or Affiliate. The Contractor must specify whether each Loaded Hourly Labor Rate applies to the Prime contractor, each Subcontractor, and/or each Division, Subsidiary or Affiliate.

Without Adequate Price Competition:

- (1) Pursuant to FAR 52.216-30, if price is not expected to be based on adequate price competition, the Contractor must identify and provide “separate” Loaded Hourly Labor Rates for Prime contractor labor, each Subcontractor, and/or each Division, Subsidiary, or Affiliate.”

Commercial Items:

- (1) Pursuant to FAR 52.216-31, if price is expected to be based on commercial items, separate Loaded Hourly Labor Rates are not required for Prime contractor labor, each Subcontractor, and/or Affiliate labor. The Contractor must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The Contractor must specify whether the fixed hourly rate for each labor category applies to labor performed by the Prime Contractors, each Subcontractor, and/or each Division, Subsidiary, or Affiliate.”

5. Replace Section B.7.4.2 Materials on T&M Orders in its entirety as follows:

“B.7.4.2 Materials on T&M Orders

“Materials on T&M Orders must comply with FAR 52.232-7 Payments Under Time-and-Materials and Labor Hour Contracts (Feb 2007).

The OCO must identify a not-to-exceed materials ceiling under a separate CLIN on the Order.”

6. Replace Section B.7.4.3 Indirect Costs Under T&M Orders, in its entirety as follows:

“B.7.4.3 Indirect Costs Under T&M Orders

“Indirect Costs on T&M Orders must comply with FAR 52.232-7 Payments Under Time-and-Materials and Labor Hour Contracts (Feb 2007)”

7. Add the following paragraph to Section B.9, LABOR SUBJECT TO THE DAVIS BACON ACT as follows:

“The Basic Contract does not include all applicable flow-down clauses for labor categories subject to the Davis Bacon Act. Each Order must be tailored to include the appropriate clauses.”

8. Add the following paragraph to Section B.10, LABOR SUBJECT TO THE SERVICE CONTRACT ACT (SCA) as follows:

“The Basic Contract does not include all applicable flow-down clauses for labor categories subject to the Service Contract Act. Each Order must be tailored to include the appropriate clauses.”

9. Replace paragraph 1, Section C.2 SCOPE, for clarification, as follows:

“The scope of the Basic Contract includes any and all components of an integrated IT solution, including all current and any new technologies which may emerge during the life cycle of the Basic Contract. In addition, the scope of the Basic Contract includes information technology systems and services in support of National Security Systems, as defined in FAR 39.002. The Basis Contract provides IT Solutions through performance of a broad range of services which may include the integration of various technologies critical to the services being acquired. As the definition of IT changes over the lifecycle of the Basic Contract, the scope of the Basic Contract will be considered to coincide with the current definition at any given time.”

10. Update the last paragraph of Section G.5, GWAC OMBUDSMAN, as follows:

“The Ombudsman is:

Task and Delivery Order Ombudsman
Office of the Chief Acquisition Officer
U.S. General Services Administration
1800 F Street, N.W.
Washington, DC 20405”

11. Replace Section G.9.7, Contractor Administrative Reporting, in its entirety as follows:

“G.9.7 Contractor Administrative Reporting

The following defines the administrative reporting requirements under the Basic Contract. All of the reporting data specified here shall be provided electronically via the GWAC Management Module which can be accessed at <http://itss.gsa.gov>.

The types of reporting data required are as follows:

(a) Order Award – The contractor shall report all non IT Solution Shop (ITSS) Orders within thirty (30) calendar days of Order award. Award data includes, but is not limited to:

- (1) Basic Contract Number
- (2) Order Number
- (3) Order Description (i.e, Type of Project)
- (4) Predominant Contract Type (i.e, T&M, CPFF, FFP, etc.)
- (5) Issuing Ordering Contracting Officer (OCO)
- (6) Initial Period of Performance
- (7) Award Date
- (8) Award Obligated/Funded Amount

Order Award data issued through ITSS will automatically populate in the GWAC Management Module.

(b) Modification Data – The contractor shall report all non ITSS Modifications within thirty (30) calendar days from the date of each Modification. Modification data includes, but is not limited to:

- (1) Basic Contract Number
- (2) Order Number
- (3) Modification Number
- (4) Modification Description (i.e., Incremental Funding, Exercise Option, etc.)
- (5) Issuing OCO
- (6) Modification Period of Performance
- (7) Modification Date
- (8) Modification Obligated/Funded Amount

Modification data issued through ITSS will automatically populate in the GWAC Management Module.

(c) Purchase Data – The contractor shall report purchase data from each invoice within sixty (60) calendar days from the date the invoice is submitted for payment. Purchase data includes, but is not limited to:

- (1) Contractor Invoice Number
- (2) Date Issued
- (3) Itemized Charges categorized as follows:
 - (a) On-Site and Off-Site Labor Categories (including non-Alliant/specialized labor categories)
 - (b) Loaded Hourly Labor Rates or Direct Labor rates as applicable.
 - (c) Indirect Costs (i.e., Fringe, Overhead, G&A, etc. if applicable)
 - (d) Profit (i.e., Award/Fixed/Incentive Fees if applicable)
 - (e) Travel
 - (f) Other Direct Costs (ODCs), including Quantity and Price for each (i.e., Materials, Equipment, etc.)
 - (g) Fixed-Price Deliverable/Milestone if applicable
 - (h) Contract Access Fee (applied to total cost/price)

(d) CAF Payment Data – The contractor shall report each CAF payment remitted to GSA within fourteen (14) calendar days following each CAF payment. All CAF payments must be remitted electronically via Automated Clearing House (ACH). The procedures to set up ACH can be found on the payment page in the GWAC Management Module.

CAF payment data includes, but is not limited to:

- (1) Trace Number (or Voucher Number)
- (2) Total Remitted Amount
- (3) Remit Date
- (4) Amount applied to each Order Number (for the reported payment)

The Contractor shall convert all currency to U.S. dollars using the “Treasury Reporting Rates of Exchange,” issued by the U.S. Department of Treasury, Financial Management Service.”

12. Update Section H.1, Provisions Incorporated by Reference at Order Level, as follows:

PROVISION #	TITLE	DATE	<u>FP</u>	<u>COST</u>	<u>TM</u>
52.211-14	NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY PREPAREDNESS AND ENERGY PROGRAM USE	APR 2008	x	x	x
52.216-29	TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITH ADEQUATE PRICE COMPETITION (Note: If DoD, use DFARS 252.216-7002 Alternate A (FEB 2007) in combination with FAR 52.216-29 (FEB 2007))	FEB 2007			x
52.216-30	TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITHOUT ADEQUATE PRICE COMPETITION	FEB 2007			x
52.216-31	TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—COMMERCIAL ITEM ACQUISITION	FEB 2007			x
52.225-2*	BUY AMERICAN ACT CERTIFICATE	FEB 2009	x	x	x
52.225-4*	BUY AMERICAN ACT – FREE TRADE AGREEMENT – ISRAELI TRADE ACT CERTIFICATE	FEB 2009	x	x	x
52.227-15*	REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE	DEC 2007	x	x	x

13. Update the following clauses in Section I.2, FAR 52.252-2 Clauses Incorporated By Reference (Feb 1998), as follows:

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CLAUSE NO.	TITLE	DATE	FP	COST	TM
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	SEP 2007	x	x	x
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	DEC 2007	x	x	x
52.204-7	CENTRAL CONTRACTOR REGISTRATION	APR 2008	x	x	x
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	SEP 2007	x	x	x
52.204-10	REPORTING SUBCONTRACT AWARDS	SEP 2007	x	x	x
52.207-3	RIGHT OF FIRST REFUSAL OF EMPLOYMENT	MAY 2006	x	x	x
52.211-15	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS	APR 2008	x	x	x
52.212-4	CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS	OCT 2008	x	x	
52.212-4	ALTERNATE I	OCT 2008			x
52.215-9	ALTERNATE I	OCT 1997	x		
52.215-9	ALTERNATE II	OCT 1997		x	
52.215-14	ALTERNATE I	OCT 1997	x	x	x
52.215-17	WAIVER OF FACILITIES CAPITAL COST OF MONEY	OCT 1997	x	x	x
52.217-9*	OPTION TO EXTEND THE TERM OF THE CONTRACT	MAR 2000	x	x	x
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN	APR 2008	x	x	x
52.222-26	EQUAL OPPORTUNITY	MAR 2007	x	x	x
52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS	DEC 2007	x	x	x
52.223-16	IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS	DEC 2007	x	x	x
52.223-16	ALTERNATE I	DEC 2007	x	x	x
52.225-3	BUY AMERICAN ACT – FREE TRADE AGREEMENTS – ISRAELI TRADE ACT	AUG 2007	x	x	x
52.225-5	TRADE AGREEMENTS	NOV 2007	x	x	
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	JUN 2008	x	x	
52.227-1	AUTHORIZATION AND CONSENT	DEC 2007	x	x	
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEC 2007	x	x	
52.227-10	FILING OF PATENT APPLICATIONS- CLASSIFIED SUBJECT MATTER	DEC 2007	x	x	
52.227-11	PATENT RIGHTS – OWNERSHIP BY THE CONTRACTOR	DEC 2007	x	x	
52.227-13	PATENT RIGHTS – OWNERSHIP BY THE GOVERNMENT	DEC 2007	x	x	
52.227-14	RIGHTS IN DATA—GENERAL	DEC 2007	x	x	x
52.227-14	ALTERNATE I	DEC 2007	x	x	x
52.227-14*	ALTERNATE II	DEC 2007	x	x	x
52.227-14*	ALTERNATE III	DEC 2007	x	x	x
52.227-14	ALTERNATE IV	DEC 2007	x	x	x

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CLAUSE NO.	TITLE	DATE	<u>FP</u>	<u>COST</u>	<u>TM</u>
52.227-14*	ALTERNATE V	DEC 2007	x	x	x
52.227-17	RIGHTS IN DATA-SPECIAL WORKS	DEC 2007	x	x	x
52.227-19	COMMERCIAL COMPUTER SOFTWARE RESTRICTED LICENSE	DEC 2007	x		
52.227-21*	TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS	DEC 2007	x	x	x
52.230-2	COST ACCOUNTING STANDARDS	OCT 2008	x	x	x
52.230-3	DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES	OCT 2008	x	x	x
52.230-5	COST ACCOUNTING STANDARDS – EDUCATIONAL INSTITUTION	OCT 2008	x	x	x
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS	MAR 2008	x	x	x
52.232-7*	PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS	FEB 2007			x
52.232-7	ALTERNATE I [DELETED FROM FAR]	FEB 2007			x
52.232-17	INTEREST	OCT 2008	x	x	x
52.232-19*	AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR	APR 1984	x	x	
52.232-25	PROMPT PAYMENT	OCT 2008	x	x	x
52.244-2*	SUBCONTRACTS	JUNE 2007	x	x	x
52.244-2	ALTERNATE I	JUNE 2007		x	
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	FEB 2009	x	x	x
52.245-1	GOVERNMENT PROPERTY	JUNE 2007	x	x	x
52.245-2*	GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES	JUNE 2007	x	x	x
52.245-4	RESERVED				
52.245-5	RESERVED				
52.245-9	USE AND CHARGES	JUNE 2007	x	x	x

14. Delete the following clauses in Section I.2, FAR 52.252-2 Clauses Incorporated By Reference (Feb 1998), as follows:

CLAUSE NO.	TITLE	DATE	<u>FP</u>	<u>COST</u>	<u>TM</u>
52.211-11*	LIQUIDATED DAMAGES – SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT	SEP 2000	x		
52.227-12	PATENT RIGHTS – RETENTION BY THE CONTRACTOR (LONG FORM) [RESERVED]	JAN 1997	x	x	
52.232-7	ALTERNATE II	FEB 2002			x
52.245-2	ALTERNATE I	APR 1984	x		
52.245-4	GOVERNMENT-FURNISHED PROPERTY (SHORT FORM)	JUN 2003	x		x
52.245-5	GOVERNMENT PROPERTY (COST REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS)	MAY 2004		x	x

CLAUSE NO.	TITLE	DATE	FP	COST	TM
52.245-18	SPECIAL TEST EQUIPMENT	FEB 1993	x	x	
52.245-19	GOVERNMENT PROPERTY FURNISHED "AS IS"	APR 1984	x	x	x
52.246-4	INSPECTION OF SERVICES – FIXED PRICE	APR 1996	x		
52.246-5	INSPECTION OF SERVICES – COST REIMBURSEMENT	APR 1984		x	

15. Update Section I.9, FAR 52.232-32 PERFORMANCED-BASED PAYMENTS (FEB 2002) as follows:

“I.9 FAR 52.232-32* PERFORMANCED-BASED PAYMENTS (JAN 2008)

a) *Amount of payments and limitations on payments.* Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract’s description of the basis for payment.

(b) *Contractor request for performance-based payment.* The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor’s request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests.

(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the _____ [*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert “30th”*] day after receipt of the request for performance-based payment by the designated payment office. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the

performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments.* The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) Title.

(1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (*e.g.*, the termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor shall obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls.* The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default.* If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) Reservation of rights.

(1) No payment or vesting of title under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment.* The Contractor's request for performance-based payment shall contain the following:

- (1) The name and address of the Contractor;
- (2) The date of the request for performance-based payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made;
- (4) Such information and documentation as is required by the contract's description of the basis for payment; and
- (5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) *Content of Contractor's certification.* As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that—

- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;
- (2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;
- (3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

16. Update Section J, List of Attachments, Attachments 2 and 3, to read:

Attachment 2: Government Site Loaded Hourly Labor Rates, dated 12/19/2008, are incorporated herein by reference.

Attachment 3: Contractor Site Loaded Hourly Labor Rates, dated 12/19/2008, are incorporated herein by reference.