



LOCKHEED MARTIN CORPORATION

PRIME SUPPLEMENTAL FLOWDOWN DOCUMENT (PSFD)

**ADDITIONAL TERMS AND CONDITIONS FOR SUBCONTRACTS/PURCHASE ORDERS
UNDER**

LRIP 8 F-35 JSF

Prime Contract No. N00019-13-R-0078 & N00019-15-C-0031

Non-Annualized and Annualized Sustainment

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19 February 2014 (ORIGINAL)

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The Terms and Conditions listed below are incorporated by reference and made a part of this Contract. Unless otherwise limited in this Contract, each document applies in its entirety.

In the event of a conflict between the version or date of a clause set forth in this document and the version or date of a clause set forth in the identified CorpDocs, the version or date of the clauses set forth in this document shall take precedence.

This document includes clauses that flow-down LOCKHEED MARTIN's U.S. Government regulatory and customer obligations. To the extent that any clause included in this PSFD is inapplicable to the performance of this Contract, the parties shall consider such clauses to be self-deleting and shall not impose any obligations upon the SELLER.

PART I. The dates of the following FAR and DFARS clauses are modified as follows and are incorporated into the Contract:

FAR 52.209-6 Protecting the Governments Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment (Aug 2013)

FAR 52.219-8 Utilization of Small Business Concerns (Jul 2013)

FAR 52.244-6 Subcontracts for Commercial Items (Jul 2013)

DFARS 252.211-7003 Item Identification and Valuation (Jun 2013)

DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (Jun 2013)

DFARS 252.246-7003 Notification of Potential Safety Issues (Jun 2013)

DFARS 252.247-7023 Transportation of Supplies by Sea (Jun 2013)

Part II. The following FAR, DFARS, and other Agency clauses are incorporated into the Contract:

FAR 52.216-16 Incentive Price Revision -- Firm Target (Oct 1997)

(Applicable to the Seller only if being awarded a fixed-price incentive contract. "Contracting Officer," "contract administrative office" and "Government" mean "Lockheed Martin." Paragraph (i) is deleted. The blanks in the clause shall be deemed to be completed with the amounts specified in the contract.)

FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)

(Applies if this subcontract is subject to FAR 52.222-41. The information contained in the blanks of this clause is specified elsewhere in this contract.)

FAR 52.227-19 Commercial Computer Software – Restricted Rights (Dec 2007)

(Applicable to the Seller only if delivering commercial software to the Government through Lockheed Martin.)

FAR 52.228-3 Workers' Compensation Insurance (Defense Base Act) (Apr 1984)

(Applicable to the Seller if it will perform work subject to the Defense Base Act 42 U.S.C. 1651, et seq.)

FAR 52.228-4 Workers' Compensation and War-Hazard Insurance Overseas (Apr 1984)

(Applicable only if the Seller is performing work in which the Defense Base Act would apply.)

FAR 52.232-17 Interest (Oct 2010)

(Applicable to the Seller only if the contract contemplates any category under FAR 32.611 (a) "Government" means "Lockheed Martin.")

FAR 52.245-9 Use and Charges (Apr 2012)

(Communications with the Government under this clause will be made through Lockheed Martin. This clause shall only apply to tasks under this Contract involving non-commercial items where Government furnished property shall be provided through Lockheed Martin to the Seller.)

FAR 52.246-2 Alt I – Inspection of Supplies Fixed-Price (Jul 1985)

(The clause is applicable to the Seller only if being awarded a fixed price incentive contract. "Government" means "Lockheed Martin and the Government" except in paragraphs (f), (j), and (l) where it means "Lockheed Martin." "Contracting Officer" means "Lockheed Martin.")

FAR 52.246-15 Certificate of Conformance (Apr 1984)

(Applicable to the Seller only if it will make direct shipments to the Government and there is no intervening acceptance by Lockheed Martin.)

FAR 52.249-14 Excusable Delays (Apr 1984)

(The clause is applicable to the Seller only if being awarded a cost-reimbursement type contract. In paragraph (a)(2) "or contractual" is deleted. "Contracting Officer" and "Government" means Lockheed Martin.)

DFARS 252.203-7004 Display of Fraud Hotline Poster(s) (Dec 2012)

(Applicable to the Seller under all contracts in excess of \$5M except subcontracts performed entirely outside the United States.)

DFARS 252.211-7006 Passive Radio Frequency Identification (Sep 2011)

(Applicable to the Seller only if it will make direct shipments meeting the criteria at FAR 211.275-2 to the Government of items covered by the clause.)

DFARS 252.211-7007 Reporting of Government-Furnished Property (Aug 2012)

(Applicable to Seller only if it will be in possession of Government property for the performance of this contract.)

DFARS 252.211-7008 Use of Government-Assigned Serial Numbers (Sep 2010)

(Not applicable to the Seller unless GASNs will be assigned to the Seller by Lockheed Martin).

DFARS 252.222-7006 Restrictions on the Use of Mandatory Arbitration Agreements (Dec 2010)

(Applicable to the Seller only under contracts for non-commercial items exceeding \$1,000,000 that will be funded in whole or part with Fiscal Year Dept. of Defense 2010, 2011 and future years appropriated funds. The clause is not required if all of the subcontractors employees performing work under the contract will be located outside of the United States. The certification in paragraph (b)(2) applies to both Seller in its own capacity and to Seller's covered subcontractors.)

DFARS 252.223-7008 Prohibition of Hexavalent Chromium (May 2011)

(Applicable to the Seller for contracts for supplies, maintenance and repair services, or construction materials. "Contracting officer" means "Lockheed Martin.")

DFARS 252.225-7012 Preference for Certain Domestic Commodities (Feb 2013)

(Applicable to the Seller only if furnishing any of the items covered by this clause.)

DFARS 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (Apr 2003)

(Applicable to the Seller only if awarded a contract involving contingent fees. The reference to the clause in paragraph (a) means FAR 52.203-5. The blank in paragraph (b)(1) is completed with "any Government." Subparagraph (b)(2) is deleted.)

DFARS 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (Apr 2003)

DFARS 252.225-7032 Waiver of United Kingdom Levies -- Evaluation of Offers (Apr 2003)

(Applicable to the Seller if it is a United Kingdom corporation. "Contracting Officer means "Lockheed Martin.")

DFARS 252.227-7017 Identification and Assertion of Use, Release, or Disclosure Restrictions (Jan 2011)

(The provision requires offerors to identify any technical data for which restrictions, other than copyright, on use, release, or disclosure are asserted and to attach the identification and assertions to the offer. "Offeror" means "Seller." Contracting Officer" means "Lockheed Martin or Contracting Officer." In paragraphs (a) and (b) the references to the SBIR data rights clause are deleted.)

DFARS 252.228-7001 Ground and Flight Risk (Jun 2010)

(Applicable to contracts for non-commercial items only. In paragraph (a)(1)(i) "this contract" means "the prime contract." The following is added at the beginning of the clause: "Communications between Seller and the JSFPO shall be made through Lockheed Martin. Any equitable adjustment provided for this clause shall be implemented in this contract to the extent such adjustment is implemented in the prime contract." Subparagraphs (d)(2)(ii), (d)(3)(ii) and the last sentence of subparagraph (j)(2) are deleted.)

DFARS 252.234-7004 Cost and Software Data Reporting System (Nov 2010)

(Applicable only to contracts for non-commercial items in excess of \$50,000,000).
(In paragraph (b), "Government" means Lockheed Martin.)

DFARS 252.239-7016 Telecommunications Security Equipment, Devices, Techniques, and Services (Dec 1991)

(Applicable to the Seller only if the nature of the work under the Contract requires secure telecommunications to be utilized to ensure compliance with the regulation. Does not apply if contract is for a commercial item as defined in FAR Part 2.101)

DFARS 252.243-7002 Requests for Equitable Adjustment (Dec 2012)

(Not applicable to the Seller unless the contract is for a commercial item as defined in FAR Part 2.101 "Government" means "Lockheed Martin.")

DFARS 252.244-7000 Subcontracts for Commercial Items and Commercial Components (DoD Contracts) (Jun 2013)

DFARS 252.245-7001 Tagging, Labeling, and Marking of Government-Furnished Property (Apr 2012)

(Applies to contracts where the items furnished by the contractor will be subject to serialized tracking, should the Statement of Work or another document in the solicitation identify such items subject to serialized tracking)

DFARS 252.245-7004 Reporting, Reutilization, and Disposal (May 2013)

(Applicable to Seller only if it will be furnished with Government under this contract. "Contracting Officer" means Lockheed Martin.)

DFARS 252.246-7000 Material Inspection and Receiving Report (Mar 2008)

(Applicable to the Seller if this contract requires delivery of items directly to the Government.)

DFARS 252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (MAY 2014) Paragraph (6) is modified: "Contracting Officer" shall mean "Lockheed Martin".

NAVAIR 5252.247-9508 Prohibited Packaging Materials (Jun 1998)

(Applicable to the Seller only if it will make shipments under this contract directly to the Government.)

Part III. **SECTION H – SPECIAL PURCHASE ORDER REQUIREMENTS**

For purposes of this Section H, “Government” means the United States Government. The following Section H clauses are incorporated into the Contract in full-text:

H-2 WORK SHARE AGREEMENTS (VARIATION)

The Seller shall not enter into any new F-35 work share agreements with any of its subcontractors that specify that a subcontractor will receive a certain amount of business based solely on a dollar amount or percentage of contract or program cost unless it has been determined to be best value to the F-35 Program by the Contracting Officer who, through LOCKHEED MARTIN, has provided written consent pursuant to FAR 52.244-2, Subcontracts (OCT 2010). The Contracting Officer, through LOCKHEED MARTIN, shall provide written response to the notice of work share agreement within 14 working (i.e. – exclusive of federal holidays, Saturdays and Sundays) days after receipt of the work share notification; if a written response is not provided within 14 working days by the Government, through LOCKHEED MARTIN, the Seller may proceed with the entering into the agreement.

H-5 NAVAIR 5252.204-9504 DISCLOSURE OF CONTRACT INFORMATION (JAN 2007) (VARIATION)

- (a) The Seller shall not release to anyone outside the Seller’s organization any information (e.g., announcement of contact award), regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any effort directly related to the F-35 Lightning II Joint Strike Fighter (JSF) Program unless—
 - (1) The JSFPO has given prior written approval through LOCKHEED MARTIN;
 - (2) The information is otherwise in the public domain before the date of release; or
 - (3) The information is being released to associate contractors, subcontractors, suppliers, or vendors who require the information for execution of work under an F-35 Lightning II JSF contract.
 - (b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. “Information” includes, but is not limited to, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, and professional papers to be published. The Seller shall submit the original and 1 copy of the information proposed for release to LOCKHEED MARTIN.
- Where practicable, requests and the specific information may be provided to LOCKHEED MARTIN using an electronic medium appropriate for the security level of the information being transmitted. The Seller shall submit its request to LOCKHEED MARTIN at least 25 working days before the proposed date for release.
- (c) RESERVED
 - (d) The Seller agrees to include a similar requirement in each subcontract or purchase order under this contract. Subcontractors, suppliers, and vendors shall submit requests for authorization to release through LOCKHEED MARTIN to the Government’s Public Affairs Officer.

H-10 PRESERVATION OF RIGHTS FOR TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION ACCESSED, DELIVERED, OR PROVIDED ELECTRONICALLY

Information, whether delivered pursuant to the Supplier Data Requirements List (SDRL) or provided in response to any other requirement contained in this contract, which would be deemed “technical data” under DFARS 252.227-7013, Rights in Technical Data–Noncommercial Items (JUN 2013), or “computer software” and “computer software documentation” under DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (MAY 2013), if it were delivered in written form, shall not lose its status as technical data, computer software, or computer software documentation solely because access by the Government or LOCKHEED MARTIN, delivery by the Seller, or provision by the Seller is by electronic means. The rights of the parties shall be as specified in DFARS 252.227-7013 and DFARS 252.227-7014.

H-13 NAVAIR 5252.227-9507 NOTICE REGARDING THE DISSEMINATION OF EXPORT-CONTROLLED TECHNICAL DATA (OCT 2005) - (The following clause applies only to contracts where LOCKHEED MARTIN is acquiring non-commercial items).

- (a) Export of information contained herein, which includes release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms Regulations (ITARs), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.
- (b) For violation of export laws, the Seller, its employees, officials or agents are subject to:
 - (1) Imprisonment and/or imposition of criminal fines; and
 - (2) Suspension or debarment from future Government contracting actions.
- (c) Neither the Government nor LOCKHEED MARTIN shall be liable for any unauthorized use or release of export-controlled information, technical data or specifications in this contract.
- (d) The Seller shall include the provisions or paragraphs (a) through (c) above in any subcontracts awarded under this contract.

H-16 NAVAIR 5252.227-9511 DISCLOSURE, USE AND PROTECTION OF PROPRIETARY INFORMATION (FEB 2009)

- (a) During the performance of this contract, the Government may use an independent services contractor (ISC), who is neither an agent nor employee of the Government. The ISC may be used to conduct reviews, evaluations, or independent verification and validations of technical documents submitted to the Government during performance.
- (b) The use of an ISC is solely for the convenience of the Government. The ISC has no obligation to LOCKHEED MARTIN or the Seller. The Seller is required to provide full cooperation, working facilities and access to the ISC for the purposes stated in paragraph (a) above.

(c) Since the ISC is neither an employee nor agent of the Government, any findings, recommendations, analyses, or conclusions of such a contractor are not those of the Government.

(d) The Seller acknowledges that the Government has the right to use ISCs as stated in paragraph (a) above. It is possible that under such an arrangement the ISC may require access to or the use of information (other than restricted cost or pricing data), which is proprietary to LOCKHEED MARTIN or Seller.

(e) To protect any such proprietary information from disclosure or use, and to establish the respective rights and duties of both the ISC and LOCKHEED MARTIN, the Seller will agree to enter into a direct agreement with any ISC, if required by the Government or LOCKHEED MARTIN. A properly executed copy (per FAR 9.505-4) of the agreement will be provided by LOCKHEED MARTIN to the Government's Procuring Contracting Officer.

H-19 NAVAIR 5252.211-9510 CONTRACTOR EMPLOYEES (MAY 2011)

(a) In all situations where Seller personnel status is not obvious, all Seller personnel are required to identify themselves to avoid creating an impression to the public, agency officials, or Congress that such contractor personnel are Government officials. This can occur during meeting attendance, through written (letter or e-mail) correspondence or verbal discussions (in person or telephonic), when making presentations, or in other situations where Seller status is not obvious to third parties. This list is not exhaustive. Therefore, the contractor employee(s) shall:

(1) Not by word or deed give the impression or appearance of being a Government employee;

(2) Wear appropriate badges visible above the waist that identify them as Seller's employees when in Government spaces, at a Government-sponsored event, or an event outside normal work spaces in support of the contract/order;

(3) Clearly identify themselves as Seller employees in telephone conversations and in all formal and informal written and electronic correspondence. Identification shall include the name of the company for whom they work;

(4) Identify themselves by name, their company name, the name of the prime contractor (LOCKHEED MARTIN) their company is supporting, as well as the Government office they are supporting when participating in meetings, conferences, and other interactions in which all parties are not in daily contact with the individual contractor employee; and

(5) Be able to provide, when asked, the full number of the contract/order under which they are performing, and the name of the Government Contracting Officer's Representative.

(b) If Seller's employees are wearing a badge that is a risk to safety and/or security, then an alternative means of identification maybe utilized if endorsed by the Government Contracting Officer's Representative and approved by the Government Contracting Officer through LOCKHEED MARTIN to the Seller.

(c) LOCKHEED MARTIN will make the final determination of compliance with regulations with regard to proper identification of contractor employees.

H-27 PARTNERING WITH MILITARY SERVICE DEPOTS (MSD)

This clause is in accordance with Article 8.2 of the F-35 Lightning II Depot Partnering Agreement and applies to the Seller only if it has a Partnering Agreement under the Program with an MSD and the Seller is performing work for or on behalf of an MSD under this Contract.

1. FAR Non-Applicability. Pursuant to FAR 1.104, FAR Applicability, Partnering Agreements (PA) and Implementing Agreements (IA) between the Seller and Military Service Depots (MSD) are not subject to the FAR or any agency supplements thereto, because the FAR applies to contracts where the Government acts in its capacity as a buyer. No FAR and/or agency supplement flow down clauses shall apply to any PA/IA issued or to any other contractual vehicle placed by the Seller with an MSD providing a supply/service under this prime contract, except as may be expressly included by mutual consent of the Seller and the MSD.

a. **Non-Applicability of Advanced Payments.** Payments made by the Seller to the MSD, as required by the terms of the PA/IA, shall be considered to be incurred costs under the terms of this contract.

2. TINA Non-Applicability. The Truth in Negotiations Act, 10 USC Section 2306a, as amended, (hereinafter referred to as TINA) and its implementing regulations/clauses, do not apply to any MSD performing under this contract. Accordingly, the Government agrees:

a. The portion of the Seller's contract price that consists of costs relating to work performed by an MSD need not be supported by the submission of certified cost or pricing data and,

b. The absence of such certified data shall not form the basis, directly or indirectly, for a claim by the Government of defective pricing against the Seller.

3. Release of Responsibility. The Government agrees not to hold the Seller responsible, directly or indirectly, for the delay, non-performance, or other non-compliance of work required under this contract to the extent such delay, non-performance, or non-compliance is solely attributable, in accordance with the terms of the PA and IA, to the action or inaction of an MSD performing an IA related to the Seller's performance obligations under this contract.

a. **Equitable Adjustment.** Subject to the provisions of FAR 52.249-14, Excusable Delays, such delay, non-performance, or other non-compliance attributable to the MSD in performing such PA/IA, may be considered to be an excusable delay for the Seller or non-compliance for which an equitable adjustment in the performance period and/or cost/price of this contract may be provided by the Government to the Seller. Further, such delay, non-performance, or non-compliance determined to be solely attributable to the MSD under FAR 52.249-14, Excusable Delays shall not be used by the Government, in whole or in part, as the basis for termination for default or withholding of payments under this contract. Any disagreement with the Contracting Officer's final decision regarding an equitable adjustment is subject to the Disputes clause.

b. **Continued “Good Faith/Duty to Mitigate.”** This provision does not excuse the Seller from its requirement to continuously exercise good faith to effectively manage the MSD, if necessary, to perform the affected services itself or find a commercial sub-contractor to perform the services, and to fulfill its responsibilities under this contract and applicable PA/IA. Such efforts include reasonable corrective actions to mitigate the effects of the MSD’s non-compliance under this contract’s schedule and/or prices.

FAR 52.232-32 PERFORMANCE-BASED PAYMENTS (VARIATION)

APRIL 2012

(Applicable to the Seller only if under the contract LOCKHEED MARTIN will be making financing payments to the Seller in the form of performance based payments.)

- (a) Performance-based payments shall form the basis for contract financing payments, if such payments are provided under this contract. The Performance Based Payments schedule set forth in this Contract describes the basis for payment, to include identification of the individual payment events, evidence of completion, and amount of payment due upon completion of each event.
- (b) At no time shall cumulative performance-based payments exceed cumulative contract cost. To ensure compliance with this requirement, the SELLER shall, in addition to providing the information required by FAR 52.232-32 (Performance-Based Payments (APR 2012), submit the required certificate, modified to include Item (6), as set forth below on or in conjunction with each invoice:

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

- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of LOCKHEED MARTIN;
- (2) (Except as reported in writing on _____[insert date if applicable]), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;
- (3) There are no encumbrances (except as reported in writing on _____[insert date if applicable]) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to LOCKHEED MARTIN of the most recent written information dated _____[insert date if applicable]; and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.
- (6) **THE CUMULATIVE PERFORMANCE-BASED PAYMENTS REQUESTED AND PAID TO DATE DO NOT EXCEED CUMULATIVE COST INCURRED UNDER THIS CONTRACT.”**

- (c) Costs-incurred are determined by the SELLER’s accounting books and records. LOCKHEED MARTIN intends to rely on the SELLER’s submission of cost-incurred information in processing invoices in order to facilitate prompt financing payments.



(d) Verification by LOCKHEED MARTIN of successful performance of each event, according to the criteria outlined in the Performance Based Payments schedule, is required prior to payment.