



Flowdown Provisions
EELV LAUNCH SERVICES (ELS), FA8811-08-C-0005
NROL-15 LAUNCH SERVICES, FA8811-09-C-0003

PRIME CONTRACT REQUIREMENTS

A. The following clauses of the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), Air Force Federal Acquisition Regulation Supplement (AFFARS) and National Aeronautics and Space Administration Federal Acquisition Regulation Supplement (NFS) are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable during the performance of this Contract. The full text of a clause may be accessed electronically at the following address: <http://www.arnet.gov/far>

1. FAR FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
52.203-14	DISPLAY OF HOTLINE POSTER(S) (DEC 2007) (Applies if this Contract exceeds \$5,000,000. Contact the Purchasing Representative for the location where posters may be contained if not indicated elsewhere in the Contract.)
52.227-01	AUTHORIZATION AND CONSENT (DEC 2007)
52.227-02	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007) (Applies if this Contract exceeds \$100,000. Notes 2 and 3 apply.)
52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003) (Applicable if Contract involves international air transportation. This Clause does not apply to Contracts for Commercial Items.)
52.248-01	VALUE ENGINEERING (FEB 2000) ALTERNATE II (FEB 2000) (This clause with Alternate II is in lieu of the basic clause identified in the applicable Doc. Note 1 applies, except in paragraphs (c)(5) and (m), where Note 3 applies, and except in (b)(3) where Note 4 applies, and where "Government" precedes "cost" throughout. Note 2 applies. This clause does not apply to Contracts for Commercial Items.)

2. DFARS FLOWDOWN CLAUSE

<u>Clause Number</u>	<u>Title/Applicability</u>
252.215-7004	EXCESSIVE PASS-THROUGH CHARGES (MAY 2008) (Applies unless this contract is a fixed-price contract, including fixed-price subcontracts with economic price adjustment, awarded on the basis of adequate price competition. Note 5 applies. In paragraph (e), the term "Contracting Officer" includes ULA. If the Contracting Officer determines excessive pass-through charges are included in CONTRACTOR's prices, ULA shall make an adjustment to exclude such charges.)
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS COMPUTER SOFTWARE (JUN 1995) (Notes 3 and 7 apply.)
252.227-7030	TECHNICAL DATA—WITHHOLDING OF PAYMENT (MAR 2000) (Notes 2 and 4 apply.)
252.227-7039	PATENTS-REPORTING OF SUBJECT INVENTIONS (APR 1990)

3. AFFARS FLOWDOWN CLAUSES

<u>Clause Number</u>	<u>Title/Applicability</u>
5352.223-9000	ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES (ODS) (APR 2003) (The blank in paragraph (d) is completed with "NONE". In paragraph (d) Note 2 applies. This clause does not apply to Contracts for Commercial Items.)
5352.242-9001	COMMON ACCESS CARDS FOR CONTRACTOR PERSONNEL (AUG 2004) (Applicable if CONTRACTOR will perform work on a Government Installation or have access to the Government information technology systems. Note 5 applies.)

NOTES

1. Substitute "ULA" for "Government" throughout this clause.
2. Substitute "Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and ULA" after "Government" throughout this clause.
4. Insert "or ULA" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through ULA.
6. Insert "and ULA" after "Contracting Officer" throughout the clause.
7. Insert "or Procurement Representative" after "Contracting Officer" throughout the clause.

B. The following additional provisions apply to this Contract:

1) CONTRACTOR IDENTIFICATION

- (a) CONTRACTOR personnel and their subcontractors must identify themselves as Contractors or subcontractors during meetings, telephone conversations, in electronic messages, or correspondence related to this Contract.

(b) CONTRACTOR-occupied facilities (on AFSPC or other Government installations) such as offices, separate rooms, or cubicles must be clearly identified with Contractor supplied signs, name plates or other identification, showing that these are work areas for CONTRACTOR or subcontractor personnel.

2) ENABLING CLAUSE FOR GENERAL SYSTEMS ENGINEERING AND INTEGRATION

(a) This Contract covers part of the Air Force EELV program which is under the general program management of SMC/LR. The Air Force has entered into a contract with The Aerospace Corporation for the services of a technical group, which will support the DoD program office by performing General Systems Engineering and Integration.

(b) General Systems Engineering and Integration (GSE&I) deals with overall system definition; integration both within the system and with associated systems; analysis of system segment and subsystem design; design compromises and tradeoffs; definition of interfaces; review of hardware and software, including manufacturing and quality control; observation, review and evaluation of tests and test data; support of launch, flight test, and orbital operations; appraisal of the CONTRACTORS' technical performance through meetings with the CONTRACTOR and its subcontractors, exchange and analysis of information on progress and problems; review of plans for future work; developing solutions to problems; technical alternatives for reduced program risk; providing comments and recommendations in writing to the DoD System Program Manager and/or Project Officer as an independent technical assessment for consideration for modifying the program or redirecting the CONTRACTOR's efforts; all to the extent necessary to assure timely and economical accomplishment of program objectives consistent with mission requirements.

(c) In the performance of this Contract, subject to coordination with ULA, the CONTRACTOR agrees to cooperate with The Aerospace Corporation by responding to invitations from authorized personnel to attend meetings; by providing access to technical information and research, development planning data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications and procedures, parts and quality control procedures, records and data; manufacturing and assembly procedures; and schedule and milestone data; all in their original form or reproduced form and including cost* data; by delivering data as specified in the Supplier Data Requirements List; by discussing technical matters relating to this program; by providing access to CONTRACTOR facilities utilized in the performance of this Contract; and by allowing observation of technical activities by appropriate Aerospace technical personnel. The Aerospace personnel engaged in GSE&I effort (i) are authorized access to any technical information (including proprietary information) pertaining to this Contract and may discuss and disclose it to the applicable DoD Program Office; and (ii) are authorized to discuss and disclose such technical information (including proprietary information) to the commander or director of the various DoD organizations it supports and any U.S. Government program office which, if not disclosed to the U.S. Government, could have adverse effects on the reliability and mission success of a U.S. Government program.

(d) The CONTRACTOR further agrees to include in each subcontract a clause requiring compliance by subcontractor and succeeding levels of subcontractors with the response and access provisions of paragraph (c) above, subject to coordination with the CONTRACTOR. This agreement does not relieve the CONTRACTOR of its responsibility to manage the subcontracts effectively and efficiently nor is it intended to establish privity of contract between the Government or The Aerospace Corporation and the CONTRACTOR or its subcontractors.

(e) The Aerospace Corporation shall protect the proprietary information of contractors, subcontractors, and suppliers in accordance with the Nondisclosure Agreement entered into with the Air Force, a copy of which is available upon request. Because this Nondisclosure Agreement provides that such contractors and succeeding levels of subcontractors are intended to be third-party beneficiaries, each such contractor and succeeding levels of subcontractors hereby waives any requirement that The Aerospace Corporation enter into any separate company-to-company confidentiality or nondisclosure agreements.

(f) The Aerospace Corporation personnel are not authorized to direct the CONTRACTOR in any manner. The contractor agrees to accept technical direction as follows:

1. Direction under this contract will be given to the contractor solely by the Procurement Representative.
2. Whenever it becomes necessary to modify the Contract and redirect the effort, a Change Order signed by the designated Procurement Representative or a Contract Modification signed by both the designated Procurement Representative and the CONTRACTOR will be issued.

* Cost data is defined as information associated with the programmatic elements of life cycle (concept, development, production, operations, and retirement) of the system/program. As defined, cost data differs from "financial" data, which is defined as information associated with the internal workings of a company or contractor that is not specific to a project or program.

3) ENABLING CLAUSE FOR PRIME AND SUPPORT CONTRACTOR RELATIONSHIPS

(a) The Government has or may enter into contracts with one or more of the following companies to provide Contracted Advisory and Assistance Services (CAAS) and/or Systems Engineering and Technical Assistance (SETA) and/or Systems Engineering and Integration (SE&I):

1. Scitor Corporation
2. General Dynamics
3. Tecolote Research, Inc.
4. Analex
5. SRS Technologies
6. Northrop Grumman (TASC)
7. L3 Communications
8. BD Systems
9. Trisept
10. MCR
11. LinQuest
12. Quantech

(b) In the performance of this contract, subject to coordination with ULA, the CONTRACTOR agrees to cooperate with the companies listed above (hereafter referred to as (CAAS/SETAs/SE&I). Cooperation includes allowing observation of technical activities by appropriate CAAS/SETA/SE&I technical personnel, discussing technical matters related to this program; responding to invitations from authorized CAAS/SETA/SE&I personnel to attend meetings; and providing access to technical, cost*, and financial** information and research and development planning data. The Contractor shall provide CAAS/SETA/SE&I personnel access to data such as, but not limited to, design and development analyses; test data and results; equipment and process specifications; test and test equipment specifications; procedures, parts, and quality control procedures; records and data; manufacturing and assembly procedures; and schedule and milestone data. CAAS/SETA/SE&I personnel engaged in general systems engineering and integration effort are normally authorized access to any technical information pertaining to this Contract. However, exceptions, such as the case where the Contractor seeks to preclude CAAS/SETA/SE&I personnel from having access to

Contractor trade secrets, will be handled on a case-by-case basis. If the Contractor seeks to limit distribution of data to Government personnel only, the Contractor must submit this request in writing through ULA to the prime contract contracting officer.

(c) The CONTRACTOR further agrees to include in each subcontract a clause requiring compliance by the subcontractor and succeeding levels of subcontractors with the response and access provisions of paragraph (b) above, subject to coordination with the CONTRACTOR. This agreement does not relieve the CONTRACTOR of responsibility to manage the subcontracts effectively and efficiently, nor is it intended to establish privity of contract between the Government or CAAS/SETA/SE&Is and Contractor or its subcontractors.

(d) CAAS/SETA/SE&I personnel are not authorized to direct the CONTRACTOR in any manner. The CONTRACTOR agrees to accept technical direction as follows:

1. Technical direction under this Contract will be given in accordance with the Contract.
2. Whenever it becomes necessary to modify the Contract and redirect the effort, a Change Order signed by the designated Procurement Representative or a Contract Modification signed by both the designated Procurement Representative and the CONTRACTOR will be issued.

(e) **CAAS/SETA contracts will contain an organizational conflict of interest clause that requires the CAAS/SETA contractor to protect contract data and prohibits the CAAS/SETA contractor from using such data for any purpose other than that for which the data was presented.**

* Cost data is defined as information associated with the programmatic elements of life cycle (concept, development, production, operations, and retirement) of the system/program. As defined, cost data differs from "financial" data, which is defined as information associated with the internal workings of a company or contractor that is not specific to a project or program.

** Financial data shall only be provided to the below listed Companies:

1. Scitor Corporation
2. Tecolote Research, Inc
3. MCR, Inc.
4. Quantech

4) GOVERNMENT INSIGHT AND ACCESS

(a) CONTRACTOR acknowledges that the Government has reserved certain insight rights into CONTRACTOR's performance under this Contract. This Government insight will include, but is not limited to, access to facilities used in the performance of this Contract, access to data directly related to the performance of this Contract (other than financial data) through electronic or other means, attendance and participation at meetings and participation in scheduled program events. **The Government's insight does not include approval/disapproval rights, nor the right to require new data or documents to be created.**

(b) Government insight is defined as gaining an understanding necessary to knowledgeably concur/non-concur with the CONTRACTOR's actions through watchful observation, documentation, meeting attendance, reviews, tests and compliance evaluations. Where Government insight is required, the CONTRACTOR shall notify the Procurement Representative of meetings, reviews, or tests in sufficient time to permit meaningful Government participation.

(c) Should insight identify non-compliance with the terms and conditions of the contract, a difference in interpretation of test results, or disagreement with the CONTRACTOR technical directions, the Government, through ULA, will take appropriate action within the terms of the contract to ensure compliance via written direction to the CONTRACTOR.

(d) In accordance with paragraph (a), CONTRACTOR's documents, reports, records, software and data provided to ULA be made available to the Government in compliance with the Prime Contracts. CONTRACTOR will label all information provided to ULA under this Contract as either "ULA Proprietary Information" or "[CONTRACTOR] Proprietary Information" as appropriate in accordance with the data rights provisions of this Contract. Except as noted in paragraph (c), the Government's access to such CONTRACTOR data shall not constitute delivery of data, software or information to the Government and the Government shall only have the right to review and evaluate, and print out and incorporate the data into other documents for Governmental purposes.

(e) ULA's rights in data shall be determined under the "Intellectual Property" provision of the General Provisions.

5) MISHAP INVESTIGATION

CONTRACTOR's responsibilities in the Event of Mission Failure of an EELV mission:

(a) In the event of mission failure(s), as defined herein below, and if directed by ULA, the CONTRACTOR shall support a mishap investigation including engineering analysis that is adequate to determine the cause of the mishap and the corrective action necessary to prevent future mishaps. The CONTRACTOR shall allow Government observers. In the event of a mission failure, CONTRACTOR shall impound and place under positive control all of its or its subcontractors' flight and processing data that is accessible directly or through agreements with other agencies and subcontractors. ULA may provide to CONTRACTOR any applicable data (e.g. radar tracking, camera video, etc.) generated by the Government during the mishap. The CONTRACTOR shall prepare and furnish to ULA all the data and reports applicable to the mishap investigation and corrective action determination, including any revisions or updates of the information, at no increase in contract price. Access to information under this clause does not constitute delivery of data, software, or information. Neither the Government nor ULA shall be held liable for inadvertent release where the CONTRACTOR failed to place appropriate restrictive legends on the data. In the event the Air Force elects to perform its own independent mishap investigations, the CONTRACTOR shall support and cooperate as may be requested by the Government or ULA.

(b) The Parties agree to work in good faith, including escalation of unresolved issues to executive management, to agree on the corrective actions necessary to return to flight. If ULA and/or the Government and the CONTRACTOR cannot agree on the corrective actions necessary to return to flight, ULA and/or the Government shall have the right to direct the CONTRACTOR to proceed with the corrective actions on launch vehicles required for launch Services under this Contract, as deemed necessary by the Government or ULA. CONTRACTOR shall be obligated to proceed upon receipt of the Procurement Representative's direction. This direction should be made pursuant to the "Changes" clause of this Contract. Nothing in this paragraph shall preclude ULA from exercising its right to terminate.

(c) If an Air Force Safety Investigation Board (SIB) and an Accident Investigation Board (AIB) are convened, the data arising out of the mishap will be controlled by the Air Force and released in accordance with Air Force policies and 10 USC 2254. This data will be released as quickly as possible to the CONTRACTOR for its use in the engineering analysis. The CONTRACTOR shall not release this data or its engineering analysis to the public without the approval, through ULA, of the Air Force in compliance with 10 USC 2254.

(d) If the SIB or AIB or any other Air Force organizations requires tests, analysis, or investigation in addition to that performed in engineering analysis and as part of the Air Force's independent mishap investigation, the CONTRACTOR shall cooperate and support the independent investigation.

(e) Definitions: For purposes of this clause the following definitions shall apply:

(1) Mission Failure: total or constructive total failure.

(2) Total Failure: The payload is destroyed or lost during the booster processing or launch phase or the payload cannot be separated from the Launch Vehicle, and the Launch Vehicle performed in a manner that caused the payload to be destroyed, lost, or unable to be separated.

(3) Constructive Total Failure: The operational utility loss of the payload is such that no payload mission objectives can be achieved, and it is determined from the flight data that the Launch Vehicle performed in a manner that caused damage to the payload.

(4) Mission Success: ULA did insert the payload in the prescribed orbit under the conditions specified in the approved prime contract Interface Control Document (ICD).

(5) Insertion in the Prescribed Orbit: The release of the payload at the separation from the EELV within the altitude, environmental, and other such conditions as specified in the applicable system specification and the appropriate approved ICD, and at such a point and with such a velocity into an orbit from which a useful payload mission can be established.

(f) In the event of a mishap concerning a mission utilizing the Atlas V or Delta IV system which is procured outside of the EELV Program, the Government nevertheless shall have the right to participate in the mishap investigation in an informational role only to the extent such participation is permitted under the terms of ULA's agreement with its customer for the mission. ULA and the Government shall have access to all data available to the mishap investigation team regarding the mishap, including impounded data.

6) PRIORITY RATING

This Contract has a priority rating of DX-A2 and as such, is certified for national defense use. The CONTRACTOR shall follow all the requirements of the Defense Priorities and Allocation System Regulation (15 C.F.R. Part 700).