

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. Contract ID Code
Firm Fixed Price

Page 1 Of 15

2. Amendment/Modification No.

39

3. Effective Date

2014APR21

4. Requisition/Purchase Req No.

SEE SCHEDULE

5. Project No. (If applicable)

6. Issued By

U.S. ARMY CONTRACTING COMMAND
DAVID W. DANIELS
WARREN, MICHIGAN 48397-5000
HTTP://CONTRACTING.TACOM.ARMY.MIL

EMAIL: DAVID.W.DANIELS2@US.ARMY.MIL

Code

W56HZV

7. Administered By (If other than Item 6)

DCMA DETROIT
35803 MOUND ROAD
STERLING HEIGHTS MI 48310

Code

S2305A

8. Name And Address Of Contractor (No., Street, City, County, State and Zip Code)

GENERAL DYNAMICS LAND SYSTEMS INC.
38500 MOUND RD
STERLING HEIGHTS, MI 48310-3200

9A. Amendment Of Solicitation No.

9B. Dated (See Item 11)

10A. Modification Of Contract/Order No.

W56HZV-06-G-0006/0007

10B. Dated (See Item 13)

2007JUL27

Code 7W356

Facility Code

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers

is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods:
(a) By completing items 8 and 15, and returning _____ copies of the amendments; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. **FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER.** If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting And Appropriation Data (If required)

ACRN: AA NET DECREASE: -\$1,677,084.00

**13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS
It Modifies The Contract/Order No. As Described In Item 14.**

- A. This Change Order is Issued Pursuant To: _____ The Changes Set Forth In Item 14 Are Made In _____
The Contract/Order No. In Item 10A.
- B. The Above Numbered Contract/Order Is Modified To Reflect The Administrative Changes (such as changes in paying office, appropriation data, etc.) Set Forth In Item 14, Pursuant To The Authority of FAR 43.103(b).
- C. This Supplemental Agreement Is Entered Into Pursuant To Authority Of: _____ H. 20
- D. Other (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the Issuing Office.

14. Description Of Amendment/Modification (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

SEE SECOND PAGE FOR DESCRIPTION

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. Name And Title Of Signer (Type or print)		16A. Name And Title Of Contracting Officer (Type or print)	
		LISA M. JONES LISA.M.JONES3@US.ARMY.MIL (586)282-6973	
15B. Contractor/Offeror	15C. Date Signed	16B. United States Of America	16C. Date Signed
_____ (Signature of person authorized to sign)		By _____ /SIGNED/ (Signature of Contracting Officer)	2014APR21

Name of Offeror or Contractor: GENERAL DYNAMICS LAND SYSTEMS INC.

SECTION A - SUPPLEMENTAL INFORMATION

Buyer Name: DAVID W. DANIELS
 Buyer Office Symbol/Telephone Number: CCTA-ACP-A/(586)282-4865
 Type of Contract: Firm Fixed Price
 Kind of Contract: System Acquisition Contracts
 Type of Business: Large Business Performing in U.S.
 Surveillance Criticality Designator: B
 Weapon System: Tank, M1 Abrams Family of Vehicles

*** End of Narrative A0000 ***

1. The purpose of this Modification 39 to Contract W56HZV-06-G-0006/0007 is to reduce CLIN 0001AA, ACRN AA in the amount of \$1,677,084 for credits the contractor owes the Government pursuant to clause H.20.2 and modification 22.
2. These credits were derived from the following:
 - a. Residual credit pursuant to Paragraph H.20.2 and mod 7, in the amount of \$1,569,660 for a bundling credit.
 - b. Residual credit resulting from modification 22 dated 20 August 2009 Paragraph 1 in the amount of \$107,424 for Loaders Tray credits.
 - c. CLIN 0001 is reduced by the total combined credit amount of \$1,677,084.
3. The contractor shall issue a check to DFAS Columbus IAW the demand letter signed by the PCO on (insert Date of Demand Letter). Also, this modification de-obligates the \$1,677,084 on CLIN 0001AA, ACRN AA. Therefore, CLIN 0001AA, ACRN AA is reduced by \$1,677,084 from \$137,335,473.00 to \$135,658,389.
4. Clause H.20.2 is revised to add the statement, (This credit is taken via Modification 39.)
5. As a result of this Modification 39 on delivery order 0007, the total value of this contract is decreased by \$1,677,084 from \$139,942,181.80 to \$138,265,097.80.
6. As a result of this modification, the following contract pages are changed:

<u>Section</u>	<u>Description</u>
B	CLIN 0001AA funds de-obligated
G	G Page Added
H	H.20.2 updated
7. The Contractor confirms it has no further billings, therefore the Contractor hereby waives any and all rights and claims for equitable adjustment attributable to such facts and circumstances giving rise to this contract. The contractor shall issue a check to DFAS Columbus IAW the demand letter signed by the PCO on the date of award of this modification
8. Except as stated herein, all other contract terms and conditions remain unchanged and in full force and effect.

*** END OF NARRATIVE A0042 ***

CONTINUATION SHEET

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Name of Offeror or Contractor: GENERAL DYNAMICS LAND SYSTEMS INC.

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS				
0001	SEP RETROFIT (60) NSN: 0000-00-000-0000 FSCM: 00000 PART NR: 000000				
0001AA	<u>M1A2 RETROFIT</u> COMMODITY NAME: SEP RETROFIT (60) CLIN CONTRACT TYPE: Firm Fixed Price PRON: 477BVSS547 PRON AMD: 04 ACRN: AA AMS CD: 31206453015 PSC: 2350 <u>Packaging and Marking</u> <u>Inspection and Acceptance</u> INSPECTION: Origin ACCEPTANCE: Origin	60	EA	\$ 2,260,973.150	\$ 135,658,389.00

CONTINUATION SHEET

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Name of Offeror or Contractor: GENERAL DYNAMICS LAND SYSTEMS INC.

SECTION G - CONTRACT ADMINISTRATION DATA

LINE	PRON/ AMS CD/ MIPR/ <u>ITEM</u>	OBLG <u>STAT</u>	JO NO/ <u>ACCT ASSIGN</u>	<u>ACRN</u>	<u>PRIOR AMOUNT</u>	<u>INCREASE/ DECREASE</u>	<u>CUMULATIVE AMOUNT</u>
0001AA	477BVSS547 31206453015 A17P30152R47	1	7GAAUS	AA	\$ 137,335,473.00	\$ -1,677,084.00	\$ 135,658,389.00
						NET CHANGE	\$ -1,677,084.00

<u>ACRN</u>	<u>ACCOUNTING CLASSIFICATION</u>	<u>INCREASE/ DECREASE</u>
AA	21 72033000075R5R02P31206431E9 S20113 W56HZV	\$ -1,677,084.00
		NET CHANGE \$ -1,677,084.00

	<u>PRIOR AMOUNT OF AWARD</u>	<u>INCREASE/DECREASE AMOUNT</u>	<u>CUMULATIVE OBLIG AMT</u>
NET CHANGE FOR AWARD:	\$ 139,942,181.80	\$ -1,677,084.00	\$ 138,265,097.80

LINE	<u>ITEM</u>	<u>ACRN</u>	<u>EDI/SFIS ACCOUNTING CLASSIFICATION</u>
0001AA	AA	21	070920330000 S20113 75R5R023120645301531E9 7GAAUSS20113 W56HZV

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SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1. DEMILITARIZATION OF ITEMS

H.1.1. The Government shall provide demilitarization instructions as required.

H.2. SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) 252.219-7003 (APR 1996)

H.2.1. In furtherance of the Government's policy of promoting the development of small disadvantaged business enterprises, the contractor agrees to award subcontracts to such enterprises, as they are defined in the referenced clause to the maximum practicable extent consistent with efficient contract performance.

H.2.2. The Contractor's revised Small Business and Small Disadvantaged Business Subcontracting Plan dated 24 July 2007, is incorporated into the Contract by reference.

H.3. CONTRACT - ORDER OF PRECEDENCE

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) the Schedule (excluding the specifications);
- (b) representations and other instructions;
- (c) contract clauses;
- (d) other documents, exhibits, and attachments; and
- (e) the specifications.

The specifications include the ERR.

Among the specifications, the following is the order of precedence for the Retrofit M1A2 SEP VERSION 2 specifications contained in C.2.

1. Any Interface Control Document referenced in the System Specification and Provision C.2.7.;
2. System Specification;
3. Prime Item Product Fabrication;
4. LRU Specifications listed in Attachment 003
5. The ERR/Technical Specifications; and
6. Other specifications.

H.4 Reserved.

H.5. SYSTEMIC WARRANTY

H.5.1. Definitions:

H.5.1.1. Acceptance" is execution by an authorized Government Representative of a DOD Form 250 and means the act by which the Government assumes, for itself or as an agent of another, ownership of the identified supplies or recognizes completion of total performance specified in the Order.

H.5.1.2. Supplies" are all new and refurbished SEP hardware, all M1A2 hardware upgraded to the M1A2 SEP configuration, the installation and assembly of the foregoing hardware into M1A2 SEP Retrofit Tanks, and all software. The contractor is responsible for any defect or non-compliance with the essential performance requirements (see H.5.1.5) that is caused by these supplies except as limited by Provision H.5.9.3. The warranty rights and responsibilities of the Government and the contractor for the M1A2 hardware re-used without modification are set forth in DAAB07-01-G-N001/0003 and remain unchanged.

H.5.1.3. Vehicle" is the Abrams Series Tank delivered with new or upgraded LRUs and SRUs under this Delivery Order.

H.5.1.4. Failure" is any condition or characteristic in any supplies furnished under the Order that is not in compliance with the

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requirements of the Order and authorized maintenance documentation.

H.5.1.5. Essential Performance Requirement" is defined as delivered vehicles under warranty meeting the requirements in C.2. (see C.2.6 for GFM converted to CFM), and C.3. of the order, provided that, there shall be no warranty, expressed or implied, related to the additional obligations being undertaken by the Contractor for those "total systems responsibility" requirements which did not exist under delivery order 0009 as applied to the specifications in Section C of this contract."

H.5.1.6. "Design and Manufacturing Requirements" are defined as those structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the system being produced, as identified in H.5.1.5. above.

H.5.1.7. A "Warranted Design Item" is defined as an item of "supplies" in H.5.1.2., which:

a) is introduced into the baseline configuration by a unilateral decision of the Contractor; or

b) is introduced into the baseline configuration by a change to design, manufacturing, or software requirements embodied in an executed contract change order to the baseline configuration and which has satisfactorily completed the appropriate development and planned tests, as mutually agreed upon, by cognizant Contractor and Government technical personnel.

H.5.1.8. Defects" are defined as:

a) Any condition or characteristic in "supplies" that is not in compliance with the requirements of the Prime Item Product Fabrication Specification, Tank, Combat, as defined in Section C.2.

b) "Defects" under the System Specification defined in Section C.2. are defined as specification non-compliance(s).

c) During this Order, a system level test may result in achievement of a characteristic which i.) was previously untested or ii.) confirms the correction to a known prior non-compliance. If any Warranted Design Item change is introduced subsequent to such test and the change degrades the newly demonstrated compliance, then the degradation will constitute a defect under this clause. This requirement will be applicable on a prospective basis.

H.5.1.9. Reserved.

H.5.1.10. Redesign" is defined as the remedy applicable to correct defective warranted design items when workmanship and material and manufacturing non-conformance have been eliminated as the cause of the failure or defect. "Redesign" applies to systemic defects only.

H.5.1.11. Systemic Defect" is a classification of failures which occurs, or may occur, with a frequency, pattern, or sameness to indicate a logical regularity of occurrence which exceeds expected failures and would justify multiple vehicle corrective action.

H.5.1.12. A "Production Lot" for this Order is each squadron of tanks.

H.5.1.13. Appropriate development and planned tests," as it is used in H.5.1.7, is defined as development together with verification testing that is commensurate with the complexity of the subject change as mutually agreed between the parties. Verification testing may include component, subsystem, system and vehicle level testing, incorporating environmental, EMI, EMC, NBC and Nuclear Testing and any necessary vehicle level verification to include confirmation to the Prime Item Product Fabrication Specification, the System Specification, testing in accordance with the FIR and funded by the Government under the current STS contract. Software verification testing may include CSU Test, Integration Test, CSCI Test, Vetronic System Test, Quality Assurance Vehicle Test, Prime Item FIR Vehicle Test (at Lima Army Tank Plant), as well as Government Testing including User-conducted "Beta" testing. In the event that the Government fails to conduct any of the agreed upon testing the parties agree that any characteristic not tested shall not be warranted until such time as the Government funds and the Contractor successfully completes testing on that characteristic as defined in the appropriate test plan.

H.5.2. Coverage:

H.5.2.1. Notwithstanding inspection and acceptance by the Government of supplies furnished under this Order or any clause of this Order concerning the conclusiveness thereof, the Contractor warrants for the periods set forth herein that all supplies provided under this Order:

a. Will be free from all defects in material and workmanship at the time of delivery that would cause the warranted items to fail to meet the requirements of this Order.

b. Will conform to the design and manufacturing requirements set forth in Section C of this Order; and

c. Will meet the essential performance requirements identified in Paragraph H.5.1.5 above.

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H.5.2.2. The Contractor shall, to the extent the Contractor's suppliers customarily provide to customers a Greater Warranty covering specific supplies, provide such greater warranty as available for those specific components. The contractor is identifying such supplies and warranty terms under the Contractor/Government TAPS Contract.

H.5.3. Contractor Liability: The Contractor's maximum liability under this entire clause H.5 for the cumulative corrective action taken on supplies delivered under each CLIN shall be limited to the ceiling prices given below.

CLIN 0001: \$2,298,658.00

H.5.4. WARRANTY FOR SYSTEMIC DEFECTS:

H.5.4.1. MATERIAL REPAIR/REWORK/REPLACEMENT: In the event the Government determines that a systemic defect exists in the warranted vehicles delivered under this contract, and such defect is determined to be the result of a breach of any of the warranties set forth in paragraph H.5.2 above, then the Contractor shall be liable for timely correction of such systemic defect(s) by repair, rework or replacement of the defective supplies. The Government shall provide reasonable evidence in support of each claim of systemic defect, and where necessary evidence of adequate testing of the warranted design items, to establish the nature of the defect at Government expense. Government expense shall include payment to the Contractor for locating and identifying any failed components in tanks which have been unconditionally accepted by the Government, when so directed to do so by the Contracting Officer.

H.5.4.2. REDESIGN: In addition to the remedy set forth in paragraph H.5.4.1. above, if such a systemic defect exists in a warranted design item, the Contractor shall be liable for redesign of such defective item including any testing required to validate/qualify the proposed redesign, any other effort normally associated with an ECP, provide the redesigned item for vehicles delivered with the defective item and incorporation of the redesign into remaining vehicles to be manufactured under this contract, at no increase in cost to the Government.

H.5.4.3. NOTICE OF A CLAIM: Any claim for correction of a systemic defect, including redesign effort, shall be invoked by the Contracting Officer giving notice to the Contractor within forty-five (45) days after the conditions evidencing systemic defect as set forth in this clause have been provided to the Contracting Officer. The Contractor shall have no liability under this warranty unless such notice is received within forty-five (45) days after completion of the applicable warranty period for systemic defects relating to workmanship and material, design and manufacturing requirements, essential performance requirements or warranted design items. Similarly, the Contractor shall have no liability for System Specification non-compliance unless the Contracting Officer documents with the notice of claim that the noncompliance was a defect as defined in H.5.1.8. The Contracting Officer's notification to the Contractor will include the applicable equipment serial number or the part number or the Federal Stock Number of the defective part, location of equipment to the best of the Government's knowledge, the circumstances surrounding the defect(s), evidence of adequate testing including appropriate test reports if not in the Contractor's possession for warranted design claims, and a point of contact to include phone number. The Government shall provide the Contractor at its request, all reasonably available test data related to a test report(s) provided in a claim, if the data is not included in the report(s).

H.5.4.4. The Contractor shall submit to the Contracting Officer a written reasonable recommended redesign plan or corrective action plan within forty-five (45) days, or such other period as may be mutually agreed, after receipt of the Contracting Officer's notice in accordance with H.5.4.3. The Contracting Officer shall, within thirty (30) days after receipt of the Contractor's redesign plan or corrective action plan, either accept or reject the plan. If the Government accepts the plan, the Contractor will proceed with the redesign effort or corrective action at the Contractor's expense. If the Contractor's recommended plan is determined to be inadequate, the Contractor shall be informed of the extent of the inadequacies and shall submit a revised recommendation within thirty (30) days after receipt of such information.

H.5.4.5. The Contractor upon receipt of a warranty claim will provide in the Contractor's format, the Government with warranty tracking data pertaining to the claim to the extent such data may be available in the Contractor's system.

H.5.4.6. If the initial and/or revised recommended redesign is reasonable and can be demonstrated to correct the systemic defect, but the Government directs an alternative design to be implemented, the Contractor shall be entitled to an equitable adjustment for any increased cost to the Contractor caused by implementing the Government's redesign rather than the Contractor's recommended design. In such an event, the Contractor shall have no continuing warranty obligation with respect to the Government directed redesign.

H.5.4.7. Where the Government funded tests for a warranted design item are not satisfactorily completed until after incorporation of the design change into the delivery order, warranty coverage shall commence when items incorporating the design change are initially incorporated into supplies, except that when the item configuration has been further changed as a result of test problems, warranty coverage shall commence when the item containing the configuration that satisfactorily completed the Government funded tests was initially incorporated into supplies.

H.5.5. WARRANTY PERIOD:

H.5.5.1. The warranty for material and workmanship for Systemic Defects shall extend from the date of acceptance at JSMC (DD250) for a period of fifteen (15) months. If the contractor receives notice of a valid material or workmanship defect within this warranty period,

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the contractor shall correct such defect in all tanks in which it occurs within the unbroken production lot of the tank upon which notice was given.

H.5.5.2. The Contractor's responsibility for redesign of warranted design items delivered under this Order shall continue for a thirty-six (36) month period following first delivery of the component, part, or system software in a warranted vehicle.

H.5.6. RIGHT TO EQUITABLE ADJUSTMENT:

H.5.6.1. If, upon determination of a warranty claim as provided under H.5.4, the Government elects to repair the warranted items at Government expense, or if the Government elects not to require redesign, repair or replacement of defective or non-conforming warranted supplies to which it is otherwise entitled at Contractor expense under this warranty, the Order shall be subject to a downward equitable adjustment.

H.5.6.2. The amount of the equitable adjustment for repair/replacement of warranted supplies shall be the lower of the replacement cost or the agreed upon repair cost to the Contractor. The replacement cost shall be the amount originally charged to the Government in the Contractor's Bill of Material for the defective supplies plus Contractor mark-ups and profit (Component's price not cost). The Contractor shall forward payment quarterly for all warranty claims by the Government for money reimbursement, which were resolved during the previous quarter. Payment shall be sent to the Abrams PM Office, Plans and Program Branch (SFAE-ASM-AB-PP) with checks made out to "THE TREASURER OF THE UNITED STATES (SFAE-ASM-AB-PP), with a list identifying the user's warranty claim number, date of the claim, amount of each, and Order number under which each claim arose. A copy of the list marked with the identifying check number shall be provided to the Contracting Officer concurrent with payment. The Order will be equitably adjusted in an amount equal to the payment.

H.5.7. Field Maintenance Responsibility and Liability:

H.5.7.1. Maintenance performed by Government personnel in accordance with published maintenance procedures, shall not void any coverage under this warranty and shall be at Government expense, including parts and labor.

H.5.7.2. There will be no voiding of warranty for use by the Government of MIL Spec Parts unless it can be determined that failure is caused thereby.

H.5.8. Exclusions: The provisions of this warranty shall not apply to any warranted supplies if failure has been caused by:

- a. Improper installation or maintenance by the Government.
- b. Operation contrary to the validated and verified Technical Manuals (TMs), design operating parameters, or other written instructions provided to and approved by the Government in such a way as to be a principal cause of the failure.
- c. Repair or alteration by the Government in such a way as to cause the failure.
- d. Misuse, neglect, or accident, including, but not limited to, fire or explosion.
- e. Participation in a combat mission or having sustained combat damage from a combat mission.
- f. Operation outside the specific installation and operating limits specified in Prime Item Product Fabrication Specification or System Specification operating parameters in such a way as to be a principal cause of the failure.
- g. Foreign object damage.
- h. Installation or operation in other than its intended use.
- i. Force Majeure, subversion, riots, vandalism, or sabotage, or fire or explosion induced by or originating from sources external to the warranty items.
- j. Damage attributable to improper packaging, crating, handling, or storage by the Government to the extent of said damage.

H.5.9. Disclaimers and Limitations:

H.5.9.1. Disputes arising under this Order shall be resolved in accordance with the clause of this Order entitled "Disputes."

H.5.9.2. This warranty is the only warranty applicable to the supplies delivered hereunder and is expressed in lieu of all other guarantees or warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Additionally, the Contractor shall not be liable for consequential damages resulting from a failure under this clause of supplies delivered hereunder.

H.5.9.3. With respect to Government-Furnished Materials (GFM), the Contractor's warranty including its warranty with respect to design

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shall extend only to proper installation in accordance with the TDP so as not to degrade its performance and/or reliability, unless the Contractor is required to perform modification or authorized repair on such property, in which case the Contractor's warranty shall extend to such modification or authorized repair.

H.5.9.4. Unless specifically provided under this contract, this warranty is non-transferable to other than the intended user of the vehicles.

H.5.9.5. The rights and remedies of the Government provided in this clause:

a. Shall not be affected in any way by any terms and conditions of this Order concerning the conclusiveness of inspection and acceptance.

b. Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this Order including, but not limited to, initial acceptance test criteria.

H.5.9.6. Individual claims where the total amount of systemic defect hardware replacement/repair prices are less than \$75,000 each will not be covered by this clause.

H.5.9.7. The Contractor shall not be liable for warranty claims if it is determined that the failed part(s) was provided by any source other than the Contractor.

H.5.9.8. The Government will provide the Contractor with reimbursement for reasonable and necessary expenses incurred for analysis, inspection and testing of alleged systemic defects where no failure is determined to have occurred and the warranty claim was asserted without reasonable cause.

H.5.9.9. The Government shall bear the costs and liability for transportation resulting from actions under this clause.

H.5.10. Bar Coding: If the Contractor elects to bar code parts or components, information collected pursuant to the Bar Coding system shall be made available to the Government upon request.

H.5.11. OTHER: The parties agree that the Order as awarded includes no direct cost for administration or contingent costs related to this warranty. The parties further agree that the Prime Contractor's own direct administrative or contingent costs related to warranty shall not be recoverable under any equitable adjustment made pursuant to the Changes clause of this contract.

H.6. MATERIAL COST

H.6.1. To assure conformance to the nuclear hardness requirement of SA-SA00001D, the Contractor may use electronic material that is certified as being nuclear hard to the appropriate levels. Semiconductors and higher assemblies procured from the Radiation Tolerant Assurance Source of Supply Center (RTASSC) are considered certified, to the levels and conditions specified on the corresponding White Sands Standard Drawings (WSDs). Additionally, a nuclear hardness Letter of Certification (LOC) from the RTASSC for higher assemblies will meet this material requirement. The use of source controlled drawings to ensure nuclear hardness requirements are met is no longer required. The Contractor is not responsible for the nuclear hardness of electronic material procured using WSDs and LOCs from RTASSC, to the extent and under the conditions provided by the WSDs and LOCs. For semiconductors microcircuit and higher assemblies procured from other than RTASSC, the Contractor is responsible for meeting the nuclear hardness requirements of the System Specification to the extent previously demonstrated in Government testing.

H.7. COMMINGLING OF MATERIAL

H.7.1. The Contractor and its subcontractors are authorized to commingle material produced, purchased, or otherwise furnished by the Contractor under this Delivery Order, as well as Shop Replaceable Units (SRU's) and Line Replaceable Units (LRU), and other materials provided by the Government, except for the material described in H.7.2 below. For the purpose of this provision, the same part manufactured to different revision levels may be commingled, except as described in H.7.2. below and where parts are specifically designated as obsolete by TDP revision. The contractor may not commingle Government material from the Reset Delivery Orders (DAAE07-01-G-N001/0013, DAAE07-01-G-N001/0017, and any subsequent Reset Delivery Orders) with the Government material under any other contract.

H.7.2. Parts and Components which may not be commingled are:

H.7.2.1. Engine. Starting in FY07, the Contractor will receive two types of GFM engines: TIGER Abrams engines, and Egyptian Engines (for kitting).

a. TIGER engines will go into M1A2 SEP, M1A1 AIM, Wolverine, and A2 to SEP A2 retro-fit vehicles.

b. Egyptian engines only go into kits for shipment to Egypt.

H.7.2.2. Transmissions. The Contractor will have three transmission types as listed below.

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- a. SEP Transmissions.
- b. AIM transmissions.
- c. Egyptian transmissions.

H.7.2.3. Cannon Assemblies. These can be either new or reclaimed. These cannot be mixed.

- a. AIM, M1A2 to SEP A2 Retro-fit and M1A1 to SEP A2 Abrams Upgrade Tanks use reclaimed cannon assemblies.
- b. SEP AUT (M1 to M1A2) and Government of Egypt (GOE) use new 120mm cannon assemblies.

H.8. M1A2 SEP ABRAMS RETROFIT TANK (M1A2 SEP VERSION 2) PROGRAM CLOSE-DOWN

H.8.1. The Delivery Order prices do not include any direct costs associated with the close-down of the M1A2 SEP VERSION 2 vehicle program.

H.8.2. The Contractor's close-down actions not in the vehicle prices, based on Part 45 of the Federal Acquisition Regulations, are:

- a. Preparation of machines for shipment.
- b. Preparing final inventories, boxing and identifying special tooling, test equipment, fixtures and gages required to process parts assigned to various pieces of equipment.
- c. Boxing and protecting any special controllers, etc., that is required for machines.
- d. Layaway and ninety (90) day in-place maintenance of Government production and research property.
- e. Update of all property records for Government production and research property.
- f. Maintenance of real property after 31 December 2010.

H.9 Reserved.

H.10 SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT

H.10.1. Special Tooling and Special Test Equipment acquired or accountable under Contract DAAE07-95-C-0292 to be used on this contract shall be authorized on a rent free use non-interference basis under contract DAAE07-95-C-0292.

H.11 ANAD Rebuild Components

H.11.1 Unless stated otherwise, this clause applies to rebuild components provided to GDLS by ANAD and does not apply to GFM, which is identified on Attachment 001.

H.11.2 GDLS shall provide new material to ANAD and ANAD shall provide Code-F components and Code-A ANAD rebuild components to GDLS in accordance with the workshare agreement, Rev C.

H.11.3 For ANAD rebuild components the contractor shall be entitled to all equitable adjustments available to him under the Government property clause of this contract subject to the following:

H.11.3.1 No adjustment shall result from instances where the contractors supplies to ANAD result in defects in, damage in, or late delivery of rebuild components from ANAD.

H.11.3.2 The cost to remove and replace defective ANAD rebuild components received from ANAD, including the packaging, handling, and preparation cost for return shipment, is included in the vehicle price. The Government shall bear the cost to return the damaged or defective material to ANAD.

H.11.3.3 The parties agree that price adjustments shall be limited to the costs associated with line disruptions and the acquisition of additional Lima supplemental material (LSM) if authorized by the Contracting Officer (see H.4).

H.11.4 If tanks are otherwise ready for acceptance, otherwise meet the contracts requirements, and the contractor is missing ANAD rebuild components or GFM (Attachment 001), the contractor may elect conditional acceptance of tanks as an equitable remedy. Subject to verification that the conditions of this clause have been met, the Government shall conditionally accept tanks subject to a mutually agreeable withhold of payment. Conditional acceptance may be deemed by the Government at its sole discretion to release the Government from claims for equitable adjustment for late delivery of GFM or ANAD parts on any tanks so accepted.

H.12 GOVERNMENT SUPPLY SYSTEM

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H.12.1 The contractor is authorized to purchase material from the Government Supply System in accordance with C.13.6 (Supply Support), to obtain certain items that have historically been GFM. The contractor is authorized to purchase material from this supply system provided the item manager concurs. The contractor shall assume complete responsibility for any such item as if he had made it and shall hold the Government harmless as regards the item.

H.13. Material Management Accounting System (MMAS) For Anniston Material

H.13.1. There is no requirement for the contractor to maintain an MMAS for material provided to and in the possession of Anniston Army Depot.

H.14 RESERVED

H.15. TRANSFER OF OUT OF PRODUCTION MATERIAL INTO DELIVERY ORDER W56HZV-06-G-0006/0007.

H.15.1. The Government has acquired Out of Production Material through the Contractor to provide the Government and Contractor material for production and spares. This material was acquired under Contracts W56HZV-07-D-0062, DAEE07-01-G-N001/0001, and TACOM-Rock Island delivery orders/contracts managed under W56HZV-07-D-0062.

H.15.2. The contractor's requirements for microcircuits GFM are indicated on Attachment 004 in total. For several of the chips, the Government has purchased sufficient quantities for all SEP retrofit tanks. For those microcircuit chips where the quantities are less than the required quantity for vehicles, redesign of the applicable upper assembly component has eliminated the need for additional microcircuits. The contractor has assured the Government that the quantities of microcircuits listed in Attachment 004 are sufficient to build 60 SEP Retrofit vehicles with CEEP components.

H.15.3. The Government has agreed to transfer to this Delivery Order the Out of Production material in the 60 column in Attachment 004 for the 60 vehicles under CLIN 0001 under the conditions below. The quantities in these columns contain an 8% attrition factor. The cost of this material will not be transferred from the original contracts. The parties agree that this material is in the possession of the contractor at time of delivery order award or will be available in time to meet the contract delivery schedule.

a. The Contractor is authorized utilization of material identified in Attachment 004 and shall confirm the transfer of this material from the previous contracts to this delivery order by execution of a DD Form 1149. The contractor shall provide a copy of DD Form 1149 to the ACO, Raymond Brown, DCMA Lima.

b. Although still Government-owned material, the contractor shall be responsible for meeting the contract requirements as if the material were contractor-furnished. Storage, protection and accountability shall be provided in accordance with the contractor's approved practices.

H.15.4. The Contractor has confirmed that costs associated with transfer of Government provided Out of Production material identified in Attachment 004 have been excluded from the Delivery Order prices and supplier purchase orders. Should the Contractor later find this condition to have changed or to have been reported incorrectly, the Contractor shall report this condition within ten (10) days to the TACOM Contracting Officer.

H.16 Reserved

H.17 Lead Solder

H.17.1 The contract price does not include any costs to comply with any U.S. Environmental Protection Agency or any European Union Restriction of Hazardous Substances (RoHS) Directive (effective July 2006) prospective ban of the use of lead solder and other hazardous material processes. It does include any related costs required to comply with FAR 52.223-3, Hazardous Material Identification and Material Safety Data (Jan 1997).

H.18 SAFETY MONITORING AND SURVEILLANCE FOR DU ARMOR EFFORT

CLIN 0001AA vehicle prices do not include any DU Armor labor or Other Direct Cost (ODC) that were proposed by the contractor for Department 2082 (Monitoring and Surveillance). The parties agree that necessary and reasonable costs for such effort during performance of C.20 DISPOSAL OF DU ARMOR PACKAGES REMOVED FROM JSMC will be covered on a cost-no fee basis under Facilities Contract W56HZV-04-E-0001.

H.19 Planned Change Order for Material and Labor Due to Potential Change in Vehicle Configuration

This re-opener was definitized in Modification 09 in the amount of \$1,394,256.00 for the 38 vehicles GDLS has inspected.

H.19.1 The parties are aware that the final configuration mix for sixty M1A2 SEP vehicles to be inducted into the M1A2 SEP retrofit

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program has not been determined by time of award. However, due to time constraints and the need to expedite contract award, the parties agreed to negotiate the price for these requirements based on sixty 18th year vehicles.

H.19.2 The parties agree that the price for the difference in sixty 18th year M1A2 SEP vehicles and the actual configuration mix shall be subject to an equitable adjustment. The Government shall provide the exact vehicle quantity for each of the configurations by 15 September 2007. The contractor shall provide a delta proposal for the induction adjustment in accordance with the following schedule:

Sixty M1A2 SEP Vehicles Final Configuration

Government Identification of configuration:	15 September 2007
Submission of Qualifying Proposal:	30 September 2007
Completion of Govt Review/Negotiation:	15 November 2007
Completion of Definitization:	30 November 2007

H.19.3 Prior to 30 November 2007, the contractor shall not purchase any material for these 60 vehicles that may be deleted by the induction vehicle mix. In the event the change is not negotiated by 30 November 2007, the parties will consider a ceiling priced change order so the contractor may proceed to purchase all required material.

* H.20 RE-OPENER FOR COMBINED MATERIAL PURCHASES WITH POTENTIAL CONTRACT AWARDS FOR SEP UPGRADE AND IMPROVED SEP RESET REQUIREMENTS

H.20.1 Price for vehicle CLIN 0001AA (60 each) does not include the negotiated material bundling factors and corresponding price reductions that would apply if GDLS' purchases are combined with anticipated requirements for SEP Retrofit, Improved SEP Reset (ISR) vehicles, and additional SEP Upgrade vehicles.

* The total credit is taken/deobligated in Mod 39. This clause is settled and finalized.

H.20.2 The parties agree that the following price decrease shall apply in the event the referenced quantities are executed by 30 June 2008:

Vehicle Qty Purchased By 06/30/08	Adjustment per vehicle(60)
158	(\$86,710.00)
338	(\$101,698.00)
393	(\$108,848.00)
573	(\$127,859.00)

Includes the SEP Retrofit quantities of 60 under this delivery Order 0007

H.20.3 If one of the above potential contract quantities is awarded by the above deadline, the Contracting Officer may unilaterally adjust the prices by the above corresponding amounts.

H.20.4 If : (a) the total actual contract quantity purchased varies from the quantities above but stays within a plus or minus (+/-) 10% range; and (b) the ratio of additional upgrade vehicles actually purchased to Improved SEP Reset vehicles actually purchased varies not more than 5% from the planned ratio (235/180), the parties shall revise the price decreases in a manner consistent with Contractor's proposed bundling percentages and decrement learning curves (included in SEP 07-0298), incorporated herein by reference, without regard to "blending" along with the applicable range pricing for items from Borish. If either of the conditions in (a) or (b) above does not apply, the parties shall renegotiate the price decreases. In either case, if agreement on definitive revised price decreases is not reached by 30 June 08 or any extension granted by the Contracting Officer, the Contracting Officer may determine reasonable price adjustments in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause.

H.20.5 Late in the negotiation of the price decreases in this clause, the contractor's supplier for the Eyesafe Laser Rangefinder (ELRF) withdrew any additional decrement on the 158 for any additional procurements (i.e., 180/235), even if made this year, due to the timing of deliveries. Should the contractor negotiate any additional volume decrease to the 158, the contractor agrees to extend the additional volume price decrease (fully loaded with mark-ups and profit) to the Government as a credit to this contract.

H.20.6(a) In Modification 07, the Government exercised its right to the bundling credit described in Clause H.20.2 for a quantity of 338 vehicles. As a result of this credit the contract price was reduced by \$3,069,606.

H.20.6(b) Prices for vehicle CLIN 0001AA (60 each) have not yet (that is, at this point of Modification 07 issuance) been reduced by the total amount of potential bundling factor decrements reflected above. In the event the USG funds 235 M1A2v2 SEP Upgrade vehicles as provided in BOA Order 0011 by 30 June 2008, the USG shall be entitled to a unit price decrease of the CLIN 0001AA vehicles of \$26,161.00.

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H.21 RESERVED

H.22 Reopener: Accounting Issues

There are two accounting issues that may require the vehicle price of CLIN 0001AA (60 vehicles) to be re-opened. They are the vendor warehouse at Tallahassee and vendor warehouse at Lima.

H.22.1 RESERVED

H.22.2 Vendor Warehouse at TLH.

This Re-Opener is definitized by Modification 22

H.22.2.1 The parties disagree as to the proper method of cost allocation for the vendor warehouse at TLH. The contractor believes that it is correct to allocate these vendor provided services as direct costs; the Government, as indirect costs. The contract vehicle price includes \$94,237.00 of direct cost (without markups) for the vendor warehouse at TLH. This direct cost is an NTE price and does not represent any agreement on the part of the Government as to the allocability or reasonableness of these costs.

H.22.2.2 The DACO shall within 120 days of contract award determine in writing the method of cost allocation for the cost of the vendor warehouse at TLH subject to contractor dispute as provided in the Disputes clause of the contract.

H.22.2.3 Direct Cost. If the DACO determines that these costs should be allocated directly, the contractor and the Government will proceed to negotiate the definitive direct costs to be allocated to this contract for the warehouse. The target date for definitization of the direct costs shall be 60 days from the DACOs written determination. The price of the contract may only be adjusted downward.

H.22.2.4 Indirect Cost. If the DACO determines that these costs should be allocated indirectly, the contractor may request that the 14 May 07 FPRA be changed as a result of this determination on the costs of the vendor warehouse at TLH. The contractor shall submit any request for equitable adjustment due to the changed FPRA within 60 days of the DACO determination; the target date for equitable adjustment is 60 days after submission of the request. The price of the contract may only be adjusted downward.

H.22.2.5 The parties agree that this direct cost amount shall be subject to a downward adjustment only. The contractors spreadsheet dated 19 July 2007 (in GDLS letter SEP 07-0276 and incorporated by reference) includes the NTE and negotiated applicable rates and profit for CLIN 0001AA. In the event the DACO determines these costs to be direct, the downward adjustment to CLIN 0001AA shall be calculated by substituting the negotiated warehouse cost (H.22.2.3) into this spreadsheet. If the DACO determines these costs to be indirect, the downward adjustment shall be calculated either by deleting the NTE and substituting the revised FPRA rates resulting from this determination or, if the contractor elects not to request a change to the FPRA, by deleting the NTE from the spreadsheet.

H.22.2.6 In the event that the parties cannot reach agreement on an equitable adjustment under H.22.2.3 or H.22.2.4, or if under H.22.2.4 the contractor fails to submit a request for equitable adjustment, the Contracting Officer has the right to establish unilaterally the downward-only equitable adjustment subject to Contractor disputes provided under the Disputes clause of the contract.

H.22.3 Vendor Warehouse at Lima.

This Re-Opener is definitized by Modification 22

H.22.3.1 The parties disagree as to the proper method of cost allocation for the vendor warehouse at Lima. The contractor believes that it is correct to allocate these vendor provided services as direct costs; the Government, as indirect costs. The contract vehicle price for SubCLIN 0001AA includes \$218,894.00 (including \$70,094.00 for 200 each containers at \$350.47) of direct cost (without markups) for the vendor warehouse at Lima. This direct cost is a NTE price, and does not represent any agreement on the part of the Government as to the allocability, the need for the vendor warehouse, or reasonableness of these costs.

H.22.3.2 The DACO shall within 120 days of contract award determine in writing the method of cost allocation for the cost of the vendor warehouse at Lima subject to contractor dispute as provided in the Disputes clause of the contract.

H.22.3.3 Direct Cost. If the DACO determines that these costs should be allocated directly, the contractor and the Government will proceed to negotiate the definitive direct costs to be allocated to this contract for the warehouse. The target date for definitization of the direct costs shall be 60 days from the DACOs written determination. The price of the contract may only be adjusted downward.

H.22.3.4 Indirect Cost. If the DACO determines that these costs should be allocated indirectly, the contractor may request that the 14 May 07 FPRA be changed as a result of this determination on the costs of the vendor warehouse at Lima. The contractor shall submit any request for equitable adjustment due to the changed FPRA within 60 days of the DACO determination; the target date for equitable adjustment is 60 days after submission of the request. The price of the contract may only be equitably adjusted downward.

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H.22.3.5 The parties agree that this direct cost amount shall be subject to a downward adjustment only. The contractors PPAS spreadsheet dated 19 July 2007 (in GDLS letter SEP 07-0276 and incorporated by reference) includes the NTE and negotiated applicable rates and profit for CLIN 0001AA. In the event the DACO determines these costs to be direct, the downward adjustment to CLIN 0001AA shall be calculated by substituting the negotiated warehouse costs (H.23.3.3) into this spreadsheet. If the DACO determines these costs to be indirect, the downward adjustment shall be calculated either by deleting the NTE and substituting the revised FPRA rates resulting from this determination or, if the contractor elects not to request a change to the FPRA, by deleting the NTE from the spreadsheet.

H.22.3.6 In the event that the parties cannot reach agreement on an equitable adjustment under H.22.3.3 or H.22.3.4, or if under H.22.3.4 the contractor fails to submit a request for equitable adjustment, the Contracting Officer has the right to establish unilaterally the downward-only equitable adjustment subject to Contractor disputes provided under the Disputes clause of the contract.

23. Vendor-Control-Test Re-opener

H.23.1 The parties disagree as to the whether the M1A1 AIM contracts should be included in the base for the vendor-control-test allocations.

H.23.2 The contract price for vehicle CLIN 0001AA (60 each) is based on the contractors higher proposed rate per vehicle that excludes the M1A1 AIM contracts from the base. The contractors proposed Vendor-Control-Test rates and negotiated mark-ups and profit are shown in the contractors PPAS spreadsheet dated 19 July 2007 (in GDLS letter SEP 07-0273 and incorporated by reference)

H.23.3 The Divisional Administrative Contracting Officer (DACO) will within 120 days of contract award determine in writing whether the M1A1 AIM contracts will be included in the base for the vendor-control-test allocations. This determination is subject to contractor dispute as provided in the Disputes clause of the contract.

H.23.4 If the DACO determines that the base for this rate should include the AIM contracts, the Contracting Officer may unilaterally reduce the vehicle price by the following amount:

\$1,219,743.00(at the price line) \$20,329.05 per vehicle

H.23.5 If the DACO determines that the AIM contracts does not need to be included in the base, the contractor and the DACO will proceed to negotiate a revision to the vendor-control-test rate in the FPRA. The revised FPRA rate shall be used by the parties to adjust the contracts vehicle price downward and downward only. The target date for the FPRA revision is 60 days after DACO determination; the target date for the contract adjustment is 60 days after the revised FPRA.

The downward adjustment shall be calculated by substituting the revised FPRA rates into The contractors PPAS spreadsheet dated 19 July 2007 (in GDLS letter SEP 07-0273 and incorporated by reference) for CLIN 0001AA.

H.24.6 If the Government and the contractor cannot agree on either the FPRA revision or the downward contract price adjustment, the Contracting Officer has the unilateral right to equitably adjust the contract subject to contractor dispute as provided in the Disputes clause.

H.24 RE-OPENER FOR L3 SUBCONTRACTS

*Note! This Re-Opener is definitized by Mod 31 as described in Section A narrative A0034.

H.24.1 Prices for vehicle CLIN 0001AA (60 each) include material cost (without GDLS markups) NTE ceiling of \$2,168,198.00 for material to be purchased from subcontractor L3.

H.24.2 The parties agree that this material cost amount shall be subject to a downward adjustment only. This downward adjustment in material cost shall be based on the final negotiated subcontracts between the contractor and subcontractor L3 utilizing results of a Government assist audit to be requested by GDLS based on the combined value of L3s pricing proposals on the various parts. The contractors PPAS spreadsheet dated 24 July 2007 (in GDLS letter SEP 07-0286) and incorporated by reference) includes the negotiated NTE and negotiated applicable rates and profit for CLIN 0001AA. The downward adjustment to CLIN 0001AA shall be calculated by substituting the definitive subcontract prices into this spreadsheet. The contractor shall submit to the PCO the results of the negotiations and the price negotiation memos to substantiate the definitive subcontract prices. The parties also recognize that the L3 Comm material cost was not included in the calculation of the price decreases in H.20 due to combined material buys and that the downward adjustment provided by this clause H.21 will either increase the price decreases in H.20 or, if after 18 Dec 07, be based on the combined quantities of tanks actually bought.

H.24.3 The contractor shall complete its negotiations, provide applicable negotiation memos, and a proposal for the adjustment to CLIN 0001AA no later than 31 Dec 2007. The target date for the downward adjustment contract modification is 15 Feb 2008. Should the parties

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fail to agree to a definitive agreement by the target modification date, the PCO shall have the unilateral right to adjust the contract subject to contractor disputes in accordance with the disputes clause.

H.25 Performance-Based Payments

H.25.1 The parties have agreed to change the form of contract financing from Progress Payments to Performance Based Payments (PBP) pursuant to FAR 52.232-32. Reference Section G.9 for PBP terms and conditions and Exhibit C for requirements and payments.

H.25.2 *Resolved by Modification 18* *As of 23 March 2009 DCAA completed the evaluation of performance based payments as proposed by the contractor and found no exceptions. During the evaluation of the Performance Based Payments (PBP), the PBP was revised as of 24 September 2008. If DCAA questions any of the proposed revised plan, GDLS and the Government would come to a mutual agreement and would insert the final PBP in the contract at a later date.

H.26 Re-Opener for DRS TEM SUBCONTRACTS

NOTE ** This Re-Opener is definitized by Modification 20.

H.26.1 Prices for SLIN 0001AB (60 each) include a NTE ceiling of \$323,810 concerning material to be purchased from subcontractor DRS TEM, that does not include GDLS markups. The part numbers affected by this Re-Opener clause are as follows:

12992559	Sidocar Module
12992561	Wiring Harness
12992565	Wiring Harness
12992576	Sidocar Bracket
PE73792	DRS TEM Misc. Hardware

H.26.2 The parties agree that the cumulative material cost amount to the Government for these parts (without GDLS markups) shall be subject to a downward adjustment only from the NTE ceiling figure. This downward adjustment shall be based on assist audit results and the final negotiated subcontracts between the contractor and the subcontractor. GDLS markups relevant to the DRS TEM parts will be computed based on the negotiated rates and profit at the time of modification award. The contractor shall submit to the PCO the results of the negotiations and the price negotiation memos to substantiate the definitive subcontract prices.

H.26.3 The target date for the downward adjustment contract modification is 120 days after issuance of Modification 08. Should the parties fail to agree to a definitive agreement by the target modification date, the PCO shall have the unilateral right to adjust the contract subject to contractor dispute in accordance with disputes clause.

The Terms and Conditions and contract clauses specific to Section H of the Basic Order Agreement (W56HZV-06-G-0006) are incorporated by reference into this Delivery Order W56HZV-06-G-0006/0007 to include the following clauses:

REGULATORY CITE	TITLE	DATE
FAR 52.232-16	PROGRESS PAYMENTS(ALT III,DATED APR 2003)	APR 2003
DFARS 252.232-7004	DOD PROGRESS PAYMENT RATES	OCT 2001

* changed & added by Mod 39

*** END OF NARRATIVE H0001 ***