

# Exhibit B

## The Poorly Written Contract that Cost Taxpayers at Least \$48 Million

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Analysis · BR-ANALYSIS-CYBL-CONTRACT-0526-v2 · May 2026 · Version 2

*Subject: HII Defense & Federal Solutions · Subcontract No. P000043846 · Cyberlux K8 drone procurement*

*Every factual claim in this analysis is sourced to documents in the public record. This is not legal advice. Inferences drawn from the record are identified as such throughout.*

Congress appropriated \$66.5 billion in security assistance to Ukraine. One traceable line item within that — \$78.8 million — was obligated through HII Mission Technologies for 2,000 Cyberlux K8 drones. HII announced the underlying vehicle as a flagship win. It booked the revenue. When the procurement collapsed, the available record is consistent with an organization that had powerful financial incentives to ensure the full account never reached the people who needed to hear it. Three hundred ninety-two drones were formally accepted by the United States Government. The other 1,608 are in a warehouse.

### Bottom Line Up Front

1. The subcontract HII Mission Technologies executed on August 29, 2023 designated itself Firm Fixed Price — stated in the title and confirmed in the opening section. Through its own negligent authoring, HII had already surrendered most of its contractual authority before termination arrived: the seven structural contradictions of the FFP designation handed Cyberlux the leverage it would use at settlement. What remained — the right to demand return of \$22,776,605.40 in unearned advance owed to the government at termination, and the right to invoke Cyberlux's failure to submit a compliant settlement proposal within the contract's twenty-day window as forfeiture of entitlement — HII chose not to exercise. Instead it agreed to pay an additional \$25,769,369.03 to a party its own court filing had characterized as nonresponsive, and the \$22.8 million owed to the government was not recovered.
2. The record supports the inference that awarding Cyberlux a \$78.8 million contract served HII Mission Technologies' institutional interests more directly than it served the government's. HII booked the revenue on a flagship \$826 million OASIS+ task order. Mission Technologies' growth narrative depended on the vehicle performing. When the procurement failed, the available filings are consistent with an organization that managed the collapse to protect that narrative — through a termination settlement, a communication restriction, and an interpleader that converted HII from a prime contractor with potential exposure into a discharged neutral stakeholder. The investors never saw the problem. The growth story continued.
3. HII Mission Technologies was institutionally mismatched for this procurement. Its own annual reports across 2022–2024 identify FFP as an elevated risk area. Mission Technologies generates approximately 12% of its revenue under FFP, overwhelmingly from small awards. The division processed the \$78.8 million Cyberlux subcontract through a professional services IDIQ vehicle, on a professional services template, without documented price analysis, financial responsibility assessment, or advance payment protections. The contract's seven structural contradictions of its own FFP designation are traceable to an organization whose institutional DNA is cost-type services contracting.
4. Cyberlux Corporation was not qualified to receive a government contract. North Carolina court records show forty pre-award financial judgments. A civil judgment against the company and its CEO was entered sixty-two days before the subcontract was signed. The CEO had been twice sanctioned by a Virginia court for evasive conduct and defying court orders. Cyberlux was in default on its settlement

obligations twenty-eight days before award. None of this required non-public information. FAR 9.104-1 requires a financial responsibility determination before award. The public record answered the question the regulation required HII to ask.

5. The documented taxpayer cost is at least \$48,545,974 — \$22,776,605.40 in unearned advance owed to the government at termination and \$25,769,369.03 in termination settlement now contested by nine claimants in federal court. Under a genuine FFP contract, neither number exists in its current form. The advance mechanism does not belong in FFP. The settlement exceeds what genuine FFP termination arithmetic would have produced. The timing of the Stop Work Order — thirty-two days after a public filing that showed the advance fully deployed, nine days before fiscal year-end — raises questions the available record does not answer.

The question this analysis asks is not why Cyberlux spent the money the way it did. That story has been documented in federal court by nine competing creditors, a court-appointed receiver, and parallel proceedings across three jurisdictions. The question is why HII Mission Technologies — operating under the full weight of FAR obligations as a prime contractor entrusted with congressionally appropriated Foreign Military Financing — created the conditions that made it possible, and why the available record suggests the complete account of what happened never reached the officials who needed to hear it.

### **The Vehicle and the Win**

HII's 2022 Annual Report announced among its Mission Technologies highlights an \$826 million task order to deliver mission actions and technology services to the U.S. Department of Defense. That task order is OASIS+ delivery order PIID 47QFCA22F0039. Its current obligated value is \$606 million; its ceiling is \$813.8 million. It is the vehicle through which the Cyberlux K8 procurement was processed.

The vehicle matters because it shapes everything that follows. OASIS+ delivery order 47QFCA22F0039 is a technology services IDIQ for the National Security Innovation Network. Its NAICS code is 541330: Engineering Services. Its Product Service Code is R499: Support Professional, Other. Its subcontractors are overwhelmingly professional services firms; Boston Consulting Group is the largest at \$193 million for professional labor support.

HII used this vehicle to procure 2,000 military drones. Cyberlux — one award, \$78,857,414.20, August 29, 2023, "Procurement of 2,000 COTS Type UAS/Drone Systems" — is the second-largest subcontractor on a vehicle built for consulting engagements. Both this and a separate \$42 million drone procurement eight days earlier were processed on Form TSF-P1922, Mission Technologies' professional services template. The vehicle was designed for services. The template was designed for services. The procurement was hardware. That mismatch runs through every document that followed.

The procurement's timing adds context. The government fiscal year ends September 30. The subcontract was awarded August 29, 2023 — thirty-two days before year-end. The P00016 modification that realigned \$143 million in vehicle ceiling was executed August 24. The \$38.7 million advance was wired September 8 — twenty-two days before the government's books closed. End-of-year procurement is where failures concentrate; the pressure to obligate before September 30 creates an environment where getting the obligation on the books competes with getting it right. The record does not show that price analysis, counterparty assessment, or a purpose-built subcontract instrument received the time they required.

### **The Price Nobody Checked**

FAR 15.404 requires the prime to determine that the price it pays is fair and reasonable before award. A Schmidt Signal message filed as ARG Exhibit B in the Eastern District of Virginia proceedings establishes the K8's all-in manufacturing cost at \$4,700 per unit. HII paid \$39,428 per unit.

The companion analysis *K8: Not Fit for Purpose* establishes that \$10,000 is a generous ceiling for a fair price — and that figure assumes a functional product. The K8 fails every critical subsystem assessment for its stated operating environment, including a Chinese-manufactured 2.4GHz controller actively targeted by Russian EW in theater. HII paid \$39,428 per unit for a system the technical record scores at zero for the environment it was procured for.

| Price basis                    | Per unit  | 2,000 units   | Source  |
|--------------------------------|-----------|---------------|---|
| Manufacturing cost (COGS)      | \$4,700   | \$9,400,000   | Schmidt Signal message — ARG Ex. B, ECF 167-1 |
| Fair and reasonable (generous) | ~\$10,000 | ~\$20,000,000 | Analytical estimate                           |
| Contract price                 | \$39,428  | \$78,857,414  | Subcontract No. P000043846                    |
| Premium above fair price       | ~\$29,428 | ~\$58,857,414 | Calculated                                    |

The approximately \$58.8 million above a defensible price created the advance pool, funded what HII invoiced FEDSIM for, and is the price against which the termination settlement was calculated. A price analysis applied when FAR 15.404 required it would have produced a number that made a \$38.7 million advance arithmetically indefensible. That determination does not appear in any public record.

### **The Counterparty Nobody Assessed**

FAR 9.104-1 requires the prime to determine that a prospective subcontractor has adequate financial resources to perform before award. Cyberlux's public record — available before August 29, 2023 — did not support that determination. North Carolina court records show forty-six financial judgments against Cyberlux; forty entered before the award date. On June 28, 2023 — sixty-two days before the subcontract was signed — a Virginia circuit court entered a civil judgment against Cyberlux and Mark Schmidt jointly and severally. The underlying lawsuit had produced two court-imposed sanctions for evasive conduct, document withholding, and defying a court order.

Cyberlux's Q2 2023 filing — published August 14, fifteen days before award — showed operating cash of \$1,028,414, a stockholders' equity deficit of \$3.68 million, and \$28 million in accumulated losses. On August 1, 2023 — twenty-eight days before HII signed — Cyberlux missed its court-ordered settlement payment and went into default. Whether HII conducted the FAR 9.104-1 financial responsibility assessment the regulation requires is not documented in any filing before any court. The public record provided the answer to the question FAR 9.104-1 required HII to ask before it wired \$38.7 million.

### **The Contract That Handed All the Power to the Sub**

By August 29, 2023, HII had agreed to pay \$39,428 per unit for a drone with a \$4,700 manufacturing cost, on a professional services vehicle, to a company in active default on a civil judgment. It then drafted the instrument governing \$38.7 million of Foreign Military Financing. Form TSF-P1922 — Mission Technologies' standard professional services template — was applied to a \$78.8 million military drone manufacturing transaction. The cover page reads "Firm Fixed Price (FFP)." The body contradicts that designation seven times.

Across 2022–2024, roughly 12% of Mission Technologies' revenue was generated under FFP, primarily from small awards. HII as a whole generated 3% of its revenue under FFP. Each annual report across this

period warns investors that fixed-price contracts generally tend to have more financial risk. The organization producing the contract knew — formally, in SEC disclosures — that FFP was not its institutional territory. A properly drafted FFP subcontract concentrates power in the prime's hands: payment on delivery, seller bears cost risk, prime's exposure bounded by accepted goods. This contract did the opposite — releasing \$38.7 million before a drone was accepted, embedding cost-type mechanics that became Cyberlux's termination leverage, and leaving HII with no oversight capability appropriate to a hardware manufacturing transaction.

### **Seven Failures of Prime Contractor Responsibility**

- (1) Advance payment at award (Section 5). The first payment — \$38.7 million — was triggered by an invoice and a Spend Plan, not a delivered drone. This mechanism does not exist in genuine FFP, where sellers fund performance from their own capital.
- (2) “Reimburse” (Section 6). The contract says “Buyer agrees to reimburse the Seller” — a cost-recovery relationship, not a fixed price on delivery. When Cyberlux argued termination entitlement at Mod 4, it pointed to this language. HII had written it.
- (3) Cost-category invoicing (Section 5h). HII required invoices to show current and cumulative material, travel, and other direct costs by line item. Under FFP, the buyer's price does not change with the seller's costs. This is cost-type invoicing imposed on an FFP instrument.
- (4) Cost reporting to the Program Manager (Section 9b). HII required Cyberlux to report any negative impact to schedule or cost. Under FFP, the seller's cost picture is the seller's problem. Building cost reporting into a fixed-price document implied a financial relationship that FFP eliminates by design.
- (5) Timecards and receipts (Section 32.1). The termination clause requires Cyberlux to produce timecards and receipts to verify claims. Timecards verify hours on a services engagement. They do not value partially assembled drone inventory. HII wrote itself the wrong verification instrument for the only oversight moment that mattered at termination.
- (6) “Ceiling Value” (Section 3). The total contract price is labeled a ceiling rather than a price. Cost-type contracts have ceilings; fixed-price contracts have prices. The ambiguity this created was available to cost-type termination logic at Mod 4. It was used.
- (7) The services template (Form TSF-P1922). HII applied its professional services template to a \$78.8 million hardware manufacturing contract — payment terms calibrated for professional labor, timecards as termination verification, sections marked RESERVED where hardware-specific provisions should appear. That mismatch produced a termination architecture incapable of valuing what was actually in the warehouse.

### **The Advance That Didn't Protect the Taxpayer**

The contract's first milestone created an advance payment mechanism — \$38.7 million released on an invoice and a budget document, eleven days after contract execution, on September 8, 2023. FAR 32.409-3 contemplates that advance payments be deposited in a segregated special account with a contractor paramount lien on the balance, under close supervision. FAR 52.232-12 contemplates a financial institution agreement before the advance is made. HII required none of it.

Cyberlux's Q3 2023 filing records the advance as “Customer deposits: \$38,700,600” — a commercial deposit, no restricted cash, no government lien. The Towne Bank statement in the interpleader record shows what happened to \$38.7 million in 114 days: \$3 million to the seller of Datron World Communications on Day 1, approximately \$850,000 to Mark Schmidt's personal Edward Jones

investment account, nearly \$1 million to G2G Global Limited — a UK entity incorporated September 25, 2023 — \$213,000 to a Mercedes dealership, and commissions payable of \$2,629,624 before a single drone had been formally accepted. By December 31, \$35.5 million had left. Cyberlux's Q3 filing was published November 20, 2023. Thirty-two days later, on December 22 — nine days before HII's fiscal year closed on December 31 — HII issued a Stop Work Order.

### **What Cyberlux Did With What HII Gave Them**

Cyberlux read the contract and understood what it had been given: \$38.7 million before performance, reimbursement language for the termination, cost-type invoicing mechanics, and no financial obligations equivalent to what HII owed the government. At termination in May 2024, the Mod 4 inventory showed thirty-seven drone kits that had passed HII-witnessed Flight Acceptance Testing, 745 that cleared QC but not FAT, 526 work-in-progress at various assembly stages, and components for 300 builds never entered into assembly. Under genuine FFP, those groups are the seller's problem — the government pays for delivered and accepted goods, not warehouse inventory. But this contract said "reimburse," required cost-category invoicing, and had embedded advance payment mechanics from Day 1. Cyberlux pointed to HII's own language and argued termination entitlement for all four groups. The record shows HII accepted that argument — paying \$25.77 million for inventory the government did not owe under the contract type stated on the cover page.

### **The Settlement — Motive, Mechanics, and Information Control**

Modification No. 4, executed February 26, 2025 — nine months after termination — settled the Cyberlux subcontract. The \$78.8 million subcontract was approximately 10% of the \$826 million OASIS+ task order HII had announced in its 2022 annual report as a Mission Technologies achievement. Neither the 2023 nor the 2024 annual report mentions Cyberlux in Note 14: Investigations, Claims, and Litigation. A \$78.8 million revenue reversal, or a material contingent liability disclosure arising from documented prime contractor failures, would have generated questions from investors, auditors, and the board. Under the settlement and interpleader structure, those questions did not arise.

The Stop Work Order was issued December 22, 2023 — nine days before HII's fiscal year ended December 31. The formal termination did not arrive until May 2024. The 2023 annual report, filed after the December 31 close, reflects a record Mission Technologies year. The record supports the inference that the SWO's timing preserved FY2023 revenue recognition on the flagship vehicle while deferring the formal failure into 2024 — where the termination, the nine-month negotiation, and the settlement all occurred without appearing in investor disclosures.

On April 2, 2024 — six weeks before the formal termination — Modification P00027 to the OASIS+ delivery order changed the Contracting Officer. The CO who had been present for the award was replaced. The incoming CO inherited a situation with no institutional memory of the original procurement decisions. When FAR 49.108-3 required that CO to review and approve the Mod 4 settlement, the CO's understanding of the transaction was shaped by what was presented.

The contract's termination for convenience clause imposed a twenty-day window on the seller to submit a compliant settlement proposal. The government terminated for convenience May 13, 2024; HII terminated the Cyberlux subcontract May 17. In October 2024 — with the twenty-day window long expired — HII filed a Non-Joinder stating it did not know what was owed and characterizing Cyberlux as nonresponsive. Under the basic terms of such a clause, a seller that fails to submit a compliant proposal within the required window forfeits its settlement entitlement. The right to invoke that forfeiture, and to demand return of the \$22.8 million unearned advance, HII chose not to exercise. Four months later it

agreed to pay an additional \$25,769,369.03. The \$22.8 million owed to the government was not recovered.

**Modification No. 4 — Section 9**

*“Cyberlux shall not communicate with the U.S. Navy or the General Services Administration regarding the performance or termination of the Subcontract. HII shall be the sole point of contact for such communications with the U.S. Navy or the General Services Administration, including but not limited to communications regarding the Government Contracting Officer’s review of the Agreement.”*

Clause 9 contractually restricted Cyberlux’s direct communications with the government at the precise moment of CO review. Whether the settlement’s excess above genuine FFP entitlement and the communication restriction were coincidental features of the same document — or whether one was consideration for the other — is an inference the record supports without establishing. What the record establishes is that both arrived on the same signature page, and that the CO’s determination was made without an independent account from the subcontractor. The interpleader converted HII from a prime contractor with potential exposure into a neutral stakeholder seeking only to deposit disputed funds. The discharge resolved HII’s financial liability for the fund. The contract that produced the fund was not before the court.

**The Cost — Measured Against What FFP Requires**

Under a genuine FFP contract, the government pays the fixed price on accepted delivery; the seller bears all cost risk; there is no advance, and no unearned balance at termination. At termination, the calculable number is the 392 drones formally accepted on DD-250s, plus training kits and simulation software. The \$22.77 million does not exist — FFP advances nothing. The \$25.77 million settlement would be a fraction of its current figure — the partially assembled inventory is the seller’s problem under FFP, not four categories of warehouse inventory the government pays for.

| <b>Amount</b> | <b>Record significance</b>   |
|---------------|--|
| \$22,776,605  | Unearned advance — owed at termination (Schmidt spreadsheet, ECF 70-2). Does not exist under genuine FFP.      |
| \$25,769,369  | Termination settlement — interpleader fund (HII complaint ¶ 30, ECF 41). A fraction of this under genuine FFP. |
| \$48.5M+      | Documented taxpayer cost — floor (excludes legal costs, receiver fees, and interpleader litigation).           |

The \$22,776,605.40 was owed to the government at termination in May 2024 — not when Mod 4 was executed nine months later. Advance payment trust obligations do not wait for settlement. Cyberlux’s public filings showed the money was already gone. Mod 4 does not attempt to recover it. It pays out \$25.77 million more, using the cost-type architecture HII had embedded in its own FFP document, approved by a new CO under information control, against a contract price four times a defensible fair value.

Within the \$66.5 billion Congress appropriated to defend Ukraine, \$78.8 million was obligated for 2,000 Cyberlux K8 drones — listed on the Department of Defense’s official security assistance fact sheet dated January 8, 2025 as delivered assistance, alongside Patriot batteries, HIMARS, and Abrams tanks. Three hundred ninety-two were formally accepted on DD-250s. The remaining 1,608 are in a warehouse. They were never operationally deployed. The DoD counts them as delivered. They are on a shelf.

*Incompetent enough to create the problem. Institutionally motivated to ensure it stayed contained.*

## Sources

1. Subcontract No. P000043846, HII Defense & Federal Solutions, Inc. / Cyberlux Corporation, August 29, 2023. Form TSF-P1922, Version 1. Filed as Exhibit 4, Document 5-4, Case 4:25-cv-01689 (S.D. Tex.).
2. OASIS+ Delivery Order PHD 47QFCA22F0039, GSA to HII Mission Technologies Corp. USASpending.gov. Cyberlux subaward \$78,857,414.20, August 29, 2023.
3. HII Annual Reports 2022–2025. Risk disclosure consistent: fixed-price contracts generally tend to have more financial risk. Advance accounting language re security interest in inventories.
4. Schmidt Signal message — K8 manufacturing cost \$4,700/unit; Cyberlux Towne Bank statement. ARG Exhibit B, ECF No. 167-1, 3:25-cv-00483-JAG (E.D. Va.).
5. FAR 15.404; FAR 9.104-1; FAR 32.409-3; FAR 52.232-12; FAR 44; FAR 49.108-3.
6. Atlantic Wave Holdings, LLC and Secure Community, LLC v. Cyberlux Corporation and Mark D. Schmidt, Case No. CL22-3882, Circuit Court of the City of Richmond, Virginia.
7. North Carolina court records — forty-six financial judgments against Cyberlux; forty before the August 29, 2023 award.
8. Cyberlux OTC Markets Quarterly Report, June 30, 2023.
9. Cyberlux OTC Markets Quarterly Report, September 30, 2023 — Customer deposits \$38,700,600.
10. Cyberlux Amended Annual Report, December 31, 2023.
11. Invoice Summary — Fairwinds commission spreadsheet, Mark Schmidt, July 8, 2025. “To USG \$22,776,605.40.” Exhibit 1, ECF No. 70-2.
12. First Amended Complaint for Interpleader, HII Mission Technologies Corp., ECF No. 41 (E.D. Va.).
13. Modification No. 4, February 26, 2025. Exhibit 2, Case 4:25-cv-01689.
14. Order Discharging HII, 3:25-cv-00483-JAG (E.D. Va.).
15. Department of Defense Fact Sheet on U.S. Security Assistance to Ukraine, January 8, 2025.
16. K8: Not Fit for Purpose — Jackson Holt, TheCyberluxFiles.com, May 2026.
17. How to Win a Contract You Have No Business Winning — Jackson Holt, TheCyberluxFiles.com, May 2026.