

## **Customer Contract Requirements**

Customer Contract N00039-15-D-0043

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**ORDER OF PRECEDENCE** (The following references FAR 52.215-8, Order of Precedence – Uniform Contract Format, applicable only to this Contract)

Any inconsistency in this Solicitation or Contract shall be resolved by giving precedence in the following order:

- (a) the schedule (Sections A through H) (excluding the specifications);
- (b) representations and other instructions (Section K);
- (c) contract clauses (Section I);
- (d) attachments (including Statements of Work) (in order, except Attachments F, which is (e) below)
- (e) the specifications\*

\* Any inconsistencies between specifications shall be resolved by giving precedence in the following order:

- 1. Functional Baseline for MIDS-LVT as defined in the F Attachments :
- 2. Allocated Baseline for MIDS-LVT as defined in the F Attachments
- 3. Other documentation referenced in the specifications (STANAG 4175, STANAG 5516, other NATO, military, and federal standards; other Government documents and non-Government documents).

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### **METHOD OF SELECTION FOR ISSUANCE OF ORDERS**

(A) Individual orders shall be placed using one of the following selection procedures:

(1) The ordering officer may request technical proposals and/or price proposals from each awardee and make award(s) to the contractor(s) whose proposal(s), represents the best value to the government. The contractor is permitted to propose improvements (e.g., performance, schedule, prices contained in or listed at “TBD” in Section B of this contract) in its quotation. “Best value” is defined as the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement (FAR 2.101).

(2) The ordering officer may utilize existing contract prices determined in accordance with -Section B-4 for MIDS-LVT. The contractor may propose price improvements to Section B-4 - at any time after contract award. The opportunity to propose a pricing model for the contract based on adequate price competition is considered the contractor’s fair opportunity for these orders.

(3) The ordering officer may request technical proposals and/or price or cost proposals from each awardee and make award to the contractor whose proposal, represents the lowest priced technically acceptable offer.

**(B) At the Government’s discretion, it may order additional production terminal quantities under a previous lot buy or other order by contract modification, without further competition (emergent buy). The Government will apply the previous lot buy or other order award split, where possible, as quantities permit. Pricing shall be established in accordance with B-4(g). The previous lot buy or other order is considered the contractors’ fair opportunity pursuant to FAR 16.505(b)(1) for additional quantity orders within 180 calendar days of the previous lot buy or other order. Regardless of this ability, the Government may decide to issue an RFP for the additional quantities.**

(C) The Government desires continuous improvements in terminal & spares pricing via updates to the pricing structure contained in Section B-4. The Government considers a price improvement to be an updated pricing structure (e.g., learning curve in Section B-4) that results in a lower, overall terminal price. If the contractor proposes terminal and spares pricing independent of Section B-4, the Government may elect to disregard such prices even if they may be lower than prices derived from Section B-4. If determined to be the best value to the Government, the ordering officer may utilize an offeror’s higher prices from an existing Section B-4 or a proposed updated Section B-4.

(D) Regardless of the selection procedures utilized, the ordering officer will consider existing prices from Section B-4 and any proposed price improvements and may consider a variety of factors, including, but not limited to:

- (a) information received from the contractor(s) in response to the contracting officer’s request for cost/technical proposals, if requested;
- (b) past performance under this contract including all outstanding and previous delivery orders;
- (c) the price and extent of technical data rights, computer software rights, and computer software documentation rights in the Technical Data Package;

- (d) warranty prices;
- (e) delivery rate(s).

If the ordering officer utilizes selection procedure (A)(1) or (A)(3), the RFP will specify instructions for submitting a proposal, and identify the technical factors that will be used in the evaluation. Regarding (A)(1), the RFP will also specify the relative order of importance for technical factors, and will state the relative importance of the technical factors to price. In either the (A)(1) or (A)(3) scenario, the technical factors in the RFP may not include all of those identified in paragraph (C) above, and may include other technical factors more appropriate for the particular requirement.

(D) The ordering officer may elect not to compete the award of any particular order if one or more of the following conditions exist:

- (a) The agency need for such supplies or services is so urgent that providing the opportunity would result in unacceptable delays;
- (b) Only one contractor is capable of providing such supplies or services at the level of quality required because the supplies or services are unique or highly specialized;
- (c) For MIDS Engineering Services tasks one or both contractors may receive an award on a sole source basis because that contractor or contractors is/are capable of providing such supplies or services at the level of quality required because the supplies or services are unique or highly specialized;
- (d) The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order;
- (e) It is necessary to place an order to satisfy a minimum guarantee.

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##### **CERTIFICATE OF COMPLIANCE**

The Contractor shall certify that the terminal, as designed, meets all the current requirements of the contract and all attachments thereto, including interchangeability requirements. Any and all non-conformances shall be documented in separate Requests for Deviation (RFDs) and submitted for Government approval and shall be noted on the individual Certificates of Compliance. The Contractor shall submit a separate Certificate of Compliance for each MIDS variant and Block Upgrade configuration.

These certificates shall be delivered via contract letter after the contractor has successfully completed its contractor qualification effort. The certification must be submitted no later than 15 days prior to the contractor request for Government acceptance (via DD 250) of the first terminal for each variant and Block Upgrade configuration. The certificates shall be signed by an individual authorized to obligate the Contractor.

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##### **AIRWORTHINESS CERTIFICATE (APPLICABLE TO ALL MIDS-LVT TERMINALS DELIVERED UNDER THIS CONTRACT)**

- (a) The Contractor shall certify that the delivered Terminals are safe for intended use. The certificate shall be based on successful completion of Contractor testing and analysis. Safe-For-Intended Use (SFIU) tests shall consist of (1) Crash Safety, (2) Random Vibration, (3) Electronic Field Radiated Emission (RE02) Test, (4) Power Line and Signal Line Conducted Emission (CE03) and explosive atmosphere.
- (b) The Contractor shall provide a completed AFMC Form 3, Component Airworthiness Certificate, as part of their First Article Approval prior to the first terminal delivered under this contract (See H-23). The AFMC Form 3 is considered "completed" once the contractor has completed the necessary testing and analysis and the responsible contractor system safety engineer/officer/ manager has signed the form. The Government expects to review the test data and analyses upon which the Contractor based the airworthiness certificate.
- (c) The Contractor shall maintain the Terminal's airworthiness certificate until the period of performance for the entire contract is completed.

#### H-16

##### **ELECTROMAGNETIC COMPATIBILITY (EMC) FEATURES APPROVAL (APPLICABLE TO ALL MIDS TERMINALS DELIVERED UNDER THIS CONTRACT)**

The Contractor is required to obtain EMC Features approval in accordance with the DoD Link 16 EMC Features Certification Process and Requirements prior to First Article Approval and to maintain such approval until the period of performance for the entire contract is completed. Any waivers or deviations against the DoD Link 16 EMC Features Certification Process and Requirements shall be submitted to NTIA via the DoD Certification

Authority for approval. The certification effort may require technical interchange meetings with the DoD Certification Authority, currently designated as SPAWAR 05 Chief Engineers Office, or with members of their designated EMC Features Certification execution activity. Accordingly, it is the sole responsibility of the Contractor to determine and to provide all information, briefings, test procedures, test conduct, test reports and analysis that may be required to document and obtain certification from the DoD Certification Authority and final EMC features approval from NTIA.

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**COMMUNICATIONS SECURITY (COMSEC) APPROVAL FOR USE (APPLICABLE TO ALL MIDS TERMINALS AND SOFTWARE DELIVERED UNDER THIS CONTRACT)**

The Contractor is required to obtain National Security Agency (NSA) Approval for Use of the MIDS terminals and software together with NSA approval of the associated documentation as part of First Article Approval and to maintain such COMSEC Approval for Use until the period of performance for the entire contract is completed. This effort will require technical interchange meetings with NSA, or a designated agency.

Accordingly, it is the sole responsibility of the Contractor to determine and to provide all information, briefings, test procedures, test conduct, test reports and analysis that may be required to document and obtain such approval by NSA. To obtain copies of the COMSEC requirement documents, the Contractor must send a written request to the National Security Agency (NSA) Program Manager for MIDS, with a copy of the request sent to PMA/PMW 101, MIDS Program Office. The request shall include identification of the Contractor's current U.S. COMSEC account and evidence of a current facility and personnel clearance.

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**CONTRACT SECURITY CLASSIFICATION SPECIFICATION**

DOD Contract Security Classification (DD 254), attached, itemizes the classified portion of work to be performed under this Contract. Upon completion of the final delivery under this contract, the Contractor shall promptly notify, in writing, the Space and Naval Warfare Systems Command (SPAWAR) Security Office (SPAWAR Code 83310), and the MIDS Program Office. The Contractor shall, if applicable, request classified material disposition in accordance with the National Industrial Security Program Operating Manual (NISPOM) (DOD 5220.22-M) and Security within the North Atlantic Treaty Organization (Document C-M(55)15(Final)) and any subsequent amendments.

Regarding FAR 52.204-2 ("Security Requirements"), paragraph (b), the following applies in lieu of DOD 5220.22-M (including any revisions to this manual) for any Non-U.S. contractors or Non-U.S. subcontractors located outside the U.S.:

1. For those located within the Republic of France:
  - (a) "Instruction Generale Interministerielle 1300/SGDN/DR" of 12 March 1982;
  - (b) "Instruction Interministerielle 2000/SGDN/SSD/DR" of 01 October 1986; and
  - (c) "Instruction 2500/DEF/C23" of 26 January 1983.
2. For those located within the Federal Republic of Germany:

"Handbuch fur den Geheimschutz in der Wirtschaft" of Jun 1986
3. For those within the Republic of Italy:

"Norme unificate per La tutela del Segreto" SMD-1/R - Vol III del 1971 e successive direttive/aggiornamenti:  
- PCM-ANS 1/R/A del 28.01.1986  
- ANS-NDA 296  
- ANS-S/R e altre
4. For those within the Kingdom of Spain:

"Manual de Seguridad Industrial de Las F.F.A.A.", Orden Ministerial No. 12-82 (21 October)

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**NONDISCLOSURE OF COMSEC INFORMATION**

COMSEC/TEMPEST information will be the subject of a Memoranda of Agreement between the National Security Agency (NSA) and the Cryptologic Authorities of the Participants. All information related to the COMSEC/TEMPEST portions of this Program will be released on a Government-to-Government basis by the NSA to the Cryptologic Authorities of the Participants. Public release of information relating to COMSEC and its uses shall be restricted in dissemination to Contractor personnel and Government personnel involved in the Contract. Any proposed release of unclassified COMSEC information relating to this Contract into the public domain shall be forwarded, via the PCO, to NSA. The term "release" includes, but is not limited to: newspaper articles, company

newsletters, contract announcements, advertisements, brochures, photographs, motion-picture films, technical papers, unclassified presentations at symposia, speeches, displays, etc. on any COMSEC phase related to this Contract.

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##### **RESTRICTED ACCESS TO COMSEC INFORMATION**

(a) The Contractor agrees to obtain written approval from the National Security Agency (NSA) through the PCO on behalf of the MIDS Program Office (MPO) before assigning work or granting access to any foreign national or foreign representative to data related to the following items/subject matter, whether such data is provided by the Government or generated under this Contract in accordance with DD 254, Contract Security Classification Specification:

1. U-TVB CTIC/DS-101 Hybrid (CDH)
2. KOI-18 Paper Tape Reader
3. Cryptographic Keys (Various developmental Key Material)
4. AN/PYQ-10, Simple Key Loader (SKL)
5. Security and cryptographic related specifications, publications, and software
6. Common Tier 3 DTD UAS
7. KYK-13, Common Fill Device
8. E-HVM (All Variants), MIDS SMP & documents
9. KOV-55, MIDS LVT COMSEC Module (LCM) Crypto Device **and documents**
10. Data Management Device (DMD) User Application Software
11. COMSEC documents and materials
12. NSA Test Link 16 TEKs
13. NSA Test FEKs
14. NSA Test KEKs
15. NSA Master Key Encryption Key (MKEK)
16. KGV-8 (E-2), Miniature Secure Data Unit (SDU)
17. Joint Tactical Information Distribution System (JTIDS)
18. MIDS LVT (All RT-#### Variants)
- 19. MIDS Signal Message Processor (SMP) (Modernized) and documents**

(b) For purposes of this clause, a foreign national is anyone who is not a citizen of the United States. A foreign representative is anyone (regardless of nationality) who is acting as an official, agent, or employee of (i) a foreign owned/controlled/influenced firm, corporation, or person or (ii) a foreign government. Nothing in this clause is intended to waive any requirement imposed by any other US Government agency with respect to employment of either foreign nationals or foreign representatives or to export control.

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##### **DATA/SOFTWARE ACCESSION LIST**

The Data Accession List (DAL) provides a listing of information generated by the Contractor as required by CDRL Data Items A016 **and X00G**. The Contracting Officer may order copies of any data, documentation or computer software identified in the DAL. If requested, electronic copies of the data shall be provided to the Government via MIDSVue within 5 working days from the date of the request. The cost of furnishing such data or software shall be subject to payment pursuant to DFARS 252.227-7027 ("Deferred Ordering of Technical Data or Computer Software") under Section I.

#### H-23

##### **MIDS-LVT FIRST ARTICLE QUALIFICATION REQUIREMENTS**

The contractor is required to have its MIDS-LVT variant(s) first article approved by the Government before the contractor may start delivery of terminals. Contractors that have previously had their MIDS-LVT variant(s) qualified shall provide evidence of that first article approval prior to their first delivery under this contract. For any MIDS-LVT variant(s) for which the contractor has not previously obtained Government first article approval, the Government will approve such variant(s) when all of the following conditions have been met:

- a) The Contractor has submitted a Certificate of Compliance (H-12) after successful completion of contractor Qualification which was performed in accordance with a Government approved contractor qualification plan/procedure. The certificate shall state, as applicable, that the Contractor's first article meets all of the requirements of the MIDS Functional and Allocated baselines detailed in the F Attachments.

- b) The Contractor has submitted an EMC Features Approval (H-16).
- c) The Contractor has submitted a signed COMSEC Approval for Use (H-17).
- d) The Contractor has submitted a signed Air Worthiness certificate (H-15) for terminals to be operated in an airborne environment.
- e) The Contractor has successfully demonstrated LRU and SRU interchangeability in accordance with Section C-2.
- f) The contractor's terminal has successfully passed any Government executed qualification testing that the Government, at its discretion, deems necessary.

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#### **GOVERNMENT FURNISHED COMPUTER SOFTWARE**

As part of the Government qualification process of GFM software cited in H-26, the Government will be testing the software on the contractor's production terminal prior to providing it as GFM. If during this qualification process the Government determines that there is a problem with the contractor's terminal executing the GFM software, the Government will notify the contractor in writing. Within 30 days of Government notification and at no cost to the Government, the contractor shall complete corrective action that ensures its terminal successfully executes the GFM software.

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#### **GOVERNMENT FURNISHED PROPERTY**

The Government will provide only that property set forth below, on or before the date indicated, notwithstanding any provisions of the specification(s) to the contrary: **To be completed upon award**

Upon Contractor's written request to the Procuring Contracting Officer via the cognizant Contract Administration Office, the Government will furnish the following for use in the performance of this contract: **To be completed upon award**

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>DATE</u>	<u>DESTINATION</u>	<u>NOTES</u>
*	*	*	*	*	*

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#### **GOVERNMENT FURNISHED MATERIAL**

(a) The Government, via Management Control Activity (MCA) Distribution Code N00039, will furnish to the Contractor for use in connection with this Contract, only the Government Furnished Material set forth below:

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>DATE</u>	<u>DESTINATION</u>	<u>NOTES</u>
IPO	MIDS CORE Software* MIDS TIO Software*	1 EA 1 EA	Initial: 3 Months After Contract Award.	Available on MIDSvue	Version Description Documents will be

	MIDS ADDSI Software* MIDS CSIA Software* NSIO Software* NCP Software* LVT(3) CORE Software LVT(3) I/O Software*	1 EA 1 EA 1 EA 1 EA 1 EA 1 EA	Updates version provided as available.		provided with the software. Deliveries shall include all source, definition, build files, and all other necessary files to create executables, plus final executables.
NSA	U-TVB CTIC/DS-101 Hybrid (CDH) –	1 per FMS SMP SRU ordered.	6 months prior to the required delivery date for each BU1 terminal/SMP as defined in Section F	Contractor's Plant	See Section H.21.
IPO	KOV-55 (LCM)	1 EA	6 months prior to the required delivery date for each BU2 terminal/SMP as defined in Section F	Contractor's Plant	See Section H-21.

\*Updated versions to be provided as they become available

(b) Only the material listed above in the quantities shown will be furnished by the Government notwithstanding any provisions of the specification(s) to the contrary. Government Furnished Material will be delivered, all transportation charges paid, to the cognizant contract administration office specified herein, in care of the Contractor's plant.

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**WARRANTY (APPLICABLE TO CLINS 1001-1007; 2001-2007; 3001-3007; 4001-4007 and 5001-5007)**

This warranty contains the following sections:

- I. Scope
- II. Definitions
- III. Individual Warranty Coverage
- IV. Systemic/Performance Warranty Coverage
- V. Commercial Warranties
- VI. Warranty Procedures/Remedies
- VII. Other Rights and Remedies
- VIII. Warranty Administration
- IX. Warranty Status Reporting
- X. Exclusions
- XI. Presumption of Failure/Defect
- XII. Contractor Obligations
- XIII. Disputes

**I. SCOPE**

Contractor warrants that hardware items, firmware, and computer software furnished under this contract will conform to the design and manufacturing requirements, and specified performance requirements specifically delineated in the Contract and any supplementary agreements thereto.

**II. DEFINITIONS**

- A. Acceptance: The execution of an official document (DD Form 250) by an authorized representative of the Government.
- B. Cosmetic damage: Cosmetic damage includes faded or chipped paint, scratches, minor dents, nicks, or other damage resulting from normal and customary use that does not affect the operational use or maintenance of the item.
- C. Defect: A condition or characteristic that causes an item's performance not to meet the specifications or other requirements of the contract, or when an item lacks something essential for completeness for its intended use.

A defect does not necessarily affect performance.

D. Design and Manufacturing Requirements: The structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the items being procured under this contract.

E. Failure: A breakdown or degradation of operation or function. Failures include items returned to the contractor's facility that are identified as NEOF (RTOK, NFF and A-799).

F. Individual Coverage: Warranty coverage that requires the contractor to correct all failures for any reason (except for Out-of-warranty Items or Non-warranty Items) via individual warranty claim actions for each failure at no additional cost to the Government.

G. Items: MIDS-LVT (1, 2, 3, 4, 6, 7, 11 and 12) Terminal Sets, LRUs, SRUs, ancillary items and Commercial COMSEC variants delivered under this contract, inclusive of all hardware, firmware, software (except GFE software).

H. No Evidence of Failure: The term "No Evidence of Failure" or NEOF, as used herein, means a returned item that upon initial checkout by the contractor, successfully completes the performance verification testing as defined in the LRU or SRU Acceptance Test Plan (ATP). NEOF is the same as a Retest Okay (RTOK), No Fault Found (NFF), Can Not Duplicate (CND) or A-799.

I. Non-warranty Items: Items that are not warranted, or are excluded under the exclusion clause of this contract.

J. Out-of-warranty Items: Items for which the timeframe in calendar years exceeds the warranty.

K. Repair: The elimination of a defect or correction of a failure. Correction of cosmetic damage is not required unless it effects the operation or maintenance of the item.

L. Repetitive Failure: When at least 3 items delivered to the government over any six-month period of time have failed with the same root cause, the failures are considered repetitive.

M. Retrofit Plan: A retrofit plan describes how the contractor will implement corrections to defects or systemic failures for all fielded items.

N. Systemic/Performance Coverage: Warranty coverage that requires the contractor to correct the cause of repetitive failures or defects for all items. A retrofit plan for repetitive failures or defects is required.

O. Terminal: Includes all of the SRUs and LRUs that make up a MIDS-LVT (1, 2, 3, 4, 6, 7, 11, and 12) and Commercial COMSEC variants ordered under Section B.

P. Turn-Around Time, Contractor Issue: The Contractor Issue TAT (CITAT) clock begins upon receipt of a customer/user requisition at the contractor site, and ends upon delivery to the customer at either a Continental United States (CONUS) operational site, or a CONUS beach/field detachment for military forwarding to an Outside CONUS (OCONUS) site.

Q. Turn-Around Time, Depot Repair: The contractor Depot Repair TAT clock begins upon receipt of a returned SRU or LRU at the contractor site, and ends when it is either placed into wholesale inventory or shipped to user.

R. Warranty: Individual and Systemic/Performance Coverage.

### III. INDIVIDUAL WARRANTY COVERAGE

Warranty for individual coverage begins upon acceptance (DD-250). Terminals, LRUs and SRUs are warranted for individual coverage for a period of four years from acceptance.

Upon repair of an item, the warranty coverage remaining for that item shall be the time or timeframe not yet expended.

### IV. SYSTEMIC/PERFORMANCE WARRANTY COVERAGE

Warranty for systemic/performance coverage begins upon acceptance (DD250). Terminals are warranted for systemic/performance coverage for a period of four years from acceptance. Repetitive failures or defects are covered under systemic/performance coverage and require the contractor to implement the retrofit plan fix on all affected items at no additional cost to the Government.

### V. COMMERCIAL WARRANTIES

The contractor shall provide the Government with any commercial warranties received from his or her suppliers or subcontractors even if they extend beyond the warranty period.

### VI. WARRANTY PROCEDURES/REMEDIES

#### A. Individual Coverage:

The Government will return any item experiencing a failure to the contractor's repair facility.

The contractor shall provide the materials and services necessary to repair or replace the item at no

additional cost to the Government within the specified Turn-Around Time. All repaired items, or items identified as NEOF, shall successfully pass acceptance testing in accordance with appropriate LRU and SRU Acceptance Test Plans for the item prior to return.

If the contractor has any disagreement with the Government regarding a returned item, the contractor shall proceed with the repair/replacement of the item within the specified Turn-Around Time and may invoke his or her rights in accordance with the "Disputes" clause. If the contractor has reason to believe that returned items are not subject to the warranty provisions of this contract, the contractor shall notify the Government within 3 calendar days. Failure to do so will be deemed a waiver by the contractor of any and all remedies to which it otherwise would have been entitled to under the "Disputes" clause. Warranty repairs shall be complete with an average repair Turnaround time of 30 working days. No individual repair turnaround time shall exceed 60 working days.

**B. Systemic/Performance Coverage:**

The contractor shall provide and implement a retrofit plan that provides a detailed technical description of how repetitive failures or defect will be alleviated, and an explanation of how fielded units will be corrected. The contractor shall coordinate the implementation of the corrective action plan with the Government prior to beginning corrective action. Following such coordination, the contractor shall submit the retrofit plan to the Procuring Contracting Officer (PCO) and is liable for all costs associated with the corrective action, including the cost of preparing the plan and transportation costs to effect repair/replacement of items. The retrofit plan shall provide for the repair, replacement or retrofit of all delivered items under this contract.

## **VII. OTHER RIGHTS AND REMEDIES**

A. The rights and remedies of the Government provided for in this warranty do not limit, but are in addition to, the rights the Government has under any other clause of this contract. The requirements of this warranty do not limit the Government's rights under the inspection and acceptance provisions of the contract.

B. This warranty shall not be voided by any Government performed repair of any warranted item when accomplished in accordance with accepted Government maintenance concepts.

C. The Government shall not be responsible for any extension or delay in the scheduled deliveries or periods under this contract as a result of the contractor's obligation to repair or replace defective or failed items. There shall not be any adjustments of the delivery schedule or periods of performance as a result of the repair or replacement of defective or failed items, unless provided for by the inclusion of a modification, with adequate consideration to the Government in this contract. The Government's rights under this warranty shall survive final payment.

## **VIII. WARRANTY ADMINISTRATION**

A. The contractor and Government will administer the warranty.

B. Disagreements on warranty issues shall be settled pursuant to the "Disputes" clause of the contract. The contractor shall repair/replace all returned items in accordance with the terms of this warranty while the dispute is being resolved.

## **IX. WARRANTY STATUS REPORTING**

The contractor shall report on warranty status via the contractor online database.

## **X. EXCLUSIONS**

A. The contractor shall prove to the satisfaction of the ACO by a preponderance of the evidence that an item returned for repair is excluded from warranty due to one of the following exclusions:

- (1) Combat damage
- (2) Damage or failures, that are beyond the control of and not attributable to the contractor, that are caused by:
  - (a) willful misconduct
  - (b) abuse
  - (c) improper user installation or application (e.g. improper cabling, rack mounting, power input or exposure to environmental conditions beyond specific capabilities)
  - (d) maintenance not executed in accordance with the Government maintenance concept
  - (e) negligence in transportation, with the exception of transportation covered under warranty



paragraph XIIB, handling, or storage

(f) use by non-contractor personnel of shipping containers other than those specified per ASTM D3951-95 "Standard Practice for Commercial Packaging", if use of such container resulted in damage

(g) catastrophic damage such as fire, flood or explosion

(h) act of God

B. If the contractor considers that a returned item is covered by one of the exclusions listed above, the contractor shall request the ACO to perform inspection of the items that the contractor considers subject to exclusion

If the ACO determines that the repair or replacement is excluded, repair or replacement of the items may be accomplished under a repair contract. All repaired items shall continue to be warranted for the remaining warranty period at no change in the contract price.

The failure of the ACO and the contractor to reach an agreement on exclusion shall be considered a Dispute within the meaning of the "Disputes" clause. The contractor shall proceed with the repair/replacement upon written direction of the ACO, even if a disagreement exists.

C. With respect to Government Furnished Property (GFP), the contractor's warranty shall extend only to the proper installation of the GFP, so as not to degrade the performance or reliability of the GFP. If the contractor performs some modification or other work on such property, then the contractor's warranty shall extend to such modification or other work performed on the GFP.

## **XI. PRESUMPTION OF FAILURE/DEFECT**

A. If the Contracting Officer issues a Final Decision pursuant to the "Disputes" clause of this contract finding that none of the exclusions identified in X of this clause was (were) the cause(s) of the defects or failures of any hardware items, firmware or computer software to perform in accordance with all terms and conditions of the contract during the period identified in section IV of this clause, and the Contractor subsequently files an appeal from that Final Decision with any court or board of contract appeals, on appeal the contractor shall have the burden of proving beyond a preponderance of the evidence that one or more of the exclusions identified in section X of this clause was (were) the cause(s) of the defects or failure of any hardware items, firmware or computer software to perform in accordance with all terms and conditions of the contract during the period identified in sections III and IV of this clause.

B. The contractor shall have this burden of proof regardless of which party may have possession, custody or control over any evidence (documentary or testimonial) which would tend to prove or disprove the existence of any of the exclusions identified in section X of this clause, and regardless of whether the matter is before the Contracting Officer, a court or a board of contract appeals.

C. The parties agree that unless the contractor can sustain this burden of proof, the warranty described in this clause shall be applicable to the hardware items, firmware and computer software delivered under this contract which failed or are defective. Likewise, where the Contracting Officer makes a determination under section IV of this clause that the failures were systemic, the contractor shall have the burden of proving to the satisfaction of the Contracting Officer, a court or a board of contract appeals, by a preponderance of the evidence, that the defects or failures were not systemic, regardless which party may have possession, custody or control over any evidence (documentary or testimonial) which would tend to prove or disprove that the defects or failures experienced were caused by systemic defects or failures.

D. If it is later determined by the Contracting Officer, a court or a board of contract appeals that one or more of the exclusions identified in section X of this clause was (were) the cause(s) of the failures or defects of any hardware items, firmware or computer software to perform in accordance with all terms and conditions of the contract during the period identified in sections III & IV of this clause, the contract price will be equitably adjusted.

## **XII. CONTRACTOR OBLIGATIONS**

### **A. Labeling or Plating**

The contractor shall provide contractor data markings for identification of each LRU and SRU in accordance with the requirements contained in Section D.

### **B. Transportation costs**

The contractor shall be responsible for the cost of transporting warranted items back to the Government designated point of delivery. Shipment shall be made by the most expedient means available. Preservation, packaging, packing and handling of repaired items shall be in accordance with the requirements contained in Section D.

### XIII. DISPUTES

The rights and remedies of the Government provided in this warranty are in addition to, and do not limit, any right the Government may have under any other clause of this contract. Disputes arising under this warranty will be resolved in accordance with the Section I clause of this contract entitled "Disputes."

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#### **REQUALIFICATION REQUIREMENTS**

During production, the contractor shall apply the Configuration Management (CM) requirements of Attachment A of the contract and the contractor's CM procedures. The Government reserves the right to require the Contractor to re-qualify his product if either of the following occurs:

- (1) The Contractor has modified its product, or changed the material or its manufacturing processes such that, in the opinion of the Government, the validity of the previous qualification is questionable. Any expenses incurred by the Contractor associated with re-qualification in these instances (including but not limited to regressive testing) shall be borne by the Contractor.
- (2) It is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification. Any costs incurred by the Contractor associated with re-qualification in this instance (including but not limited to regressive testing) shall be negotiated between the Government and the Contractor.

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#### **REQUIREMENTS FOR THE DELIVERY OF LVT (4) CONFIGURATION TERMINALS EXECUTING NSIO AND NCP SOFTWARE**

**Any terminals ordered with the term "NSIO" in the description are required to be delivered with CORE, NCP and NSIO software. The Allocated Baseline for these terminals is contained in the applicable Attachment F.*n* (where *n* is the version number, .1, .2, etc.), Data List # DL-M-40044 or DL-M-40244. These terminals shall be Acceptance Tested in a standard LVT (4) configuration, i.e. the CORE and TIO configuration. Upon successful completion of ATP, the vendor shall load the requested MIDS on Ship SMP software and block cycle of CORE, NSIO and NCP software in to the terminals. The vendor shall verify the correct software load of SMP, CORE, NSIO and NCP, then successfully perform IBIT with NSIO in accordance with SSS Section 3.2.5.2.6.3, and document the IBIT results prior to terminal delivery to the customer. In addition the LVT(4) with CORE, NSIO and NCP software configuration shall have completed Contractor and Government performance verification and received Government qualification for this configuration.**

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#### **ASSOCIATE CONTRACTORS CLAUSE**

The Contractor shall maintain a close liaison with the other MIDS production contractors (EuroMIDS and US contractors to be included after award of contracts), Government and Software Support Activities (SSAs) (BAE Systems and EuroMIDS), on matters pertaining to the interface control, interoperability, and interchangeability through the Technical Working Group (TWG), Problem Review Board (PRB) and Interface Control Working Group (ICWG). Accordingly;

- (a) In performance of this contract, the Contractor shall participate with the other MIDS production contractors, Government, and SSAs in the TWG, PRB, and ICWG. The TWG shall be a forum, chaired by the Government, that provides the communication link between the MIDS production contractors, the Government, the SSAs, the MIDS International Program Office (IPO), national representatives, and senior technical and platform integrator representatives, for resolving interface and technical problems. The PRB shall be a forum, chaired by the Government, which addresses and monitors the status and disposition of problems and deficiencies. The ICWG shall be a forum for the MIDS production contractors, Government, and SSAs to discuss technical issues concerning Engineering Change Proposals (ECPs) to ensure that all parties agree on the exact technical wording of Specification change(s) prior to the MIDS production contractors submitting ECPs to the Government. The purpose of the ICWG is to develop, control, and coordinate changes to the MIDS Functional Baseline and Allocated Baseline documents prior to submission of an ECP and Companion ECPs to the Government. Incident to its participation in the TWG, PRB, and ICWG, the Contractor agrees to disclose to other MIDS Production and SSA contractors, after the execution of suitable proprietary information protection agreements, data and

software requested by the TWG, PRB, or ICWG that are relevant and necessary to ensure a complete and successful agreement on the technical wording of potential FBL and ABL ECPs.

(b) In the event that the Contractor considers any direction, or other conduct by the TWG, PRB, and ICWG, or any member thereof, to constitute a change to this contract, it shall refrain from acting thereon, and shall so notify the Contracting Officer in accordance with the terms and conditions of clause 52.243-7 "Notification of Changes" of this contract.

(c) In addition to participating in the TWG, PRB, and ICWG, the Contractor shall establish associate contractor relationships, as described below, to ensure the successful completion of interface control documentation.

(d) All data and software to which limited/restricted rights apply that is furnished by the Contractor to other MIDS production contractors, the Government and SSAs through the TWG, PRB, and ICWG shall bear the appropriate markings as delineated in DFARS 252.227-7013 and 252.227-7014. Except with the prior written permission of the Contractor, the Government shall not release, use, or disclose, in whole, or in part, such data or software for any purpose other than the performance of the interface requirements of this contract. This provision, however, shall not limit the rights of the Government in such data and software that are lawfully obtained from another source.

(e) Furthermore, the Contractor hereby agrees that it shall use data and software to which limited/restricted rights apply, whether provided by the Government, other MIDS production contractors, or SSAs through the TWG, PRB, or ICWG, solely for the purposes of fulfilling the TWG, PRB, and ICWG requirements detailed in this contract, and agrees to indemnify and hold the Government harmless against any claim asserted by any party arising out of the Contractor's use of such data and software. This provision, however, shall not limit any right of the Contractor to use such data and software that is lawfully obtained from some other source.

(f) The Contractor shall be responsible for notifying the Government as to any information, including data and software, requested at the TWG, PRB, and ICWG that the Contractor believes to be of a limited/restricted rights nature.

(g) Nothing in this clause shall be construed as limiting the parties' rights under the Rights in Technical Data and Computer Software clauses contained in this contract.

(h) While the Government will attempt to facilitate the exchange of information amongst the MIDS production contractors, Government, and SSAs, the Contractor is solely responsible for obtaining and providing all information necessary to successfully perform the requirements of this contract. The Contractor shall enter into Associate Contractor Agreements with the awardees of all US and European MIDS Production contract(s), and any SSA(s). The Associate Contractor Agreement shall address, at a minimum, the requirements identified in this clause. The Procurement Contracting Officer will notify the Contractor of the names of the MIDS production contract awardees and contractor SSAs. Upon notification, the Contractor shall, within 30 calendar days, execute and deliver signed ACAs that comply with all the requirements of this clause, with all the entities contained in the notification, to the Procurement Contracting Officer (PCO). Fulfillment of this requirement is a "material requirement" of this contract. Accordingly, the Contractor agrees that in the event that a copy of the required ACAs are not provided to the PCO within 30 calendar days after the PCO notification described above, the PCO shall have the right to reduce or suspend progress payments or performance based payments, as applicable, or terminate this contract for default. Any subsequent modifications to the ACAs shall be submitted to the PCO within 30 calendar days after execution. The Contractor shall ensure that the ACAs remain in effect through the period of performance of this contract, which includes the periods of performance for any and all options exercised.

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#### **COMMUNICATIONS SECURITY (COMSEC) REQUIREMENTS FOR TERMINALS AND REPAIRS PROCURED FOR U.S. REQUIREMENTS**

This section only applies for MIDS Terminals produced or repaired for U.S. requirements. The Contractor shall ensure that all COMSEC portions of MIDS Terminals are manufactured, integrated and delivered in the U.S. only by a U.S. contractor holding a U.S. COMSEC account. Once the COMSEC portion of the MIDS terminals are integrated, the MIDS Terminals shall not leave the custody of that U.S. contractor prior to delivery.

H-48

#### **METHOD OF SELECTION FOR ISSUANCE OF ORDERS FOR COMPETITIVE FOREIGN MILITARY SALES (FMS)**

Individual orders for Foreign Military Sales requirements that are not directed sole source by the foreign customer to a particular contractor shall be placed using the following selection procedure:

The ordering officer will request proposals from each U.S. MIDS contractor and the European MIDS contractor and

make award to a single contractor whose proposal, in the judgment of the ordering officer, represents the best value to the government. "Best value" is defined as the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement (FAR 2.101). The offeror's proposed price for an individual FMS competition may either be based upon the existing price model in Section B of the contract or a different price model for the instant procurement.

For the FMS competitions the ordering officer may consider factors including, but not limited to: the proposed price; and past performance under this contract including all outstanding and previous delivery orders

Note: The listing of factors above is not inclusive and is not listed in any order of relative importance. All applicable factors and their relative importance will be contained in the RFP for each particular competitive FMS requirement. Past performance includes, but is not limited to, the contractor's record of delivering in accordance with the contract delivery schedule. The specific evaluation factor that considers past performance will be fully defined in the RFP for each particular competitive FMS requirement.

H-32

### **MIDS-LVT THIRD PARTY TRANSACTIONS**

(a) Definitions. For the purposes of this section:

"Participants" is defined as a signatory of the MIDS Program Memorandum of Understanding and each supplement.

"Foreground Information" is defined as any information generated under the Program.

"Information" is defined as any information, knowledge, or data, regardless of form or characteristics including: that of a scientific or technical nature, threat, experimental and test data, designs, semiconductor mask works and topography, improvements, photographs, reports, manuals, specifications, processes, techniques, inventions, technical writings, computer software, sound recordings, pictorial reproductions, drawings and other graphical representations; whether on magnetic tape, in computer memory or in whatever form presented, and whether or not subject to copyright or other legal protection.

"MIDS-LVT Equipment" is defined as program equipment, including hardware and software that is produced or supported through contracts managed by the MIDS International Program Office (IPO). MIDS-LVT Equipment may be an end item, a system, or a component. MIDS-LVT Equipment includes MIDS-LVT all variants. MIDS-LVT Equipment excludes special tooling and test equipment.

"Third Party" is defined as any entity that desires to obtain MIDS-LVT Equipment and Foreground Information outside of this contract, i.e., not through an order placed under this contract.

"Procuring Contracting Officer" is defined in Section G under 5252.216-9209 "Appointment of Ordering Officer(s)".

"Levy" is defined as the recoupment value of Nonrecurring Costs (NRC) that can be obtained by the Participants for certain transactions involving Third Parties.

(b) Restriction. The contractor, and all of its subcontractors, are prohibited from selling, entering into a contract to sell, transferring title of, or disclosing or transferring possession of, any MIDS-LVT Equipment or Foreground Information, exclusive of any MIDS-LVT Equipment or Foreground Information that has been approved for public release, to any Third Party without the express written notification by the Procuring Contracting Officer (PCO) that the proposed transaction is approved by the MIDS Steering Committee or U.S. MIDS Steering Committee Representative, as applicable.

(c) Procedures

(1) If at any time the contractor desires to engage in a transaction restricted by paragraph (b) above, the contractor must submit a formal written request to that effect to the PCO prior to the earlier of (a) forwarding an offer to sell, entering into a contract to sell, or transferring MIDS-LVT Equipment or Foreground Information to a Third Party, or, (b) submittal of a request to the United States Department of State for an export license, if necessary, for such a proposed transaction. The request shall include at a minimum the following information:

(i) A description of the defense equipment or information to be transferred, including quantity, number of units, unit price, and total value of proposed sale,

(ii) The identity of the Ministry of Defense of the new recipient (if applicable).

(iii) The anticipated purpose, end use, and end user of the defense equipment or information.

If the contractor deems its request to be proprietary, the following paragraph shall be included in its request:

This request for sale or transfer of MIDS-LVT Equipment or Foreground Information includes data that shall not be disclosed outside of the Participants and shall not be duplicated,

used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this request. This restriction does not limit the Participants' rights to use information contained in this data if it is obtained from another source without restriction.

(2) Upon receipt of a request submitted pursuant to (c)(1), the PCO will forward the request to either the MIDS Steering Committee or the U.S. MIDS Steering Committee Representative, depending upon the nature of the requested transaction, for consideration and action. The PCO will notify the contractor when the MIDS Steering Committee or the U.S. MIDS Steering Committee Representative, as applicable, decides to approve or disapprove the requested transaction. The contractor may enter into the transaction as specifically requested pursuant to paragraph (c)(1) only upon receipt of PCO notification that the requested transaction has been approved.

(3) If the request submitted pursuant to (c)(1)(ii) is for a transaction either directly with a foreign government or foreign industry OR to a US Government Agency or US industry where the end user is a foreign government or foreign industry, a levy payment in accordance with section (d) shall be included.

(d) Additional Guidelines and Procedures for Approved Transactions To Third Parties Involving Levies  
(1) If the contractor's request is approved by the MIDS Steering Committee, then the contractor will include the applicable levy as a separately priced line item in the proposal to the Third Party. The applicable amount of the EMD non-recurring costs will either be deposited to the MIDS Nations levy accounts directly by the Third Party or included on the contract and deposited to the MIDS Nations levy accounts by the contractor. The MIDS IPO will provide instructions for deposit of the levies. This sum shall not include any amount that any or all of the Governments elect to waive.

(2) Prior to shipment of MIDS equipment to the Third Party, the contractor shall obtain written verification from the MIDS International Program Office that all applicable levies have been deposited to the Participants' bank accounts. Shipment of MIDS equipment without obtaining such verification may result in withdrawal of approval for current transactions, and rejection of future requests (presented pursuant to paragraph (c)(1)) by the MIDS Steering Committee.

(3) The contractor agrees to include in any proposals to a Third Party the not-to-exceed amount of \$17,071 per terminal, which represents the maximum recoupment value that can be levied by the Participants (exclusive of the US Government) for any Third Party transaction.

(4) The contractor further agrees to include the following language in all contracts it enters into with Third Parties that involve the export of MIDS LVT Equipment and Foreground Information:

"The acceptance of this Contract by the Contractor is based upon its receipt of both the applicable export approval of the Department of State of the United States of America pursuant to the International Traffic in Arms Regulations and the approval of the MIDS Steering Committee for the transfer of MIDS LVT equipment and information to the Customer."

(e) The contractor acknowledges that although the United States is one of the five participants to the MIDS program, the United States has no authority to order the MIDS Steering Committee to approve any particular request for sale or transfer of MIDS-LVT Equipment or Foreground Information to a Third Party.

(f) For all transactions involving Third Parties, the contractor shall take appropriate measures to ensure that the Third Party does not re-transfer or use the MIDS-LVT Equipment or Foreground Information provided to that Third Party in any manner inconsistent with the purposes approved by the MIDS Steering Committee or U.S. MIDS Steering Committee Representative, as applicable.

(g) The Contracting Officer's written notification of the approval of a transaction restricted by paragraph (c) involving a particular Third Party shall not constitute an approval by either the MIDS Steering Committee or U.S. MIDS Steering Committee Representative of any desired future transaction restricted by paragraph (c) with either that Third Party or another Third Party.

(h) The contractor acknowledges and agrees that this section is a material requirement of the contract, and that its failure to follow any requirement of this section entitles the Government to terminate the contract for default.

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#### **NON-CONFORMANCES TO SPECIFICATION ON BLOCK UPGRADE 2 (BU2) BASELINE**

The following non-conformances to specification are accepted as part of the BU2 baseline. These nonconformances will be accepted in any BU2 production terminal, LRU and SRU (includes retrofits):

(a) SSS 3.3.2.1 – MIDS-LVT (2/11) Radiated Emissions (RE02)

(b) SSS 3.2.6.1.1.d – MIDS-LVT(1)/(6) BU2 TACAN built-in test reports while operating at transient high temperature and cooling conditions LVT

(c) SSSA 3.2.5.2.6.1 – MIDS-LVT (2/11) Startup time in the BU2 exceeds 15 seconds

H-12.1

**LCM CERTIFICATE OF COMPLIANCE**

1) The Contractor shall certify that the LCM, as designed, meets all the current requirements of the contract and all attachments. Any and all non-conformances shall be documented in separate Requests for Deviation (RFDs) and submitted for Government approval and shall be noted on the individual Certificates of Compliance. The Contractor shall submit a separate Certificate of Compliance for each MIDS variant (e.g. LVT(1), LVT(2), LVT(3)).

2) These certificates shall be delivered via contract letter after the contractor has successfully completed its contractor qualification effort. The certification must be submitted no later than 15 days prior to the contractor request for Government acceptance (via DD 250) of the first terminal for each variant. The certificates shall be signed by an individual authorized to obligate the contractor.

H-17.1

**COMMUNICATIONS SECURITY (COMSEC) APPROVAL FOR USE (APPLICABLE TO ALL MIDSLVT**

**CRYPTOGRAPHIC MODULE (LCM) AND SOFTWARE DELIVERED UNDER THIS CONTRACT)**

1) The Contractor is required to obtain National Security Agency (NSA) Approval for Use of the LCM and software together with NSA approval of the associated documentation as part of First Article Approval and to maintain such COMSEC Approval for Use until the period of performance for the entire contract is completed. This effort will require technical interchange meetings with NSA, or a designated agency.

2) Accordingly, it is the sole responsibility of the Contractor to determine and to provide all information, briefings, test procedures, test conduct, test reports and analysis that may be required to document and obtain such approval by NSA. To obtain copies of the COMSEC requirement documents, the Contractor must send a written request to the National Security Agency (NSA) Program Manager for MIDS, with a copy of the request sent to the MIDS Program Office. The request shall include identification of the Contractor's current U.S. COMSEC account and evidence of a current facility and personnel clearance.

H-39.1

**LCM WARRANTY (APPLICABLE TO CLINS 5013 and 5014)**

This warranty contains the following sections:

**I. Scope**

**II. Definitions**

**III. Individual Warranty Coverage**

**IV. RESERVED**

**V. Commercial Warranties**

**VI. Warranty Procedures/Remedies**

**VII. Other Rights and Remedies**

**VIII. Warranty Administration**

**IX. Warranty Status Reporting**

**X. Exclusions**

**XI. Presumption of Failure/Defect**

**XII. Contractor Obligations**

**XIII. Disputes**

**I. SCOPE**

Contractor warrants that hardware items furnished under this contract will conform to the requirements specifically delineated in the Contract and any supplementary agreements thereto.

**II. DEFINITIONS**

**A. Acceptance:** The execution of an official document (DD Form 250) by an authorized representative of the Government.

**B. Cosmetic damage:** Cosmetic damage includes faded or chipped paint, scratches, minor dents, nicks, or other damage resulting from normal and customary use that does not affect the operational use or maintenance of the item.

**C. Defect:** A hardware condition that causes a specific item not to meet the specifications of the

contract.

**D. Manufacturing Requirements:** The manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the items being procured under this contract.

**E. Failure:** A breakdown or degradation of operation or function due to the item's hardware. Failures include items returned to the contractor's facility that are identified as NEOF (RTOK, NFF and A-799).

**F. Individual Coverage:** Warranty coverage that requires the contractor to correct all hardware failures (except for Out-of-warranty Items or Non-warranty Items) via individual warranty claim actions for each hardware failure at no additional cost to the Government.

**G. Items:** LCM hardware and ancillary hardware items delivered under this contract (except GFE).

**H. No Evidence of Failure:** The term "No Evidence of Failure" or NEOF, as used herein, means a returned item that upon initial checkout by the contractor, successfully completes the performance verification testing as defined in the applicable Acceptance Test Plan (ATP). NEOF is the same as a Retest Okay (RTOK), No Fault Found (NFF), Can Not Duplicate (CND) or A-799.

**I. Non-warranty Items:** Items that are not warranted, or are excluded under the exclusion clause of this contract.

**J. Out-of-warranty Items:** Items for which the timeframe in calendar years exceeds the warranty.

**K. Repair:** The elimination of a defect or correction of a failure. Correction of cosmetic damage is not required unless it effects the operation or maintenance of the item.

**L. Turn-Around Time, Contractor Issue:** The Contractor Issue TAT (CITAT) clock begins upon receipt of a customer/user requisition at the contractor site, and ends upon delivery to the customer at either a Continental United States (CONUS) operational site, or a CONUS beach/field detachment for military forwarding to an Outside CONUS (OCONUS) site.

**M. Turn-Around Time, Depot Repair:** The contractor Depot Repair TAT clock begins upon receipt of a returned item at the contractor site, and ends when it is either placed into wholesale inventory or shipped to user.

**N. Warranty: Individual Coverage** as defined herein.

**O. Turn-Around Time, Warranty:** Working days from the time an asset is inducted for repair until the item is certified ready for issue.

### **III. INDIVIDUAL WARRANTY COVERAGE**

Warranty for individual coverage begins upon acceptance (DD-250). LCMs are warranted for individual coverage for a period of four years from acceptance.

Upon repair of an item, the warranty coverage remaining for that item shall be the timeframe not yet expended.

### **IV. RESERVED**

### **V. COMMERCIAL WARRANTIES**

The contractor shall provide the Government with any commercial warranties received from his or her suppliers or subcontractors even if they extend beyond the warranty period.

### **VI. WARRANTY PROCEDURES/REMEDIES**

#### **A. Individual Coverage:**

The Government will return any item experiencing a hardware failure to the contractor's repair facility. The contractor shall provide the materials and services necessary to repair or replace the item at no additional cost to the Government within the specified Turn-Around-Time. All repaired items, or items identified as NEOF, shall successfully pass acceptance testing in accordance with appropriate LCM Acceptance Test Plans for the item prior to return.

If the contractor has any disagreement with the Government regarding a returned item, the contractor shall proceed with the repair/replacement of the item within the specified Turn-Around Time and may invoke his or her rights in accordance with the "Disputes" clause. If the contractor has reason to believe that returned items are not subject to the warranty provisions of this contract, the contractor shall notify the Government within 3 calendar days. Failure to do so will be deemed a waiver by the contractor of any and all remedies to which it otherwise would have been entitled to under the "Disputes" clause. Warranty repairs shall be complete with an average repair Turnaround time of 30 working days. No individual repair turn-aroundtime shall exceed 60 working days.

## **VII. OTHER RIGHTS AND REMEDIES**

A. The rights and remedies of the Government provided for in this warranty do not limit, but are in addition to, the rights the Government has under any other clause of this contract. The requirements of this warranty do not limit the Government's rights under the inspection and acceptance provisions of the contract.

B. This warranty shall not be voided by any Government performed repair of any warranted item when accomplished in accordance with accepted Government maintenance concepts.

C. The Government shall not be responsible for any extension or delay in the scheduled deliveries or periods under this contract as a result of the contractor's obligation to repair or replace defective or failed items. There shall not be any adjustments of the delivery schedule or periods of performance as a result of the repair or replacement of defective or failed items, unless provided for by the inclusion of a modification, with adequate consideration to the Government in this contract.

D. The Government's rights under this warranty shall survive final payment.

## **VIII. WARRANTY ADMINISTRATION**

A. The contractor and Government will administer the warranty.

B. Disagreements on warranty issues shall be settled pursuant to the "Disputes" clause of the contract. The contractor shall repair/replace all returned items in accordance with the terms of this warranty while the dispute is being resolved.

## **IX. WARRANTY STATUS REPORTING**

The contractor shall report on warranty status via the contractor database (CDRL X006)

## **X. EXCLUSIONS**

A. The contractor shall prove to the satisfaction of the Administrative Contracting Officer (ACO) by a preponderance of the evidence that an item returned for repair is excluded from warranty due to one of the following exclusions:

(1) Failures not related to the hardware requirements specifically delineated in the Contract or any supplementary agreements thereto

(2) Combat damage

(3) Damage or failures, that are beyond the control of and not attributable to the contractor, that are caused by:

(a) willful misconduct

(b) abuse

(c) improper user installation or application (e.g. improper cabling, rack mounting, power input or exposure to environmental conditions beyond specific capabilities)

(d) maintenance not executed in accordance with the Government maintenance concept

(e) negligence in transportation, with the exception of transportation covered under warranty paragraph XIIB, handling, or storage

(f) use by non-contractor personnel of shipping containers other than those specified per ASTM D3951-

95 "Standard Practice for Commercial Packaging", if use of such container resulted in damage

(g) catastrophic damage such as fire, flood or explosion

A. (h) act of God

B. B. If the contractor considers that a returned item is covered by one of the exclusions listed above, the

C. contractor shall request the ACO to perform inspection of the items that the contractor considers subject to

D. exclusion.

E. If the ACO determines that the repair or replacement is excluded, repair or replacement of the items may be

F. accomplished under a repair contract. All repaired items shall continue to be warranted for the remaining

G. warranty period at no change in the contract price.

H. The failure of the ACO and the contractor to reach an agreement on exclusion shall be considered a Dispute



- I. within the meaning of the "Disputes" clause. The contractor shall proceed with the repair/replacement upon
- J. written direction of the ACO, even if a disagreement exists.
- K. C. With respect to Government Furnished Property (GFP), the contractor's warranty shall extend only
- L. to the proper installation of the GFP, so as not to degrade the performance or reliability of the GFP. If the
- M. contractor performs some modification or other work on such property, then the contractor's warranty shall
- N. extend to such modification or other work performed on the GFP.
- O. XI. PRESUMPTION OF FAILURE/DEFECT
- P. A. If the Contracting Officer issues a Final Decision pursuant to the "Disputes" clause of this contract
- Q. finding that none of the exclusions identified in X of this clause was (were) the cause(s) of the defects or
- R. failures of any hardware items to perform in accordance with all terms and conditions of the contract during
- S. the period identified in section IV of this clause, and the Contractor subsequently files an appeal from that
- T. Final Decision with any court or board of contract appeals, on appeal the contractor shall have the burden of
- U. proving beyond a preponderance of the evidence that one or more of the exclusions identified in section X of
- V. this clause was (were) the cause(s) of the defects or failure of any hardware items to perform in accordance
- W. with all terms and conditions of the contract during the period identified in sections III and IV of this clause.
- X. B. The contractor shall have this burden of proof regardless of which party may have possession, custody or control over any evidence (documentary or testimonial) which would tend to prove or disprove the existence of any of the exclusions identified in section X of this clause, and regardless of whether the matter is before the Contracting Officer, a court or a board of contract appeals.
- C. The parties agree that unless the contractor can sustain this burden of proof, the warranty described in this clause shall be applicable to the hardware items delivered under this contract which failed or are defective.
- D. If it is latter determined by the Contracting Officer, a court or a board of contract appeals that one or more of the exclusions identified in section X of this clause was (were) the cause(s) of the failures or defects of any hardware items to perform in accordance with all terms and conditions of the contract during the period identified in Sections III & IV of this clause, the contract price will be equitably adjusted.

## **XII. CONTRACTOR OBLIGATIONS**

### **A. Labeling or Plating**

The contractor shall provide contractor data markings for identification of each LCM in accordance with the requirements contained in Section D.

### **B. Transportation costs**

The contractor shall be responsible for the cost of transporting warranted items back to the Government designated point of delivery. Shipment shall be made by the most expedient means available. Preservation, packaging, packing and handling of repaired items shall be in accordance with the requirements contained in Section D.

## **XIII. DISPUTES**

The rights and remedies of the Government provided in this warranty are in addition to, and do not limit, any right the Government may have under any other clause of this contract. Disputes arising under this warranty will be resolved in accordance with the Section I clause of this contract entitled "Disputes."

**In the event that the contractor decides that it will no longer support/repair any items delivered to the Government under this contract or any other MIDS-LVT contract awarded to the contractor, the contractor shall offer to the Government: (a) Technical Data Package (TDP) and (b) technical data and software rights in that TDP that are both sufficient for another company or the Government to make repairs and produce the item (CDRLs A006 and X00F).**

CLAUSES INCORPORATED BY REFERENCE  
252.216-7006    Ordering                    MAY 2011

CLAUSES INCORPORATED BY FULL TEXT

**5252.216-9213 TYPES OF TASK OR DELIVERY ORDERS (DEC 1999)**

The following types of task or delivery orders may be issued under this contract:

- (\*) A cost-plus-fixed-fee (CPFF) level of effort (LOE) task order will be issued when the scope of work is defined in general terms requiring only that the contractor devote a specified LOE for a stated time period.**
  - (\*) A firm-fixed-price (FFP) delivery order will be issued when acquiring supplies or services on the basis of reasonably definite or detailed specifications and fair and reasonable prices can be established at the outset.**
- (End of clause)

**5252.216-9216 PROCEDURES FOR ISSUING ORDERS (JUN 2009)**

(a) *Ordering.* This is an IDIQ for production of the MIDS-LVT radios, **spares, and LCMs**. Ordering for any other customer is prohibited without authority of the Contracting Officer or his/her representative. Supplies or services to be furnished under this contract shall be furnished by the issuance of delivery or task orders on DD Form 1155. Orders shall be placed by the Ordering Officer or his/her representative. Delivery or task orders shall contain the information in paragraph (b) below:

(b) *Ordering Procedures.* (1) Delivery or task orders issued shall include, but not be limited to, the following information:

- (a) Date of Order
- (b) Contract, order number and requisition number
- (c) Appropriation and accounting data
- (d) Description of the services to be performed
- (e) Description of end item(s) to be delivered
- (f) DD Form 254 (Contract Security Classification Specification), if applicable
- (g) DD Form 1423 (Contract Data Requirements List), if data to be delivered under the order is not listed on the DD Form 1423 included in this contract
- (h) Exact place of pickup and delivery
- (i) The inspecting and accepting codes (as applicable)
- (j) Period of time in which the services are to be performed
- (k) For each applicable labor category, estimated number of labor hours required to perform the order
- (l) The estimated cost plus fixed fee or ceiling price for the order
- (m) List of Government-furnished material and the estimated value thereof, if applicable
- (n) Delivery date

(2)(a) Pursuant to the clause at 52.216-18, Ordering, incorporated into this contract in Section I, the Government may issue orders orally, by facsimile, or by electronic commerce methods including, but not limited to, sending the orders by e-mail to the contractor.

(b) Oral orders may be placed hereunder only in emergency circumstances. Information described above shall be furnished to the contractor at the time of placing an oral order and shall be confirmed by issuance of a written delivery/task order on DD Form 1155 within two working days. Oral orders placed under this contract shall not exceed *TBD*.

(c) *Modification of Delivery/Task Orders.* Delivery/Task orders may be modified by the ordering officer. Modifications to delivery/task orders shall include the information set forth in paragraph (b) above, as applicable. Delivery or task orders may be modified orally by the ordering officers in emergency circumstances. Oral modifications shall be confirmed by issuance of a written modification within two working days from the time of the oral communication modifying the order. The Contractor shall acknowledge receipt of any delivery or task order within one working day after receipt thereof.

(d) *Ceiling Price*. The cost plus fixed fee or ceiling amount for each delivery/task order will be the ceiling price stated therein and may not be increased except when authorized by a modification to the delivery/task order.

(e) *Unilateral Orders*. Delivery or task orders under this contract will ordinarily be issued after both parties agree on all terms. If the parties fail to agree, the Ordering Officer may require the contractor to perform and any disagreement shall be deemed a dispute within the meaning of the "Disputes" clause.

(End of clause)

#### **5252.219-9201 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2003)**

Pursuant to Public Law 95-507, the Contractor's Subcontracting Plan for small business, HUBZone small business, small disadvantaged business, women-owned small business, veteran-owned small business, and service-disabled veteran-owned small business concerns is hereby approved and attached hereto as Attachment B and made a part of this contract.

(End of clause)

#### **5252.225-9200 OFFSHORE PROCUREMENT OF COMSEC EQUIPMENT (MAY 1996)**

Due to the unique sensitivity of Communications Security and to maintain rigid control over the integrity of COMSEC equipment, no subcontracts or purchase orders which involve design, manufacture, production, assembly or test in a location not in the United States, of equipment, assemblies, accessories or parts performing cryptographic functions shall be made under this contract without prior specific approval of the Contracting Officer. The Contractor further agrees to include this clause in any and all subcontracts he may let pursuant to this contract for equipment, assemblies, accessories or parts.

(End of clause)

#### **5252.227-9215 QUALIFIED U.S. CONTRACTORS FOR EXPORT-CONTROLLED TECHNICAL DATA (JAN 1992)**

(a) By Department of Defense (DoD) Directive 5230.25 (hereinafter referred to as "the Directive"), a program was established to allow Qualified U.S. Contractors to obtain export-controlled technical data under certain conditions. A "Qualified U.S. Contractor" is a private individual or enterprise (hereinafter described as a U.S. Contractor") that, in accordance with procedures established by the Under Secretary of Defense for Research and Engineering, certifies, as a condition of obtaining export-controlled technical data subject to the Directive from the Department of Defense, that:

(1) The individual who will act as recipient of the export-controlled technical data on behalf of the U.S. contract is a U.S. citizen or a person admitted lawfully into the United States for permanent residence and is located in the United States.

(2) Such data are needed to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, or for other legitimate business purposes in which the U.S. contractor is engaged, or plans to engage. The purpose for which the data is needed shall be described sufficiently in such certification to permit an evaluation of whether subsequent requests for data are related properly to such business purpose.

(3) The U.S. contractor acknowledges its responsibilities under U.S. export control laws and regulations (including the license prior to the release of technical data within the United States) and agrees that it will not disseminate any export-controlled technical data subject to the Directive in a manner that would violate applicable export control laws and regulations.

(4) The U.S. contractor also agrees that, unless dissemination is permitted by the Directive, it will not provide access to export-controlled technical data subject to the Directive to persons other than its employees or persons acting on its behalf, without the permission of the DoD component that provided the technical data.

(5) To the best of its knowledge and belief, the U.S. contractor knows of no person employed by it, or acting on its behalf, who will have access to such data, who is debarred, suspended or otherwise ineligible to perform under U.S. Government contracts; or has violated U.S. export control laws or a certification previously made to the Department of Defense under the provisions of the Directive.

(b) Private individuals or enterprises are certified as Qualified U.S. Contractors by submitting a DD Form 2345 to Commander, Defense Logistics Services Center (DLSC), ATTN: DLSC-FEB, Federal Center, Battle Creek, Michigan 49017-3084.

(c) Canadian contractors may be qualified in accordance with the Directive for technical data that do not require a license for export to Canada under section 125.12 of the International Traffic in Arms Regulations and sections 379.4(d) and 379.5(e) of the Export Administration Regulations, by submitting an equivalent certification to the DLSC. (End of clause)

## **5252.231-9200 REIMBURSEMENT OF TRAVEL COSTS (JAN 2006)**

### **(a) Contractor Request and Government Approval of Travel**

Any travel under this contract must be specifically requested in writing, by the contractor prior to incurring any travel costs. If this contract is a definite or indefinite delivery contract, then the written Government authorization will be by task/delivery orders issued by the Ordering Officer or by a modification to an issued task/delivery order. If this contract is not a definite or indefinite delivery contract, then the written Government authorization will be by written notice of approval from the Contracting Officer's Representative (COR). The request shall include as a minimum, the following:

- (1) Contract number
- (2) Date, time, and place of proposed travel
- (3) Purpose of travel and how it relates to the contract
- (4) Contractor's estimated cost of travel
- (5) Name(s) of individual(s) traveling and;
- (6) A breakdown of estimated travel and per diem charges.

### **(b) General**

(1) The costs for travel, subsistence, and lodging shall be reimbursed to the contractor only to the extent that it is necessary and authorized for performance of the work under this contract. The costs for travel, subsistence, and lodging shall be reimbursed to the contractor in accordance with the Federal Acquisition Regulation (FAR) 31.205-46, which is incorporated by reference into this contract. As specified in FAR 31.205-46(a) (2), reimbursement for the costs incurred for lodging, meals and incidental expenses (as defined in the travel regulations cited subparagraphs (b)(1)(i) through (b)(1)(iii) below) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the following:

- (i) Federal Travel Regulation prescribed by the General Services Administration for travel in the contiguous 48 United States;
- (ii) Joint Travel Regulation, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and the territories and possessions of the United States; or
- (iii) Standardized Regulations, (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances in Foreign Areas" prescribed by the Department of State, for travel in areas not covered in the travel regulations cited in subparagraphs (b)(1)(i) and (b)(1)(ii) above.

(2) Personnel in travel status from and to the contractor's place of business and designated work site or vice versa, shall be considered to be performing work under the contract, and contractor shall bill such travel time at the straight (regular) time rate; however, such billing shall not exceed eight hours per person for any one person while in travel status during one calendar day.

### **(c) Per Diem**

(1) The contractor shall not be paid per diem for contractor personnel who reside in the metropolitan area in which the tasks are being performed. Per diem shall not be paid on services performed at contractor's home facility and at any facility required by the contract, or at any location within a radius of 50 miles from the contractor's home facility and any facility required by this contract.

(2) Costs for subsistence and lodging shall be paid to the contractor only to the extent that overnight stay is necessary and authorized in writing by the Government for performance of the work under this contract per paragraph (a). When authorized, per diem shall be paid by the contractor to its employees at a rate not to exceed the rate specified in the travel regulations cited in FAR 31.205-46(a)(2) and authorized in writing by the Government. The authorized per diem rate shall be the same as the prevailing locality per diem rate.

(3) Reimbursement to the contractor for per diem shall be limited to payments to employees not to exceed the authorized per diem and as authorized in writing by the Government per paragraph (a). Fractional parts of a day shall be payable on a prorated basis for purposes of billing for per diem charges attributed to subsistence on days of travel. The departure day from the Permanent Duty Station (PDS) and return day to the PDS shall be 75% of the applicable per diem rate. The contractor shall retain supporting documentation for per diem paid to employees as evidence of actual payments, as required by the FAR 52.216-7 "Allowable Cost and Payment" clause of the contract.

### **(d) Transportation**

(1) The contractor shall be paid on the basis of actual amounts paid to the extent that such transportation is necessary for the performance of work under the contract and is authorized in writing by the Government per paragraph (a).

(2) The contractor agrees, in the performance of necessary travel, to use the lowest cost mode commensurate with the requirements of the mission and in accordance with good traffic management principles. When it is necessary to use air or rail travel, the contractor agrees to use coach, tourist class or similar accommodations to the extent consistent with the successful and economical accomplishment of the mission for which the travel is being performed. Documentation must be provided to substantiate non-availability of coach or tourist if business or first class is proposed to accomplish travel requirements.

(3) When transportation by privately owned conveyance (POC) is authorized, the contractor shall be paid on a mileage basis not to exceed the applicable Government transportation rate specified in the travel regulations cited in FAR 31.205-46(a)(2) and is authorized in writing by the Government per paragraph (a).

(4) When transportation by privately owned (motor) vehicle (POV) is authorized, required travel of contractor personnel, that is not commuting travel, may be paid to the extent that it exceeds the normal commuting mileage of such employee. When an employee's POV is used for travel between an employee's residence or the Permanent Duty Station and one or more alternate work sites within the local area, the employee shall be paid mileage for the distance that exceeds the employee's commuting distance.

(5) When transportation by a rental automobile, other special conveyance or public conveyance is authorized, the contractor shall be paid the rental and/or hiring charge and operating expenses incurred on official business (if not included in the rental or hiring charge). When the operating expenses are included in the rental or hiring charge, there should be a record of those expenses available to submit with the receipt. Examples of such operating expenses include: hiring charge (bus, streetcar or subway fares), gasoline and oil, parking, and tunnel tolls.

(6) Definitions:

(i) "Permanent Duty Station" (PDS) is the location of the employee's permanent work assignment (i.e., the building or other place where the employee regularly reports for work.

(ii) "Privately Owned Conveyance" (POC) is any transportation mode used for the movement of persons from place to place, other than a Government conveyance or common carrier, including a conveyance loaned for a charge to, or rented at personal expense by, an employee for transportation while on travel when such rental conveyance has not been authorized/approved as a Special Conveyance.

(iii) "Privately Owned (Motor) Vehicle (POV)" is any motor vehicle (including an automobile, light truck, van or pickup truck) owned by, or on a long-term lease (12 or more months) to, an employee or that employee's dependent for the primary purpose of providing personal transportation, that:

(a) is self-propelled and licensed to travel on the public highways;

(b) is designed to carry passengers or goods; and

(c) has four or more wheels or is a motorcycle or moped.

(iv) "Special Conveyance" is commercially rented or hired vehicles other than a POC and other than those owned or under contract to an agency.

(v) "Public Conveyance" is local public transportation (e.g., bus, streetcar, subway, etc) or taxicab.

(iv) "Residence" is the fixed or permanent domicile of a person that can be reasonably justified as a bona fide residence.

EXAMPLE 1: Employee's one way commuting distance to regular place of work is 7 miles. Employee drives from residence to an alternate work site, a distance of 18 miles. Upon completion of work, employee returns to residence, a distance of 18 miles.

In this case, the employee is entitled to be reimbursed for the distance that exceeds the normal round trip commuting distance (14 miles). The employee is reimbursed for 22 miles ( $18 + 18 - 14 = 22$ ).

EXAMPLE 2: Employee's one way commuting distance to regular place of work is 15 miles. Employee drives from residence to an alternate work site, a distance of 5 miles. Upon completion of work, employee returns to residence, a distance of 5 miles.

In this case, the employee is not entitled to be reimbursed for the travel performed (10 miles), since the distance traveled is less than the commuting distance (30 miles) to the regular place of work.

EXAMPLE 3: Employee's one way commuting distance to regular place of work is 15 miles. Employee drives to regular place of work. Employee is required to travel to an alternate work site, a distance of 30 miles. Upon completion of work, employee returns to residence, a distance of 15 miles.

In this case, the employee is entitled to be reimbursed for the distance that exceeds the normal round trip commuting distance (30 miles). The employee is reimbursed for 30 miles ( $15 + 30 + 15 - 30 = 30$ ).

EXAMPLE 4: Employee's one way commuting distance to regular place of work is 12 miles. In the morning the employee drives to an alternate work site (45 miles). In the afternoon the employee returns to the regular place of

work (67 miles). After completion of work, employee returns to residence, a distance of 12 miles.

In this case, the employee is entitled to be reimbursed for the distance that exceeds the normal round trip commuting distance (24 miles). The employee is reimbursed for 100 miles ( $45 + 67 + 12 - 24 = 100$ ).

EXAMPLE 5: Employee's one way commuting distance to regular place of work is 35 miles. Employee drives to the regular place of work (35 miles). Later, the employee drives to alternate work site #1 (50 miles) and then to alternate work site #2 (25 miles). Employee then drives to residence (10 miles).

In this case, the employee is entitled to be reimbursed for the distance that exceeds the normal commuting distance (70 miles). The employee is reimbursed for 50 miles ( $35 + 50 + 25 + 10 - 70 = 50$ ).

EXAMPLE 6: Employee's one way commuting distance to regular place of work is 20 miles. Employee drives to the regular place of work (20 miles). Later, the employee drives to alternate work site #1 (10 miles) and then to alternate work site #2 (5 miles). Employee then drives to residence (2 miles).

In this case, the employee is not entitled to be reimbursed for the travel performed (37 miles), since the distance traveled is less than the commuting distance (40 miles) to the regular place of work.

(End of Clause)

#### **5252.243-9600 AUTHORIZED CHANGES ONLY BY THE CONTRACTING OFFICER (JAN 1992)**

(a) Except as specified in paragraph (b) below, no order, statement, or conduct of Government personnel who visit the Contractor's facilities or in any other manner communicates with Contractor personnel during the performance of this contract shall constitute a change under the Changes clause of this contract.

(b) The Contractor shall not comply with any order, direction or request of Government personnel unless it is issued in writing and signed by the Contracting Officer, or is pursuant to specific authority otherwise included as a part of this contract.

(c) The Contracting Officer is the only person authorized to approve changes in any of the requirements of this contract and notwithstanding provisions contained elsewhere in this contract, the said authority remains solely the Contracting Officer's. In the event the contractor effects any change at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any increase in charges incurred as a result thereof.

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#### **MIDS COMMERCIAL LOW VOLUME TERMINAL (CLVT) INTEROPERABILITY REQUIREMENTS**

The contractor is required to demonstrate interoperability with previously procured Commercial Low Volume terminals as part of its qualification effort in H-23 MIDS-LVT FIRST ARTICLE QUALIFICATION REQUIREMENTS. A government furnished CLVT will be provided to support this activity.

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#### **BEYOND PHYSICAL REPAIR (BPR) AND/OR BEYOND ECONOMICAL REPAIR (BER)**

SRUs that are determined by the Contractor to be Beyond Physical Repair (BPR) and/or Beyond Economical Repair (BER) shall be replaced, in lieu of repair, and funding for the replacement shall be provided to the Contractor on an "over and above" basis under a separate contracting action. BPR is defined as an SRU not capable of being repaired in accordance with the SOW due to the extent of physical damage. BER is defined as the cost of repair of an SRU in accordance with the SOW exceeding 70% of the replacement price of the SRU.

#### **NEXT GENERATION DELIVERY SERVICE (NGDS) SHIPPING TERMS**

(1) Quantity pricing limited to a not-to-exceed (NTE) five (5) unit total per NGDS shipment. Pricing for excess quantities subject to mutually-agreeable price and terms.

(2) Costs of shipping via NGDS will be covered separately by the FMS Customer shipping or receiving outside of the subject contract via the FMS case, i.e., Viasat will not be required to incur the NGDS shipping costs under the applicable Delivery Orders requiring use of NGDS. Therefore, the price is predicated on the contract delivery requirements for the applicable CLINs in the subject ID/IQ contract and relevant Delivery Orders being revised from "FOB: Destination" to "FOB: Origin".

(3) The price assumes that no US export licensing or related documentation will be required for shipping via NGDS. The terminals will be shipped in accordance with 22 CFR § 126.6(c). (export will be under FMS case).

(4) Customs or broker fees associated with the in-bound shipments will be covered by the FMS customer or

FMS case.

(5) The MIDS IPO will provide the required shipping information in accordance with current MIDS LVT Viasat contract.

(6) Viasat shipments to FMS customers via NGDS will be considered CONUS shipments in accordance with the current MIDS LVT Viasat contract.