

The purpose of this modification is to incorporate Clause H-912, Alternative Dispute Resolution, and reserve CLIN 9999 as a cost reimbursable line item in conjunction with subject clause.

1. H-912. Alternative Dispute Resolution

In accordance with Lightning Bolt 99-4, Alternative Disputes Resolution (ADR) First, and FAR 33.214, the following clause is hereby incorporated in the IPIC contract.

The Contractor and the Government are both interested in the timely, efficient and fair resolution of disputes. Based on the mutual desire for a system of resolving disputes that meets these goals and the Administrative Dispute Resolution Act of 1990, the Contractor and the Government agree to the use of the following procedures under this contract for disposition of disputes.

- a. **Partnering.** The Contractor and the Government will develop the use of partnering for dispute avoidance. Partnering is used to build an environment that encourages open communication and fosters the achievement of mutual goals. This process should assist both parties in identifying and solving problems before they become issues in controversy.
- b. Consistent with FAR 33.214, in cases where the parties decide to use ADR, the parties will prepare and agree to a specific, written ADR agreement appropriate to the controversy, (within four weeks) before the ADR process begins. The agreement should normally address the following (as appropriate): authorized representatives for each party; ADR techniques and processes to be utilized and procedures to be followed; methods for the exchange of information; a schedule and procedures for any discovery proceedings, including how to limit discovery/factual exchange; appointment and payment of neutrals (unless an administrative law judge is selected which results in no cost to either party); whether and to what extent to stay or suspend any pending litigation; possible audit requirements; confidentiality, at what point the parties will begin negotiations; and a provision for termination of the agreement.
 - (1) Either the Contractor or the Government may request that ADR be utilized to resolve any controversial issue arising under or related to this contract which has not been resolved through negotiations. All such requests shall be submitted in writing to the other involved party. The request for review of the issue shall clearly state the specific issue(s) in full detail.
 - (2) The Contractor and the Government shall have 15 working days to submit position papers to the neutral appointee(s) with copies provided to the other interested party. The position paper shall provide a comprehensive statement of the specific facts regarding the parties' positions on the issues in the case. Unless specifically agreed to by the other involved parties prior to the submission date, no position paper shall exceed thirty pages.

- (3) When an issue is submitted for ADR, the review shall be conducted at a neutral location. The party requesting the review will first present its position, followed by the other party. During the review, the Contractor and the Government shall each be provided the full opportunity to present all of their evidence, documentation and testimony. The neutral appointee(s) may ask questions, request clarification or ask for additional data. Copies of all information provided by one party shall be provided to the other party. Transcripts or minutes of the meeting will be prepared.
 - (4) After the review is concluded, neutral appointee(s) shall formulate his/her (their) recommendations. The recommendations, complete with explanations of his/her (their) reasoning, shall be submitted to the Contractor and the Government as a written report. The recommendations shall be based on the pertinent provisions of the contract and the facts and circumstances involved in the issue. It is important for the neutral appointee(s) to express clearly and concretely the logic and reasoning leading to the recommendations, so that both parties fully understand them.
 - (5) After issuance of the recommendations, the Contractor and the Government have two weeks to accept or reject the recommendations and reach a final settlement. (This does not include the administrative time for preparing any contract modification which may be required.) This provision takes precedence over FAR 52.233-1, Disputes Clause, up to this point. Recommendations that have not been accepted or issues that have not been resolved by the end of this period shall revert back to the normal disputes process as deemed in FAR 52.233-1 unless an extended settlement period is agreed to by both parties.
 - (6) All requests by the Contractor for contract price adjustment may be subject to audit by the Defense Contract Audit Agency (DCAA). None of these processes shall alter the terms of the contract, nor the requirements for the appropriate certifications.
- c. ADR Administration Costs. The Contractor is responsible for contracting for the neutral appointee(s) unless an administrative law judge is utilized. This contract includes a cost reimbursable line item to pay for this expense and the other ADR administrative expenses as a direct charge. The Contractor may not use this line item to pay for any ADR settlement costs.

In the event either party believes a particular issued is not well-suited to ADR, or is dissatisfied with progress being made in a particular ADR proceeding, that party may, after good faith efforts to resolve the issue, elect to abandon the ADR process and proceed as otherwise provided under contract, regulation or statute. Nothing in this Agreement shall be deemed to prevent either party from preserving and exercising its legal rights and remedies during the ADR process.

2. CLIN 9999 is hereby reserved for use as a cost reimbursable line item in conjunction with Clause H-912, Alternative Dispute Resolution.
3. All other terms and conditions remain unchanged.

F-16 PROGRAM

*Alternative Dispute Resolution
Memorandum of Agreement
Between
The Department of The Air Force
And
Lockheed Martin Tactical Aircraft Systems*

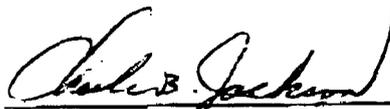
1. The Department of the Air Force (Air Force) and Lockheed Martin Tactical Aircraft Systems (LMTAS) (collectively the parties) have entered into various contracts to acquire F-16 aircraft and related supplies and services. The Parties share the objective of supplying America's war fighters with technologically advanced and reliable equipment in a timely manner and at a reasonable price to promote swift, safe and successful accomplishment of the national defense mission. This (These) contract(s) contain(s) the "Disputes" clause (52.233-1) to implement the Contract Disputes Act of 1978. However, as contemplated by FAR 32.214, the parties also recognize that Alternative Dispute Resolution (ADR) procedures involving collaborative techniques can be used as an alternative to Disputes Clause procedures in order to avoid the disruption and high cost of litigation which detracts from mission accomplishment.
2. The Parties agree that they will try to resolve all issues in controversy arising under or related to the contract by negotiation and mutual agreement at the contracting officer's level. If negotiations reach an impasse, the parties agree to use to the maximum extent feasible one or more of the ADR processes contemplated by FAR 32.2 to reduce or eliminate the need for litigation. The Parties further agree that any ADR process must be structured to allow sufficient time to exchange and analyze any information necessary to obtain and justify a settlement.
3. Consistent with FAR 33.214, in cases where the parties decide to use ADR, the parties will prepare and agree to a specific, written ADR agreement appropriate to the controversy, before the ADR process begins. The agreement should normally address the following (as appropriate): authorized representatives for each party; ADR techniques and processes to be utilized and procedures to be followed; methods for the exchange of information; a schedule and procedures for any discovery proceedings, including how to limit discovery/factual

exchange; appointment and payment of neutrals; whether and to what extent to stay or suspend any pending litigation; possible audit requirements; confidentiality; at what point the parties will begin negotiations; and a provision for termination of the agreement.

4. If the contracting officer rejects a contractor's request to use ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. See 41 U.S.C. 605(e) and FAR 33.214(b). In any case where a contractor rejects the government's request to use ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

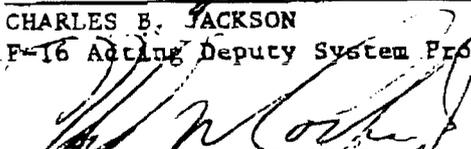
5. It is not the intent of the parties that this agreement alter, supplement or deviate from the terms and conditions of any contract(s) between the parties, or the legal rights and obligations of the parties set forth therein. Any changes to those contract(s) must be executed in writing by authorized contracting officials.

6. In the event either party believes a particular issue is not well-suited to ADR, or is dissatisfied with progress being made in a particular ADR proceeding, that party may, after good faith efforts to resolve the issue, elect to abandon the ADR process and proceed as otherwise provided under contract, regulation or statute. Nothing in this Agreement shall be deemed to prevent either party from preserving and exercising its legal rights and remedies during the ADR process.



CHARLES B. JACKSON
F-16 Acting Deputy System Program Director

1 Oct 99
Date



Contracting Officer

30 Sep 99
Date



Contractor Program Director

30 Sep 99
Date



Contractor Director of Contracts

30 Sep 99
Date