



ADDITIONAL PROVISIONS FOR ORDERS FOR COMMERCIAL ITEMS ACQUIRED UNDER U.S. GOVERNMENT CONTRACTS NEWPORT NEWS SHIPBUILDING DIVISION SUPPLEMENT

(This document is to be used in conjunction with Huntington Ingalls Incorporated GENERAL PROVISIONS FOR ORDERS FOR COMMERCIAL ITEMS ACQUIRED UNDER U.S. GOVERNMENT CONTRACTS for Orders issued by the Newport News Shipbuilding Division.)

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1. CAST COPPER NICKEL (CuNi) AND PERVASIVE COMMODITY SPECIAL QUALITY REQUIREMENTS. [\(back to top\)](#)

A. **Mandatory Source Requirements.** Seller shall ensure that Level I products, cast Copper-Nickel (CuNi) products, Butt Weld and Socket Pipe Fittings are obtained only from manufacturers or other suppliers approved by Buyer and listed on the following link: http://supplier.huntingtoningalls.com/sourcing/res_technical.html. Approved lists are provided for: Butt Weld and Socket Weld Pipe Fittings Manufacturers, Forging Manufacturers, Fastener Manufacturers and Distributors, CuNi Foundries, Casting Foundries with In-House Machining Capability, and Level I Manufacturers. Butt Weld and Socket Weld Pipe Fittings are considered herein to be included in the Pervasive Commodities Program. Examples of these Fittings include, but are not limited to, parts of standard dimensions used in the assembly of a piping system, such as couplings, elbows, tees, crosses, caps, unions, reducers, and flanges. Seller and its suppliers shall only use Buyer approved manufacturers for Butt Weld and Socket Weld Pipe Fittings provided under this Order.

- B. **Non-Mandatory Buyer Approved Manufacturers.** Seller is encouraged, but not required, to purchase other forging, fasteners and casting material with in-house machining capability from suppliers listed on the following link: http://supplier.huntingtoningalls.com/sourcing/res_technical.html.
- C. Seller's use of a mandatory or an approved manufacturer does not relieve the Seller of its obligation to deliver a Product that conforms to all of the requirements of this Order.
- D. Specific certifications, test reports, or other non-hardware deliverables shall be provided by Seller as specified in the Order.
- E. **Cast CuNi Products.** Seller and its suppliers shall only use Buyer approved CuNi foundries in the performance of this Order.

In addition to, or in conjunction with, testing required elsewhere in this Order, Seller shall invoke the following supplemental requirements on orders at any level for CuNi castings from a foundry approved by Buyer or Electric Boat Corporation (EB) or both:

- i. For each heat, the foundry shall test and have available a chemical test report for an "A" (beginning of furnace charge pour) and "B" (end of furnace charge pour) test specimen. The test reports and the specimen shall be identified as "A" and "B" in addition to the heat number traceability.
- ii. Mechanical test bars shall be poured no sooner than 50% through the furnace charge pour.
- iii. The foundry or supplier shall maintain the "A" and "B" test specimens, the mechanical test bars, and the test results as objective quality evidence, subject to audit and further analysis by Buyer and/or Electric Boat Corporation (EB).
 - (a) Retention time shall be a minimum of seven (7) years following certification of the heat.
 - (b) Notify Buyer or EB or both for disposition instructions prior to disposal of records and specimens.
- iv. Buyer's and EB's products may be poured in the same heat; however, the heat shall be unique to Buyer and/or EB. No other customer's product shall be included in the heat.
- v. Chemistry and mechanical test report submittal shall be in accordance with the requirements contained elsewhere in this Order. If chemical test reports are required to be submitted, the "B" chemistry test results shall be submitted, unless otherwise specified.

2. TRANSMISSION ABROAD OF NAVAL NUCLEAR PROPULSION INFORMATION. [\(back to top\)](#)

- A. This provision applies only if, during the performance of this Order, Seller will have access to Naval Nuclear Propulsion Information ("NNPI") as defined in OPNAVINST 9210.3. All defined terms in this provision shall have the same meaning as those terms are defined in Part I of SBF P9152 (<https://spars.huntingtoningalls.com/procurement/procforms.html>). Seller shall review OPNAVINST 9210.3 and DoD Pamphlet 5230.25PH and abide by the applicable requirements of those publications.
- B. If Seller has Foreign Nationals and/or Representatives of a Foreign Interest who work within or have access to its premises, Seller shall have a Technology Access Control Plan which:
 - i. Denies Foreign Nationals, Representatives of a Foreign Interest, and unauthorized U.S. Citizens and U.S. Nationals access to Naval Nuclear Propulsion Information; and
 - ii. Permits only authorized U.S. Citizens, U.S. Nationals, Foreign Nationals and/or Representatives of a Foreign Interest access to Technical Data other than Naval Nuclear Propulsion Information or restricts access to Naval Nuclear Propulsion Information and/or Technical Data only to U.S. Citizens and U.S. Nationals who have a need-to-know.
- C. Seller shall not disclose NNPI to Foreign Nationals. U.S. Citizens and U.S. Nationals representing a foreign government, foreign private interest or other Foreign Nationals, are considered to be included in the definition of Foreign Nationals for industrial security purposes and the purpose of the restrictions contained in this provision 3.
- D. Disclosure of Restricted Data as defined in the Atomic Energy Act of 1954 as amended, relating to the Naval Nuclear Propulsion Program to employees of Seller granted Limited Clearances under the provisions of DOD 5220.22M, National Industrial Security Program Operating Manual (NISPOM) is denied.

- E. Any issue or release of NNPI beyond parties with a need to know and necessary for the performance of this Order, whether or not ordered through an administrative or judicial tribunal, shall be brought to the attention of Buyer.
- F. Buyer shall be immediately notified of any litigation, subpoenas, or requests which either seek or may result in the release of NNPI. If a court or administrative order makes immediate review by Buyer impractical, Seller will take all necessary steps to notify the court or administrative body of the Navy's interest in controlling the release of such information through review and concurrence in any release.
- G. In addition to the requirements of this provision 3, the Seller shall comply with all other requirements relative to Naval Nuclear Propulsion Information (NNPI) wherever located in this Order.
- H. Seller agrees to insert this "Transmission Abroad of Naval Nuclear Propulsion Information" clause including this paragraph (I) in all of its subcontracts issued under this Order.

3. ADDITIONAL SECURITY REQUIREMENTS. [\(back to top\)](#) In addition to complying with any other security requirements contained in this Order, Seller shall not disclose "Restricted Data" as defined in the Atomic Energy Act of 1954 as amended, relating to Navy Nuclear Propulsion Program to employees who have been granted Limited (interim) Clearances except under the provisions of DoD 5220.22M, National Industrial Security Program Operating Manual (NISPOM).

4. NOTICE OF PRIOR WAIVERS AND DEVIATIONS. [\(back to top\)](#) In the event the Seller is providing or proposing to provide to the Buyer an item:

- A. That has previously been provided to the Navy for inclusion as Government Furnished Material (GFM) on ENTERPRISE or previous NIMITZ Class Ships, or
- B. Seller is developing for the Navy under another Government program; then the Seller shall immediately notify Buyer in writing indicating any specification differences, waivers and/or deviations that were or are in effect for the item(s).

5. VENDOR INFORMATION REQUEST. [\(back to top\)](#)

- A. Seller shall make no changes to the requirements of the Order without the prior written consent of the Buyer. Seller may submit requests for changes to the specifications or plans only on Buyer's Vendor Information Request (VIR) Form, No. NN3409. Changes that affect the price or delivery schedule or both shall only be made through written modification of this Order. A dispositioned VIR applies only to the item for which it is submitted; the resolution may not be extended to any other item under the same or another Order without Buyer's explicit written consent. Notwithstanding the foregoing, if complete details for the manufacture of a component are not provided by the Buyer or its customer, Seller shall have internal corrective action authority for updating or changing piece part drawings or for resolving departures from Seller's piece part drawings or internal procedures without VIR submittal to the Buyer ONLY if the corrective action does not depart from or affect in any manner the following:
 - i. Order, Appendices, Terms and Conditions, requirements, including listed specification effectivity dates;
 - ii. Material specification requirements;
 - iii. Drawings or procedures issued by or subject to approval by the Buyer or its customer;
 - iv. Safety, reliability, interchangeability, form, fit, or function of the component or component parts; or
 - v. Shock or vibration integrity of qualified designs.
- B. Any corrective action taken as a result of Seller's internal review and disposition shall meet sound engineering principles, and records of all corrective actions must be maintained and made available to Buyer or its customer upon request. Copies of approved VIRs shall be sent with the material.

6. SHIPPING AND LABELING INSTRUCTIONS. [\(back to top\)](#) Unless otherwise provided in the Order, Seller shall ship material to: Huntington Ingalls Incorporated, Main Distribution Center, 2175 Aluminum Avenue, Bldg. 872, Hampton, VA 23661. Seller shall clearly mark each shipping package, container label and all shipping documents with the Order number (P. O. #XXXXXXXXXX), the item number, the Newport News Part number (if applicable), Seller's invoice

number, and the release number (if applicable). For container labels, Seller shall provide the following additional information: Shipper's name and address; Consignee Name; number of packages; gross and net weight and number of pieces per carton. Sellers shall go to the routing guide at: <http://supplier.huntingtoningalls.com> for complete shipping instructions. Use the carrier in the guide for the shipping location. The Buyer's routing requirements shall flow down to the Seller's suppliers. In those instances when the Seller's supplier must ship to the Seller, the sub-supplier must contract the NNS Traffic Office at NNSTrafficOffice@hii-nns.com or (800) 426-1910 for assistance.

7. **FREIGHT CHARGES.** [\(back to top\)](#) Unless otherwise specified in this Order, the Buyer will pay freight charges and insurance, and Seller shall ship to Buyer on a freight collect basis using Buyer's preferred carrier. Buyer will not accept C.O.D. shipments unless expressly provided for in the Order. If the Buyer does accept C.O.D. shipments and the freight cost is \$200 or more, the Seller shall ensure a copy of the freight bill from the freight carrier is provided as back up documentation when the invoice is submitted to Accounts Payable. If the freight bill is not submitted with the invoice, the entire invoice will be rejected and the Seller will need to resubmit the invoice with the proper documentation.
8. **DOMESTIC BARGE SHIPMENTS.** [\(back to top\)](#) Seller shall notify the Traffic Section of Buyer at 1-800-426-1910 at least 30 calendar days prior to shipment by domestic barge.
9. **HEAVY MATERIAL.** [\(back to top\)](#) Seller shall mark *DELIVER ON FLAT BED TRAILER* when shipping single articles that exceed 4,000 pounds or that do not adapt to safe unloading with a standard forklift truck.
10. **PACKING AND CRATING.** [\(back to top\)](#) Seller shall, when practicable, ship in packages or loose pieces for unloading by a standard 4,000-pound forklift truck. Unless otherwise provided in the Order, Seller's price includes all charges for packing and crating.
11. **VALUE DECLARATION.** [\(back to top\)](#) Seller shall not insure for excess value via any mode of transportation. For shipments at Buyer's risk in which freight rates are based on *released value* Seller shall declare the lowest value on the bill of lading. For shipments at Buyer's risk via domestic air freight, air freight forwarder, and Parcel Post, Seller shall insert the notation *NVD* (no value declared).
12. **DELIVERY.** [\(back to top\)](#) These requirements are in addition to those contained in the "Delivery, Title" clause in the "*General Provisions For Orders For Commercial Items Acquired Under U.S. Government Contracts.*" All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Order. Unless otherwise specified in this Order, Seller shall not:
 - A. Make partial shipments of individual line items; or
 - B. Make shipments more than 90 days in advance.
13. **SUBCONTRACTING.** [\(back to top\)](#) No subcontract at any tier placed under this Order shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the Federal Acquisition Regulation (FAR).
14. **COMPLIANCE WITH WORKSITE RULES.** [\(back to top\)](#) *(applicable only if Seller will be performing work on Buyer's property or a worksite under Buyer's control, or a third party's worksite in connection with performance under this Order).*
 - A. While on Buyer's property/worksite, Seller shall comply with all of Buyer's safety and security rules and regulations to include, but not limited to, the most recent version of Buyer's safety handbook. A copy of this handbook can be obtained from Buyer's purchasing representative.
 - B. If required, Seller will obtain a background check, at Seller's expense, for all employees as outlined at <https://supplier.huntingtoningalls.com/sourcing/AccessNNS.html>. Background checks shall be obtained through <https://www.backgroundchecks.com/solutions/Huntington>.

- C. Prior to performing Production Work on Buyer's Newport News, Virginia, property, or at other locations if informed by Buyer that Seller must be "safety qualified" to perform the work, Seller shall also coordinate with Buyer's Environmental, Health, and Safety (EH&S) Department (O27) to complete the qualification process, and comply with the requirements of Buyer's "Contractor EH&S Resource Manual" which is available under Supplier Resources at this web site: http://supplier.huntingtoningalls.com/sourcing/Contractor_Safety/index.html. "Production Work" is defined as operations that involve hazards to personnel, including but not limited to construction, demolition, "hot work," work in enclosed and confined spaces, blasting, painting, material handling, working with hazardous materials or equipment, efforts in direct support of Buyer's Production Work, and similar operations.
- D. If in performance of this order Seller performs work at a third party's worksite, Seller shall comply with all rules and regulations of that worksite, including safety and health rules and procedures, and the use of required personal protective equipment. Seller guarantees strict compliance by all its employees, agents and lower tier subcontractors while on the third party's premises.
- E. In addition to any other remedies Buyer may be entitled to, Buyer may, without notice and an opportunity to cure:
 - i. Terminate this Order for default if Seller fails to comply with any part of provision 14; or
 - ii. Expel from Buyer's property/work site, any employee, subcontractor or agent of Seller found violating any part of provision 14.
- F. Access by non-U.S. citizens to Buyer's property/worksite is prohibited unless approved in writing by Buyer.

15. RESTRICTION ON CERTAIN PAYMENTS (orders or purchase order line item numbers to which the cost principles at FAR Part 31 apply). [\(back to top\)](#) Seller shall obtain Buyer's written permission prior to requiring employees to perform work under this Order for which the employees will be eligible to receive overtime premium pay as defined in FAR 22.103-1. Any overtime premium pay that is paid to Seller's employees for work performed under this Order for which Seller has failed to obtain Buyer's prior written approval shall be an unallowable cost under this Order. Employees and Subcontractors' employees performing work under this Order will complete a full shift at the worksite. Man-hour costs (whether straight-time or overtime) and transportation costs for Seller personnel or Seller's subcontractor personnel traveling to or from worksites, including travel to worksites other than the Seller's facility for performance of the work shall not be an allowable cost under this Order. The restriction on travel costs contained in the previous sentence shall apply only to payments for travel time before or after the workers' regular shifts and does not apply to legitimate travel costs incurred during normal working hours, provided that those costs meet the following conditions:

- A. Unless the travel is directed by Buyer, Seller will obtain Buyer's prior written approval before engaging in travel related to this Order. In requesting approval, Seller will fully disclose all facts regarding the proposed trip, including, but not limited to: the employee(s) involved, the purpose of the trip and destination, the dates, and the proposed mode(s) of transportation.
- B. Costs incurred by Seller personnel on travel ("Travel Costs") must comply with the Federal Acquisition Regulations ("FAR") and in particular FAR 31.205-46. Unless otherwise provided, the amounts that the Seller can invoice for lodging, meals, and incidental expenses is limited to the maximum per diem rate for the locality of travel specified in the Federal Travel Regulations, prescribed by the General Services Administration ("GSA"), for travel in the contiguous United States. Except as provided in this paragraph B, Buyer will not be liable to Seller for invoiced Travel Costs that exceed the prevailing GSA per diem rates. At the Buyer's absolute discretion, Buyer may reimburse Seller lodging and meal expenses in excess of the prevailing GSA per diem rate when: (i) costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural or manmade disasters); (ii) lodging and meal expenses within prescribed allowances cannot be obtained nearby; and (iii) costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging. Buyer will not be liable to Seller for any Travel Costs incurred in connection with travel not pre-approved or directed by Buyer in accordance with paragraph A of this provision 16.
- C. Except as provided in this paragraph C, Buyer will not be liable to Seller for airfare costs in excess of the lowest priced airfare available to Seller during normal business hours ("Lowest Fare"). Buyer may at its absolute

discretion reimburse Seller for airfare in excess of the Lowest Fare when use of the Lowest Fare would: (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) excessively prolong travel, (iv) result in increased cost that would offset transportation savings, (v) not reasonably accommodate the physical or medical needs of the traveler, or (vi) not reasonably meet Order requirements. If requested by Buyer, Seller will provide documentation supporting Seller's selection of the Lowest Fare.

- D. For vehicle transportation by Seller's personnel using their personally owned vehicles, Buyer will reimburse Seller at the prevailing Internal Revenue Service standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. Seller shall provide the mapquest showing the start and stop location and the number of miles for the trip. If the start location cannot be provided due to employee confidentiality, the Seller shall provide the start city, zip code and state.
- E. Tips for meals will be included in the meal cost and subject to the prevailing GSA per diem meal rate. Tips for baggage handling (e.g. skycaps, bellhops, etc.) and maids will be included in the lodging cost and subject to the prevailing GSA lodging per diem rate. Tips for transportation and taxis required for business purposes are not included in and subject to the per diem caps. Buyer will reimburse Seller for reasonable amounts for such tips provided they are adequately explained in Seller's expense report.
- F. Rental car costs will be reimbursed for a standard size vehicle only. Use of luxury cars and sports utility vehicles are not authorized. The gas tank will be full before returning vehicle.
- G. All fines for traffic or parking violations are the sole responsibility of Seller and are not reimbursable as travel costs or otherwise. Costs for alcoholic beverages consumed during meals or otherwise are not reimbursable.
- H. Seller will itemize all travel expenses utilizing the NNS Travel Expense Form located at https://supplier.huntingtoningalls.com/sourcing/accounts_payable.html for which it will be claiming reimbursement and include a copy of receipts for any single expense in excess of \$75.00. Notwithstanding the immediately preceding sentence, Seller will provide receipts, regardless of value, for air or rail transportation, lodging, car rentals, and gasoline purchased for rental vehicles. Failure to provide the required receipts will result in non-payment of invoice until all documentation is received. If the Seller does not itemize all travel expenses on the invoice and/or provide the required receipts, the entire invoice will be rejected and the Seller will need to resubmit with the necessary documentation.
- I. Paragraphs A through H apply only to costs incident to travel for temporary job assignments, i.e. assignments to a work location for a period of less than 12 months. Buyer will not reimburse Seller for costs incident to travel for assignments more than 12 months unless specifically identified by Seller and agreed to in writing by Buyer prior to the travel's occurring.
- J. Seller's obligation to perform this order is in no way conditioned upon the providing by the Buyer or its customer of any facilities, except as may be otherwise expressly provided herein. Accordingly, no such facilities shall be either acquired by the Seller for the account of the Buyer or its customer or furnished to the Seller by the Buyer or its customer hereunder. For the purpose of this requirement, facilities means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development or test, including real property and rights therein, buildings, structures, improvements, and plant equipment as defined in FAR 2.101, FAR 45.101 and DFARS 245.101.

16. INVOICE PROCESSING. [\(back to top\)](#) Unless Seller is part of Buyer's Invoiceless Payment System, Seller shall email a PDF version of all invoices showing the Order number and Order Item Number to the Huntington Ingalls Incorporated email address on the first page of this Order. If Buyer does not fully pay Seller's original invoice because of a performance deficiency, Seller must submit a new invoice for any remaining amounts due after Seller corrects the deficiency that caused the partial payment. The Seller shall ensure the purchase order line item is clearly referenced on each item being invoiced. The Seller shall also ensure the invoice is submitted in the same unit of measure as the purchase order. If the purchase order line items are not referenced and the unit of measure is different from the purchase order, the entire invoice will be rejected and the Seller will need to resubmit the invoice with the proper criteria. If the invoice is for a down payment/milestone payment, the invoice must be submitted with the waiver of lien, insurance papers and Application for Partial Payment and Certification of Milestone Completion and Incurred

Cost Form (NN9626). If these documents are not submitted with the invoice, the entire invoice will be reject and the Seller will need to resubmit the invoice with the proper documentation.

17. GOVERNMENT TITLE (COST-REIMBURSEMENT AND TIME-AND-MATERIALS ORDERS). [\(back to top\)](#)

- A. Title to all property purchased by Seller from a vendor for which the Seller is entitled to be reimbursed as a direct item of cost under this Order shall pass to and vest in the Government upon the vendor's delivery of such property to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to and vest in the Government upon:
 - i. Issuance of the property for use in Order performance;
 - ii. Commencement of processing of the property for use in Order performance; or
 - iii. Reimbursement of the cost of the property pursuant to the terms of this Order, whichever occurs first.
- B. Upon the Government's acquiring title to property under this provision, the provisions of the BUYER OR GOVERNMENT PROPERTY clause contained in the "*General Provisions for Orders for Commercial Items Acquired under U.S. Government Contracts*" shall apply to such property.

18. PAYMENTS FOR TIME-AND-MATERIALS/LABOR-HOUR ORDERS. [\(back to top\)](#) Buyer will pay Seller as follows upon the submission of proper invoices:

A. Hourly rate.

- i. The amounts shall be computed by multiplying the appropriate hourly rates prescribed in this Order by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Unless otherwise specified, invoices may be submitted once each month to Buyer. Seller shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by Buyer.
- ii. Buyer may unilaterally issue a modification requiring the Seller to withhold amounts from its billings until a reserve is set aside in an amount that the Buyer considers necessary to protect the Buyer's interests. Buyer may require a withhold of 5 percent of the amounts due under this provision, but the total amount withheld for this Order shall not exceed \$50,000. The amounts withheld shall be retained until final payment under this Order.
- iii. Unless otherwise specified, the hourly rates in the Order shall not be varied by virtue of Seller having performed work on an overtime basis. If no overtime rates are provided in this Order and overtime work is approved in advance by the Buyer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes provision. If this Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Buyer.

B. Materials and subcontracts (if specified in this Order).

- i. Buyer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this Order. Direct materials, as used in this provision, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
- ii. Seller may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Seller's usual accounting practices consistent with Subpart 31.2 of the FAR.
- iii. Buyer will reimburse Seller for supplies and services purchased directly for this Order when Seller has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or will make these payments determined due in accordance with the terms and conditions of a subcontract or invoice.
- iv. Buyer will not reimburse Seller for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under this provision.

- v. Seller shall give credit to Buyer for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of Seller, or would have accrued except for the fault or neglect of Seller.
 - vi. If the nature of the work to be performed requires Seller to furnish material that Seller regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this provision, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Buyer, provided that in no event shall such price be in excess of the Seller's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.
- C. **Total Cost.** It is estimated that the total cost to Buyer for the performance of this Order shall not exceed the ceiling price set forth in the Order and the Seller agrees to use its best efforts to perform the work specified in this Order and all obligations under this Order within such ceiling price. If at any time Seller has reason to believe that the hourly rate payments and material costs that will accrue in performing this Order in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 75 percent of the ceiling price in this Order, Seller shall notify Buyer giving a revised estimate of the total price to the Buyer for performing this Order with supporting reasons and documentation.
- D. **Ceiling price.** Buyer shall not be obligated to pay Seller any amount in excess of the ceiling price in this Order, and Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in this Order, unless and until Buyer shall have notified Seller in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Order. When and to the extent that the ceiling price set forth in this Order has been increased, any hours expended and material costs incurred by Seller in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

19. FAR/DFARS CLAUSES/PROVISIONS. [\(back to top\)](#)

- A. The below listed FAR and DFARS clauses are incorporated by reference and made part of this Order with the same force and effect as though set forth in full text.
- B. Unless the text in these clauses clearly reserves rights in the Government only or as otherwise noted, the terms "Contractor" means "Seller," "Contracting Officer" means "Buyer," "Contract" means this Order and "Government" means "Buyer or the Government." However, the words "Government" and "Contracting Officer" do not change when a right, act, authorization or obligation can be granted or performed only by the Government or the Prime Contract contracting officer or duly authorized representative.
- C. Applicable thresholds include Truth in Negotiations Act Threshold (TINA) at \$750,000; Simplified Acquisition Threshold (SAT) at \$150,000; and Micro-purchase Threshold at \$3,000.
- D. Whenever the FAR or DFARS clauses include a requirement for the resolution of disputes between the Parties in accordance with the "Disputes clause," the dispute shall be disposed of in accordance with the provision entitled "Disputes" in this Order.
- E. The full text of a clause may be accessed electronically at <https://www.acquisition.gov/?q=browsefar>.

FAR CLAUSES/PROVISIONS		
CLAUSE NUMBER	CLAUSE NAME	CLAUSE DATE
52.216-7	Allowable Cost and Payment <i>(cost-reimbursement Orders only)</i>	(Jun 2013)

20. RESTRICTIVE MARKINGS FOR IDENTIFICATION OF NON-TECHNICAL TRADE SECRETS. [\(back to top\)](#)

- A. GENERAL. This clause specifies the required format for restrictive markings on non-technical data items delivered under this Order. This clause is applicable only to data which are not covered by DFARS provisions and which include information asserted by the Seller to be non-technical trade secrets. The standard markings specified in this clause shall be used to notify the Buyer of the Seller's assertions regarding the presence of non-technical trade secrets in data items and to identify exactly the information to which the restrictive markings refer. This clause

does not modify the rights and obligations of any party to this Order or the Government with respect to the technical data, computer software, and computer software documentation which are within the scope of the clauses at Defense Acquisition Regulation Supplement (DFARS) 252.227-7013 "Rights in Technical Data – Noncommercial Items (FEB 2014)," DFARS 252.227-7014 "Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (FEB 2014)," DFARS 252.227-7015 "Technical Data – Commercial Items (FEB 2014)," DFARS 252.227-7019 "Validation of Asserted Restrictions – Computer Software (DEC 2011)," and DFARS 252.227-7037 "Validation of Restrictive Markings on Technical Data (JUN 2013)."

B. DEFINITIONS. Terms which are defined in this clause are indicated with a bold font. As used in this clause:

- (i) **Non-technical data** means information, in any format and recorded on any media, which is not technical data, computer software or computer software documentation as defined in DFARS 252.227-7013 and DFARS 252.227-7014.
- (ii) **Non-technical trade secret** means any item of non-technical data, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process, that:
 - (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
 - (b) is the subject of efforts by the Seller, that are reasonable under the circumstances, to maintain its secrecy; and
 - (c) is not "technical data," "computer software," or "computer software documentation," as those terms are defined in DFARS 252.227-7013 and DFARS 252.227-7014; and
 - (d) is not bid or proposal information or source selection information subject to the requirements of FAR 3.104-4; and
 - (e) is not Buyer furnished information or information previously provided by the Seller to the Buyer without restriction; and
 - (f) is not information available to the Buyer without restriction from other sources.
- (iii) **Nonconforming trade secret marking** means any restrictive legend or marking that is placed on a document or within an electronic file that does not comply with the requirements of this clause but appears to assert restrictions on the Buyer's or Government's rights to use, modify, reproduce, release, perform, display, or disclose non-technical data.

C. PERMISSABLE RESTRICTIVE MARKINGS ON NON-TECHNICAL DATA. The following types of notices or markings are permitted by law on non-technical data delivered under this Order: copyright notices pursuant to 17 U.S.C. §§ 401 – 404; patent markings pursuant to 35 U.S.C. § 287(a); trademark registration notices pursuant to 15 U.S.C. § 1111; common law trademark notices ("TM"); and the distribution statements required by DOD Directive 5230.24. Only the following markings are authorized for the purpose of asserting restrictions on the Buyer's or Government's rights to use, modify, reproduce, release, perform, display, or distribute non-technical trade secrets disclosed in non-technical data delivered under this Order.

- (i) The following legend shall be placed on the cover page and title page of any document, near the title block of any drawing, and on the label of any computer disc, digital tape or other storage device:

[Insert Seller Name] Trade Secret

This [document, drawing or file] contains non-technical information that is a trade secret of [insert Seller name]. This trade secret information is specifically identified as such within the body of this [document, drawing or file]. This [document, drawing or file] is not to be disclosed to persons who are not employed by [insert Seller name], Huntington Ingalls Incorporated, or the United States Government without the prior written permission of [insert Seller name], unless the identified trade secret is completely deleted and otherwise removed from this [document, drawing or file] before disclosure.

In addition, for electronic files that contain non-technical trade secrets, the above legend shall appear on the computer screen or other user display upon initial access to the file.

- (ii) In addition to the legend prescribed by paragraph (c)(1) above, each individual page of a document (other than the cover or title page), or separable portions of an electronic file, that contains a non-technical trade secret shall have the following legend as a footer:

[Insert Seller Name] Trade Secret -- refer to cover page for restrictions

This footer is permitted only on those pages that actually include non-technical trade secrets

- (iii) Where individual pages of a document, or separable portions of an electronic file, contains both nontechnical trade secret(s) and other information not subject to restrictions, the non-technical trade secret(s) shall be clearly identified by notes or markings indicating specifically which paragraphs, figures, tables, etc. the restrictive markings refer to.
- (iv) Reproductions of any portion of an original document, drawing, electronic file or database that contains non-technical trade secret(s) shall include reproductions of the legend(s) specified in this clause only if the reproduced portions include non-technical trade secret(s).

D. CORRECTION AND JUSTIFICATION OF RESTRICTIVE MARKINGS ON NON-TECHNICAL DATA.

- (i) The restrictive markings authorized by this clause are the sole means by which the Seller may give notice to the Buyer and Government of its assertions about non-technical trade secret(s). Nothing in this Order limits the Buyer's or Government's rights to challenge the validity or accuracy of those assertions at any time after delivery of the data item with restrictive markings.
- (ii) If an item of non-technical data is delivered with nonconforming trade secret marking(s), the Buyer or Government may require the Seller to resubmit that data at its own expense with markings that conform to the requirements of this clause. If the Buyer or Government notifies the Seller of a nonconforming trade secret marking and the Seller fails to remove or correct such marking and resubmit the data within sixty (60) days, the Buyer and Government may ignore or, at the Seller's expense, remove or correct the nonconforming trade secret marking.
- (iii) The Buyer or Government may request information needed to evaluate the validity of assertions made by the Seller with the markings authorized by this clause. For this purpose the Seller will provide a detailed listing which identifies the specific non-technical trade secret(s) which are the basis for the restrictive markings.

E. APPLICABILITY TO SUBCONTRACTORS. This clause shall be included in all subcontracts at any tier which will require delivery of non-technical data to the Buyer or Government.

F. The requirements of this clause apply both to non-technical data delivered in hard copy and to non-technical data delivered on the IDE or any other electronic media.

21. JOINT CERTIFICATION PROGRAM REQUIREMENT. [\(back to top\)](#) Seller shall have an active number under the U.S./Canada Joint Certification Program (JCP) pursuant to DoD Directive 5230.25 and shall provide the active certification number and expiration date to the Buyer. Failure of Seller to maintain an active JCP may result in Buyer's termination of this Order for default.