

Flowdown Attachment
FDA-2020.0261

RFP / Contract No.: DOTC-19-05-INIT5501

DPAS Rating: None

SAS DUNS number: 799855812

If the Purchase Order is valued at or above \$700,000, and is not for commercial items, the following applies:

In order to meet the requirements of FAR 52.219-9, the Seller agrees to provide a Small Business Subcontracting Plan prior to the award of a Purchase Order. The referenced plan should contain goals for subcontracting with small businesses, small disadvantaged businesses, woman-owned small business, historically under-utilized small business, veteran owned and service disabled veteran owned businesses in accordance with the plan requirements outlined in FAR 52.219-9.

In addition, the Seller must submit an Individual Subcontracting Report (ISR) via the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>) on a semi-annual basis for reporting periods ending on March 31st and September 30th. Reports are due no later than 15 days after the close of each reporting period.

Email for Seller's official acknowledging or rejecting the ISR: sas.eSRS.mail@raytheon.com
(Seller must include contractor official on the ISR report email notification)

The following customer contract requirements apply to this Purchase Order to the extent indicated below and are hereby incorporated into the Purchase Order by reference:

In all clauses listed herein terms shall be revised to suitably identify the party to establish Seller's obligations to Buyer and to the Government; and to enable Buyer to meet its obligations under its prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term "Government" and equivalent phrases shall mean "Buyer", the term "Contracting Officer" shall mean "Buyer's Purchasing Representative", the term "Contractor" or "Offeror" shall mean "Seller", "Subcontractor" shall mean "Seller's Subcontractor" under this Purchase Order, and the term "Contract" shall mean this "Purchase Order". For the avoidance of doubt, the words "Government" and "Contracting Officer" do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 and (2) when title to property is to be transferred directly to the Government. Seller shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS clauses in accordance with the flow down requirements specified in such clauses.

ARTICLE VIII: CONFIDENTIAL INFORMATION

A. Definitions

"Confidential Information" means information and materials which are designated as Confidential or as a Trade Secret in writing, whether by letter or by use of an appropriate stamp or legend, prior to or at the same time any such information or materials are disclosed by such Disclosing Party to the Receiving Party. Notwithstanding the foregoing, materials and other information which are orally, visually, or electronically disclosed by a Disclosing Party, or are disclosed in writing without an appropriate letter, stamp, or legend,

shall constitute Confidential Information or a Trade Secret if the Disclosing Party, within thirty (30) calendar days after such disclosure, delivers to the Receiving Party a written document or documents describing the material or information and indicating that it is confidential or a Trade Secret, provided that any disclosure of information by the Receiving Party prior to receipt of such notice shall not constitute a breach by the Receiving Party of its obligations under this Paragraph. "Confidential Information" also includes any information and materials considered a Trade Secret by the NAC on its own behalf or on behalf of the CMF or NAC Members, or their subcontractors or suppliers.

"Trade Secret" means all forms and types of financial, business, scientific, technical, economic, engineering or otherwise proprietary information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, regardless of how it is stored, compiled, or memorialized, including physically, electronically, graphically, photographically, or in writing if:

1. The owner has taken reasonable measures to keep such information secret; and
2. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public.

B. Exchange of Information

The Government may from time to time disclose Government Confidential Information to the NAC for use by the CMF or NAC Members awarded OTIAs, their subcontractors or suppliers, in connection with the Annual Technology Plan and similar processes or particular projects. The CMF, on behalf of the NAC, NAC Members, their subcontractors or suppliers, may from time to time disclose information that is Trade Secret or Confidential Information to the Government in connection with this Agreement, a project proposal, DOTC Base Agreements, or performance under an OTIA. Neither Party shall be obligated to transfer Confidential Information or Trade Secrets independently developed by the Parties, absent an express written agreement between the Parties providing the terms and conditions for the disclosure.

C. Confidentiality and Authorized Disclosure

The Receiving Party agrees, to the extent permitted by law, that Confidential Information and Trade Secrets shall remain the property of the Disclosing Party, and that, unless otherwise agreed by the Disclosing Party, Confidential Information and Trade Secrets shall not be disclosed, divulged, or otherwise communicated to third parties or used by for any purposes other than in connection with specified project efforts and the licenses granted in Article X, Patent Rights, and Article XI, Data Rights and Copyrights. The aforementioned shall not extend to information or materials that:

1. Are received or become available without restriction to the Receiving Party under a proper, separate agreement;
2. Are not identified with a suitable notice or legend;
3. Are lawfully in possession of the Receiving Party without such restriction to the Receiving Party at the time of disclosure, as demonstrated by prior written records;
4. Are or later become part of the public domain through no fault of the Receiving Party;
5. Are received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party that made the disclosure;
6. Are developed independently by the Receiving Party without use of Confidential Information or Trade Secrets, as evidenced by written records; or
7. Are required by law or regulation to be disclosed, provided, however, that the Receiving Party has given written notice to the Disclosing Party promptly so as to enable such Disclosing Party to seek a protective order or otherwise prevent further disclosure of such information.

D. Return of Proprietary Information

Upon the request of either Party, the other Party shall promptly return all copies and other tangible manifestations of the Confidential Information or Trade Secrets that were disclosed. As used in this section, tangible manifestations include human readable media as well as magnetic and digital storage media.

E. Term

Except to the extent covered by and subject to other provisions of this Agreement or the specific OTIA, the obligations of the Receiving Party under this Article shall continue for a period of five (5) years after the expiration or termination of the OTIA under which the information was provided.

The NAC Member, shall flow down the requirements of this Article to their respective personnel, member entities, and agents at all levels.

ARTICLE X: PATENT RIGHTS

A. Allocation of Principal Rights

Patent Rights under this Agreement or subsequent OTIAs shall be determined in accordance with FAR 52.227-11 (Patent Rights—Ownership by the Contractor (May 2014)), which is hereby incorporated by reference with the following modifications:

1. As appropriate, replace “Contractor” with “NAC Member”; “the agency” and “the Federal Agency” with “Government”; “contract” with “Agreement”; and “Contracting Officer” with “Agreements Officer”.
2. The Government shall have the initial option to retain title to each subject invention made only by Government employees or made jointly by the NAC Member and Government employees. The Government shall promptly notify the NAC Member upon making this election, and agrees to timely file patent applications at its own expense and agrees to grant to the NAC Member a non-exclusive, irrevocable paid-up license to practice the subject invention throughout the world.
3. The NAC Member shall elect in writing whether or not to retain ownership of any subject invention by notifying the Agreements Officer within six (6) months of disclosure. In any case where publication, on sale, or public use has initiated the one (1) year statutory period during which valid patent protection can be obtained in the United States, the period of election of title shall no later than sixty (60) calendar days prior to the end of the statutory period.
4. The CMF, on behalf of the NAC Member, may request an extension to the six (6) month period for ownership election. The Agreements Officer may, in their discretion, extend the ownership election period, but the ownership election period shall not exceed two (2) years from the disclosure of the subject invention. FAR 52.227-1 (Authorization and Consent (Dec 2007)) and Alternate I (Apr 1984) and FAR 52.227-2 (Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)) are also incorporated by reference under this Agreement. If FAR 52.227-3 3 (Patent Indemnity (Apr 1984)) is applicable, it shall be incorporated into the OTIA.

B. Patent Reports

All DOTC Base Agreements shall require the use of DD Form 882, Report of Inventions and Subcontracts, to file an invention report for every OTIA. Negative reports are also required. The NAC Member shall provide the CMF, with an Annual Invention Report at the close of each performance year of each OTIA and at the end of the term of each OTIA.

C. Final Payment

Final payment of an OTIA cannot be made until the NAC Member delivers to the CMF all disclosures of subject inventions and confirmatory instruments required by this Agreement.

D. Lower Tier Agreements

The NAC Member shall include this Article, suitably modified in all lower tier agreements, regardless of tier, for experimental, developmental, or research work performed under the OTIAs awarded pursuant to this Agreement.

ARTICLE XI: DATA RIGHTS AND COPYRIGHTS

Although this Article shall serve as the default and overarching terms and conditions for the handling of Data Rights and Copyrights, every OTIA is individually negotiated, and any specific Data Rights or Copyright terms and conditions in the OTIA Statement of Work will control over this Article.

Technical Data and Computer Software Rights under this Agreement shall be determined in accordance with DFARS 252-227-7013 (Rights in Technical Data—Noncommercial Items (Feb 2014)) and DFARS 252.227-7014 (Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014)), except at otherwise specified in this Article or the OTIA. The definitions included in this Article shall replace the definitions found in the referenced DFARS clauses.

A. Definitions

“Government Purpose” means any activity in which the Government is a party. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

“Government Purpose Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and to release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for Government purposes. This is a middle path unique to defense contracts that allows contractors to have the exclusive right to use the technical data in the commercial market. Unless otherwise agreed, Government Purpose Rights convert to Unlimited Rights five years after execution of the OTIA.

“Limited Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party. However, the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if it is necessary for emergency repair and overhaul, or a release or disclosure to a covered Government support contractor in performance of its covered Government support contract (management and administrative support). The recipient of the technical data is subject to prohibition on the further reproduction, release, disclosure, or use of the technical data, and the contractor or subcontractor asserting the restriction shall be notified of such reproduction, release, disclosure, or use.

“Restricted Rights” applies only to noncommercial computer software and means the Government’s right to use a computer program on a limited number of computers, and make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes. However, the Government may allow the use of the noncommercial computer software outside of the Government under a limited set of circumstances, including use by a covered Government support contractor in performance of its covered Government support contract (management and administrative support), and after the contractor or subcontractor asserting the restriction is notified.

“SBIR Data Rights” refers to a Small Business Innovation Research contract and applies to both technical data and computer software. The contractor is entitled the SBIR data protection to all technical data and computer software developed during performance of a SBIR Phase III agreement, regardless of the funding source. SBIR Data Rights are generally equivalent to Limited Rights for technical data and Restricted Rights for computer software. In the DOD, SBIR Data Rights survive for five years from the completion of the project, at which point they will convert to Unlimited Rights. SBIR efforts are divided into three successive phases (I, II, III), with the ultimate goal of commercializing the technology in question. The Government can award an unlimited number of SBIR Phase III agreements as long as they are a logical follow-on to the technology being developed, and with the understanding that the five-year clock restarts with every award.

“Specifically Negotiated License Rights” means any modification by mutual agreement to the standard DFARS noncommercial data rights categories (Unlimited Rights, Government Purpose Rights, Limited/Restricted Rights) laid out in this Article that the Government and NAC Member consider appropriate to the specific contract action, but shall not provide rights less than that provided by Limited Rights. Any rights so negotiated shall be identified in a license agreement written into or made part of the OTIA.

“Technical Data” means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial or management information.

“Unlimited Rights” means the right to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

B. Allocation of Principle Rights

The Government shall receive a Government Purpose Rights license or an Unlimited Rights license to all technical data and computer software developed and delivered under this Agreement, except for the technical data and computer software that was previously developed exclusively at private expense and identified in the OTIA Statement of Work. To the maximum extent practicable, segregable portions of deliverables that will be restricted shall be clearly identified and labeled by the NAC Member.

The Government and the NAC Member can negotiate for a specific level of rights to all, or a distinct subset of the technical data and computer software that is developed and delivered for a specific OTIA, which will have the full force and effect of an executed license.

If the Government and the NAC Member agree to engage in a Cost Share OTIA, and the NAC Member desires to contribute more than 50% of the total costs of the project, the Government may agree to a Limited or Restricted Rights license to all technical data and computer software developed and delivered under the OTIA, or any other mutually agreed upon level of rights to a distinct subset of the technical data and computer software developed and delivered under the OTIA.

C. Copyrights

The NAC Member reserves the right to protect by copyright original works developed under this Agreement and any subsequent OTIA, pursuant to 17 U.S.C. §§ 401 and 402. All such copyrights will be in the name of the individual NAC Member. The NAC Member, hereby grants to the Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, any copyrighted materials developed under this Agreement, and to authorize others to do so.

In the event that information is exchanged with a notice indicating that it is protected under copyright as a published, copyrighted work, and it is also indicated that such information existed prior to, or was produced outside of this Agreement or any subsequent OTIA, the Government, the CMF or the NAC Member receiving the information and others acting on its behalf may reproduce, distribute, and prepare derivative works for the sole purpose of carrying out its responsibilities under this Agreement.

D. Handling of Data

The NAC Member shall clearly identify, prior to award, the technical data and computer software (and the items, components or processes to which they pertain) that will have asserted restrictions in each OTIA Statement of Work. If, after award, the NAC Member wishes to use any other internally developed technical data or computer software, or any other pre-existing proprietary information not previously identified in the OTIA Statement of Work, then the NAC Member shall disclose its intent in writing the CMF prior to its use, and shall receive written approval from the Agreements Officer through the CMF prior to its use or incorporation. The asserted restrictions in the OTIA Statement of Work are the unilateral claims of the NAC Member, and the inclusion of those restrictions in the OTIA Statement of Work does not equate to the Government's agreement to those claims. At any time, the Government has the right to request substantiating information supporting those claims, and can challenge or reject those claims if they are unsupported.

Technical Data and Computer Software Provided by the Government: Technical data and computer software provided by the Government under this Agreement shall be appropriately marked with a suitable notice or legend and maintained in confidence and disclosed and used by the NAC Member only for the purpose of carrying out their responsibilities under a specific OTIA. At no time will technical data and computer software provided by the Government under this Agreement become the property of the NAC Member, nor does its use in carrying out their responsibilities grant any form of license to the NAC Member to disclose or use that technical data or computer software for any other purpose, unless specifically agreed to in writing by the Agreements Officer. This includes all technical data and computer software first produced by the Government under this Agreement. All OTIAs that contain technical data or computer software provided by the Government shall have appropriate non-disclosure agreements signed by the NAC Member. Upon completion of an OTIA, the aforementioned technical data and computer software shall be disposed of as requested by the Government.

Oral and Visual Information: If information which the NAC or any NAC Member considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to the Government, the exchange of such information must be reduced to a tangible, recorded form and marked with a suitable notice or legend, and furnished to the Government within ten (10) calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information.

Disclaimer of Liability: Notwithstanding the above, the Government shall not be restricted in, nor incur any liability for, the disclosure and use of:

1. Data or software not identified with a suitable notice or legend as set forth in this Article; nor
2. Information contained in any data or software for which disclosure and use is restricted under Article VIII, Confidential Information, if such information is or becomes generally known without breach of the above, is known to or is generated by the Government independently of carrying out responsibilities under this

Agreement, is rightfully received from a third party without restriction, or is included in data or software which the NAC Member have or is required to furnish to the Government without restriction on disclosure and use.

E. Marking of Data

Except for technical data and computer software developed or delivered with Unlimited Rights, all technical data and computer software developed and delivered under this Agreement shall have appropriate Data Rights Markings in accordance with DFARS 252.227-7013(f) and 252.227-7014(f). The Government will have Unlimited Rights to all unmarked technical data or computer software. In the event that unmarked technical data or computer software should have contained a restrictive legend, the CMF, on behalf of the NAC Member, can cure the omission by providing written notice to the Agreements Officer within thirty (30) calendar days of the erroneous disclosure. The Government will not be responsible for any additional disclosures of the inappropriately marked technical data or computer software prior to that written notice.

F. Lower Tier Agreements

The NAC Member shall include this Article, suitably modified, in all lower tier agreements, regardless of tier, for work performed under the OTIAs awarded pursuant to this Agreement.

ARTICLE XII: EXPORT CONTROL

A. Export Control

The Parties shall comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Agreement. Accordingly, the NAC Member shall not export, directly or indirectly, any products or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations.

B. Lower Tier Agreements

The NAC Member shall include this Article, suitably modified in all lower tier agreements, regardless of tier, for work performed under the OTIAs awarded pursuant to this Agreement.

The following clauses apply to all Purchase Orders, including those for “Commercial Item(s)”, as defined in FAR 2.101:

52.227-1	Authorization and Consent (Dec 2007)	Applicable to all Purchase Orders over the Simplified Acquisition Threshold.
52.227-1	Authorization and Consent (Dec 2007) Alternate I	Applicable to all Purchase Orders over the Simplified Acquisition Threshold.
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007)	Applicable to all Purchase Orders expected to exceed the Simplified Acquisition Threshold.

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52.227-11	Patent Rights -- Ownership by the Contractor (May 2014)	Applicable to all Purchase Orders for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization with the following modifications: 1. As appropriate, replace "Contractor" with "NAC Member"; "the agency" and "the Federal Agency" with "Government"; "contract" with "Agreement"; and "Contracting Officer" with "Agreements Officer". 2. The Government shall have the initial option to retain title to each subject invention made only by Government employees or made jointly by the NAC Member and Government employees. The Government shall promptly notify the NAC Member upon making this election, and agrees to timely file patent applications at its own expense and agrees to grant to the NAC Member a non-exclusive, irrevocable paid-up license to practice the subject invention throughout the world. 3. The NAC Member shall elect in writing whether or not to retain ownership of any subject invention by notifying the Agreements Officer within six (6) months of disclosure. In any case where publication, on sale, or public use has initiated the one (1) year statutory period during which valid patent protection can be obtained in the United States, the period of election of title shall no later than sixty (60) calendar days prior to the end of the statutory period. 4. The CMF, on behalf of the NAC Member, may request an extension to the six (6) month period for ownership election. The Agreements Officer may, in their discretion, extend the ownership election period, but the ownership election period shall not exceed two (2) years from the disclosure of the subject invention.
52.245-1	Government Property (Jan 2017)	Applicable to all Purchase Orders when Government property is acquired or furnished (see PT-001).
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting (Oct 2016)	Applicable to all Purchase Orders for operationally critical support, or for which Purchase Order performance will involve covered defense information.
252.223-7002	Safety Precautions for Ammunition and Explosives (May 1994)	Applicable to all Purchase Orders that involve ammunition or explosives.
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (Sep 2014)	Applicable to all Purchase Orders that require, may require, or permit a Seller or its lower tier subcontractor's access to a DoD installation.
252.223-7007	Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (Sep 1999)	Applicable to all Purchase Orders for (i) the development, production, manufacture, or purchase of arms, ammunition, and explosives (AA&E), or (ii) when AA&E will be provided to the Seller as Government-furnished property.
252.225-7013	Duty-Free Entry (May 2016)	Applicable to all Purchase Orders with Sellers who are located in a "Qualifying country" as defined in DFARS Part 225.8; or if the estimated U.S. duty for the Goods will exceed \$200 per unit. The information required by paragraph (j)(3) of this clause is available upon request.
52.223-3	Hazardous Material Identification and Material Safety Data (Jan 1997)	Applicable to all Purchase Orders that require the delivery of hazardous materials as defined in FAR 23.301. "Government" means "Government and Buyer" in this clause.
52.245-9	Use and Charges (Apr 2012)	Applicable to all Purchase Orders when Government property is acquired or furnished (see PT-001).
252.223-7001	Hazard Warning Labels (Dec 1991)	Applicable to all Purchase Orders for goods that require submission of hazardous material data sheets. (See FAR 23.302(c))

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252.223-7003	Change in Place of Performance – Ammunition and Explosives (Dec 1991)	Applicable to all Purchase Orders that involve ammunition or explosives.
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