Acquiring and Enforcing the Government's Rights in Technical Data and Computer Software Under Department of Defense Contracts: A Practical Handbook for Acquisition Professionals

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PREPARED BY

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FOREWORD

Business entities and governments are more cognizant of the value of intellectual property now than at any time in recorded history. Business entities consider intellectual property their "lifeblood" which they actively guard and for which they charge a premium. In a similar fashion, the Department of Defense (DoD) considers a certain type of intellectual property – technical data and computer software rights acquired under its contracts – its "lifeblood" in order to enhance competition and sustain each system and its subsystems over their life cycle (e.g., development, production, testing, installation, operation, maintenance, upgrades/modifications, interoperability with other systems, transfer of technologies to other programs/systems/platforms).

This handbook provides a practical "cradle-to-grave" approach to acquiring technical data and computer software rights. It is an extended treatment of that subject which is briefly discussed in *Government Contract Law for Engineers* (September 2004) issued by SMC/JA. I want to acknowledge Mr. James H. Haag as the driving force and main contributor to this handbook. Please submit any suggested improvements or corrections to this handbook to the Contract and Patent Law Division, Office of the Staff Judge Advocate, Space and Missile Systems Center, Los Angeles AFB, 483 North Aviation Boulevard, El Segundo, CA 90245 or to james.haag@us.af.mil.

The acquisition of rights in technical data and computer software under DoD contracts applies equally to supply contracts, services contracts and construction contracts. Accordingly, Appendix 1 contains excerpts from a request for proposals (RFP) for a services acquisition, Appendix 2 contains excerpts from an RFP for a software-intensive system, and Appendix 3 contains excerpts from an RFP for a hardware-intensive system. Various program offices carefully tailored those excerpts for each acquisition using the disciplined intellectual framework described in this handbook to account for the specific needs of their particular acquisition.

Due to the size of the appendices to this handbook, this office has highlighted relevant portions of Appendices 1-3 in yellow in the soft copy so readers can quickly find those excerpts. Readers may wish to print out a double-sided hard copy of this handbook using a color copier and insert that copy into a three-ring binder, as that approach will facilitate the reader's ability to find a relevant portion in an appendix the rationale for which this handbook discusses in the narrative portion.

Each acquisition has its own unique needs for rights in technical data and computer software. Unfortunately, a one-size-fits-all-panacea-clause does not exist. If it did, the drafters of the Defense Federal Acquisition Regulation Supplement (DFARS) would have included such a clause into that acquisition regulation the last time (i.e., June 28, 1995) they issued a complete rewrite of the regulations applicable to this topic – or the last time they proposed another complete rewrite of those regulations (i.e., September 27, 2010). It would therefore be inadvisable for the reader to conclude that all that is necessary is to select one of the examples included in Appendices 1-3 and copy it over into their RFP. Instead, this office recommends that readers use the disciplined intellectual framework recommended in this handbook so that readers will carefully *tailor* one of these examples to satisfy the unique needs of their specific program.

This handbook is not designed to furnish legal advice to specific problems. Readers should neither cite nor rely upon this handbook as a substitute for legal advice. YOU ARE ENCOURAGED TO SEEK THE ADVICE OF YOUR PROGRAM ATTORNEY ON SPECIFIC LEGAL PROBLEMS.

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I. Introduction.

As stated in the publication issued by the Undersecretary of Defense (Acquisition, Technology & Logistics)((USD)AT&L) entitled *Intellectual Property: Navigating Through Commercial Waters* (October 15, 2001), innovation requires substantial financial investment and effort over a long period and uses scarce resources. Where the Government is not directly paying for that investment, to make this investment worthwhile industry relies on its intellectual property rights as the primary means to recoup these nonrecurring costs and seek profit. By law, the Government is required to honor any restrictions on its ability to use, release and disclose a corporation's intellectual property (including technical data and computer software) as reflected by restrictive markings affixed to that intellectual property, as the unauthorized or inadvertent disclosure of such trade secrets[1] may destroy their commercial value. Although legal remedies for such improper disclosure include money damages, injunctions and criminal sanctions, contractual remedies for such improper disclosure are often inadequate to preserve the value of the trade secret because it is difficult to prove their misappropriation.

Arguably, the proper acquisition of technical data and computer software rights by the Government – a type of intellectual property that contains trade secrets – is one of the most complicated subjects in Federal procurement law. This dilemma is not necessarily due to any ambiguities that may exist in such regulations. This conclusion is supported by the fact that those regulations have spawned relatively little litigation since the DoD substantially rewrote them in 1995.

Rather, their length and format cause the dilemma. Specifically, they take up 124 single-spaced pages in the DFARS. Moreover, to understand how they work one must read those pages and use them multiple times during contract formation and administration – because the regulations are not laid out in chronological order.

Only recently[2] has any other DoD organization[3] or private publishing company[4] issued a publication like this one – a user-friendly resource that provides a detailed "cradle-to-grave"

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[1] The definition of the term "trade secret" varies depending upon whether one is discussing, e.g., the Trade Secrets Act (18 U.S.C. § 1905), the Freedom of Information Act (5 U.S.C. § 552(b)(4)), or the Uniform Trade Secrets Act codified by most states (e.g., Cal. Civ. Code Ann. § 3426.1(d) (West 2014)). When using that term in this handbook, the authors are using the definition of "trade secret" in the Economic Espionage Act (18 U.S.C. § 1839(3)) as that definition is the only one codified in Federal law; i.e., "all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if [ ] the owner thereof has taken reasonable measures to keep such information secret[ ] and 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".

[2] Office of the Staff Judge Advocate, Air Force Materiel Command, *Air Force Materiel Command JA Data Rights Handbook* (May 2010).

[3] *Compare, e.g.*, DoD Open Systems Architecture Data Rights Team, *DoD Open Systems Architecture Contract Guidebook for Program Managers* (v.1.1, June 2013), *available at* https://acc.dau.mil/osaguidebook; *Defense Acquisition Guidebook* (September 16, 2013 ed.), *available at* https://acc.dau.mil/docs/dag_pdf/dag_complete.pdf; Office of the Undersecretary of Defense (Acquisition, Technology & Logistics), *Intellectual Property: Navigating*

approach to acquiring technical data and computer software rights starting from the moment the program office commences drafting the Capability Development Document (CDD)/Capability Production Document (CPD), through drafting the acquisition strategy/plan, through properly structuring each section of the Request for Proposals (RFP), through competitive or sole-source negotiations prior to award, through delivery of the technical data and computer software to which those rights pertain.[5,6] That is the purpose of this handbook – to put this topic in chronological order so that program office personnel understand what to acquire, how to acquire, and when to acquire rights in technical data and computer software.

Before discussing the "what", "how" and "when" relative to acquiring rights in technical data and computer software, one must answer a fundamental question: "Why should program office personnel be concerned about this topic?" There are four reasons why program office personnel should be concerned about this topic. First, law, regulation, and policy require that program office personnel be concerned.

Second, acquiring such rights has a critical impact on the cost and affordability of technology that a program office cannot treat as a separate or distinct issue it can negotiate apart

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Through Commercial Waters (October 15, 2001), *available at* http://ww.acq.osd.mil/dpap/Docs/intelprop.pdf; Principal Deputy Assistant Secretary of Defense (Logistics & Materiel Readiness), *Product Support Manager Guidebook* (April 2011)(available at https://acc.dau.mil/psm-guidebook); *Naval Open Architecture Contract Guidebook for Program Managers* Version 2.0 (June 30, 2010), *available at* https://e-commerce.sscno.nmci.navy.mil/Command/02/ACQ/navgenint.nsf/policydocs/85FFB659233FFB91862575D00076A648/$file/NOA%20Contract%20Guidebook%20V2.0_Statement%20A__FINAL.pdf; *Guidebook for Acquisition of Naval Software Intensive Systems* Version 1.0 (September 2008), *available at* https://acquisition.navy.mil/rda/content/view/full/6079; Assistant Secretary of the Air Force for Acquisition (SAF/AQ), *United States Air Force Weapon Systems Software Management Guidebook* Version 1 (August 15, 2008), *abridged version available at* https://acc.dau.mil/adl/en-US/191921/file/40200/USAF%20WSSMG%20%20ABRIDGED.pdf; Army Materiel Command, *Army Guide for the Preparation of a Program Product Data Management Strategy (DMS)* (August 31, 2010), *available at* https://www.dodtechipedia.mil/dodc/display/dodc/Army+Product+Data+and+Data+Rights+Topics; Army Materiel Command, *Addendum to Army Guide for the Preparation of a Program Product Data Management Strategy (DMS): Transition to Technical Data Rights Strategy (formerly Data Management Strategy)* (June 2012), *available at* https://www.dodtechipedia.mil/dodc/display/dodc/Army+Product+Data+and+Data+Rights+Topics; CENDI Secretariat, *Frequently Asked Questions about Copyright and Computer Software: Issues Affecting the U.S. Government with Special Emphasis on Open Source Software (CENDI/09-1)* (October 10, 2010 Revision), *available at* http://www.cendi.gov/publications/09-1FAQ_OpenSourceSoftware_FINAL_110109.pdf.

[4] *See, e.g.*, James G. McEwen, David S. Block, Richard M. Gray & John T. Lucas, *Intellectual Property in Government Contracts: Protecting and Enforcing IP at the State and Federal Level* (2nd ed. 2012); Ralph C. Nash, Jr. & Leonard Rawicz, *Intellectual Property in Government Contracts* (6th ed. 2008).

[5] In August 2012, the Defense Acquisition University (DAU) issued a Continuous Learning Module (CLM) entitled *Intellectual Property and Data Rights* (CLE 068). Between April and June 2013, the DAU issued the following CLMs: *Introduction to Data Management* (CLM 071), *Data Management and Storage* (CLM 072), *Data Management Planning System* (CLM 073), *Technical Data and Computer Software Rights* (CLM 074), *Data Acquisition* (CLM 075), *Data Markings* (CLM 076), and *Data Management Protection and Storage* (CLM 077). These on-line training modules are available at https://learn.dau.mil.

[6] AF/A4I (Directorate of System Integration) has issued a *Product Data Acquisition Guidance* Web-based aid, *available at* https://www.my.af.mil/gcss-af/USAF/site/ACQUISITION/ACE/PLM (last visited February 26, 2014). The purpose of that *Guidance* is to "provide acquisition programs with tools, guidance, and training to comply with policy and to secure needed product and software data & data rights."

from contract performance requirements or cost/price. In other words, rights in technical data and computer software are a function of the technical data and computer software the program office seeks to procure, which in turn is a function of the hardware the program office seeks to procure, which in turn is a function of the mission the requirements community seeks to accomplish by placing that weapon system into the hands of the warfighter.

Specifically, if program office personnel do not acquire sufficient rights in technical data and computer software prior to award, they may relinquish the opportunity to enhance competition and preserve core logistics capabilities as required by 10 U.S.C. §§ 2464 and 2466. If the Air Force relinquishes that opportunity prior to award, the Air Force will lock itself into a position where the incumbent can force it to pay an exorbitant price years or decades hence to be able to use, release or disclose that technical data or computer software to individuals outside the Government. Of course, that assumes the incumbent is willing to sell the Air Force a license to use, release or disclose that technical data or computer software to individuals other than Government employees at any price.

Third, the unauthorized use, release or disclosure of such trade secrets is a felony under the Trade Secrets and Economic Espionage Acts. Fourth, the unauthorized use, release or disclosure of such trade secrets can subject the Air Force to paying millions of dollars in damages to the owner of that data or software.

Regarding the first reason, permanent legislation[7] requires the DoD acquire certain types of rights in technical data rights under its contracts. The DFARS implements this statutory mandate not just for technical data but also for computer software as well. Memoranda issued by USD(AT&L), the DoD Chief Information Officer, the Secretary of the Air Force, the Acting Assistant Secretary of the Air Force, and the Air Force Service Acquisition Executive,[8] as well

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[7] 10 U.S.C. §§ 2305, 2320, 2321.

[8] Memorandum from Under Secretary of Defense (Acquisition, Technology & Logistics) for Distribution, Subj: "Implementation Directive for Better Buying Power 2.0 – Achieving Greater Efficiency and Productivity in Defense Spending", of April 24, 2013, *available at* http://bbp.dau.mil/docs/USD(AT&L)%20BBP%202.0%20Implementation%20Directive%20(24%20April%202013).pdf; Memorandum from Under Secretary of Defense (Acquisition, Technology & Logistics) for Defense Acquisition Workforce, Subj: "Better Buying Power 2.0: Continuing the Pursuit for Greater Efficiency and Productivity in Defense Spending", of November 13, 2012, *available at* https://dap.dau.mil/policy/Lists/Policy%20Documents/Attachments/3347/USD(ATL)%20Signed%20Memo%20to%20Workforce%20BBP%202%200%20(13%20Nov%2012)%20with%20attachments.pdf; Memorandum from Principal Deputy Under Secretary of Defense (Acquisition, Technology & Logistics) for Secretaries of the Military Departments and Directors of Defense Agencies, Subj: "Document Streamlining – Program Strategies and Systems Engineering Plan", of April 20, 2011, *available at* https://dap.dau.mil/policy/Lists/_Policy%20Documents/Attachments/3284/2011Apr20_TDS_AS_SEP%20Memo%_20PDUSD(ATL)%20Signed.pdf *enclosing* "Technology Development Strategy/Acquisition Strategy Sample Outline" of April 20, 2011, *available at* http://www.acq.osd.mil/ic/IAF%20XXX%20Briefings%203%20June%_202011/TDS_AS__Outline-04-20-2011.pdf; Memorandum from Under Secretary of Defense (Acquisition, Technology & Logistics) to Secretaries of the Military Departments and Directors of the Defense Agencies, Subj: "Implementation Directive for Better Buying Power – Obtaining Greater Efficiency and Productivity in Defense Spending", of November 3, 2010, *available at* https://dap.dau.mil/policy/Documents/2011/Implementation_Directive_Better_Buying_Power_110310.pdf; Memorandum from Under Secretary of Defense (Acquisition, Technology & Logistics) to Secretaries of the Military Departments and Directors of the Defense Agencies, Subj: "Better Buying Power: Guidance for Obtaining Greater Efficiency and Productivity in Defense Spending", of September 14, 2010, *available at* https://dap.dau.

as various instructions,[9] reflect senior leadership's concerns regarding this topic. These concerns are primarily based upon the second reason.

Before discussing the "what", "how" and "when" relative to acquiring rights in technical data and computer software, one also needs to understand certain fundamental concepts about those "rights." First, there is a difference between the Government owning the delivered physical medium on which the technical data or computer software resides and the Government's right to use, release and disclose that technical data or computer software to other than Government employees. The Government may own the medium (e.g., book, compact disc, Blackberry®) on which the technical data or computer software resides. The Government might not, however, have acquired sufficient rights to use, release or disclose that technical data or

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mil/policy/Documents/Policy/Memo%20for%20Acquisition %20Professionals.pdf; Memorandum from Acting Under Secretary of Defense (Acquisition, Technology & Logistics) to Distribution, Subj: "Technology Development Strategy and Acquisition Strategy Documents", of August 20, 2010, *available at* https://acc.dau.mil/adl/en-US/391780/file/52873/Kendall%20ASAP%20Memo%20 Monday_August_23_2010.pdf; Memorandum from Under Secretary of Defense (Acquisition, Technology & Logistics) to Service Acquisition Executives, Subj: "Data Management and Technical Data Rights", of July 19, 2007, *available at* https://acc.dau.mil/adl/en-US/158981/file/29618/2007-4365-ATL_signed.pdf; Memorandum from Department of Defense Chief Information Officer to Distribution, Subj: "Clarifying Guidance Regarding Open Source Software (OSS), of October 16, 2009, *available at* http://dodcio.defense.gov/Portals/0/Documents/ FOSS/2009OSS.pdf; Memorandum from Secretary of the Air Force to Distribution, Subj: "Data Rights and Acquisition Strategy", of May 3, 2006, *available at* https://acc.dau.mil/adl/en-US/32634/file/6199/SECAF%20Memo%20%20Data%20 Rights%20and%20Acquisition%20Strategy%20(3%20May%2006).pdf; Memorandum from Military Deputy, Office of the Assistant Secretary of the Air Force (Acquisition) to Distribution, Subj: "Air Force Implementation of the New OSD Technology Development Strategy/Acquisition Strategy (TDS/AS), Program Protection Plan (PPP), Life Cycle Sustainment Plan (LCSP), and Systems Engineering Plan (SEP) Templates," of November 4, 2011, *available at* https://acc.dau.mil/adl/en-US/483422/file/61292/USAF%20Implementation%20of%20the%20New %20OSD%20Templates%20(incl%20LCSP)%20(4%20Nov%2011).pdf; Memorandum from Air Force Service Acquisition Executive to Distribution, Subj: "Present a Competitive Acquisition Strategy at Each Program Milestone", of January 14, 2011, *available at* https://acc.dau.mil/adl/en-US/435257/file/58875/SAFAQ%20Memo %2014Jan11.pdf.

[9] Interim DoD Instruction 5000.02 ("Operation of the Defense Acquisition System")(November 26, 2013), *available at* http://www.dtic.mil/whs/directives/corres/pdf/500002_interim.pdf; DoD Instruction 5230.24 ("Distribution Statements on Technical Documents")(August 23, 2012), *available at* http://www.dtic.mil/whs/directives/corres/pdf/523024p.pdf; MIL-HDBK-502A ("Product Support Analysis")(March 8, 2013), *available at* https://acc.dau.mil/CommunityBrowser.aspx?id=32543; TO 00-5-3 ("Technical Manual, Methods and Procedures: AF Technical Order Life Cycle Management")(January 1, 2012), *available at* http://www.tinker.af.mil/shared/media/document/AFD-110505-045.pdf; AFPD20-1/63-1 ("Acquisition and Sustainment Life Cycle Management") (July 3, 2012), *available at* http://static.e-publishing.af.mil/production/1/af_a4_7/publication/afpd20-1/afpd20-1.pdf; AFI23-105 ("Spare Parts Breakout Program")(June 7, 1994), *available at* http://static.e-publishing.af.mil/production/1/af_a4_7/publication/afi23-105/afi23-105.pdf; AFI61-204 ("Disseminating Scientific and Technical Information")(August 30, 2002), *available at* http://static.e-publishing.af.mil/production/1/saf_aq/publication/afi61-204/afi61-204.pdf; AFI63-101/20-101_AFGM01 ("Integrated Life Cycle Management")(June 20, 2013), *available at* http://static.e-publishing.af.mil/production/1/saf_aq/publication/afi63-101_20-101_afgm01/afi63-101_20-101.pdf; AFI63-131 ("Modification Management")(March 19, 2013), *available at* http://static.e-publishing.af.mil/production/1/saf_aq/ publication/afi63-131/afi63-131.pdf; AFPAM63-128 ("Guide to Acquisition and Sustainment Life Cycle Management")(October 5, 2009), *available at* http://static.e-publishing.af.mil/production/1/saf_aq/publication/afpam63-128/afpam63-128.pdf; SMCI20-101 ("Space System Sustainment Planning and Management")(October 15, 2008), *available at* http://static.e-publishing.af.mil/production/1/smc/publication/smci20-101/smci20-101.pdf; SMCI63-104 ("Software Acquisition Instruction")(May 26, 2009), *available at* http://static.e-publishing.af.mil/ production/1/smc/publication/smci63-104/smci63-104.pdf.

computer software to persons that are not Government employees in the same manner that the Government may own a book, compact disc, or BlackBerry® that contains technical data but have no right to transfer that technical data to any contractor. The Government retains complete ownership of the medium and if the technical data can be removed the Government could transfer the medium to a third party just like the purchaser of a movie on a digital video disc (DVD) could erase the movie and transfer the blank DVD to anyone. A purchaser of the DVD, however, does not automatically have the right to do anything they want with it (e.g., show it to 100 people for a fee). Conversely, the Government could have acquired the "rights" to use, release and disclose technical data to individuals that are not Government employees but not own the medium (e.g., the Government could have rights to technical data being developed at Government expense that has never been delivered to the Government). Under such circumstances, the Government would still have to negotiate with the contractor to have the technical data transferred to the medium and pay for the medium. Thus, in general the Government must consider both the acquisition of the medium (i.e., deliverable) and the acquisition of the "rights" to the technical data or computer software residing on that medium.

Second, there is a difference between ownership of the underlying technical data or computer software and the "rights" to use, release or disclose that technical data or computer software to third parties. The owner of technical data or computer software has exclusive control over the use, release and disclosure of that intellectual property (including the right to exclude others from using the technical data or computer software). In contrast, a licensee is limited to using that technical data or computer software in accordance with the terms and conditions of the license the owner has granted the licensee.

Therefore, here is the critical point: Under only unique circumstances (i.e., where the technical data the contractor will deliver to the Government is a "special work" such as audiovisual works, musical compositions, investigative reports, and medical records) does the Government acquire title or ownership to technical data or computer software developed under DoD contracts. This fact remains true *even if the Government funded 100% of the development of that technical data or computer software*. Instead, the Government acquires a *license* to use, release or disclose that technical data or computer software to persons who are not Government employees – and employees of Federally Funded Research and Development Centers (FFRDC) (e.g., The Aerospace Corporation, MITRE), a Systems Engineering and Technical Assistance (SETA) contractor, or a Systems Engineering & Integration (SE&I) contractor are not Government employees. That is why, unless assigned to the Government, the contractor typically owns the copyright in the technical data and computer software it developed under a Government contract subject to the Government's license rights (and therefore why copyright markings ("©") are usually affixed to technical data and computer software delivered to the Government). Under such circumstances, the author of an expression of original thought or work can exclude others from copying, performing, displaying or distributing such intellectual property for any period. Accordingly, the DoD will be negotiating over license rights and not ownership in technical data or computer software the contractor will deliver under a contract and for the reasons stated above it is critical that DoD acquisition professionals understand what license rights the Government will acquire under that contract.

By way of analogy, if a driver only possesses a California Class "C" license, he/she cannot drive a motorcycle the operation of which requires a driver to have a California Class "M" license. In a similar fashion, if a program office has not acquired a broad enough license to use, release or disclose a specific item of technical data or computer software to *specific persons or entities who are not Government employees* for *specifically enumerated purposes* for *specified periods of time*, the person who releases those trade secrets to other than those specified persons/entities or for unauthorized purposes or outside the period of time permitted by the license may violate the two criminal statutes mentioned above. With this concept in mind, one can now turn to discussing the "what" (i.e., the terminology) applicable to this subject.

II. Terminology.

Experience demonstrates that various terms (e.g., "computer software") are more broadly defined in the context of technical data and computer software rights than engineers or computer scientists may have been taught is the case in their undergraduate- or graduate-level computer science courses. The contracting parties may fail to communicate effectively with each other if they use different definitions of the same terms during negotiations prior to award and during contract administration after award. Therefore, understanding the definitions of terms is a prerequisite to properly acquiring and enforcing rights in technical data and computer software. The following discussion summarizes 10 U.S.C. §§ 2305 and 2320-2321, Federal Acquisition Regulation (FAR) Subparts 2.1, 7.1, 9.5, 15.3, 15.4, 46.3, 46.7, DFARS Subparts 207.1, 209.5, 215.4, 227.71, 227.72 and 246.7, DFARS Procedures, Guidance, and Information (PGI) Subparts 207.1 and 217.75, and SMC Informational Guidance (IG) Subpart 5315.470, except for the provisions in those resources that discuss technical data and computer software rights acquired under Small Business Innovative Research (SBIR) contracts. Contracts awarded by civilian agencies (e.g., Governmentwide Agency Contracts (GWAC), GSA Federal Supply Schedule (FSS) contracts) contain technical data and computer software clauses required by the FAR that are different from those clauses required by the DFARS. The subject of procuring technical data and computer software via SBIR contracts and task orders, delivery orders, and Blanket Purchase Agreements issued under GWACs or GSA FSS contracts is beyond the scope of this handbook. For further details, contact SMC/JAQ.

A. Technical Data.

"Technical data" is defined by DFARS § 252.227-7013(a)(15) as recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation), excluding computer software or data incidental to contract administration, such as financial and/or management information. Examples of technical data include, but are not limited to, design review data packages, engineering drawings, specifications, interface control documents, test plans, test procedures, test reports, assessment reports, technical orders, and operations and maintenance manuals.

B. Computer Software.

"Computer software" is defined by DFARS §§ 252.227-7013(a)(3) and 252.227-7014(a)(4) as computer programs, source code, source code listings, object code listings, design

details, algorithms, processes, flow charts, formulae and related material *that would enable the software to be reproduced, recreated or recompiled*, but excludes computer databases or computer software documentation. This definition does not expressly mention firmware as being a type of computer software. (SMC Standard SMC-S-012 ("Software Development Standard for Space Systems")(June 13, 2008) defines firmware as the "combination of a hardware device and computer instructions and/or computer data that reside as read-only software on the hardware device.") Nevertheless, the software portion of firmware is encompassed by the broad definition of the term "computer program;" i.e., "a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations."

C. Relevant Constraints.

Apart from the terminology defined above, DoD's ability to acquire rights in technical data and computer software is constrained by statute, regulation and policy. DoD policy is to acquire only that technical data and computer software, and the rights thereto, necessary to satisfy agency needs and that is consistent with Federal procurement law. (As we will discuss in detail below, one of your most important challenges is to carefully determine what those "agency needs" are.) Once the program office has identified particular items of technical data or computer software it wants to take physical possession of (regardless of what specific license rights it may need), solicitations and contracts must then specify the technical data and computer software the program office expects to be delivered. Solicitations and contracts must also establish procedures for determining the acceptability of that technical data and computer software. They must identify separate Contract Line Item Numbers (CLINs) for that technical data and computer software. They must require offerors separately price each item. They must require offerors to identify the technical data or computer software they will furnish with restrictions. They must require contractors to identify technical data they will deliver with such restrictions prior to delivery.

Even if the DoD wants a contractor to deliver technical data or computer software developed exclusively at private expense, DoD is prohibited by statute from requiring the offeror, as a condition of being responsive to an RFP or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components, or processes developed at private expense except for certain types of technical data specified in the DFARS. (Those certain types of technical data include form/fit/function data, data necessary for installation/operation/maintenance/training purposes (which would include computer software documentation)(other than detailed manufacturing process data), data that constitutes a correction or change to data furnished by the Government, data otherwise publicly available or data that has been released by the contractor without restrictions.) Similarly, the Government shall not prohibit or discourage offerors and contractors from furnishing or offering to furnish items, components, or processes developed at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose technical data pertaining to those items may be restricted.

Regulations also prohibit DoD from requiring as a condition of being responsive to an RFP or as a condition for award, to sell or otherwise relinquish to the Government any rights in noncommercial computer software developed at private expense except for certain types of

computer software specified in the DFARS. (Those certain types of computer software include corrections/changes to computer software or computer software documentation furnished to the contractor by the Government, computer software or associated documentation that is otherwise publicly available or has been released or disclosed by the contractor or its subcontractor without restriction on further use, release or disclosure, computer software or associated documentation obtained with Unlimited Rights under another Government contract or as a result of negotiations, or computer software and associated documentation furnished under another Government contract under restrictive conditions that have expired.) Similarly, the Government shall not prohibit or discourage offerors from furnishing or offering to furnish noncommercial computer software developed exclusively at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display or disclose the software may be restricted.

It is permissible, however, for the program office to evaluate the extent to which an offeror proposes to furnish rights in technical data and computer software, and use the results of that evaluation during source selections *provided if* the RFP notifies offerors of that fact. In other words, the program office may use its evaluation of the offeror's proposal to furnish a certain level of technical data and computer software rights as part of its "best value" determination. However, except for the certain types of technical data identified above, the program office cannot mandate the delivery of technical data or computer software with Government Purpose Rights or Unlimited Rights. In other words, although the DoD cannot require an offeror to sell or otherwise relinquish to the Government rights in technical data or computer software previously developed at private expense except for certain types of technical data and computer software specified above, the law does not prohibit the DoD from negotiating with offerors to purchase those rights.

A common misconception is that the Government only acquires rights in technical data or computer software depending upon whether it has funded, in whole or in part, the creation of that data or software. That is not always the case. Under certain circumstances the program office may – and in some cases must – obtain Unlimited Rights even if an offeror or contractor developed the technical data or computer software at private expense. The following discussion differentiates between rights in noncommercial technical data and computer software and rights in commercial technical data and computer software.

D. Noncommercial Rights.

A program office may purchase any one of four types of rights associated with noncommercial technical data (i.e., Unlimited Rights, Government Purpose Rights, Limited Rights, Specifically Negotiated License Rights) and any one of four types of rights associated with noncommercial computer software (i.e., Unlimited Rights, Government Purpose Rights, Restricted Rights, Specifically Negotiated License Rights) under DoD contracts.

1. Unlimited Rights: With respect to noncommercial technical data and computer software, Unlimited Rights means the right to use, release, and disclose within and outside the Government without restrictions (DFARS §§ 252.227-7013(a)(16), 252.227-7014(a)(16)).

2. Government Purpose Rights: With respect to noncommercial technical data and computer software, Government Purpose Rights means the right to use, release, and disclose within the Government without restriction and the right to release or disclose outside the Government for U.S. Government purposes. ("Government purpose" includes any activity in which the U.S. Government is a party, including competitive procurements and excluding use, release, or disclosure for commercial purposes.) After five years (or some other period negotiated by the parties), the Government's rights in such noncommercial technical data or computer software are automatically upgraded to Unlimited Rights. (DFARS §§ 252.227-7013(a)(13), 252.227-7014(a)(12)).

3. Limited Rights: With respect to noncommercial technical data, Limited Rights means the right to use, release and disclose within the Government without restriction and the right to release outside the Government *only if*

(1) the recipient requires such data to perform emergency repair and overhaul *or* the release or disclosure will be to a "covered Government support contractor" in performance of its covered Government support contract for use, modification, reproduction, performance, display, release or disclosure to a person authorized to receive limited rights technical data *or* (other than detailed manufacturing or process data) will be to a foreign government that is in the interest of the U.S. Government to release and is required for evaluation or informational purposes,

(2) the recipient's contract contains DFARS § 252.227-7025, *and*

(3) the Government notifies the owner of that technical data of such reproduction, release, disclosure or use.

If the Government provides such Limited Rights technical data to a recipient for purposes of emergency repair or overhaul, the recipient must destroy that technical data and all copies in its possession promptly following completion of the emergency repair/overhaul. (DFARS § 252.227-7013(a)(14)).

4. Restricted Rights: With respect to noncommercial computer software, Restricted Rights means the right to use, copy (solely as a backup) and modify the computer software (generally limited to one computer and not placed upon a shared network) within the Government (with notification to the contractor if that software is transferred to another government agency) and the right to disclose that software outside the Government *as long as*:

(1) the recipient is a contractor/subcontractor performing a *services contract* to use that computer software to diagnose *and* correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, the recipient's contract contains DFARS § 252.227-7025 *or* the recipient has signed the Use and Non-Disclosure Agreement found at DFARS § 227.7103-7(c); the Government notifies the owner/licensor that a release or disclosure to the recipient was made; the Government prohibits the recipient from decompiling, disassembling, or reverse-engineering the software or using software decompiled, disassembled, or reverse-engineered by the Government; *and* the recipient uses the computer program with one computer at one time, *or*

(2) the recipient is a contractor/subcontractor performing emergency repairs or overhaul of items or components procured under this or a related contract to use the software to perform the repairs or overhaul made or to modify that software to reflect the repairs or overhaul made; the recipient is subject to the Use and Non-Disclosure Agreement found at DFARS § 227.7103-7(c) or is a Government contractor whose contract contains DFARS § 252.227-7025; *and* the Government prohibits the recipient from decompiling, disassembling or reverse-engineering the software or using software decompiled, disassembled, or reverse-engineered by the Government, *or*

(3) the recipient is a "covered Government support contractor" performing its covered Government support contract for use, modification, reproduction, performance, display, release or disclosure of that computer software authorized to receive restricted rights computer software provided that the covered Government support contract contains DFARS § 252.227-7025 and the Government prohibits the recipient from decompiling, disassembling or reverse engineering the software or using software decompiled, disassembled or reverse engineered by the Government for any other purpose. (DFARS § 252.227-7014(a)(15)).

5. Specifically Negotiated License Rights: Specifically Negotiated License Rights means the parties can modify the standard license rights granted to the Government or obtain rights under circumstances where the Government would ordinarily not be entitled to specific rights. The Government cannot release noncommercial technical data or computer software marked with Specifically Negotiated License Rights outside the Government *unless*

(1) the conditions specified in that license – which the Contracting Officer must include into the contract – have been satisfied,

(2) the recipient's contract contains DFARS § 252.227-7025, *and*

(3) the recipient has signed the Use and Non-Disclosure Agreement found at DFARS § 227.7103-7(c) as modified by DFARS § 252.227-7025(b)(3). (DFARS §§ 252.227-7013(b)(4), 252.227-7014(b)(4)).

In some cases, the Government may accept less than Unlimited Rights or Government Purpose Rights in noncommercial technical data or computer software – but it cannot accept less than Limited Rights in noncommercial technical data or Restricted Rights in noncommercial computer software. Moreover, if the technical data is of a certain type, the contractor may never restrict the Government from releasing or disclosing such technical data outside the Government – and the law restricts the Government from negotiating away its Unlimited Rights to use, release, or disclose such technical data. See pages 27-28 of this handbook for details.

E. Commercial Rights.

Before discussing the types of rights the Government acquires in commercial technical data or computer software, the reader must first understand the definitions of the terms "commercial item", "commercially available off-the-shelf" (COTS) and "commercial computer software". Program office personnel must understand these terms and apply them correctly to whatever technical data or computer software they seek to acquire because the types of rights the Government acquires in commercial technical data or computer software are different from those rights associated with noncommercial items.

The FAR defines the term "commercial item" as any item of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes that (1) has been sold, leased or licensed to the general public, (2) has been offered for sale, lease or license to the general public, (3) evolved from such an item and will be available in the commercial marketplace in time to satisfy the Government's delivery requirements, or (4) any item described above but for modifications of a type customarily available in the commercial marketplace or "minor" modifications not customarily available in the commercial marketplace made to meet federal Government requirements. The FAR defines the term "minor" as those modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component or change the purpose of a process. The FAR states that factors the acquisition team should consider in determining whether the modification is "minor" include the value and size of the modification and the comparative value and size of the final product.

The FAR defines the term "COTS" as a subset of the concept of a "commercial item". Specifically, the FAR defines that term as any item of supply that (1) is a "commercial item", (2) is sold in substantial quantities in the commercial marketplace and is offered to the Government in the same form in which it is sold in the commercial marketplace, and (3) does not include bulk cargo (e.g., agricultural products, petroleum products). The DFARS defines the term "commercial computer software" as software developed or regularly used for non-governmental purposes which (1) has been sold, leased or licensed to the public, (2) has been offered for sale, lease or license to the public, (3) will be available for commercial sale, lease or license in time to satisfy the delivery requirements of the contract, or (4) satisfies any of the criteria specified above and would require only "minor" modification to meet the requirements of the contract.

Although these definitions provide no objective criteria for defining the term "minor," the FAR indicates that modifications of a commercial item are exempt from the requirement for submission of certified cost or pricing data if the total price of all such modifications does not exceed the greater of $700,000 or five percent of the total price of the contract. As a result, this standard may serve as a basis for determining whether in this context the proposed modifications to commercial technical data or computer software are "minor."

As stated above, the types of rights the Government acquires in commercial technical data or computer software are different from those rights associated with noncommercial items. Specifically, the Government will have the "unrestricted" right to use, release, or disclose such technical data pertaining to commercial items if it was previously provided without restrictions, is form/fit/function data, is a correction or change to technical data furnished to the contractor by the Government, or is necessary for operation, maintenance, installation or training purposes (other than detailed manufacturing or process data). Outside of those situations the Government may not use, release, or disclose such technical data outside of the Government unless (1) such use, release or disclosure is necessary for emergency repair/overhaul of the commercial items procured, (2) it obtains a license from the licensor to do so, or (3) the recipient is a "covered Government support contractor" performing a Government contract where that contract contains DFARS § 252.227-7025 and the "covered Government support contractor" has entered into a Non-Disclosure Agreement (NDA) with that contractor regarding the use of such data (unless the contractor has waived the requirement for an NDA in writing). (DFARS § 252.227-7015(b)).

There is no standard clause in the DFARS establishing the Government's rights in commercial computer software, including Open Source Software (OSS). Therefore, such software must be acquired under licenses customarily provided to the public unless provisions in those licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs. (Pages 44-45 of this handbook provide specific examples of such provisions that the contracting parties must eliminate in the proposed contract prior to award. Appendix 1 ("Relevant Excerpts from SE&I Follow-On RFP") of this handbook (at Attachment 10(i)) includes an example of how to eliminate such provisions in the proposed contract.) The Government shall acquire such software competitively to the maximum extent practicable using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.

III. Step-by-Step Approach.

Having now answered the "why" and "what" questions pertaining to the acquisition of technical data and computer software rights, the following pages answer the "how" and "when" questions by describing a step-by-step approach to acquiring sufficient rights in technical data and computer software to permit the program office to successfully execute a program. This approach begins with the program office's formulation of the CDD/CPD, through drafting the acquisition strategy/plan, through drafting provisions of the RFP, through competitive or sole-source negotiations, through the ultimate use, release and disclosure of such deliverables after award of the resulting contract to non-Government employees.

A. Formulating the CDD/CPD.

The *Manual for the Operation of the Joint Capabilities Integration and Development Systems* requires that all CDDs/CPDs describe at an appropriate level of detail the key logistics criteria (e.g., system reliability, maintainability, operational availability, supportability) that will help minimize the system's logistics footprint, enhance its mobility, and reduce the total ownership cost. Unfortunately, neither that publication nor AFI10-601 ("Operational Capability Requirements Development")(November 6, 2013) requires those critical documents identify what technical data and computer software and their associated license rights the program office must acquire to successfully execute the program from development through disposal. That fact is even more surprising given that acquisition of such technical data and computer software (and their associated rights) can be a critical factor in reducing the program's total ownership cost.

Although there are different ways of analyzing what rights the program office should acquire at each of those stages, as explained below it all starts with the program office determining what critical technical data or computer software the contractor must delivered to the program office. Next, the program office must determine consistent with 10 U.S.C. §§ 2320-2321 which *specific persons or entities who are not Government employees* will need to use those critical items *for which specific purposes* (e.g., depot level maintenance, follow-on competitive acquisitions) for *specified periods of time* in order to identify what rights need to be acquired for those deliverables. Ideally, the program manager should be able to summarize the results of this analysis in no more than a paragraph of text in the CDD/CPD (clearly identified in the table of contents under the heading "Rights in Technical Data and Computer Software") that identifies those items and their associated license rights. That paragraph should also explain *why*

the requirements community needs those items and their associated license rights to enable the system's reliability, maintainability, operational availability, supportability and minimize its logistics footprint, enhance its mobility, and reduce the total ownership cost.

We have identified five reasons why we cannot overstate the importance of including that paragraph into those critical requirements documents. First, AFI63-101 states that all acquisition programs will coordinate the requirements document (e.g., Systems Requirements Document) used in conjunction with an RFP with the requiring Lead Command prior to the release of the final RFP and directs the reader's attention to MIL-HDBK-520A ("Systems Requirements Document Guidance")(December 19, 2011) for additional information on preparation of such requirements documents. In turn, MIL-HDBK-520A indicates that requirements documents must specify technical data and computer software requirements. Thus, inclusion of such requirements into the CDD/CPD will increase consistency between the RFP and the CDD/CPD insofar as identification of critical technical data and computer software and associated license rights are concerned.

Second, AFI63-101 states that the Commander, Air Force Space Command, will along with the Service Acquisition Executive (SAF/AQ), certify to the SECAF that the requirements as described in the CDD for ACAT I, ACAT IA and non-delegated ACAT II space programs can, amongst other things, be translated for evaluation in a source selection in a clear and ambiguous way. That instruction also requires that source selections consider Government rights to data. Accordingly, inclusion of requirements for the acquisition of technical data and computer software (and their associated rights) into the CDD/CPD will ensure that, once the RFP is finalized, the latter mandate can be executed consistent with the former mandate.

Third, the Competition In Contracting Act (CICA) requires that the program office demonstrate that the requirements it ultimately included in a RFP are reasonably necessary for the Air Force to meet its minimum needs, as in theory a bid protester can challenge any requirement as unduly restrictive of competition. If, however, the CDD/CPD contains the information described above, it is likely that a bid protest forum (e.g., Government Accountability Office (GAO), U.S. Court of Federal Claims, U.S. Court of Appeals for the Federal Circuit) will give the determination made by the Vice Chairman of the Joint Chiefs of Staff in the CDD/CPD regarding what rights in technical data and computer software he/she needs to accomplish the mission great weight – especially if the rationale for needing such technical data and computer software and their associated license rights is included into the CDD/CPD.

Fourth, if the requirements community includes such requirements and their rationale into the CDD/CPD, any successor program manager will find it difficult to relax such requirements after the Government has awarded the contract. (Situations where a relaxation of requirements might be contemplated would include the program manager erroneously assuming that such relaxation will reduce the total ownership cost of the program or the contractor experiencing "seller's remorse" (described in Section III.H.1 below) with respect to the rights it agreed prior to award to deliver to the program office after award.) The reason why is because that program manager will be unable to relax such contractual requirements unless and until those requirements are deleted from the CDD/CPD by the Vice Chairman of the Joint Chiefs of Staff.

In other words, the existence of such requirements in the CDD/CPD puts the program manager in a strong position to resist pressure originating from any source to relax such requirements.

Finally, delivery of critical technical data and computer software needed to maintain that system within an area of operation overseas by either government personnel or support services contractors, and the acquisition of the license rights needed to provide such items to those personnel or contractors is critical to maximizing the operational availability of that system. The reason why is because – if the Government never required the delivery of such critical items or failed to acquire the appropriate license rights to use, release and disclose those items to those government personnel or contractors – when that system breaks down the user will have no choice but to ship it back to the manufacturer in the United States. The user must then wait the weeks (if not months) it will take the manufacturer to repair that system and return it to that area of operation.

B. Formulating the Acquisition Strategy/Plan.

Before the acquisition team begins to draft the acquisition strategy/acquisition plan (AS/AP) for a specific program, all members of that team who will evaluate offerors' proposals relative to technical data and computer software rights should first read DFARS Subparts 227.71 and 227.72 and the related clauses for themselves so they will possess an intimate familiarity with pertinent terminology. (A copy of the DFARS is available on-line at http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.) Second, the acquisition team should use the following eight-step checklist to determine what types of rights it should acquire so it can successfully execute the acquisition program. Use of that checklist will help the acquisition team correctly complete the sections in the AS/AP for that program that must discuss this topic.

You may notice that some of these steps discuss how the acquisition team should structure the RFP in the context of drafting the AS/AP. Some readers may contend that the Contracting Officer cannot feasibly commence drafting the RFP until after the Milestone Decision Authority (MDA) has approved the AS/AP for the program in question. Those readers would be well-advised to carefully read PDUSD(AT&L)'s memorandum of June 23, 2011 – which requires that prior to Milestones B and C the program office must submit their AS *accompanied by the RFP* for all ACAT I-IV programs. As a result, program offices seeking approval of their AS/AP should commence drafting their AS/AP at the same time they are drafting their RFP. With this advice in mind, we offer the following eight-step checklist:

1. The program office must procure those rights the Government is required by statute, regulation and policy to procure. We provide further details regarding this consideration below.

2. The program office must attempt to procure those rights that the program's CDD or CPD require be procured. Although not all CDDs or CPDs may contain such requirements, the program office should not assume that those documents omit mention of that topic. Such requirements may be buried on some obscure page the existence of which is not explicitly stated in the table of contents underneath a heading (e.g., "Software Engineering") that does not contain

helpful terminology like "technical data and computer software rights." Accordingly, the program office must carefully scrutinize each page of the CDD or CPD for such requirements.

3. Interim DoDI 5000.02 states that program managers must establish and maintain an Intellectual Property (IP) Strategy to identify and manage the full spectrum of IP and related issues (e.g., technical data and computer software deliverables, patented technologies, and appropriate license rights) from the inception of a program and throughout the life cycle. The IP Strategy must describe, at a minimum, how program management will assess program needs for, and acquire competitively whenever possible, the IP deliverables and associated license rights necessary for competitive and affordable acquisition and sustainment over the entire product life cycle, including by integrating, for all systems, the IP planning elements required by DFARS § 207.106 (S-70) for ACAT I and II programs and subsystems thereof. (That subsection of the DFARS requires that acquisition strategies assess the long-term technical data and software needs for those programs and subsystems prior to issuing an RFP for that system or subsystem, address the merits of including a priced option for the future delivery of technical data, computer software and associated license rights that were not acquired upon initial contract award, and address the potential for changes in the sustainment plan over the life cycle of that system or subsystem.) The program manager must update the IP Strategy throughout the entire product life cycle, summarized in the Acquisition Strategy, and present that Strategy along with the Life-Cycle Sustainment Plan during the Operations and Support Phase.

In a similar manner, AFI63-101 states that the IP Strategy that describes the acquisition of technical data and associated rights for the system's total life cycle sustainment must be addressed at Acquisition Strategy Panels, reviews and in the system's Life Cycle Management Plan. Likewise, AFI63-131 states that DMSs for all modification programs identified on the Acquisition Program Master List (APML) and Sustainment Program Master List (SPML) and modifications to space programs and designated weapon systems cited in AFPD10-9 ("Lead Command Designation and Responsibilities for Weapon Systems")(March, 8, 2007) or AFI10-901 ("Lead Operating Command – Communications and Information Systems Management")(March 22, 2001) must include (1) a description of the system's data rights analysis and action plan to satisfy AF needs for all technical data including drawings and technical orders, and (2) a strategy to acquire data rights in anticipation of sustainment strategy including future organic depot repair capability if applicable in accordance with 10 U.S.C. § 2320. It also requires that program managers assess long-term data rights requirements and corresponding acquisition strategies prior to initiating a request for proposal.

To comply with these requirements – and thus accurately determine the program office's use, release and disclosure requirements – the acquisition team must take into consideration the unique nature of the goods or services it seeks to acquire. That is why AFI63-101 states that data rights requirements and corresponding acquisition strategies must ensure they provide for rights or delivery of data the Government requires for systems sustainment and to maintain competition throughout the life cycle (e.g., organic source of repair and/or supply decisions, Government Core depot maintenance capability requirements, expeditionary logistics footprint requirements, engineering data requirements needed for OSSE&E assurance, integrity programs, sustaining engineering, reliability management and configuration management, technical orders, reprocurement/modification/upgrade, demilitarization/disposal, open architecture, information

assurance strategies, technology refreshment or enhancement, training and training program information, spare parts procurement, testing and evaluation, intelligence mission data production, contractor logistics support). Conversely, the MDA must approve the business case analysis justifying the decision not to acquire licenses or associated intellectual property rights necessary for organic support. The program manager must also ensure that the program acquires computer software as executable code and source code unless the MDA documents and approves the rationale for not doing so.

As an aside, it is worth noting that some program offices attempt to solve this problem by having their development/production contractors agree to so-called "enabling" clauses that require those contractors provide a program office's support services contractors "access" to various types of technical, financial and schedule data. Although this is a type of license (since it attempts to identify who can have "access" for what purposes for a specified period of time), for two reasons this is a questionable solution to the problem of properly acquiring rights in technical data and computer software. First, the lexicon used by the DFARS clauses described above do not use the term "access" – they are phrased in terms of "use", "release" and "disclosure" restrictions associated with deliverables. It is unclear why a program office would want to get itself wrapped around the proverbial axle in litigation regarding whether the vague term "access" is synonymous with those terms. (According to Webster's Dictionary, the term "access" can mean anything from "an attack or onset of illness or disease", to "a fit or spell of intense feeling", "permission, liberty, or ability to enter, approach, communicate with, or pass to and from", "admission to sexual intercourse", etc.)

Second, if a development/production contractor is providing such support services contractors "access", then the contractor is providing that "access" directly to a support services contractor. In other words, use of such agreements may erode the program office's control of the program since it takes the program office "out-of-the-loop" because the program office is no longer the sole conduit of such technical data and computer software between that contractor and its support services contractor. And if the recipient provides comments on that technical data or computer software to which it has had "access" back to the contractor, those comments may not have been approved by the program office – but nevertheless might be construed by the contractor as a constructive change to its contract. (For further details regarding the concept of a constructive change, please see *Government Contract Law for Engineers*.)

The preceding examples demonstrate why the program office must determine what technical data and computer software rights are needed to sustain the system and its subsystems over their life cycle (e.g., development, production, testing, installation, operation, maintenance, upgrade/modification, interoperability with other systems, transfer of technologies to other programs/systems/platforms) when drafting the acquisition strategy/plan for that system. In order to make this determination, use the following questions as a guide in the order provided below:

(1) As described below, what rights does 10 U.S.C. § 2320 require the program office procure?

(2) As described below, what rights does DFARS Subparts 227.71 and 227.72 require the program office procure?

(3) What rights do Interim DoDI 5000.02, AFI63-101, AFI63-131 and SMCI63-104 require the program office procure?

(4) What rights does the CDD/CPD require the program office procure?

(5) To *whom* does the program office desire to release or disclose specific items of technical data and computer software (i.e., CDRLs) for *what purposes* and for what *specified period*?

For example, does the program office plan to competitively procure additional quantities of the system, spare parts, or future system upgrades/modifications, or have services contractors perform organic sustainment of the system? On the other hand, is the current producer unable to satisfy surge requirements? If so, the program office should acquire Government Purpose Rights to that technical data or computer software.

In contrast, does the program office want to use, release or disclose that technical data to only Government employees for organic sustainment? In the alternative, does the program office need that technical data to perform only emergency repair and overhaul (as opposed to routine repair and overhaul) of the system? If so, the program office should acquire Limited Rights.

Do contractors performing services (not supply) contracts need that computer software to diagnose and correct deficiencies in a computer program or to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent (as opposed to routine) tactical situations if additional restrictions are satisfied? Or do contractors need that computer software to perform only emergency repairs or overhaul (as opposed to routine repair and overhaul) of items or components thereof to use that software when necessary to perform the repairs or overhaul or modify the software to reflect the repairs or overhaul if additional restrictions are satisfied? If so, the program office should acquire Restricted Rights.

Does the program office want to modify the standard license rights granted to the Government, need additional rights in technical data or computer software acquired with Government Purpose, Limited or Restricted Rights, or want to obtain rights in technical data or computer software in which it does not have rights? If so, the program office will need to acquire a Specifically Negotiated License.

4. The program office must ultimately structure RFP provisions in a manner that will make it extremely difficult for a contractor to change the basis of the parties' bargain after award. By way of explanation, DFARS clauses in the contract permit the contractor to assert after award additional use, release or disclosure restrictions when those restrictions are based upon "new information" or "inadvertent omissions" "unless the inadvertent omissions would have materially affected the source selection decision." If the program office structured the RFP in the manner recommended below, it will be difficult for a contractor to make such assertions

after award. The reason why is that the program office will be able prove the negative: It will be able to point to contemporaneous records proving that, had the program office known of those additional restrictions prior to award, those omissions *would* have materially affected the source selection decision. (Such records would include, but not be limited to, admissions by the awardee contained in its responses to Evaluation Notices the Contracting Officer issued to the offeror during discussions, videotaped discussion sessions, and specific language in the Proposal Analysis Report, Comparative Analysis Report, or Source Selection Decision Document that supported the award of the contract in question.) Conversely, if the program office fails to carefully structure the RFP in such a manner, the contractor can (and may) drive the proverbial truck through this exception.

5. The provisions the program office ultimately includes in the RFP must be unambiguous and therefore enforceable. To that end, the program office must ensure that those provisions precisely identify what specific CDRLs the Government may use, release or disclose to which specific persons/entities who are not Government employees for which specific purposes for which specific period of time (otherwise known as "mapping" various licenses to applicable CDRLs). The reason why is because if the program office does not "map" licenses to specific CDRLs in the RFP, the program office will have difficulties analyzing whether the proposed licenses satisfy its minimum needs prior to award. Moreover, for the reasons discussed below, if licenses are not "mapped" to specific CDRLs in the resulting contract the program office will find it virtually impossible to successfully complete such a "mapping" exercise after contract award.

6. The program could experience adverse consequences if the program office uses some novel approach to acquire technical data and computer software rights for an ACAT I program (i.e., any program that will require an eventual total expenditure for RTD&E of more than $365 million in FY00 constant dollars or more than $2.19 billion in FY00 constant dollars of procurement appropriations). In other words, it is preferable for a program office to include provisions in the RFP that have been battle-tested in a program of similar magnitude. For example, when considering that program of similar magnitude, the evidence demonstrates that those provisions minimized if not eliminated disagreements between the parties during contract administration. That is not to say, however, that a "one-size-fits-all" approach is appropriate. Each program has its unique characteristics that the program office must take into consideration when it is formulating the acquisition strategy and the resulting RFP.

7. The provisions contained in the RFP must be user-friendly.

a. They must be structured in such a manner as to permit the Source Selection Evaluation Board (SSEB) to quickly identify potential licensing problems associated with a specific CDRL contained in an offeror's proposal.

b. They must take into consideration the program office's personnel constraints (i.e., the lack of specialized training provided to program office personnel on this subject). In other words, upon receipt of a CDRL deliverable after award, a Second Lieutenant or a support services contractor employee should be able to compare the restrictive marking to the contract requirements and provide his/her assessment to the Contracting Officer regarding whether the

marking is consistent with contract requirements *within 30 seconds*. In contrast, a program office that awards a contract which establishes numerous types of Specifically Negotiated License Rights, each of which grant 20+ categories of entities/personnel ("communities of interest") differing levels of use, release, or disclosure rights to vaguely-identified items of technical data or computer software that are not expressly "mapped" to specific CDRL deliverables has violated a fundamental principle of error-free design: "Simplify where you can, and build in constraints to block errors."[10] Such an approach exponentially increases the risk of unauthorized releases of trade secrets. Similarly, licensing approaches that make it impossible for program attorneys to figure out what rights were acquired for any item of technical data or computer software (i.e., CDRL) – unless a great deal of technical assistance is provided by program office engineers – are a waste of resources. In short, the program office should baseline all contents of a specific CDRL to a single level of license rights to the maximum extent practicable.

c. They must not require the assistance of the Defense Contract Audit Agency (DCAA) to resolve disputes between the contractor and the program office regarding what rights the program office acquired under a particular contract. By way of explanation, except as indicated below, the DFARS states that the level of rights the Government acquires depends upon the source of the funding used to develop the noncommercial technical data or computer software in question. For example, if noncommercial technical data pertaining to an item, component or process or noncommercial computer software was "developed exclusively at private expense," the Government receives Limited and Restricted Rights, respectively. Therefore, if the program office merely includes the standard DFARS clauses into the contract and a dispute arises between the parties after award regarding what type of rights the Government acquired to a particular item, component or process, the program office will need to request audit assistance from the DCAA. During the audit, DCAA will need to analyze the extent to which the contractor (1) developed an accounting system capable of tracking the allocation of private and government funds to the developmental work accomplished with those funds, (2) identified technologies that offered long-term competitive advantages worthy of the initial investment to develop them, and (3) broke or separated the accounting trail for development of those technologies to indirect cost pools (e.g., Independent Research and Development (IR&D)), costs not allocated to a government contract, or any combination thereof. If the contractor properly implemented these steps, the contractor can demonstrate that it developed a particular item, component or process (or all items, components or processes) described in a particular CDRL exclusively at private expense.[11] Given DCAA's current priorities, the program office would have to obtain an estimate from DCAA regarding when the program office should expect to receive that incurred cost audit report. Only upon receipt of that audit report might the program office receive a nasty surprise: The contractor's position is unassailable – and therefore the program office will not receive the rights in technical data and computer software it assumed would be the case.

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[10] Joseph T. Hallinan, *Why We Make Mistakes: How We Look Without Seeing, Forget Things In Seconds, And Are All Pretty Sure We Are Way Above Average* 189 (2009). *Accord* Walter Isaacson, *Steve Jobs* 80 (2011) (identifying the "defining precept of Jobs's design philosophy[as] "'Simplicity is the ultimate sophistication'").

[11] Matthew S. Simchak, "Protecting Rights in Technical Data and Computer Software: Applying The Ten Practical Rules And Their Corollaries," 33 Pub.Cont.L.J. 139, 148 (Fall 2003).

Complicating the matter further would be if DCAA's audit report concludes that the contractor developed some noncommercial items, components or processes described in that CDRL exclusively at private expense (e.g., IR&D), developed other noncommercial items, components or processes with both contractor and Government funding ("mixed funding"), and developed yet other noncommercial items, components or processes exclusively with Government funds. Under such circumstances, differing levels of license rights would apply to various portions of a particular CDRL. (Such a situation would violate the pragmatic rule described above: To the maximum extent practicable, the program office should ensure that all content of a specific CDRL is governed by a single level of license rights.) In contrast, if the program office uses the framework discussed below, the issue of the source of funding used to develop a particular item, component or process becomes completely irrelevant. The reason why is because under such circumstances, all that matters is the content of the license(s) (otherwise known as Specifically Negotiated License Rights) attached to the contract which the parties agreed prior to award would apply to that specific CDRL.

d. If feasible, the program office should include provisions in the RFP that obtain an express waiver from the contractor for "covered Government support contractors" to enter into any non-disclosure agreements (NDA) between the contractor and the program office's "covered Government support contractor" relative to any Limited/Restricted Rights noncommercial technical data or computer software and commercial technical data and computer software the contractor will deliver under the resulting contract. If that is not feasible, those provisions should ensure that any such non-disclosure agreements do not impose impermissible terms and conditions upon those "covered Government support contractors." (A "covered Government support contractor" is a contractor under a contract the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort provided that the contractor is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort or with any direct competitor of such prime contractor or any such first-tier subcontractor and receives access to technical data or computer software for performance of a Government contract that includes DFARS § 252.227-7025.) For example, they should not prescribe the use of terms (i.e., restrictive markings) on technical data or computer software CDRL deliverable sent from the contractor to the program office's "covered Government support contractors" that are different from those terms described above. Moreover, they should not require the transfer of technical data and computer software directly from the contractor to the program office's "covered Government support contractors." The reason why is because if they do, such NDAs may erode the program office's control of the program since it takes the program office "out-of-the-loop" because the program office is no longer the sole conduit of such technical data and computer software between that contractor and its support services contractor – potentially resulting in the adverse consequences described above. Furthermore, they should not be so restrictive as to prevent that "covered Government support contractor" from warning *other programs* about systemic problems of which it is aware associated with the contractor's performance of the subject contract that might arise on those other programs.

8. The final step the program office should perform to determine its minimum needs for the contemplated acquisition is a "gap" analysis. In other words, the program office should analyze the difference between those minimum needs it has identified for the contemplated

acquisition using the first seven steps described above and those rights in technical data and computer software associated with items, components or processes for any components or subsystems of that weapon system the Government already acquired under existing contracts. (Note that the level of system decomposition used in performing this analysis should be consistent with the sustainment strategy for the contemplated acquisition.) To determine what rights the Government currently possesses, the program office should carefully review the following five sources of information:

a. Copies of all relevant contracts.

b. Copies of FAR/DFARS standard clauses incorporated by reference into the contract. Note that by the time such an analysis commences, the program office might have difficulty obtaining a copy of those clauses if those regulations have been revised to include a more current version of those clauses or those clauses have been deleted from the FAR/DFARS. The law library of the Office of the Staff Judge Advocate contains hard copies of superseded versions of those clauses.

c. Copies of any asserted rights restrictions made by the contractor prior to award in its completed DFARS § 252.227-7017 certification/representation.

d. Copies of technical data/computer software (i.e., CDRLs) delivered under predecessor contracts, as the restrictive marking on the cover page of those CDRLs should indicate what use, release and disclosure restrictions apply to those CDRLs.

e. If the CDRLs did not contain technical data which by law the contractor was required to deliver to the Government with Unlimited Rights, the program office should request the contractor provide its accounting records that identify the sources of funding used to develop the items, components or processes associated with the technical data or computer software delivered via those CDRLs. The program office should also review any Contract Performance Reports (CPR) submitted to the Government under any Government contract that may identify the sources of funding used to develop the items, components or processes associated with the technical data or computer software delivered via those CDRLs. Note that the relevance of such CPRs will be directly proportional to the level of detail contained in the Work Breakdown Structure (WBS) appended to that Government contract. For example, the contract's WBS extended down to the level of the item, component or process described in that CDRL such that the information contained in those CPRs proves that that data was in reality developed exclusively at Government expense.

After the program office has used this eight-step checklist, it will then be able to succinctly articulate its IP Strategy in its technology development strategy/acquisition strategy/acquisition plan to comply with PDUSD(AT&L)'s TDS/AS Sample Outline. Consistent with that outline, the program office's IP Strategy must include the following information:

(1) An analysis of the data required to design, manufacture and sustain the system as well as to support re-competition for production, sustainment, or upgrade and consider baseline documentation data, analysis data, cost data, test data, results of reviews, engineering data,

drawings, models, and Bills of Materials. In particular, the analysis should identify the long-term technical data, computer software, and cost/financial/schedule data needs of the program to achieve the program's objectives (and identify those objectives) and how those needs were assessed. It should consider the needs of the entire life cycle, including potential competition/re-competition for procurement of the system, subsystems, components, and logistics support (including spare and repair parts). It should describe the types of CDRLs the contractor will deliver during contract performance that will achieve those objectives and identify the estimated cost of those CDRLs. It should describe how the program office would store, manage, and review those CDRLs. Finally, it should identify who will be responsible for ensuring those activities are performed.

(2) An explanation regarding how the program will provide for rights and delivery of technical data the program office requires for the system's total life cycle sustainment (e.g., material management, training, information assurance protection, cataloging, open architecture, configuration management, engineering, technology refreshment, maintenance/repair within the technical order (TO) limits and specifically engineered outside of TO limits, reliability management). In particular, the explanation should identify the rights the program office will acquire to those CDRLs (including the degree to which those rights will support future competition). It should identify the logic used to select those level of rights and the alternative solutions considered, list or summarize the DFARS clauses that will be included into the resulting contract(s) (including the Deferred Ordering and Deferred Delivery clauses), and identify the estimated cost of the rights to those CDRLs. It should describe the overall approach to managing data to the program office will acquire with less than unlimited rights and how data deliverables will be reviewed for unjustified or nonconforming markings. It should describe the process the program will follow to question or challenge contractor assertions or markings, and the approach for maintaining the software and its related documentation once software maintenance is transferred from the original equipment manufacturer (including contract provisions that will allow for a cost-effective migration). It should describe the use of withholding or incentives specific to performance in the area of data management. It should describe how the use of an Integrated Data/Digital Environment (IDE) (see Section III.D below) factors into the IP Strategy, any required interfaces to government data systems or repositories and how those requirements will be satisfied, and the digital format standards to be used and why they were selected.

(3) A business case analysis calculation, conducted in concert with the engineering tradeoff analysis, which outlines the approach for using Open Systems Architectures (OSA) and acquiring technical data rights. This calculation must analyze alternative acquisition decisions to provide evidence that justifies an investment decision to implement (or not implement) an OSA or acquiring (or not acquiring) rights in technical data and computer software for the program. It must take into consideration the contractor's economic interest in technical data and computer software pertaining to items, components or processes that potential offerors have developed at private expense. It must also consider the Government's costs to acquire, maintain, store, retrieve and protect the data, procurement needs, repair/maintenance/overhaul philosophies, spare/repair part considerations, and whether procurement of the items, components or processes can be accomplished on a firm, fit or function basis.

(4) The cost benefit analysis of including a priced contract option for the future delivery of technical data and intellectual property rights not acquired upon initial contract award.

(5) An analysis of the risk that the contractor may assert limitations on the government's use and release of data, including IR&D-funded data (e.g., require the contractor to declare IR&D up front and establish a review process for proprietary data) based upon the "gap" analysis described at pages 20-21 of this handbook.

C. Drafting the RFP.

As stated above, AFI63-101 requires that source selections consider Government rights to data and include priced options that correspond to the data and data rights recommended as part of the IP Strategy. That instruction, however, does not provide detailed guidance on how to structure an RFP in order to implement that mandate. Experience has demonstrated that merely incorporating by reference standard DFARS clauses will not suffice to identify critical technical data and computer software rights issues prior to and after award. For example, the DFARS requires that program offices include into their RFPs a provision that offerors use to identify use, release and disclosure restrictions (DFARS § 252.227-7017). That provision, however, does not require that the offeror "map" such restrictions to specific CDRLs. If the program office does not correct this omission prior to award, the program office may not have a defensible position regarding whether the restrictive markings the contractor affixed to a particular CDRL prior to delivery are consistent with contract requirements.

Similarly, as stated above, even though military departments encourage contractors to deliver COTS software, no clauses establish the Government's rights in such commercial computer software. If a program office encourages the delivery of such COTS software but fails to read and incorporate the relevant license agreement(s) into the contract prior to award, it may be in for an unpleasant surprise after award. Specifically, it may realize the license(s) prevent(s) the use, release or disclosure of that software to certain entities to which it must release such software in order to execute successfully the program.

Accordingly, what follows is a structured approach for drafting the relevant sections of the RFP consistent with the Uniform Contract Format contained in the FAR that, if implemented, should minimize the probability that the program office will acquire insufficient rights in technical data and computer software to execute successfully an acquisition program. This approach is not the only manner in which a program office could structure an RFP to achieve that objective. (Note, however, that various program offices have successfully used the framework described below on a Navy ACAT I program and three Air Force ACAT I programs. For further details, see Appendices 2 and 3.) Any other approach that satisfies all eight steps objectives described above in Section III.B. would be equally acceptable. Again, however, experience demonstrates that unless the program office implements an approach similar to that described above from the outset, it may be forced into having protracted discussion sessions with offerors that take much more time than would otherwise have been the case had the RFP been properly structured in the first place (not to mention multiple RFP amendments). That situation, of course, will cause delays in award of the resulting contract.

1. Exhibit A (Contract Data Requirements Lists)(CDRL).

One school of thought which held court during the "acquisition reform" heyday of the 1990s (and which persists to this day in some quarters) asserts that a reduction in the number of CDRLs will dramatically reduce the (initial) cost of the weapon system. In retrospect, the consequences of implementing that approach should have come as no surprise: The contractors wrote few documents, they did not provide those documents in a timely manner and the Government had much less authority to require improved documentation when the products omitted necessary content. Deficient documentation then resulted in late, inadequate weapon systems needing rework to improve them so the Air Force could field those weapon systems. Contracts awarded based in part upon that school of thought experienced substantial cost overruns in the years that followed – including, in some cases, multiple Nunn-McCurdy breaches. In sum, the offspring of that school of thought was that the Government lacked necessary insight into the weapon system, its quality and overall progress.

This school of thought failed then – and fails now – to consider a basic principle of systems engineering: No weapon system ever magically appeared on-demand in the hands of a warfighter as an Immaculate Conception. Before the developer can manufacture any component of any of the subsystems of that weapon system, the developer must create documentation that accurately describes the product baseline. And during the manufacture of that weapon system, the developer must create documentation that accurately describes the product (as-built) baseline and the final (as-built) configuration. That is why Aerospace Report No. TOR-2006(8506)-5738 ("Recommended Software-Related Contract Deliverables for National Security Space System Programs")(February 14, 2008) states that successful (software) development depends upon having the necessary system, segment, subsystem, and element CDRLs items in place. Like nature, accountants cannot be fooled.[12] Even if the regulatory mandates described below did not exist, a program office must still spend money having the contractor create documentation that accurately describes the product (as-built) baseline and the final (as-built) configuration in order to successfully design, develop, manufacture, deploy, sustain/maintain and dispose of a weapon. In other words, the free lunch does not exist.

During the "acquisition reform" heyday of the 1990s, program offices also attempted to convey the impression to senior leadership that they had managed to square the circle. They would still acquire the technical data and computer software necessary to execute successfully the program while at the same time dramatically reducing the number of CDRLs. How did they do that? They started using the Data Accession List (DAL) CDRL as the proverbial "kitchen sink" into which all of their known requirements for technical data or computer software could be poured. In doing so, they disregarded two facts.

First, the very text of the Data Item Description (DID) for a DAL (DI-MGMT-81453A) warns that such a use is unauthorized: The DAL "is not a substitute for standard data requirements that are contractually applied." The reason why the DoD does not authorize such a

[12] 2 *Report to the President by the Presidential Commission on the Space Shuttle Challenger Accident*, Appendix F ("Personal Observations on Reliability of Shuttle" by R.P. Feynman) p. F-5 (June 6, 1987)("[f]or a successful technology, reality must take precedence over public relations, for nature cannot be fooled"), *available at* http://history.nasa.gov/rogersrep/51lcover.htm.

misuse of the DAL is that the DAL is nothing more than a list of technical data and computer software the contractor created during contract performance. The DAL does not describe in detail the *content* of any technical data or computer software the program office expects the contractor will deliver after award that is listed on the DAL. A fundamental principle of government contracting is that in a competitive environment an RFP must provide for the submission of proposals based upon a common understanding of the agency's requirements. Since the DAL does not accurately describe the content of each item of technical data or computer software the program office expects the contractor will deliver to it after contract award, it is impossible for such a common understanding to exist between all offerors and the Government. As a result, the Government will be unable to negotiate a fair and reasonable price for such data. Some offerors may underbid not realizing what the Government's content needs are. Other offerors may overprice assuming that the Government will require delivery of all items the contractor will eventually list on the DAL.

Second, the DAL states that the list "shall also identify the Government Rights to the data using the following codes: 'GPR' = Government Purpose Rights[;] 'UR' = Unlimited Rights[;] 'LR' = Limited Rights[;] 'RR' = Restricted Rights (Computer Software only)." This language basically permits a contractor to unilaterally determine what license rights the Government will acquire to those items listed on the DAL after award – as opposed to the Government knowing prior to award what rights it will acquire to each item of technical data or computer software that is the subject of its own DD Form 1423. In short, a program office that seeks to use the DAL in such a manner is like the homebuilder whose standard practice is to use the butt-end of a screwdriver to hammer nails to build commercial and residential properties: It is possible – but the adverse consequences could be catastrophic.

After having read the above discussion you should now understand why program offices should reject the "acquisition reform" approach and get "back to basics" by strictly complying with official DoD mandates. Specifically, DoD 5010.12-M ("Procedures for the Acquisition and Management of Technical Data")(May 1993), the DFARS, and the SMC IG require that program offices acquire technical data under DoD contracts via a DD Form 1423 (CDRL). Similarly, the military departments acquire computer software and cost/financial/schedule information via DD Form 1423. (The DoD uses DD Form 1423 to assist in defining delivery obligations, not to establish the Government's rights to use, release or disclose the delivered intellectual property outside the Government.) This approach properly bounds the scope of the technical data and computer software that the contractor will deliver to the program office. The reason why is because the program office acquires only "inchoate" rights in that technical data or computer software which is not a deliverable under the contract. Moreover, the Warranty of Data clause in the resulting contract (DFARS § 252.246-7001) states that the warranty period extends for three years after completion of the delivery of the line item of data "as identified in DD Form 1423, Contract Data Requirements List. . . ." As a result, if the program office did not acquire a particular item of technical data "identified in [a] DD Form 1423" it is doubtful whether the program office has acquired a warranty of that data.

Accordingly, the first step the program office should take when drafting the RFP so that it will properly acquire rights in technical data and computer software is to create the appropriate CDRLs. (One of those CDRLs should be a Software Architecture Description (SAD).

We describe below the importance of a SAD. Aerospace Report No. TOR-2011(8506)-117 ("Integrating Software Topics into the Request for Proposal")(July 19, 2012) Appendix D describes the content of a SAD.) Creating the appropriate CDRLs includes ensuring the content of those CDRLs (including any tailoring of referenced DIDs[13]) encompass the universe of all technical data, computer software, or both, that the program office desires the contractor to deliver after award.

The best way to achieve this objective is to convene a Data Requirements Review Board (DRRB) attended by all CDRL authors, the Contracting Officer, the program attorney, and the program manager. During the DRRB, the author of the CDRL should explain (1) why the program office needs that CDRL (e.g., if the RFP will be acquiring computer software, whether SMCI63-104, Aerospace Report No. TOR-2006(8506)-5738 ("Recommended Software-Related Contract Deliverables for National Security Space System Programs")(February 14, 2008), Aerospace Report No. TOR-2008(8506)-8101, or Aerospace Report No. TOR-2011(8506)-117 requires the acquisition of that CDRL or the *DoD Open Systems Architecture Contract Guidebook for Program Managers* recommends the acquisition of that CDRL), (2) why delivery of the proposed content is required (e.g., the tailoring of that CDRL is consistent with the DID invoked by that CDRL, the author used the Queen's English properly), and (3) why "approval (vice "review") of that CDRL is required. In other words, CDRL content is critical – for if the program office fails to describe in a particular CDRL that item of technical data or computer software, that item may not be a deliverable. As a result, the program office may not acquire any license to use, release or disclose that item to non-Government employees for any purpose whatsoever.

We note in-house counsel for some defense contractors cannot even agree *amongst themselves* whether the Government acquires rights to various items of technical data – that the contract did not classify as a "deliverable" via a DD Form 1423 – where the Government only acquired electronic "access" via some type of IDE. This fact strongly counsels in favor of a program office making every scrap of technical data, computer software, and cost/financial/schedule data the program office needs to successfully execute the program throughout its life cycle the subject of a DD Form 1423 – thereby neatly circumventing the need for the program office to extricate itself from this legal quagmire after award. This step also includes identifying in a sentence at the beginning of Block 16 of the DD Form 1423 whether the CDRL requires the delivery of technical data, computer software, both technical data and computer software, or cost/financial/schedule data.

Next, the program office should review the content of the SOW paragraph, the tailored DID, and any compliance documents invoked by each CDRL and then answer the following

[13] A DID is a form that defines the intended use, preparation instructions and content and format requirements for a specific data product. The ASSIST database (http://quicksearch.dla.mil/) is the official source for DoD specifications and standards (e.g., DIDs). In order to look up a DID, however, one must know its Document ID number (e.g., "DI-IPSC-81441A") or the words in the title of the DID (e.g., "Software Product Specification"). In order to obtain that critical information, we recommend that the reader consult the "Product Software Data and DID Selector" found at the website cited in footnote 6. That resource contains a comprehensive listing of DIDs the reader may invoke in BLK 4 of each DD Form 1423 that will require the delivery of technical data or computer software to efficiently and cost effectively operate and support weapons systems throughout their acquisition and logistics life cycle.

questions to determine the technical data/computer software rights associated with that CDRL to which the Government may be entitled. (Thus, if Exhibit A of Section J of the RFP contains 120 CDRLs, the program office must repeat the following analysis 120 times.)

If those sources describe **noncommercial** technical data, is it (1) form/fit/function data, (2) data necessary for installation/operation/maintenance/training purposes (which would include computer software documentation)(other than detailed manufacturing process data), (3) data that constitutes a correction or change to data furnished by the Government, or (4) data otherwise publicly available or has been released by the contractor without restrictions? If so, the program office should acquire Unlimited Rights in that technical data unless it has determined that its minimum needs may be satisfied by acquiring a level of license rights (i.e., Specifically Negotiated License Rights) no lower than Limited Rights. In making this determination, the program office must remember that, when agreeing to such a lower level of license rights, it cannot surrender rights below the level of Government Purpose Rights if relinquishment would unduly restrict future competition.

If not, does that **noncommercial** technical data pertain to (1) studies, analyses, test data or similar data produced in the performance of a contract where that study, analysis, test data or similar work was specified as an element of performance, (2) data that the Government has obtained Unlimited Rights under another Government contract or as a result of negotiations, or (3) data furnished under another Government contract with Government Purpose Rights or Limited Rights and the restrictive condition(s) has/have expired? If so, the program office should acquire Unlimited Rights in that technical data unless it has determined that its minimum needs may be satisfied by acquiring a level of license rights (i.e., Specifically Negotiated License Rights) no lower than Limited Rights.

If those sources describe **noncommercial** technical data that does not fit within the enumerated categories listed above, will the contractor develop that item exclusively with Government funds? If so, the program office should acquire Unlimited Rights in that technical data unless it has determined that its minimum needs will be satisfied by acquiring a level of license rights (i.e., Specifically Negotiated License Rights) no lower than Limited Rights. If not, will the contractor develop that item in part with Government funds? If so, the program office should acquire Government Purpose Rights in that technical data unless it has determined that its minimum needs may be satisfied by acquiring a level of license rights (i.e., Specifically Negotiated License Rights) no lower than Limited Rights. In making this determination, the program office must remember that, when agreeing to such a lower level of license rights, it cannot surrender rights below the level of Government Purpose Rights if relinquishment would unduly restrict future competition.

If those sources describe **commercial** technical data, is it (1) form/fit/function data, (2) data necessary for installation/operation/maintenance/training purposes (which would include computer software documentation)(other than detailed manufacturing process data), (3) data that constitutes a correction or change to data furnished by the Government, or (4) data otherwise publicly available or has been released by the contractor without restrictions? If so, consistent with 10 U.S.C. § 2320, the program office should acquire Unrestricted Rights in that technical data unless it has determined that its minimum needs may be satisfied by acquiring a lower level

of license rights. In making this determination, the program office must remember that, when agreeing to such a lower level of license rights, it cannot surrender rights below the level that is equivalent to Government Purpose Rights if relinquishment would unduly restrict future competition.

If those sources describe **noncommercial** computer software, is it (1) corrections/changes to computer software furnished to the contractor by the Government, (2) computer software that is otherwise publicly available or has been released or disclosed by the contractor or its subcontractor without restriction on further use, release or disclosure, (3) computer software obtained with Unlimited Rights under another Government contract or as a result of negotiations, or (4) computer software furnished under another Government contract under restrictive conditions that have expired? If so, the program office should acquire Unlimited Rights in that noncommercial computer software unless it has determined that its minimum needs may be satisfied by acquiring a lower level of license rights. If not, will the contractor develop that item in part with Government funds? If so, the program office should acquire Government Purpose Rights in that technical data unless it has determined that its minimum needs may be satisfied by acquiring a level of license rights (i.e., Specifically Negotiated License Rights) no lower than Restricted Rights.

If those sources describe **noncommercial** computer software that does not fit within the enumerated categories above, will the contractor develop that item exclusively with Government funds? If so, the program office should acquire Unlimited Rights in that technical data unless it has determined that its minimum needs will be satisfied by acquiring a level of license rights (i.e., Specifically Negotiated License Rights) no lower than Restricted Rights. If not, will the contractor develop that item in part with Government funds? If so, the program office should acquire Government Purpose Rights unless it has determined that its minimum needs will be satisfied by acquiring a level of license rights (i.e., Specifically Negotiated License Rights) no lower than Restricted Rights.

If those sources describe **commercial** computer software, what rights to use, release, or disclose that software outside the Government does the program office need to acquire? Irrespective of the answer to that question, are the proposed rights inconsistent with Federal procurement law?

2. Section B (Supplies or services and prices/costs).

When the Government awards a contract that includes the appropriate DFARS clauses, the contract price should include the price for the allocation of rights specified by those clauses (irrespective of whether the rights the contractor proposes to grant to the Government are based upon which entity funded the development of a particular item, component or process). For the reasons stated above, however, it is prudent to structure the contract to require the offeror to expressly identify the cost/price the Government will have to pay to acquire those rights and let competition (if competition exists) encourage the offeror to propose to deliver such rights at no additional cost/price.

Under such circumstances, the contractor should identify the cost/price for the delivery of the technical data or computer software (e.g., the work involved in copying the data to a compact disc and mailing that disc to the Government) under a CLIN other than the CLIN it uses to identify the cost/price for the rights to use, release or disclose that technical data or computer software. The DFARS states that acquisition plans should address the merits of including a priced contract option for the future delivery of rights in technical data and computer software that the program office will not acquire upon initial contract award. Similarly, the instructions for filling out Block 18 of the DD Form 1423 ("Estimated Total Price") states that the cost/price for data itself is different from the cost/price associated with the rights to use, release or disclose that data outside the Government:

> [f]or each data item, enter an amount equal to that portion of the total price which is estimated to be attributable to the production or development for the Government of that item of data. These estimated data prices shall be developed only from those costs which will be incurred as a direct result of the requirement to supply the data, over and above those costs which would otherwise be incurred in performance of the contract if no data were required. *The estimated data prices shall not include any amount for rights in data.* The Government's right to use the data shall be governed by the pertinent provisions of the contract [emphasis added].

In certain cases, the Government may be already paying for the development of the technical data or computer software but has not determined whether it needs such intellectual property delivered to it. Under such circumstances, Contracting Officers should include the appropriate DFARS clause into Section I regarding future ordering of such technical data and create an additional firm-fixed-price option CLIN for delivery of technical data and computer software that addresses potential delivery costs (i.e., the cost of reproduction and delivery).

In contrast, the Government may be requiring delivery of that technical data or computer software via CDRLs. For example, SMC RFPs usually allocate the cost of creating such technical data and computer software to "Not Separately Priced" "Data and Reports" CLIN associated with various hardware CLINs. The Government's assumption that the contractor will develop and deliver certain items of technical data or computer software as part of a CDRL exclusively at its expense – and therefore it will receive a certain level of rights to use that CDRL – may be incorrect. Conversely, its assumption that the contractor will develop and deliver certain items of technical data or computer software as part of a CDRL exclusively at private expense – and therefore it will receive a different level of rights to use that CDRL – may likewise be incorrect.

Accordingly, to assist the SSEB in determining whether either assumption is incorrect, the Contracting Officer should consider creating an additional firm-fixed-price option CLIN entitled "Rights in Data (Including Technical Data, Computer Software, and Computer Software Documentation)." That option CLIN will in turn reference pricing tables contained in a Section J attachment of the RFP entitled "Rights in Data (Including Technical Data, Computer Software, and Computer Software Documentation)" (hereinafter "Data Rights Attachment"). Although at

first blush creating a separately-priced option for such rights would appear to result in the Government paying twice for that intellectual property – once under the CLIN under which that intellectual property was developed, and a second time upon exercising the option for the rights in that intellectual property – that is not necessarily the case given competitive constraints. In other words, if properly structured the RFP will not incentivize offerors to put themselves at such a competitive disadvantage with respect to their competition. In any case, the SSEB should be sensitive to this issue and be prepared to address it through discussions should this situation arise.

3. Section H (Special Contract Requirements).

a. If the contractor is delivering computer software under a fixed-price CLIN, the program office should consider acquiring a warranty for that software. In contrast, if the contractor will be delivering the computer software under a cost-reimbursable CLIN, the Government may not obtain a warranty for that software.

b. If the program office has included a fixed-price Option CLIN into Section B for Rights in Data (Including Technical Data, Computer Software, and Computer Software Documentation), it must include an option exercise clause that states the Government may exercise the option in whole or in part from the date of contract award through the end of the period of performance of the contract. In other words, the program office can exercise an option for a certain level of rights associated with a specific CDRL upon obligation of the amount indicated in Table 1 of the Data Rights Attachment (described below).

AFI65-601V1 ("Budget Guidance and Procedures")(August 16, 2012) states that the source of funds to procure and print technical data depends upon the appropriation that funded the acquisition of the end item of equipment or systems to which the technical data is applicable. Extrapolating this logic results in the conclusion that the appropriation used to acquire the rights in such technical data or software should be the same as the appropriation used to fund the creation of that technical data or software. Accordingly, the option exercise clause should state that the Contracting Officer will obligate the same type of appropriations onto that CLIN to procure rights in technical data, computer software or computer software documentation to be delivered as part of a CDRL as that appropriation he/she obligated to procure that item and that is current in the year an option is exercised for the rights in that item.

4. Section I (Contract Clauses). Incorporate by reference all technical data and computer software clauses required by the DFARS, including DFARS § 252.246-7001 ("Warranty of Data").

5. Section J (List of Attachments).

a. Indicate that the offeror's completed DFARS § 252.227-7017 certification/ representation (see below) will be an attachment to the resulting contract.

b. Exhibit A: Include all CDRLs, including a SAD.

c. Statement of Work (SOW)/Performance Work Statement (PWS):

(1) As required by SMC IG5315.470-90, the SOW/PWS should contain tasking statements that require the production/development and delivery of CDRLs contained in Exhibit A and that reference the CDRL associated with the tasking statement in a parenthetical immediately following that tasking statement. The purpose of such tasking statements is to eliminate any confusion on the contractor's part as to which item of data it is providing the Government.

(2) In order to diagnose on-orbit anomalies on the ground, it is essential that the software portion of firmware delivered as part of the end item be identical to that contained in a CDRL. Accordingly, the program office should include a sentence into the SOW that states the software portion of firmware delivered as part of an end item (e.g., space vehicle, launch vehicle) must be identical to that contained in a CDRL.

(3) Include a sentence into the SOW that requires the contractor ensure that there is no functionality in the reusable software that would inhibit operation unless explicitly specified and approved by the Government (e.g., the periodic need to enter in a license code, the presence of a physical key or similar device to enforce licensing limitations).

d. Include a Data Rights Attachment (*see* Appendix 1 ("Relevant Excerpts from SE&I Follow-On RFP") Attachment 10). Within this attachment resides the heart of the program office's approach to acquiring rights in technical data and computer software. Specifically, this attachment contains three tables that separate the rights the program office will acquire to (1) noncommercial technical data and computer software, (2) commercial technical data and computer software, and (3) cost/financial/schedule data from each other. (The primary purpose of these tables is – as stated on pages 18-19 of this *Handbook – to identify what license rights the program office will acquire to each CDRL ("mapping") and to baseline all contents of a specific CDRL to a single level of license rights to the maximum extent practicable.*) It also contains other conditions that apply to this subject as follows:

(1) **Table 1** consists of four columns (i.e., "CDRL Number," "Data Item Title (Subtitle)," "Asserted Rights Category", "Price" or "Estimated Cost") and a quantity of rows equal to the number of CDRLs. The program office must fill-in the first and second columns using the information in Exhibit A. Based upon the answers provided to the questions listed above, the program office must fill-in the third column with either "Unlimited" or "Offeror to Complete." (If a Specifically Negotiated License will satisfy the program office's needs, then the program office should instead identify that concept in the table.) The offeror will fill-in the third column for each level of rights associated with each CDRL. If a Specifically Negotiated License will satisfy the program office's needs, the program office must clearly specify the scope of that license (i.e., identify specific persons/entities to whom that CDRL may be released or disclosed to for what specific purposes and for what specified period of time).

(2) **Table 2** identifies any commercial technical data and computer software the contractor will deliver to the program office. This table will contain five columns (i.e., "CDRL Number" (or, for firmware delivered as part of a hardware item, "CLIN Number"), "Data Item Title (Subtitle)" (or, for firmware delivered as part of a hardware item, "CLIN Noun Description"), "Vendor Name, Technical Data/Software Application Name, License No.",

"Quantity" of licenses (if applicable), "Estimated Cost")) and rows equal to the number of CDRLs and CLINs that will contain such commercial technical data and computer software. The program office must fill-in the first two columns and the offeror will fill-in the third through fifth columns.

(3) Military departments invariably acquire other types of data via CDRLs that do not fall within the definition of "technical data" or "computer software" described above (e.g., Design-to-Cost/Life Cycle Cost and Variance Analysis Report, Cost Data Summary Report, Integrated Master Schedule). As a result, the program office acquires no rights to use, release or disclose such data outside the Government to support service contractors because the licensing provisions in the DFARS discussed above do not apply to that data. Accordingly, if such data must be used, released or disclosed to such contractors so the program office can successfully execute the program, the attachment should describe the license the program office will acquire to use, release or disclose that data to such contractors for enumerated purposes for what specified period of time. To that end, **Table 3** identifies any cost/financial/schedule data the contractor will deliver to the program office. This table should contain three columns (i.e., "CDRL Number", "Data Item Title (Subtitle)", "Price" or "Estimated Cost") and rows equal to the number of CDRLs that will contain such data. The program office must fill-in the first and second columns and the offeror will fill-in the third column.

(4) Many program offices procure systems via contracts that contain both fixed-price and cost-reimbursable CLINs. To prevent cost migration between various cost-reimbursable CLINs and between cost-reimbursable and firm-fixed price CLINs, the attachment should mandate how the contractor must allocate costs for various licenses procured under various CLINs in reasonable proportion to the benefits received by each CLIN.

(5) In many cases, the contractor will deliver firmware as a part of an end item (e.g., space vehicle, launch vehicle) under the resulting contract. Accordingly, the attachment should state that all licenses to be furnished by the contractor associated with any computer programs (inclusive of firmware) shall be identical to those licenses to be furnished by the contractor associated with any computer programs (inclusive of firmware) to be delivered under a specific CDRL.

(6) The attachment should state that the price (or estimated cost) for any level of rights to a specific CDRL granted by the Contractor includes the same level of rights to any updates, software maintenance patches, minor version changes, and substitutions, at no additional cost to the Government. The purpose of this provision is to facilitate accurate submission of future years' budget requests requesting funding to acquire such rights. In other words, this approach will reduce the probability that the contractor can "nickel-and-dime-to-death" the program office for the rights to use, release and disclose to non-Government employees each time the contractor or its subcontractors release any such update, patch, minor version change, etc., in the future.

(7) The attachment should state that any licenses must transfer to the Government upon exercise of the option by, and delivery of that CDRL or CLIN to, the Government.

(8) The attachment should specify what restrictive markings the contractor must affix to which CDRLs, and require that the contractor physically attach a copy of the attachment and all applicable commercial licenses to the CDRL prior to delivery to the Government. The purpose of this requirement is so that the recipient can quickly determine what use, release and disclosure restrictions apply to which specific items of commercial technical data located in which specific portions of the CDRL – vice having to hunt around for a hard or soft copy of the contract in order to make that determination.

(9) The attachment should prohibit the contractor from including impermissible terms and conditions described above into any NDAs that that contractor will require the program office's "covered Government support contractors" to enter into relative to the use, release or disclosure of technical data or computer software to which Limited/Restricted Rights markings are affixed. Better yet, for the reasons discussed above, the attachment should obtain an express waiver from the contractor of the requirement that the program office's "covered Government support contractors" enter into NDAs with the contractor relative to the use, release or disclosure of such technical data or computer software.

(10) The attachment should require the contractor to, whenever it proposes changes to, e.g., existing CDRLs, to propose the appropriate changes to the attachment as well.

(11) To prevent the contractor from abandoning fundamental principles of configuration control, the attachment should prohibit the contractor from adding, deleting, or replacing any commercial item technical data, computer software, or computer software documentation listed in Table 2 from any CLIN or CDRL under which that technical data, computer software or computer software documentation will be delivered to the Government unless the Government has approved that addition, deletion or replacement and the contract has been modified to add, delete or replace that item from that table and deleted or replaced the applicable license(s). The purpose of this prohibition is three-fold: First, to ensure at all times that the paper (the contract) reflects reality (the software architecture). Second, presumably the program office does not want to learn for the first time ever as the weapon system is going through the DoD Information Assurance Certification and Accreditation Process (DIACAP) mandated by DoDI 8510.01 ("DoD Information Assurance Certification and Accreditation Process (DIACAP) ")(November 28, 2007) that the contractor inserted such software into that system. Third, to give the program office the opportunity to determine whether the license(s) associated with that replacement software are consistent with Federal procurement law and satisfies the program office's needs.

(12) In many cases, subcontractor commercial technical data and computer software licenses contain provisions that violate Federal procurement law. Examples of such provisions include, but are not limited to, disputes provisions, choice of law provisions, attorneys' fees, automatic renewal provisions that violate the Anti-Deficiency Act, and provisions that prohibit disclosure of license terms/conditions. Therefore, the attachment should include an order of precedence clause that nullifies such provisions that violate Federal procurement law.

(13) If standard provisions in those licenses do not satisfy user needs (e.g., they are inconsistent with requirements specified in the CDD/CPD), the order of precedence clause should also expressly nullify those provisions.

6. Section K (Representations, certifications, and other statements of offerors). Insert DFARS §§ 252.227-7017 ("Identification and Assertion of Use, Release, or Disclosure Restrictions"). That provision requires offerors to identify any technical data or computer software it proposes to deliver to the Government after award with less than Unlimited Rights.

7. Section L (Instructions, conditions, and notices to offerors or respondents). Under the Government Accountability Office's (GAO) Bid Protest Regulations and bid protest decisions issued by the U.S. Court of Appeals for the Federal Circuit, protests based upon alleged solicitation improprieties which are apparent prior to the time set for receipt of initial proposals must be filed prior to the time set for receipt of initial proposals. The importance of this fact is that a protester could file a bid protest with either of those forums claiming that the contents of the RFP exceed the program office's minimum needs for rights in technical data and computer software rights.

Accordingly, the program office should explain in Section L its minimum needs for rights in technical data and computer software and the pedigree of those needs so that if such a protest results, the program office will be able to establish that rationale existed prior to release of the RFP – it is not some after-the-fact rationale the program office created after the protester filed its protest. Immediately thereafter, Section L should emphasize that the technical data and computer software rights described in the DFARS clauses listed in Section I of the RFP are the rights the program office expects to receive in exchange for paying for development of the technical data or computer software. The purpose of this information is to warn offerors they should not propose the Government have to pay an additional cost for acquiring those rights.

Next, Section L should describe how the offeror's Technical volume must explain how its Data Rights Attachment will meet the Government's minimum needs and will result in an executable program underneath the appropriate subfactor(s). In particular, Section L should require the offeror to submit as an attachment to its Technical volume a SAD that identifies precisely where all software applications will reside in its proposed architecture that are listed in Table 2 of its Data Rights Attachment. Section L should also describe how the offeror must propose prices or estimated costs for licenses in its Cost Volume.

Next, Section L should provide instructions to offerors (1) describing how they must fill-in their Data Rights Attachment described above, and (2) requiring them to complete their DFARS § 252.227-7017 certification/representation consistent with the manner in which offerors have filled-in the tables in their Data Rights Attachment. Section L should also require offerors to provide copies of all licenses associated with all commercial technical data and computer software the offeror proposes to deliver to the Government. Finally, the program office should insert DFARS § 252.227-7028 ("Technical Data or Computer Software Previously Delivered to the Government") into Section L.

8. Section M (Evaluation factors for award). For the reasons described above, the program office must create evaluation criteria within the appropriate Technical subfactors that evaluate the extent to which the offeror's Data Rights Attachment satisfies the Government's minimum needs and does not inhibit the Government's ability to execute successfully the program throughout its life cycle. Section M must state that the Government will evaluate the extent to which the offeror's proposed rights as reflected in its Data Rights Attachment (including the contents of any commercial licenses) and its completed DFARS § 252.227-7017 certification/representation will meet the Government's minimum needs as specified in the RFP and will result in an executable program underneath the appropriate subfactor(s). Section M should also explain how the Government will use the prices the offeror proposes for the rights in technical data and computer software it proposes to deliver to the Government after award as part of the Government's cost/price evaluation.

D. Integrated Digital/Data Environments (IDE)

Over the past two decades, program offices have used IDEs to execute their acquisition programs. Unfortunately, in some cases they have realized too late that they unconsciously inserted into their program management structure something they would rarely – if ever – permit a contractor to intentionally insert into the design of the weapon system to be handed to the warfighter: *A single-point failure just waiting to happen.* The single-point failure is because for administrative convenience, the program office decided that such an IDE would reside on the prime contractor's servers. What that means is that the program office will not have physical custody or control of any data residing within that IDE. The single-point failure occurs when the prime contractor unilaterally decides to electronically shut off "access" to its servers for any reason (or no reason at all), thereby preventing the program office from using, releasing or disclosing that technical data or computer software outside the Government (irrespective of whatever restrictive markings (if any) the contractor affixed to that CDRL).

The consequences of this unilateral decision is that the program comes to a screeching halt when those personnel the program office intended to have "access" cannot "access" that technical data and computer software anymore to execute the program. Only then does the program manager realize that the parties "made this IDE up as they went along" – because prior to contract award and during contract performance, they never memorialized that concept in enforceable language and included that language into the contract. With those catastrophic consequences in mind, the stage is now set for a discussion regarding what IDEs are and how the parties should memorialize that concept in the request for proposals and the resulting contract. That discussion begins with an attempt to define what an "IDE" is.

An IDE is a data storage and information management system. Its purpose is to create an environment of connected knowledge workers, in which the preferred approach to performing work involves instantaneously accessing data (including work-in-process data) required to accomplish the necessary tasks and then outputting the results into an instantaneously accessible form. Information sharing is rewarded and redundant data development, transmission or storage is frowned upon.

The IDE can either be a program-unique repository run by Government personnel on a Government server, a program-unique repository run by a contractor on its own servers, or an existing Government enterprise repository on a Government server. The *Defense Acquisition Guidebook* states that to the greatest practical extent, programs should use existing Government enterprise IDEs; program-unique IDEs are disfavored due to high infrastructure cost and because multiple program-unique IDEs inhibit access, sharing and reuse of data across programs. Program-unique IDEs may violate 40 U.S.C. § 11312, which requires that the heads of executive agencies identify information system investments that would result in shared benefits or costs for other federal agencies for "national security systems" to the extent practicable. Program-unique IDEs may also violate Section 2867 of the National Defense Authorization Act for Fiscal Year 2012 (Pub.L. No. 112-81), that prohibits the obligation of funding for a "data server farm" or "data center" unless approved by the Chief Information Officer of the Department of Defense. In contrast, such program-unique IDEs are encouraged by the *DoD Open Systems Architecture Contract Guidebook for Program Managers*.

If after analyzing the statutory restrictions summarized in the preceding paragraph the program office concludes that neither restriction precludes the creation of a program-unique repository run by a contractor on its own servers, the program office must carefully determine what will be its Concept of Operations for that IDE. Like Julius Ceasar's Gaul, the IDE will consist of three parts: (1) the *environment* consisting of a web-based platform, (2) the *data* residing within that environment, and (3) the *licenses* the contractor will grant to the program office to the environment as well as to the data that will reside within that environment. The parties may allocate the terms and conditions in a contract that must memorialize each of these parts to different sections of the RFP consistent with the Uniform Contract Format. However, that approach is not particularly user-friendly. The reason why is because it assumes that a user of the contract years hence will be able to find all those proverbial "needles-in-the-haystack" scattered throughout the contract and be able to put them together in an integrated (pun intended) fashion in order to understand how all those terms and conditions relate to each other.

Therefore, a program office should only use that approach if each section of the contract that discusses a topic relating to the IDE will cross-reference all other relevant sections of the contract. In the alternative, most of those terms and conditions may be located in a single location in the contract. That approach has the benefit of making it easier for any user of the contract years hence to find quickly those terms and conditions years hence. That approach is discussed below.

Invariably, each offeror will have their own unique proposed IDE that it believes will best satisfy the program office's needs, and one offeror's proposed IDE may be technically superior to another offeror's proposed IDE. It is therefore inadvisable for program offices to include into Section L of the RFP a requirement that offerors submit proposals against a "cookie-cutter" IDE. Conversely, the program office needs to accurately identify its IDE requirements in order to comply with a fundamental principle of government contracting stated above: In a competitive environment an RFP must provide for the submission of proposals based upon a common understanding of the agency's requirements.

Accordingly, the program office must identify in Section L of the RFP what additional CDRLs the offeror must deliver to implement its proposed IDE and what IDE-related topics the offeror must address in its proposed Appendix to the Section J Data Rights Attachment to its Model Contract. The program office must also identify in Section M of the RFP what evaluation criteria it will use to determine the technical acceptability of each offeror's unique proposed IDE relative to the three concepts described above.

Therefore, Section L should require offerors to submit as part of their proposed Model Contracts the following documents:

1. Exhibit A. Offerors should be required to submit the following four CDRLs, tailored consistent with their unique solution:

a. A Software Product Specification (DI-IPSC-81441A). The purpose of this CDRL is to require the offeror to deliver the computer software needed to instantiate the "environment". It should require the delivery of the source code to any modifications the offeror intends to make to any commercial computer software (e.g., Microsoft SharePoint) to create the IDE. If the program office will not be procuring those commercial computer software applications under separate contracts, this CDRL should also require the delivery of the executable code to those commercial computer software applications.

b. A Software Version Description (DI-IPSC-81442A). The purpose of this CDRL is to release, track and control software versions for configuration control purposes. In other words, it identifies all versions of commercial computer software the offeror intends to use to create the IDE, as well as all modifications the offeror intends to make to those software applications to customize the IDE for that specific acquisition program.

c. A Database Design Description (DI-IPSC-81437A). The purpose of this CDRL is to describe the design of the database that comprises the IDE. In other words, it provides the Government with a textual description of the IDE instantiation (i.e., the file folder structure/ hieararchy, levels of access rights and privileges specified at the user level (e.g., administrator, guest, super-user) and at the data/deliverable level (e.g., ability to allow access to specific data/deliverables to selected users only based upon the classification level and level of license rights associated with that data)) into which the "data" will be deposited, search functions). The program office will then be in a position to carefully review and approve that structure to ensure that authorized users who will create the data deposited into that IDE will know precisely in which file sub-sub-sub-subfolder they should deposit that specific document and so that authorized users can quickly find that proverbial "needle in the haystack" document. If the program office does not mandate such a disciplined approach from the date of contract award, during contract performance authorized users will create their own sub-sub-sub-subfolders and deposit data into those locations – making it virtually impossible for many other authorized users to find a specific document thereby defeating the purpose for which the IDE was created in the first place.

d. A Data Accession List (DI-MGMT-81453A). The purpose of this CDRL is to list all data the offeror will create during contract performance, including all "work-in-progress" data that will reside on the IDE.

2. Appendix A to Section J Data Rights Attachment. Section L should require the offerors discuss the following topics:

a. Purpose: In this subsection, the offeror should insert a short statement that describes the purpose of the IDE.

b. Definitions: In this subsection, the offeror should define all terms used in this Appendix to the Section J Data Rights Attachment. The reader will recall that Section III.E.2(a) of this handbook states that the first thing a program office should do in source selection is to carefully review the offeror's SAD. In a similar manner, the offeror should describe the software architecture of the "environment" into which the "data" will reside in both a narrative manner as well as in a pictorial depiction such that the reader can understand the relationship between the Software Product Specification, Software Version Description, Database Design Description, and Data Accession List CDRLs. As stated in Section III.B of this handbook, the term "access" is vague. Accordingly, the offeror should define that term in this subsection (e.g., the ability to view, print, download, annotate, and interact with all modified or archived versions of any data residing on the IDE), along with all other relevant terms (e.g., "IDE", "authorized user").

c. Requirements: In this subsection, the offeror should discuss the following topics:

(i) What will be the minimum capabilities of the IDE (e.g., internet accessible by using a standard web browser application, navigation, data exchange, data interaction, error-checking protocols, archive library).

(ii) How the offeror will configure the IDE consistent with the relationship between the four CDRLs described above.

(iii) How the costs the offeror will incur to develop and maintain the "environment" (including the costs incurred to acquire the commercial software licenses and modify that software to create the "environment") will be allocable to the contract. If, for example, the IDE will be supporting a single program, Section B of the offeror's Model Contract should include a separate CLIN so that the program office will have visibility into how much it will be paying the offeror to develop and maintain that IDE for the entire period of performance of the contract. In contrast, if the IDE will be implemented via an advisory and assistance services contract supporting multiple ACAT I/II/II programs, it will probably be too unwieldy to acquire funding from those programs and then obligate that funding onto such a CLIN on a regular basis. Under such circumstances, the offeror should be required to allocate the costs of developing and maintaining the IDE on an equitable basis to the CLINs under which the services are being provided to support the multiple programs in question.

(iv) As stated in the *DoD Open Systems Architecture Contract Guidebook for Program Managers*, "a requirement for an IDE is not a substitute for having formal technical

data and software delivery requirements." Accordingly, in this subsection the offeror should state that all data listed on the Data Accession List will reside on the IDE (as will all data delivered under other CDRLs) and that all such data will be considered "deliverables".

(v) In this subsection, the offeror should explain what procedures it will develop and maintain to protect data delivered to or stored in the environment from unauthorized release or disclosure and to control the release of data from the environment to authorized users consistent with, e.g., Defense Information Systems Agency (DISA) Web Server Security Technical Implementation Guide (STIG) Version 7 Release 1 (September 20, 2010), National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53 ("Security and Privacy Controls for Federal Information Systems and Organizations") Revision 4 (April 2013), the program's Security Classification Guide, and the Government's intellectual property rights in such data. Such procedures would include an identification of who will be authorized to "access" the data residing on the IDE consistent with the contractor's proposed Database Design Description CDRL – including any authentication procedures the contractor will implement to control "access" – and how those authorized users will obtain "access". This subsection should also state that the contracting officer will provide the contractor with the names of authorized users and the level of access authorized for each user.

(vi) If necessary, this subsection should describe how the offeror will obtain use and non-disclosure agreements from all non-government employees to whom data will be released or disclosed if that data will be delivered with less than Unlimited Rights if the recipients' contracts do not contain DFARS § 252.227-7025.

(vii) In this subsection, the offeror should identify during what periods authorized users will be able to "access" the data residing on the IDE (with occasional periods of unavailability for maintenance purposes assuming the contractor gives authorized users advance notice of any regular or extended periods of unavailability) and the minimum number of authorized users the IDE will be able to support simultaneously.

(viii) In this subsection, the offeror should state that it will deliver the Software Product Specification, Software Version Description, Database Design Description, and all data listed on Data Accession List CDRLs that comprise the IDE.

(ix) In this subsection, the offeror should state that, pursuant to DFARS § 252.227-7027, it will image the IDE – both the "environment" as well as the "data" residing within that "environment" – and deliver that instantiation to the Contracting Officer upon request. The purpose of this section is to ensure that, well prior to contract closeout, the program office receives a copy of the IDE. The program office will then be able to include that IDE into the Bidders' Library for the follow-on competitive acquisition and provide that IDE to the awardee of that follow-on contract to sustain the weapon system(s) for which the IDE was established in the first place.

(x) In this subsection, the offeror should indemnify the Government from any liability to any data owners or licensors resulting from or as a consequence of an unauthorized user.

(xi) If the offeror will be depositing into the IDE final versions of data the contract requires to be delivered as CDRLs, in this subsection the offeror should describe how such data will be received, inspected and accepted by the program office.

(xii) In this subsection, the offeror shall identify what training (e.g., classroom, on-line) and help desk support it will provide to authorized users of the IDE.

d. Remedies. Congress has not granted any court the power to order a contractor to reinstate "access" to authorized users of the IDE where, e.g., the contractor has unilaterally shut off access. Nor can the parties to a government contract confer such power upon any court. Since any such agreement between the parties would be illusory, no such language should be included into this section. Instead, the program office should require the offeror propose a monetary remedy. This section should also identify any circumstances under which the offeror will not be liable to the Government if unauthorized users are unable to "access" the "data" residing within the "environment".

e. Intellectual Property Rights. The preceding discussion has described how to memorialize in enforceable contract language two of the three essential parts of an IDE: The *environment* (i.e., the contractor data repository itself) and the *data* that will reside within that electronic repository. Accordingly, this subsection should identify the third part of an IDE, namely, what license rights the offeror will grant to the program office to all data that will reside within that environment. In other words, the offeror should "map" what license rights it will grant to the (1) Software Product Specification CDRL that requires the delivery of the software applications that comprise the integrated digital/data environment, (2) Software Version Description CDRL that identifies all versions of that software that create that environment, (3) Database Design Description CDRL that identifies the file folder structure/hierarchy of the IDE, and (4) those items the offeror will list in the Data Accession List CDRL. This subsection should also identify what restricting markings the offeror must affix to any such "data".

In sum, the program office must memorialize the IDE product baseline in an Appendix to the Section J Data Rights Attachment that describes the *environment*, the *data* that will reside within that environment, and the *licenses* that the Government will acquire to the data that will reside within that environment. To achieve this objective – and to evaluate during source selection offerors' proposed CDRLs and Section J Data Rights Attachment Appendix – the Contracting Officer will need the assistance of three types of acquisition professionals:

(1) program office personnel who will be using the IDE,
(2) information technology professionals familiar with the capabilities of the software applications that will constitute the IDE, and
(3) program attorneys possessing extensive government contracts transactional and trial experience who can memorialize the environment, the data that will reside within that environment, and the licenses to the data that will reside within that environment in enforceable contract language understandable by those possessing only a high school degree.

As suggested by the complexity of the above discussion, this is not a job for amateurs.

E. Prior to RFP Release.

In order to foster transparency with its industry partners, after it issues the draft RFP the program office should highlight the existence of the provisions described above. The program office should also describe how the Government arrived at its minimum needs, and invite potential offerors to comment on the proposed terms and conditions to address potential offerors' legitimate concerns while at the same time educating potential offerors as to the program office's requirements. The purpose of this approach is to reduce the potential for bid protests relating to the provisions described above and to ensure the program office has conducted appropriate market research.

For example, the program office may have indicated that its minimum needs include acquiring Unlimited Rights to a particular CDRL that contains form, fit and function data as required by law – but that CDRL also requires the delivery of detailed manufacturing process data. A potential offeror may be understandably reluctant to sell at any price Unlimited Rights to such detailed manufacturing process data. Conversely, the program office may not have intended to request Unlimited Rights to such technical data. Therefore, the program office may decide to solve this problem by first modifying the content of the offending CDRL by deleting the requirement for such technical data (while retaining the form, fit and function information in that CDRL and its associated Unlimited Rights license). Next, the program office would move the requirement to deliver detailed manufacturing process data to a second CDRL – and then describe the scope of a Specifically Negotiated License associated with that second CDRL that accommodated potential offerors' reasonable concerns while at the same time satisfying the Government's (revised) minimum needs.

In a similar manner, a program office could split up technical data contained within a particular CDRL that describes multiple subsystems into multiple CDRLs, such that each CDRL describes only that technical data associated with a particular subsystem. In either case, the result will be the same in that one of the steps described in Section III.B.7.b. above will still be satisfied: The program office will have baselined all contents of a specific CDRL to a single level of license rights to the maximum extent practicable.

F. During Source Selection.

1. General Guidance.

Upon receipt of offerors' proposals, the SSEB should evaluate those proposals in accordance with the Sections B/I/J/K/L/M/Exhibit A provisions described above. If the Source Selection Authority establishes a competitive range and opens discussions, the program office should have discussions with offerors regarding any weaknesses, significant weaknesses, or deficiencies in their proposal regarding this matter. If an offeror asserts that it will be delivering a particular CDRL with less than the minimum level of rights specified in Section L, the program office may need to request that the offeror provide support for its position, amend the RFP to change the Government's minimum needs, or notify the offeror that its proposal is technically unacceptable consistent with 10 U.S.C. § 2320 and the CICA. If the Government decides that its

needs are different from those rights described in the RFP, the Contracting Officer must amend the RFP consistent with its revised requirements.

Occasionally, an offeror may "overachieve". Specifically, the offeror may propose to deliver more content in a CDRL deliverable than is required by the DD Form 1423 – but in so doing "underachieve" by proposing a lower level of rights in technical data and computer software than is required by the RFP because the offeror wants to restrict the use, release or disclosure of that additional content. The offeror, however, may not realize that by attempting to obtain a strength assessment under a particular Technical subfactor for proposing that additional content, it may very well have injected a feature into its proposal the program office would assess as a deficiency under a different Technical subfactor. The reason why is because the offeror is now proposing to deliver a lower level of rights in technical data or computer software than the RFP indicates are the program office's minimum needs. There are at least two ways to fix this problem. First, during discussions, the Contracting Officer can suggest to the offeror that it delete that additional proposed content and propose to deliver technical data and computer software rights consistent with the program office's minimum needs specified in the RFP. In the alternative, if the program office believes such additional content is necessary, the Contracting Officer must amend the RFP to require delivery of that additional CDRL content and if necessary modify the level of technical data and computer software rights identified as the Government's minimum needs for that CDRL.

2. Specific Guidance.

According to the Federal Acquisition Regulation, the Source Selection Authority (SSA) must base his/her award decision on a comparative assessment of proposals against all source selection criteria in the RFP. Since this general principle applies to the acquisition of technical data and computer software rights, program offices must analyze whether all portions of the offeror's proposal are consistent with each other insofar as the level of rights in technical data and computer software proposed are concerned. Assuming the program office has structured its RFP in a manner similar to that described above, the following decision tree will assist the program office in completing an integrated assessment of an offeror's proposal technical data and computer software rights offering:

a. Carefully review the offeror's SAD contained in the *Technical Volume* of its proposal. Understand which software applications – including OSS – reside in which locations of the offeror's proposed architecture and the purposes (functionality) for which those software applications are being used in that architecture (e.g., during development, in delivered code, and for use on which systems and in which geographic locations). Create a list of those software applications for use when completing step d. below.

b. Verify that all text in the offeror's Data Rights Attachment (*see* Appendix 1 ("Relevant Excerpts from SE&I Follow-On RFP") Attachment 10) contained in the *Contracts Volume* of its proposal is identical to that contained in the Data Rights Attachment in the RFP.

c. Verify that the offeror has properly filled-in all cells in Tables 1 and 3 in its Data Rights Attachment and determine whether the noncommercial rights proposed in Table 1 satisfy the program office's minimum needs as specified in Section L of the RFP.

d. Verify that the licenses for all commercial item or COTS software applications described in the offeror's proposed SAD are included in the appendix to the offeror's Data Rights Attachment.

e. Verify that the offeror has mapped all commercial item or COTS licenses to the proper CDRLs and CLINs in Table 2 of that Attachment.

f. Analyze whether the proposed "COTS" is truly "COTS".

The Government is required to acquire commercial items or COTS items if such items satisfy its needs. As a result, some offerors may claim that a certain item of technical data or computer software it proposes to deliver as part of a CDRL is "COTS" or "modified COTS" such that the program office should accept the terms and conditions of the proposed commercial license. Before agreeing with the offeror, the SSEB should carefully determine whether the technical data or computer software the offeror proposes to deliver with various use, release disclosure restrictions in the proposed license is in fact a "commercial item", a "COTS" item, or "commercial computer software" by using the definitions of those terms provided in Section II.E of this handbook. The SSEB should carefully scrutinize any offeror's assertion that the program office should concur in the proposed commercial technical data or computer software license because the offeror only intends to make "minor" modifications to that data or software prior to delivery – when in fact the modifications the contractor will make to that data or software will be substantial. The danger of not carefully scrutinizing such assertions during source selection is that the program office may agree to commercial license restrictions when in fact it should have agreed to a non-commercial license (e.g., Unlimited Rights).

Therefore, in the case of technical data, during discussions the SSEB should ask the offeror the following questions to test the offeror's assertions that any modifications to be made to the commercial technical data or computer software to be delivered as a CDRL are truly "minor": (1) How many pages of text are contained in the unmodified technical data? (2) How many pages of text does the offeror estimate it will modify? (3) How much did it cost the offeror to develop the unmodified technical data? (4) How much will it cost the offeror to develop the modifications to that technical data? Similarly, in the case of software, during discussions the SSEB should ask the offeror the following questions: (1) How many source lines of code (SLOC) are contained in the unmodified software? (2) How many equivalent source lines of code (ESLOC) will the offeror need to create to modify that software to satisfy the requirements of the RFP? (3) How much did it cost the offeror to develop the unmodified software? (4) How much will it cost the offeror to modify that software?

If upon reviewing the answers to these questions the SSEB concludes the modifications are not "minor", then the SSEB should ask the offeror whether the software items (SI) that will contain those modifications are physically segregable from the unmodified COTS SIs consistent with OSA principles. If so, the program office should acquire the standard commercial license to

those unmodified COTS SIs and an appropriate noncommercial license (e.g., Unlimited) to the SIs containing the modifications to that COTS software. To ensure releasability of both the unmodified COTS SIs and the modified COTS SIs to the same entities for the same purposes for the same period, the scope of such licenses must be identical with each other. If unmodified COTS SIs are not physically segregable from the SIs containing the modified COTS – in contravention of OSA principles – the program office should acquire a license (or licenses) to the unmodified COTS SIs and the modified COTS SIs the scope of which are identical to each other in order to satisfy its minimum use, release and disclosure needs.

g. Carefully read each COTS license to determine whether it will satisfy the program office's needs.

During source selection, the SSEB should carefully review all commercial technical data and computer software licenses provided to ensure any restrictions contained in those licenses are compatible with the program office's needs and are consistent with Federal procurement law. If they are not, the SSEB must point out that fact to the offeror during discussions and modify the order of precedence clause in the Data Rights Attachment accordingly.

To assist the reader in understanding how this concept applies, consider the following examples. A license provision that would violate federal criminal laws (e.g., those that apply to the dissemination of classified information) would be one that states that foreign persons will perform software maintenance of a commercial software application. The reason why such a provision would violate Federal procurement law would be because, *according to the offeror's proposed SAD*, that software application will reside in a classified facility – which therefore means the resulting contract will contain a patent ambiguity because the DD Form 254 will prohibit foreign persons from entering that facility.

One license provision that would be incompatible with user needs would be one that states that the customer may only use the commercial software application in the country where purchased when, *according to the offeror's proposed SAD*, that application will be embedded into a weapon system that will be installed in countries other than the U.S. Another license provision that would be incompatible with user needs would be one that requires the customer to remove, uninstall, and return software to the contractor if the program office breaches the terms of the license. Compliance with such provisions could very well require the Air Force to declare a space vehicle non-operational so that the Air Force will be in substantial compliance with those terms/conditions since it may not be physically possible to uninstall and return such software to the contractor given the orbits within which those space vehicles reside. With respect to a control segment, since removal is physically possible the Air Force would have to declare that system non-operational until the situation is resolved either by (1) obtaining the contractor's permission to continue using the software, or (2) requiring the contractor to replace that software application with another one along with an appropriate license for that application.

The national security implications such situations would create demonstrate the need to nullify such provisions contained in proposed commercial licenses in the resulting contract prior to award. As a result, the contractor's and (if the software application was licensed from a subcontractor) its subcontractor's remedy for such a breach will be limited to monetary damages

(vice retaining language in a license that states a court could issue an injunction against the Air Force).

Yet a third provision that might be incompatible with user needs is one that that states the commercial software application is not designed or intended for use in weapon systems, for aircraft navigation purposes or safety-of-life applications. Such a disclaimer may be nothing more than another example of our litigious society. On the other hand, it could be a warning to the program office that the developer has little faith in the stability and integrity of that software – in which case, why would the program office want to purchase it for use in such critical applications? The only way for an SSEB to determine whether that provision in the proposed license should be classified as a deficiency, weakness or significant weakness would be to ask the following questions: (1) *According to the offeror's proposed SAD*, at which locations in the contractor's architecture will that software reside – on the periphery or at its heart? (2) Does the history of that software indicate it possesses sufficient stability and integrity to satisfy the requirements in the specifications and related compliance/reference documents? (3) If the SSEB initially determines prior to award the software possesses sufficient stability and integrity, but after award the Government later determines that was not the case, how difficult will it be for the contractor to switch-out that software with a replacement or develop source code from scratch to overcome those inadequacies?

An offeror's proposed use of OSS poses additional licensing issues that the SSEB must carefully analyze during source selection. For example, some OSS licenses (such as earlier versions of the GNU General Public License) require distribution of modifications to that OSS under the same terms as the license of the original software. If the program office wants the offeror to modify that software to perform successfully the contract, it would not be possible to comply with such license terms for to do so might violate Federal procurement law (e.g., export control laws, the program's Security Classification Guide). Similarly, provisions in an OSS license that provide limited or no warranty may be incompatible with user needs because they violate DoDI 8500.2 ("Information (IA) Assurance Implementation")(February 6, 2003), which limits the use of such OSS in DoD information systems unless they are necessary for mission accomplishment and there are no alternative IT solutions available.

h. Evaluate the offeror's DFARS § 252.227-7017 certification/representation.

In many cases, an offeror will not understand how to properly fill-out the DFARS § 252.227-7017 certification/representation. Amongst other things, that provision requires the offeror to identify which noncommercial technical data pertaining to items, components or processes and which noncommercial computer software or computer software documentation will be delivered with less than Unlimited Rights. Unfortunately, many offerors fill-in that provision by identifying various hardware items (e.g., "Digital receiver") notwithstanding that hardware is not "technical data." Accordingly, during discussions the SSEB should ensure the offeror revises its certification/representation to identify the specific items of technical data (e.g., "Drawing No. 12756 Rev. B (Digital Receiver) dated June 21, 2006, contained in CDRL A037") and computer software (software application name, version, release data, which CDRL will contain that software) to be furnished with restrictions. The SSEB should also analyze whether

the assertions made in that certification/representation are consistent with those stated in the offeror's Data Rights Attachment.

i. If the RFP requires the offeror to propose prices for licenses under a fixed-price CLIN, the SSEB must verify that the offeror has done so in its Data Rights Attachment. In contrast, if the RFP requires the offeror propose the costs of licenses under a cost-reimbursable CLIN (or CLINs), the SSEB must verify that the offeror has proposed costs in the Basis of Estimates (BOE) the offeror proposed in its *Cost Volume* for all licenses listed in its Data Rights Attachment – which presumably are associated with the identical software applications described in its SAD. The SSEB should also verify that the costs proposed in the offeror's Cost Volume are identical to those proposed in its Data Rights Attachment.

The SSEB should also determine the fairness and reasonableness (and if necessary, the price/cost realism) of the proposed cost *of the data itself* in addition to the cost/price of the rights to that data. Accordingly, the offeror must fill-in Block 18 of each DD Form 1423 ("Estimated Total Price") contained in Exhibit A of its *Contracts Volume* with the amount equal to that portion of the total price estimated to be attributable to the production or development for the Government of that item of data. The *Armed Services Pricing Manual* explains the purpose for which the SSEB will obtain that information from the offeror:

> The [program office] will use the submitted prices in deciding whether its needs for the data are worth the dollars they will cost. If the [program office] concludes that the benefits are commensurate with the cost, the data requirement stays on the list; if the [program office] concludes that the data are not worth what they will cost, it modifies or deletes the requirement. The amended list is made a part of the contract. *The prices on that list, how they are derived, and what they mean are the subject of this section*.[14]

G. Sole Source Contracts.

1. Establish data and data rights requirements.

Two of the steps described above to acquiring rights in technical data and computer software in a competitive environment apply equally to situations where the program office seeks to acquire supplies and services sole source. Specifically, in order to establish its data and data rights requirements, the program office should first use the same disciplined approach to drafting an AS/AP and the RFP described in sections III.B-D.

[14] 1 *Armed Services Pricing Manual (ASPM)* § 9.5 (p. 9-29)(1986)(emphasis added), *available at* http://www.library.dau.mil/ ASPM_v1_1986.pdf. In 1996, the FAR replaced the *ASPM* with the *Contract Pricing Reference Guides* (*see* FAR 15.404-1(a)(7)). Since, however, those *Guides* no longer include the detailed information found in the *ASPM*, the *ASPM* remains a useful reference for SSEBs to use when analyzing whether an offeror's estimated total price for a proposed CDRL is fair and reasonable (and if necessary, realistic).

2. Justify the award of a sole source contract.

The Air Force Federal Acquisition Regulation Supplement (AFFARS) states that the contracting officer cannot issue an RFP to a sole-source offeror unless the appropriate official has approved a Justification & Approval (J&A) authorizing the acquisition of supplies, services, or both, sole source. Although seven exceptions exist to the requirement to obtain full and open competition under the Competition in Contracting Act, only one of those exceptions relates to the topic of rights in technical data and computer software. That exception applies when the DoD demonstrates the supplies or services required are available from only one or a limited number of responsible sources when it is likely that award to any other source would result in substantial duplication of cost to the Government that is not expected to be recovered through competition or unacceptable delays in fulfilling the agency's requirements (FAR § 6.302-1).

When attempting to rely upon that exception, some program offices assume that inclusion of a conclusory statement into their J&A such as "the data rights are too expensive" will suffice to convince the approving official to sign that document. For various reasons, that assumption is not well-taken. First, such statements are usually not supported by any rigorous analysis regarding (1) what specific items of technical data and computer software the program office is referring to, (2) what specific rights to those specific items of technical data and computer software the program office is referring, or (3) the manner in which the program office calculated the value of those rights to those items of technical data or computer software. Second, the FAR cautions that, although the existence of limited rights in data may make the supplies and services available from only one source, the mere existence of such rights does not in and of itself justify use of this exception.

In the alternative, some program offices assume that inclusion of a conclusory statement into their J&A such as "the contractor refuses to sell rights to various items of technical data or computer software" will suffice to convince the approving official to sign that document. If the program office learns the offeror will be taking that position, it should ask the offeror's Chief Executive Officer (CEO) to provide a statement to that effect addressed to the MDA – which in the case of ACAT ID programs will be USD(AT&L). The possibility always exists that such a statement from the CEO to the author of the memorandum entitled *Implementation Directive for Better Buying Power 2.0 – Achieving Greater Efficiency and Productivity in Defense Spending* – which requires program offices to **"[e]nforce open system architectures and effectively manage technical data rights**" in order to "**PROMOTE EFFECTIVE COMPETITION**" – may convince that author that the CEO's representation is well-founded. Conversely, the fact that the program office intends to forward the CEO's statement to the author of that memorandum may dampen the enthusiasm of the offeror's program manager and contracts manager to refuse to sell or otherwise relinquish such rights.

In any event, if the program office intends to base its J&A in whole or in part upon the lack of rights in technical data and computer software sufficient to compete the acquisition of supplies and services needed by the program office, the J&A should include the following information consistent with the J&A Documentation Template – authored by the main contributor to this handbook – referenced in the AFFARS:

(1) Section V of the J&A Documentation Template: J&As that are based upon a determination that the program office would incur a substantial duplication of cost were the supplies and services to be competed must include the rationale for the amount of cost that would be duplicated. Accordingly, explain how the value of the technical data and computer software (and the associated rights) identified in Section IX of this template is subsumed within the amount of duplicated cost identified in this section.

(2) Section IX of the J&A Documentation Template: Based upon the analysis performed consistent with Section III of this handbook, identify what specific items of technical data and computer software (and the associated rights) the program office would need to compete the acquisition of supplies and services sought to be procured. Describe the approaches the program office used to calculate the value of those rights associated with those items of technical data or computer software (see Section III.G.3. below).

(3) Section XI of the J&A Documentation Template: Explain how the program office will attempt to acquire, as a priced option in the contract action that is the subject of the J&A, rights in technical data and computer software sufficient to compete follow-on acquisitions for all or a portion of the supplies and services sought to be procured. Describe the actions the program office will take during the period of performance of the contract to identify, reverse engineer, or acquire technical data or computer software that not identified as a priced option in the contract action that is the subject of the J&A. State how the program office intends to challenge nonconforming or unjustified markings on technical data and computer software delivered to it under previous contracts so those markings can be removed so that that technical data and computer software may be used in support of a follow-on competitive acquisition. As required by the *Implementation Directive for Better Buying Power 2.0*, discuss how the program office will take advantage of Open Business Model (i.e., Open System Architecture) practices to break vendor-lock to minimize future sole source requests.

3. Negotiate a fair and reasonable price for the rights to data.

The program office should not commence negotiations over, or request pricing for, data rights until the parties have arrived at a common understanding as to (1) the content of each CDRL the contractor will deliver and (2) the scope of the licenses that will apply to each CDRL. Once the parties have arrived at that common understanding, unless an exception applies to that acquisition, the offeror must provide certified cost or pricing data so that the Contracting Officer can determine the fairness and reasonableness of the proposed prices for the rights in technical data and computer software sought to be acquired.

The FAR defines "cost or pricing data" as all facts that, as of the date of price agreement, or an earlier date agreed upon by the parties as close as practicable to the date of price agreement, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. The FAR also states that such data are factual (not judgmental, although they include the data forming the basis for that judgment) and encompass all facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of costs already incurred. The FAR provides various examples of cost or pricing data; e.g., vendor quotations, nonrecurring costs, data supporting projections of business prospects and

objectives and related operations costs, estimated resources to attain business goals, and information on management decisions that could have a significant bearing on costs.

So what does this mean in the context of rights in technical data and computer software? It means that, unless an exception applies to that acquisition, the contractor must provide certified cost or pricing data supporting its determination as to the value of the rights to a specific item of technical data or computer software.

Valuation of intellectual property is a very complex subject – and it becomes even more complicated when one attempts to calculate the value of noncommercial technical data and computer software developed for military applications for which the marketplace is at best limited. There is no statute, regulation, or policy applicable to DoD contracts mandating that the parties utilize a specific methodology for calculating a fair and reasonable price for the rights in technical data and computer software delivered under DoD contracts. (In fact, no textbook or guide issued by any DoD activity or the private sector other than this handbook provides an extended treatment of this subject.) To put it another way, the program office has the discretion to determine what methodology – and what cost or pricing data it should request consistent with that methodology – it should use to negotiate a fair and reasonable price for that intellectual property.

Accordingly, a program office should consider using the methodology described below to negotiate the value of a specific level of rights to a specific item of technical data or computer software (e.g., CDRL) within the context of the statutory requirement to base the fairness and reasonableness of the negotiated price upon certified cost or pricing data. In this regard, program managers may want to retain a third-party valuation analyst to verify the offeror's valuation of that technical data or computer software. For further details, contact the National Association of Certified Valuators and Analysts (NACVA)(http://www.nacva.com/) or the Licensing Executives Society (U.S.A. and Canada), Inc. (http://www.lesusacanada.org/).

a. The program office should require the offeror (or, if the owner of the intellectual property in question is a subcontractor, its subcontractor's) provide a copy of its written corporate policy for calculating the value of all intellectual property in its corporate portfolio (e.g., patents, copyrights, trade secrets). The program office should also require the offeror to provide an explanation as to how it used that policy to calculate the value of the rights it proposes to deliver with the specific item of technical data or computer software at issue. If such a policy exists but the offeror did not use that policy to calculate the proposed value, the program office should require the offeror explain why it did not use that policy in this case. If no such policy exists, the program office should require that the offeror affirmatively state that is the case.

b. The program office should require the offeror (or, if the owner of the intellectual property in question is a subcontractor, its subcontractor) provide a copy of all financial statements (consolidated balance sheets) that summarize the value of all intellectual property in its portfolio irrespective of whether the offeror included those financial statements in any of its U.S. Securities and Exchange Commission filings. If the offeror is not a publicly traded company, the program office should require the offeror to provide equivalent information.

In either case, the program office should require that the offeror identify where the value of all intellectual property in its portfolio is contained in those financial statements or equivalent information (e.g., as goodwill, as intangible assets). The program office should also require that the offeror explain how it subsumed the proposed price for the value of the rights it proposes to deliver with that specific item of technical data or computer software at issue within the total value of all intellectual property within that portfolio reflected in the Offeror's financial statements (consolidated balance sheets) or equivalent information. If the former is not subsumed within the latter, the program office should require the offeror explain why that is the case. If the offeror does not summarize the value of all intellectual property in its portfolio on its financial statements (consolidated balance sheets), the program office should require that the offeror affirmatively state that is the case.

c. The program office should modify as necessary and then (if possible) use multiple approaches the commercial sector has traditionally used to calculate the value of a specific item of intellectual property to calculate the value of a specific level of rights associated with that specific item of technical data or computer software the program office wishes to acquire.[15] Specifically, the program office must decide which of the following three approaches it should use based upon the following factors: (1) the uniqueness of the particular asset, (2) the amount of cost or pricing data that is available and verifiable, (3) the context, purpose, and objective of the analysis, and (4) the judgment of the individual analyst. Those three approaches are as follows:

(1). The *cost approach* measures the cost of reproducing the technical data or computer software by purchasing it today, by replacing it with a substitute asset of equal utility and capability, or by creating an absolute reproduction of the asset. This approach includes the direct hard costs (materials, design costs), soft costs and other indirect costs including development time (e.g., software coding), overhead/G&A, marketing costs, legal costs, profit, and opportunity cost.

The offeror has the burden of proving that a particular item of technical data or computer software associated with an ACAT I/I program, subsystem or component was developed exclusively at private expense. As described at page 19 of this handbook, this means the program office should require that the offeror demonstrate that it tracked the allocation of private and government funds to the development of the item, component or process it accomplished with those funds and broke or separated the accounting trail for development of those technologies to indirect cost pools (e.g., IR&D), costs not allocated to a government contract, or any combination thereof. If it can do so, the offeror will have proved that it developed a particular item, component or process (or all items, components or processes) described in a particular CDRL exclusively at private expense. The program office should also require that the offeror demonstrate that any assertion that it developed the data exclusively at private expense is consistent with any CPRs submitted to the Government under any Government contract.

If the contractor cannot sustain its burden of proof in this regard, the Government may presume that the Government has already paid those costs. Under those circumstances, the offeror should be willing to sell Unlimited Rights associated with that technical data or computer

[15] Weston Anson, *IP Valuation and Management* 47-59 (2010).

software to the Government at zero cost. In contrast, if the item, component or process to which that technical data or computer software pertains is a commercial item or COTS, the Government must presume that the offeror developed that item of technical data or computer software exclusively at private expense unless the Government can demonstrate that it contributed to the development of the item, component or process in question.

(2). The *market approach* analyzes actual market sales, rents, and transactions of the same or similar assets using the following factors: the relevant industry, geographic constraints, exclusivity provisions, payment structures and mechanisms, timeframe, and the context of transactions (e.g., forced transaction, divestiture, bankruptcy). If, for example, the offeror proposes to acquire commercial item computer software via GSA Federal Supply Schedules pursuant to FAR § 52.251-1 ("Government Supply Sources") under a cost-reimbursement contract or CLIN, it should provide that pricing information.

(3). The *income approach* analyzes the value today of future cash flows (using direct cash flow models, incremental cash flow models, price premium and excess earning models, relief from royalty analysis) or other measures of income (e.g., number of units, sales price, delivery schedule, profit margin, discount factor/rate) the parties can estimate into the future for whatever remaining expected useful life the technical data or computer software may have. With respect to the delivery schedule, the program office should require that the offeror identify the length of time that it believes the parties should measure those income levels. With respect to the discount factor/rate, the program office should require that the offeror identify the proposed discount factor/rate and explain the basis for that proposed discount factor/rate.

After completing that analysis for a particular item of technical data or computer software, the program office should repeat the preceding steps to calculate the value of the level of rights associated with each remaining item of technical data and computer software.

It may be difficult for a program office to conceive how it could use any of the three methods described above to estimate the value of rights to a specific item of technical data acquired under a DoD contract. Accordingly, we provide the following not-too-hypothetical scenario for the reader's consideration: A program office wants to award a sole-source follow-on contract to the incumbent to acquire additional receivers, some of which will be of the identical configuration as the program office procured under the existing contract and some of which will be of a configuration that features improved capabilities. Although receivers procured under the existing contract came with a warranty, the contract also contained provisions permitting the program office to direct the contractor to perform out-of-warranty repairs based upon a price-per-repair rate included in the contract. The incumbent performed such out-of-warranty repairs during the performance of the contract. As a result, both parties know precisely how many repairs occurred each year of contract performance and precisely how much each repair cost the program office. Under the follow-on contract, the program office wants to acquire Government Purpose Rights to a technical data package (TDP) that would constitute a full design disclosure. As a result, the program office will be able to provide that TDP to offerors as government-furnished-information in order to compete depot-level maintenance of those receivers. If the program office acquires that level of rights to such technical data, however, the remaining value to the owner of that intellectual property may be negligible.

The reason why that is the case is because the contractor will no longer be in a sole-source position to gain the profit it would have otherwise received had the program office continued to have it perform such out-of-warranty repairs under the follow-on contract.

As a starting point, therefore, the parties could use the *income approach* to calculate the remaining expected useful life of that technical data. First, the parties would extrapolate data supporting projections of business prospects cost or pricing data (i.e., the historical repair incidence rate) to calculate the total quantity of future out-of-warranty repairs the incumbent would have otherwise performed under the follow-on contract on identical-configuration receivers each year after the warranty for such receivers had expired. Second, since no historical data exists for the repair-incidence-rate for improved-capability receivers, the parties would perform a regression analysis to determine the probable repair-incidence-rate for out-of-warranty repairs the incumbent would have otherwise performed under the follow-on contract for those receivers each year after the warranty for such receivers had expired. Third, the parties would agree as to the profit percentage applicable to such out-of-warranty repairs the contractor would have otherwise performed each year. Fourth, the parties would multiply that percentage by the total number of out-of-warranty repairs the incumbent would have otherwise performed under the contract each year for both types of receivers. Fifth, the parties would discount that sum to present value for each year. The result will be a quantification of the profit (net income) it is likely the incumbent would have otherwise received were it to have performed all out-of-warranty repairs under the follow-on contract as it did under the existing contract.

H. Post-Award.

1. CDRL review upon delivery.

> Examples like the *Challenger* explosion . . . demonstrate the states of complacency and familiarity we can fall into when it come to dealing with large technological decisions. This is not to say that we should become paranoid about technology, but there is much to be said for a healthy skepticism among engineers and nonengineers alike. *The most dramatic failures have occurred in a climate of overconfidence and carelessness, and the least we can learn from those incidents is to be more vigilant*. Accidents and near accidents remain our surest reminders that engineering is a human endeavor that takes place in the context of other human endeavors, including calculated risk and celebration. None of the sane among us willfully wishes to place fellow human beings in imminent danger, but we sometimes minimize or forget what dangers lurk among our technological creations. The surest way for us to be vigilant is to be aware of past mistakes and thereby to be armed with the evidence of case studies to bolster, when need be, our arguments against the launching of a space shuttle on a cold winter morning. . . .[16]

[16] Henry Petroski, *To Engineer is Human: The Role of Failure in Successful Design* 231-232 (1992)(emphasis added).

What is true in war and in systems engineering is true after award in the context of technical data and computer software rights: Complacency kills. Moreover, like in war and in systems engineering, the root cause of such complacency in this context after award is usually attributable to a breakdown in discipline. Specifically, all of the program office's hard work in negotiating rights in technical data and computer software prior to award will be for naught if it fails to ensure after award that the contractor is complying with the requirements of its contract relative to the rights in technical data and computer software the contractor ultimately delivers to the program office. Because by that time the contractor may be experiencing "seller's remorse" with respect to the rights in technical data and computer software it agreed prior to award to deliver to the program office after award.

The results of such a breakdown in discipline in the program office usually manifest themselves in three ways. The first way is that program office negotiates away for a pittance after award via bilateral contract modifications the rights it negotiated prior to award. Years later, the program office may regret acceding to the contractor's demands. By that time, however, the program office will just have to live with those constraints on its ability to execute successfully the program. Of course, if the program office can no longer successfully execute the program due to such a breakdown in discipline, the program manager and the Program Executive Officer may have to explain to his/her MDA why he/she ever permitted such a situation to occur.

The second way is for program office personnel to begin empathizing with the contractor's whining and complaining about the "proprietary" rights it freely agreed to relinquish prior to award associated with a specific item of technical data or computer software. Next, those personnel decide that this problem is so inconsequential that it must not get in the way of the parties achieving some allegedly critical milestone. In the alternative, those personnel conclude that the parties can sweep that problem under the proverbial rug or conclude that the parties can defer resolution of that problem to a more convenient time – which, of course, *never* occurs because those personnel then focus on meeting the *next* schedule-driven milestone.

Next, program office personnel enter into a verbal side agreement with the contractor relative to the level of rights associated with that item of technical data or computer software that is inconsistent with the express terms and conditions of the contract. Inevitably, such side agreements will possess one or more of the following distinguishing features. Such agreements may violate the U.S. Constitution because the program office will have never received consideration for relinquishing its intellectual property rights without obtaining authority from Congress to do so. In the alternative, such agreements may violate the CICA in one of two ways. First, the agreement may have surrendered Unlimited Rights in the types of technical data described on pages 26-27 to which the Government was otherwise entitled to receive pursuant to 10 U.S.C. § 2320 that are not in dispute. Second, the competition under which the program office ran the source selection has been compromised because, had the contractor proposed the level of rights prior to award that it will now proposes to deliver after award, as discussed above, that fact "would have materially affected the source selection decision". By this time, the contractor, having exploited this lack of discipline once, will seek to exploit it *ad nauseam* – so that in no time at all reality will bear no relationship to the express terms and conditions of the contract.

This undisciplined approach to program management and proper contract administration is unwise at best, as it increases the probability that months or years hence, the program office will have to untie the Gordian Knot caused by mismarked CDRL deliverables or missing content in the CDRLs that they now desperately need in order to execute successfully the program. (Of course, by that time the program office personnel who created this situation will have received more prestigious assignments, promotions, and cash awards and military decorations based in part upon false pretences; i.e., the "success" they achieved in meeting that allegedly critical milestone.) Only those who have spent years of their professional career handling such issues can truly understand the time and effort the program office will need to expend to bring successfully reality back into alignment with the terms and conditions of the contract.

The third way is for the program office to be so mesmerized by the content of a contractor's CDRL deliverable that it forgets to check whether the contractor has properly marked its deliverable with the proper restrictive markings (assuming the contractor should have affixed any markings to that deliverable). There is only one way to solve this problem: The program manager, the product support manager, and the Contracting Officer must implement procedures that ensure that the first thing the program office's initial recipient of a CDRL delivered by the contractor will *not* do is start reviewing the content of the CDRL for accuracy and completeness or (worse yet) immediately distribute such trade secrets to any non-Government employee in a manner that may not be authorized by the contract. Instead, with respect to technical data the recipient should verify that the cover page of the CDRL contains technical data rights restrictive legends *identical* to the restrictive markings required by the Data Rights Attachment described above for that CDRL. The recipient should then verify that no restrictive markings are included on any page of that CDRL that are inconsistent with the restrictive legends on that cover page. In a similar fashion, the recipient should ensure that, if the CDRL requires the delivery of computer software, all restrictive markings contained within that deliverable are *identical* to the restrictive legends required by the Data Rights Attachment described above for that CDRL.

If it does not, the types of technical data or computer software restrictive markings the contractor may have affixed to that CDRL will be a "nonconforming" or an "unjustified" marking. A "nonconforming" marking is a marking that does not contain the following terms: "Unlimited Rights", "Government Purpose Rights", "Limited Rights", "Restricted Rights", or "Special License Rights". (Examples of such nonconforming markings include the terms "proprietary" and "competition sensitive.") In contrast, an "unjustified" marking is one that is one that is described above (e.g., "Restricted") but is not the level of rights to that CDRL the Data Rights Attachment described above required the contractor to deliver to the program office (e.g., "Unlimited"). In either case, the program office should immediately notify the Contracting Officer so the Contracting Officer may take appropriate action. In the case of a "nonconforming" marking, the Contracting Officer will notify the contractor of such nonconformities whereupon the contractor must then correct those nonconforming markings at its own expense. If the contractor fails to correct the marking within 60 days of receiving notice of the nonconformity, the Government may correct the marking at the contractor's expense. In stark contrast, if the recipient discovers an "unjustified" marking on the cover page of the CDRL, as described below, it may take a great deal of time to have the contractor remove those "unjustified" markings.

The second thing the recipient should do is to read the licenses to understand precisely to whom he/she may furnish copies of that technical data and computer software for what purposes for what specified period. Then – *and only then* – should the recipient review the content of the CDRL for accuracy and completeness. Assuming the program office structured its Data Rights Attachment in a manner similar to that described above and trained its personnel to use the following decision tree, it should take the recipient of a CDRL less than 30 seconds to determine to whom that recipient can disclose that CDRL for what purpose(s) for what period of time:

(1) Is the data contained in a CDRL? If the answer is no, read the license contained in subsection c.(5) of the Data Rights Attachment (*see* Appendix 1 ("Excerpts from SE&I Follow-On RFP") Attachment 10)) and carefully read to whom that data may be used, released, or disclosed and for what purposes. If the answer is yes, go to question (2).

(2) Is that CDRL listed in Table 3 of the Data Rights Attachment? If the answer is yes, the recipient should carefully read the license contained in subsection c.(3) to learn the conditions under which he/she may use, release, or disclose that technical data or computer software outside the Government. If the answer is no, go to question (3).

(3) Is that CDRL listed in Table 2 of the Data Rights Attachment? If the answer is no, then that CDRL contains no commercial item technical data or computer software in which case the recipient should skip to question (4). If the answer is yes, does the license contained in Appendix A listed in Column 3 of that table associated with that CDRL encompass the technical data or computer software contained in that CDRL? If the answer is no, the CDRL must contain only noncommercial technical data or computer software, and the recipient should skip to question (4). If the answer is yes, the recipient should carefully read that license (or those licenses) and subsection c.(2) to determine to whom, for what purposes, for what duration of time, that commercial item technical data or software may be used, disclosed or released outside the Government. If (i) any technical data contained in that CDRL is marked in red as required by the Data Rights Attachment but Table 2 did not list that CDRL, or (ii) the license listed in Column 3 of that Table for that CDRL does not encompass the technical data contained in that CDRL, the recipient should notify the PCO immediately.

(4) Since the CDRL contains only noncommercial technical data or computer software, the recipient should skim down Column 1 of Table 1 of the Data Rights Attachment until he/she locates the CDRL number. Go across that corresponding row and read the cell in Column 3 associated with that CDRL. If that cell contains the word "Unlimited", there should be no restrictive marking on the CDRL and the recipient may use, release or disclose that technical data or computer software to anyone for any purpose. If, however, any restrictive markings are contained on that CDRL, the recipient should notify the PCO immediately. If that cell contains the word "Government Purpose", that term should be in the restrictive marking on the CDRL and the recipient may use, release or disclose that technical data or computer software to authorized persons for government purposes. If, however, those words are not in the restrictive marking on the CDRL, the recipient should notify the PCO immediately.

2. Use, release and disclosure of technical data and computer software.

The program office should use the following guidelines to determine whether it may release the technical data and computer software delivered under the awarded contract outside the Government.

Assuming that the technical data or computer software delivered to the program office is not subject to the Arms Export Control Act (e.g., a Distribution Statement "D" or "X" is not affixed to the cover page), if that noncommercial technical data or software contains no restrictive markings it is presumed to have been delivered with Unlimited Rights. The program office may therefore release that item outside the Government without restrictions.

Pages 8-9 of this handbook describe to whom, for what purposes, and for what period of time noncommercial technical data or computer software the Government may use, release or disclose that item marked with Government Purpose Rights restrictive markings outside the Government. Page 9 of this handbook describes to whom, for what purposes, and for what period of time noncommercial technical data or computer software the Government may use, release or disclose that item marked with Limited Rights restrictive markings outside the Government. Pages 9-10 of this handbook describes to whom, for what purposes, and for what period of time noncommercial technical data or computer software the Government may use, release or disclose that item marked with Restricted Rights restrictive markings outside the Government. Page 10 of this handbook describes to whom, for what purposes, and for what period of time noncommercial technical data or computer software the Government may use, release or disclose that item marked with Specifically Negotiated Rights restrictive markings outside the Government. The program office may only use, release and disclose commercial technical data and computer software in accordance with the terms and conditions of the license associated with those items. That is why the recipient of *any* CDRL should read the commercial licenses before reviewing the content of that CDRL for accuracy and completeness.

Finally, the program office should ensure that all conditions described in the NDA between its "covered Government support contractor" and the contractor who created that CDRL are satisfied prior to releasing or disclosing any CDRL to that "covered Government support contractor" to which is affixed "Limited Rights" or "Restricted Rights" restrictive markings or commercial technical data the content of which the Government did not acquire "Unrestricted Rights". Of course, this condition only applies if the Government did not obtain a waiver of that requirement prior to award from the contractor who created that CDRL.

3. Challenge procedures.

The program office has the later of three years from the date the contractor delivers the technical data or computer software to the program office, or three years following final payment under the contract, to challenge the validity of any "unjustified" restrictive marking affixed to that data or software. Although a formal challenge takes time, until the contractor removes those restrictive markings or gives notice that it intends to litigate the matter after receiving a Contracting Officer's Final Decision determining that the validity of the restrictive marking is unjustified, with very rare exceptions the program office cannot cancel or ignore those markings.

Under such circumstances, the program office cannot use, release or disclose that technical data or computer software in a manner inconsistent with that restrictive marking to any non-Government employee.

4. Delivery of data/software created during contract performance but not expressly identified in the contract.

If the Deferred Ordering clause (DFARS § 252.227-7027) is contained in the contract, the program office may require the contractor to deliver any data or software to the program office, not expressly identified in the contract but generated in the performance of the contract or any subcontract, anytime during performance of the contract or within three years after acceptance of all items (other than technical data or computer software). If that clause is not included in the contract and the data or software is not the subject of a CDRL, the program office will not be able to require the delivery of such data or software under the Changes Clause – irrespective of whatever "inchoate" rights the Government may have acquired to use, release and disclose that undelivered data or software outside the Government.

5. Correction of defective technical data or computer software.

With respect to technical data, if the program office discovers that the technical data delivered by the contractor is defective, it has three years to obtain the remedies described in DFARS § 252.246-7001 ("Warranty of Data") from the date of delivery if that clause was included in the contract. Those remedies include requiring the contractor to correct or replace at the contractor's expense the nonconforming technical data, a downward adjustment of the price of that technical data, or correcting or replacing the nonconforming technical data and charging the cost to the contractor. With respect to computer software delivered under a fixed-price contract, the program office receives only that warranty for which it bargained under the contract; if it purchased no express warranty, its remedies are limited to those described in FAR § 52.246-2 ("Inspection of Supplies – Fixed Price"): latent defects, gross mistakes amounting to fraud, or fraud. With respect to computer software delivered under a cost-reimbursable or time-and-materials/labor-hour contract, FAR § 52.246-3 ("Inspection of Supplies – Cost-Reimbursement"), FAR § 52.246-6 ("Inspection – Time-and-Material and Labor-Hour"), and FAR § 52.246-8 ("Inspection of Research and Development – Cost-Reimbursement"), states that if the program office discovers within six months of delivery (or other period specified by the contract) that the computer software delivered is defective, it may require the contractor to replace or correct nonconforming computer software at no increase in fee (although in most cases it will have to pay the contractor the costs it incurred to correct such defects).

6. Changes in requirements.

If requirements change after award such that the program office must modified the contract to require the contractor to deliver additional CDRL items (i.e., additional items of technical data or computer software) or additional CDRL content in pre-existing CDRLs, the program office should revise its Data Rights Attachment to add those items. The program office should then obtain certified cost and pricing data for the rights in technical data and computer software for those items, require the contractor to revise their DFARS § 252.227-7017

certification/representation and provide copies of any applicable commercial licenses, review those licenses for consistency with the Government's minimum needs, and bilaterally modify the contract accordingly. For details, see pages 44-45 of this handbook.

7. Post-award analysis of rights in technical data and computer software.

Occasionally, the program office may need to analyze the rights in technical data and computer software it purchased under one or a myriad of contracts over the past decade (or more) because it failed to use an approach similar to that recommended above to expressly identify its technical data and computer software rights requirements under those contracts prior to award. Instead, the program office merely incorporated by reference standard FAR or DFARS clauses – or even worse, failed to include the DFARS § 252.227-7017 certification/ representation into Section K of the RFP.

The circumstances under which the program office may need to perform such an analysis include determining whether the program office acquired sufficient rights in technical data or computer software to compete follow-on acquisitions or, conversely, whether the program office may be forced to acquire supplies/services sole-source because it did not acquire sufficient rights in technical data or computer software to compete such acquisition. Such circumstances may also include determining whether the program office may release technical data or computer software to covered government support contractors so those contractors can advise the Government regarding the accuracy and completeness of that technical data or computer software. The types of documents the program office will need to perform such an analysis include, but are not limited to, the five sources of information listed at page 21 of this handbook.

As you can imagine, if the program office has to perform such an analysis where the Government acquired various rights under multiple contracts over the past decade (or more) that did not use the approach described above, such an analysis can literally take months to complete. Similarly, if the program office must use litigation to get the contractor to remove an "unjustified" marking, that litigation could take as long as 9.5 years to resolve. (Of course, after the litigation has run its course, the value of that technical data or computer software to all parties may be negligible.) Thus, the benefits of structuring the RFP using the approach recommended above are three-fold. First, such an approach will facilitate proper acquisition planning. Second, it will reduce the probability that the program office must perform a complicated technical data/computer software rights analysis years after contract award. Third, it will reduce the probability that litigation may be necessary to resolve a dispute between the contractor and the Government regarding what rights the Government actually purchased under those multiple contracts.

IV. Epilogue.

Although complicated statutes and regulations govern the proper acquisition and enforcement of rights in technical data and computer software, anyone who takes the time to understand "why" such rights must be acquired, "what" rights must be acquired, "how" such rights may be acquired, and "when" such rights may be acquired, can master those resources. Moreover, this topic becomes relatively easy to understand when one keeps in mind the following principles discussed above. First, a program office acquires only a license to use,

release and disclose technical data or computer software outside the Government – not ownership. Second, a program office needs to carefully determine during formulation of an acquisition strategy/plan who will need to use such technical data and computer software delivered after award for what specific purpose it intends to use, release or disclose that technical data or computer software for what specified period of time. Third, if a program office carefully structures licensing provisions in its RFP it can more effectively evaluate offerors' proposals prior to award and ensure delivery of the appropriate licenses after award. If you keep these principles in mind, you will enhance competition and increase SMC's ability to develop, produce and sustain the space system and its subsystems over their life cycle thereby helping to achieve SMC's mission: To deliver resilient and affordable space capabilities for the nation.

Appendix 1

Relevant Excerpts from SE&I Follow-On RFP

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING DO-A2	PAGE 1 OF PAGES 68

2. CONTRACT NO.	3. SOLICITATION NO.	4. TYPE OF SOLICITATION	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.
	FA8807-11-R-0001	☐ SEALED BID (IFB) ☒ NEGOTIATED (RFP)	14 SEP 2012	

7. ISSUED BY SMC/GPK CODE FA8807	8. ADDRESS OFFER TO *(If other than Item 7)*
SPACE & MISSILE SYSTEMS CENTER 483 N. AVIATION BLVD EL SEGUNDO, CA 90245-2808 LAURA F. LAIDET 310-653-3864 LAURA.LAIDET@US.AF.MIL	

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Description: This is a solicitation for the Systems Engineering and Integration (SE&I) in support of the Global Positioning System Directorate (GPS).

Proposals are due 30 days after the RFP announcement is posted to FBO and the RFP is added to the Bidder's Library.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE *(Include area code)* *(NO COLLECT CALLS)*	C. E-MAIL ADDRESS
	ALLISON M. FLANAGAN		

11. TABLE OF CONTENTS

Conformed as of A 0004

(√)	SEC.	DESCRIPTION	PAGE(S)	(√)	SEC	DESCRIPTION	PAGE(S)
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√	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2			*PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACH.*	
√	C	DESCRIPTION/SPECS./WORK STATEMENT	24	√	J	LIST OF ATTACHMENTS	67
√	D	PACKAGING AND MARKING	25			*PART IV - REPRESENTATIONS AND INSTRUCTIONS*	
√	E	INSPECTION AND ACCEPTANCE	26	√	K	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS	K - 1
√	F	DELIVERIES OR PERFORMANCE	27				
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OFFER (*Must be fully completed by offeror*)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within ___240___ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date of receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
14. ACKNOWLEDGEMENTS OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
	☐		

AWARD (*To be completed by Government*)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304(c) ( ) ☐ 41 U.S.C. 253(c) ( )		23. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)*	ITEM
24. ADMINISTERED BY *(If other than Item 7)* CODE		25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER *(Type or print)*		27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount

Development - Base (3600 Funds)(CPIF)

0010 _____
_____

Noun: DEVELOPMENT SYSTEMS - BASE PERIOD
Contract type: V - COST PLUS INCENTIVE FEE
Start Date: ASREQ
Completion Date: ASREQ
Item project mgr.: ENO
Descriptive Data:
OCX, GPS III, NDS, MGUE, GPE

The contractor shall perform all work required in accordance with the Global Positioning Systems (GPS) Systems Engineering and Integration (SE&I) Attachment 1 - Performance Work Statement (PWS), paragraphs shown below dated 21 March 2013 attached hereto and made a part hereof.

The following PWS paragraphs apply to this CLIN:

3.2.1 - 3.2.1.3
3.2.3.1
3.2.3.3
3.2.3.4 - 3.2.3.5
3.2.4
3.3.1 - 3.3.1.5
3.3.2 - 3.3.2.2
3.3.3 - 3.3.3.2
3.3.4
3.3.5 - 3.3.5.1
3.4.1 - 3.4.1.8
3.4.2
3.6.1 - 3.6.1.11
3.6.2 - 3.6.2.2
3.6.3 - 3.6.3.2.5
3.8.1
3.8.2
3.8.3
3.10

The Performance Incentive fee will be paid in accordance with Attachment 3 - Incentive Fee Plan.

The Cost incentive fee shall be in accordance with FAR 52.216-10 Incentive Fee.

Cost-Plus Incentive Fee (CPIF)

CPIF Target Cost: _____
CPIF Target Fee: _____

ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount

Development Base - (3600 Funds)(FFP)

0020 _____

_____

Noun: DEVELOPMENT SYSTEMS - BASE PERIOD
Contract type: J - FIRM FIXED PRICE
Start Date: ASREQ
Completion Date: ASREQ
Item project mgr.: ENO
Descriptive Data:
OCX, GPS III, NDS, MGUE, GPE

The contractor shall perform all work required in accordance with the Global Positioning Systems (GPS) Systems Engineering and Integration (SE&I) Attachment 1 - Performance Work Statement (PWS), dated 21 March 2013, attached hereto and made a part hereof.

The following PWS paragraphs apply to this CLIN:

3.1 - 3.1.1
3.2.2 - 3.2.2.1
3.3.6
3.5
3.6.4 - 3.6.4.2.1
3.6.5 - 3.6.5.9
3.7.1 - 3.7.1.2
4.1 - 4.1.8
4.2 - 4.2.7
4.3 - 4.3.4.6
4.3.5 - 4.3.5.2.1
4.3.6

ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount

Legacy Base - (3020 Funds)(CPIF)

0030 _____
_____

Noun: LEGACY SYSTEMS - BASE PERIOD
Contract type: V - COST PLUS INCENTIVE FEE
Start Date: ASREQ
Completion Date: ASREQ
Item project mgr.: ENO
Descriptive Data:
GPS II

The contractor shall perform all work required in accordance with the Global Positioning Systems (GPS) Systems Engineering and Integration (SE&I) Attachment 1 - Performance Work Statement (PWS), dated 21 March 2013, attached hereto and made a part hereof.

The following PWS paragraphs apply to this CLIN:

3.2.3.2
3.3.1.5
3.3.4 - 3.3.5
3.4.2
3.6.1.11
3.6.1.3 - 3.6.1.4

The Performance Incentive fee will be paid in accordance with Attachment 3 - Incentive Fee Plan.

The Cost incentive fee shall be in accordance with FAR 52.216-10 Incentive Fee.

Cost-Plus Incentive Fee (CPIF)

CPIF Target Cost: _____
CPIF Target Fee: _____

ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount

Legacy - Base (3020 Funds)(FFP)

0040 _____
_____

Noun: LEGACY SYSTEMS - BASE PERIOD
Contract type: J - FIRM FIXED PRICE
Start Date: ASREQ
Completion Date: ASREQ
Item project mgr.: ENO
Descriptive Data:
GPS II

The contractor shall perform all work required in accordance with the Global Positioning Systems (GPS) Systems Engineering and Integration (SE&I) Attachment 1 - Performance Work Statement (PWS), dated 21 March 2013, attached hereto and made a part hereof.

The following PWS paragraphs apply to this CLIN:

3.5
3.7.1 - 3.7.1.2

Special Studies (3600 Funds)(CPFF)

0090 _____
_____

Noun: SPECIAL STUDIES
Contract type: U - COST PLUS FIXED FEE
Start Date: ASREQ
Completion Date: ASREQ
Item project mgr.: ENO
Descriptive Data:
The contractor shall perform Special Studies in accordance with H.08; Attachment 1 - Performance Work Statement paragraphs 3.9; and Attachment 8 - Special Studies. Delivery shall be in accordance with individual special studies described in Attachment 8.

The cumulative total hours to date for the CLIN is 0 hours.

Contract Year	Study Year	Cumulative FY Hours
Base Period - Year 1	FY 13	0
Base Period - Year 2	FY 14	0
Option 1 - Year 3	FY 15	0
Option 2 - Year 4	FY 16	0
Option 3 - Year 5	FY 17	0
Option 4 - Year 6	FY 18	0
Option 5 - Year 6.5	FY 19	0

Contract Clauses in this section are from the FAR, Defense FAR Sup, Air Force FAR Sup, and the Air Force Materiel Command FAR Sup, and are current through the following updates:

Database_Version: 6.14.x.600; Issued: 6/26/2013; FAR: FAC 2005-66; DFAR: DPN 20130617; DL.: DL 98-021; Class Deviations: CD 2013-O0013; AFFAR: 2002 Edition; AFAC: AFAC 2013-0327; IPN: 98-009

I. NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

A. FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES

52.202-01	DEFINITIONS (JAN 2012)
52.203-03	GRATUITIES (APR 1984)
52.203-05	COVENANT AGAINST CONTINGENT FEES (APR 1984)
52.203-06	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)
52.203-07	ANTI-KICKBACK PROCEDURES (OCT 2010)
52.203-08	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010)
52.204-02	SECURITY REQUIREMENTS (AUG 1996)
52.204-04	PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)
52.204-09	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)
52.204-10	REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (AUG 2012)
52.209-06	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010)
52.209-09	UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (FEB 2012)
52.209-10	PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (MAY 2012)
52.210-01	MARKET RESEARCH (APR 2011)
52.215-02	AUDIT AND RECORDS -- NEGOTIATION (OCT 2010)
52.215-08	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)
52.215-11	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA--MODIFICATIONS (AUG 2011)
52.215-13	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA--MODIFICATIONS (OCT 2010)
52.215-14	INTEGRITY OF UNIT PRICES (OCT 2010)
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)
52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
52.215-19	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
52.215-21	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA--MODIFICATIONS (OCT 2010) - ALTERNATE III (OCT 1997) Alt III, Para (c), Submit the cost portion of the proposal via the following electronic media: 'Excel'
52.215-23	LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

52.233-03	PROTEST AFTER AWARD (AUG 1996)
52.233-03	PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUN 1985)
52.233-04	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)
52.237-02	PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984)
52.237-03	CONTINUITY OF SERVICES (JAN 1991)
52.239-01	PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)
52.242-01	NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)
52.242-03	PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)
52.242-04	CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)
52.242-13	BANKRUPTCY (JUL 1995)
52.243-02	CHANGES -- COST-REIMBURSEMENT (AUG 1987) - ALTERNATE I (APR 1984)
52.243-07	NOTIFICATION OF CHANGES (APR 1984) Para (b), Number of calendar days is (insert 30 for RDSS/C) '30 days' Para (d), Number of calendar days is (insert 30 for RDSS/C) '30 days'
52.244-02	SUBCONTRACTS (OCT 2010) Para (d), approval required on subcontracts: 'Not Applicable' Para (j), Insert subcontracts evaluated during negotiations. 'Not Applicable'
52.244-05	COMPETITION IN SUBCONTRACTING (DEC 1996)
52.245-01	GOVERNMENT PROPERTY (APR 2012)
52.245-09	USE AND CHARGES (APR 2012)
52.248-01	VALUE ENGINEERING (OCT 2010) Para (m). Contract number. 'FA8807-13-C-0001'
52.249-02	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012)
52.249-06	TERMINATION (COST-REIMBURSEMENT) (MAY 2004)
52.249-08	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)
52.249-14	EXCUSABLE DELAYS (APR 1984)
52.251-01	GOVERNMENT SUPPLY SOURCES (APR 2012)
52.253-01	COMPUTER GENERATED FORMS (JAN 1991)

B. DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT CONTRACT CLAUSES

252.201-7000	CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)
252.203-7000	REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2011)
252.203-7001	PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (DEC 2008)
252.203-7002	REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JAN 2009)
252.203-7003	AGENCY OFFICE OF THE INSPECTOR GENERAL (DEC 2012)
252.203-7004	DISPLAY OF FRAUD HOTLINE POSTER(S) (DEC 2012) Para (b)(2). C.O. enters contact information. 'Not Applicable'
252.204-7000	DISCLOSURE OF INFORMATION (DEC 1991)
252.204-7002	PAYMENT FOR SUBLINE ITEMS NOT SEPARATELY PRICED (DEC 1991)
252.204-7003	CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)
252.204-7004	ALTERNATE A, SYSTEM FOR AWARD MANAGEMENT (MAY 2013)
252.204-7005	ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)
252.204-7006	BILLING INSTRUCTIONS (OCT 2005)
252.205-7000	PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)
252.209-7004	SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)
252.209-7009	ORGANIZATIONAL CONFLICT OF INTEREST--MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2012)
252.211-7007	REPORTING OF GOVERNMENT-FURNISHED PROPERTY (AUG 2012)

252.215-7000	PRICING ADJUSTMENTS (DEC 2012)
252.215-7002	COST ESTIMATING SYSTEM REQUIREMENTS (DEC 2012)
252.219-7003	SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (AUG 2012)
252.219-7004	SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JAN 2011)
252.222-7006	RESTRICTIONS ON THE USE OF MANDATORY ARBITRATION AGREEMENTS (DEC 2010)
252.223-7004	DRUG-FREE WORK FORCE (SEP 1988)
252.223-7006	PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 2012)
252.225-7004	REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA--SUBMISSION AFTER AWARD (OCT 2010)
252.225-7006	QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (OCT 2010)
252.225-7007	PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (SEP 2006)
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (FEB 2013)
252.226-7001	UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004)
252.227-7000	NON-ESTOPPEL (OCT 1966)
252.227-7002	READJUSTMENT OF PAYMENTS (OCT 1966)
252.227-7016	RIGHTS IN BID OR PROPOSAL INFORMATION (JAN 2011)
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS--COMPUTER SOFTWARE (SEP 2011)
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)
252.227-7030	TECHNICAL DATA--WITHHOLDING OF PAYMENT (MAR 2000)
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (JUN 2012)
252.227-7038	PATENT RIGHTS--OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (JUN 2012)
252.231-7000	SUPPLEMENTAL COST PRINCIPLES (DEC 1991)
252.232-7003	ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (JUN 2012)
252.232-7004	DOD PROGRESS PAYMENT RATES (OCT 2001)
252.232-7010	LEVIES ON CONTRACT PAYMENTS (DEC 2006)
252.234-7004	COST AND SOFTWARE DATA REPORTING SYSTEM (NOV 2010)
252.235-7010	ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995) Para (a), name of contracting agency(ies): 'United States Air Force' Para (a), contract number(s): 'FA8807-11-R-0001' Para (b), name of contracting agency(ies): 'United States Air Force'
252.235-7011	FINAL SCIENTIFIC OR TECHNICAL REPORT (NOV 2004)
252.237-7010	PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL (NOV 2010)
252.239-7001	INFORMATION ASSURANCE CONTRACTOR TRAINING AND CERTIFICATION (JAN 2008)
252.242-7004	MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (MAY 2011)
252.242-7005	CONTRACTOR BUSINESS SYSTEMS (FEB 2012)
252.242-7006	ACCOUNTING SYSTEM ADMINISTRATION (FEB 2012)
252.243-7001	PRICING OF CONTRACT MODIFICATIONS (DEC 1991)
252.243-7002	REQUESTS FOR EQUITABLE ADJUSTMENT (DEC 2012)
252.244-7001	CONTRACTOR PURCHASING SYSTEM ADMINISTRATION (JUN 2012)
252.245-7001	TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (APR 2012)
252.245-7002	REPORTING LOSS OF GOVERNMENT PROPERTY (APR 2012)
252.245-7003	CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (APR 2012)
252.245-7004	REPORTING, REUTILIZATION, AND DISPOSAL (MAY 2013)
252.246-7001	WARRANTY OF DATA (DEC 1991)
252.246-7001	WARRANTY OF DATA (DEC 1991) - ALTERNATE II (DEC 1991)

252.251-7000 ORDERING FROM GOVERNMENT SUPPLY SOURCES (AUG 2012)
Para (f), Contractor's address is '?????'
Para (f), Government remittance address is '?????'

C. AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT CONTRACT CLAUSES

5352.204-9000 NOTIFICATION OF GOVERNMENT SECURITY ACTIVITY AND VISITOR GROUP SECURITY AGREEMENTS (MAR 2012)
5352.223-9000 ELIMINATION OF USE OF CLASS I OZONE DEPLETING SUBSTANCES (ODS) (NOV 2012)
5352.223-9001 HEALTH AND SAFETY ON GOVERNMENT INSTALLATIONS (NOV 2012)
5352.242-9001 COMMON ACCESS CARDS (CAC) FOR CONTRACTOR PERSONNEL-AF SYSTEMS (NOV 2012)

II. NOTICE: The following contract clauses pertinent to this section are hereby incorporated in full text:

A. FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES IN FULL TEXT

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008)

This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

52.217-09 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 6 years 6 Months (months, years).

52.232-32 PERFORMANCE-BASED PAYMENTS (APR 2012)

(a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) Contractor request for performance-based payment. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests.

(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is

(d) The ombudsman has no authority to render a decision that binds the agency.

(e) Do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer.

5352.242-9000 CONTRACTOR ACCESS TO AIR FORCE INSTALLATIONS (NOV 2012)

(a) The contractor shall obtain base identification and vehicle passes, if required, for all contractor personnel who make frequent visits to or perform work on the Air Force installation(s) cited in the contract. Contractor personnel are required to wear or prominently display installation identification badges or contractor-furnished, contractor identification badges while visiting or performing work on the installation.

(b) The contractor shall submit a written request on company letterhead to the contracting officer listing the following: contract number, location of work site, start and stop dates, and names of employees and subcontractor employees needing access to the base. The letter will also specify the individual(s) authorized to sign for a request for base identification credentials or vehicle passes. The contracting officer will endorse the request and forward it to the issuing base pass and registration office or Security Forces for processing. When reporting to the registration office, the authorized contractor individual(s) should provide a valid driver's license, current vehicle registration, valid vehicle insurance certificate, and ????? [insert any additional requirements to comply with local security procedures] to obtain a vehicle pass.

(c) During performance of the contract, the contractor shall be responsible for obtaining required identification for newly assigned personnel and for prompt return of credentials and vehicle passes for any employee who no longer requires access to the work site.

(d) When work under this contract requires unescorted entry to controlled or restricted areas, the contractor shall comply with ????? (insert any additional requirements to comply with AFI 31-101, Integrated Defense, and AFI 31-501, Personnel Security Program Management,) citing the appropriate paragraphs as applicable.

(e) Upon completion or termination of the contract or expiration of the identification passes, the prime contractor shall ensure that all base identification passes issued to employees and subcontractor employees are returned to the issuing office.

(f) Failure to comply with these requirements may result in withholding of final payment.

D. OTHER CONTRACT CLAUSES IN FULL TEXT

252.219-7003 - SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (JUN 2012)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.
(a) Definitions.
“Historically black colleges and universities,” as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.
“Minority institutions,” as used in this clause, means institutions meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).
“Summary Subcontract Report (SSR) Coordinator,” as used in this clause, means the individual at the department or agency level who is registered in eSRS and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(v) Company telephone number.
(vi) Date the company was started.
(vii) Number of employees at your location.
(viii) Chief executive officer/key manager.
(ix) Line of business (industry).
(x) Company Headquarters name and address (reporting relationship within your entity).
(d) Reserved.
(e) Processing time for registration in SAM, which normally takes five business days, should be taken into consideration when registering. Contractors who are not already registered should consider applying for registration at least two weeks prior to invoicing.
(f) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.
(g)
(1)
(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer sufficient documentation to support the legally changed name with a minimum of one business day's written notification of its intention to-
(A) Change the name in the SAM database;
(B) Comply with the requirements of subpart 42.12 of the FAR; and
(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer.
(ii) If the Contractor fails to comply with the requirements of paragraph (g) (1) (i) of this clause, or fails to perform the agreement at paragraph (g) (1) (i) (C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.
(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.
(h) Contractors may obtain information on registration and annual confirmation requirements via the SAM accessed through <https://www.acquisition.gov/> or by calling 866-606-8220, or 334-206-7828 for international calls.
(End of Clause)

52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement , that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:
(1) Any such clause is unenforceable against the Government.
(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other

comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.
(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulation and procedures

52.232-99 PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEVIATION 2012-00014) (AUG 2012)

This clause implements the temporary policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012.
(a) Upon receipt of accelerated payments from the Government, the contractor is required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business subcontractor.
(b) Include the substance of this clause, including this paragraph (b), in all subcontracts with small business concerns.
(c) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.
(End of Clause)

52.233-01-SMC DISPUTES (JUL 2002) - ALTERNATE I (DEC 1991) (JUL 2012)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) Contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(5) The International Traffic in Arms Regulations (22 CFR Parts 120-130); and
(6) Executive Order 13222, as extended.
(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts.
(End of clause)

A252.227-7013 RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS (MAY 2013)

See full text in Department of Defense FAR Supplement.

A252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (MAY 2013)

See full text in Department of Defense FAR Supplement.

A252.227-7015 TECHNICAL DATA—COMMERCIAL ITEMS (JUN 2013)

(a) Definitions. As used in this clause-
(1) "Commercial item" does not include commercial computer software.
(2) "Covered Government support contractor" means a contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor-
(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
(ii) Receives access to technical data or computer software for performance of a Government contract that contains the clause at 252.227-7025 <http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm>, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.
(3) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.
(4) The term "item" includes components or processes.
(5) "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 and/or management information.
(b) License.
(1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that-
(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
(ii) Are form, fit, and function data;
(iii) Are a correction or change to technical data furnished to the Contractor by the Government;
(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or
(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.
(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not-

(i) Use the technical data to manufacture additional quantities of the commercial items; or
(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure, or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract, or for performance of work by covered Government support contractors.
(3) The Contractor acknowledges that-
(i) Technical data covered by paragraph (b)(2) of this clause is authorized to be released or disclosed to covered Government support contractors;
(ii) The Contractor will be notified of such release or disclosure;
(iii) The Contractor (or the party asserting restrictions as identified in a restrictive legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the Contractor (or the party asserting restrictions) regarding the covered Government support contractor's use of such data, or alternatively, that the Contractor (or party asserting restrictions) may waive in writing the requirement for an non-disclosure agreement;
(iv) Any such non-disclosure agreement shall address the restrictions on the covered Government support contractor's use of the data as set forth in the clause at 252.227-7025 <http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm>, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, and shall not include any additional terms and conditions unless mutually agreed to by the parties to the non-disclosure agreement; and
(v) The Contractor shall provide a copy of any such non-disclosure agreement or waiver to the Contracting Officer, upon request.
(c) Additional license rights. The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.
(d) Release from liability. The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.
(e) Applicability to subcontractors or suppliers.
(1) The Contractor shall recognize and protect the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320 and 10 U.S.C. 2321.
(2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the clause at 252.227-7013 <http://www.acq.osd.mil/dpap/dars/dfars/html/current/252227.htm> will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.
(End of clause)

A252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (MAY 2013)

See full text in Department of Defense FAR Supplement.

DOCUMENT	PGS	DATE	TITLE
EXHIBIT A	46	30 AUG 2012	CONTRACT DATA REQUIREMENTS LIST (CDRL)
ATTACHMENT 1	81	21 MAR 2013	PERFORMANCE WORK STATEMENT
ATTACHMENT 2	17	03 APR 2013	WORK BREAKDOWN STRUCTURE
ATTACHMENT 3	21	11 SEP 2012	INCENTIVE FEE PLAN
ATTACHMENT 4	3		SMALL BUSINESS SUBCONTRACTING PLAN (OFFEROR PROPOSE)
ATTACHMENT 5	24	04 SEP 2012	DD 254 - SECURITY REQUIREMENTS
ATTACHMENT 6	6		ORGANIZATIONAL CONFLICT OF INTEREST MITIGATION PLAN (OFFEROR PROPOSE)
ATTACHMENT 7	2		START-UP PLAN (OFFEROR PROPOSE)
ATTACHMENT 8	5		SPECIAL STUDIES
ATTACHMENT 9	3		INTEGRATED MASTER PLAN (IMP) (OFFEROR PROPOSE)
ATTACHMENT 10	13	24 JUN 2013	RIGHTS IN DATA (INCLUDING TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION)
ATTACHMENT 11L	73	14 JUN 2013	SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO BIDDERS, PAST PERFORMANCE QUESTIONNAIRE
ATTACHMENT 11M	17	04 APR 2013	SECTION M - EVALUATION FACTORS FOR AWARD

(2) A computer-generated report that contains all information required by DD Form 2139.

(e) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm.

252.227-7017 IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JAN 2011)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation--

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data--Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovation Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovation Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovation Research Program, the notification and identification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to

development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter "none" when all data or software will be submitted without restrictions.

Date _ _ _ _ _ _ _ _ _ _ _

Printed Name and Title _ _ _ _ _ _ _ _ _ _ _

_ _ _ _ _ _ _ _ _ _ _

Signature

_ _ _ _ _ _ _ _ _ _ _

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

C. OTHER SOLICITATION PROVISIONS IN FULL TEXT

252.209-7995 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW-FISCAL YEAR 2013 APPROPRIATIONS (DEVIATION 2013-O0010) (APR 2013)

(a) In accordance with sections 8112 and 8113 of Division C and sections 514 and 515 of Division E of the Consolidated and Further Continuing Appropriations Act, 2013,(Pub. L. 113-6), none of the funds made available by that Act for DoD (including Military Construction funds) may be used to enter into a contract with any corporation that-

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that-

I. NOTICE: The following solicitation provisions pertinent to this section are hereby incorporated by reference:

A. FEDERAL ACQUISITION REGULATION SOLICITATION PROVISIONS

52.204-07	CENTRAL CONTRACTOR REGISTRATION (DEC 2012)
52.215-01	INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (JAN 2004) - ALTERNATE I (OCT 1997)
52.215-16	FACILITIES CAPITAL COST OF MONEY (JUN 2003)
52.215-20	REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA (OCT 2010)
52.216-01	TYPE OF CONTRACT (APR 1984) Type of contract is 'Cost Plus Incentive Fee, Cost Plus Fixed Fee, and Firm Fixed Price'
52.222-24	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)
52.222-46	EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)
52.233-02	SERVICE OF PROTEST (SEP 2006) Para (a) Official or location is ' SMC/GPK Attn: Ms. Allison M. Flanagan, PCO 483 N. Aviation Blvd, Los Angeles Air Force Base El Segundo, CA 90245-2808'
52.237-01	SITE VISIT (APR 1984)
52.237-10	IDENTIFICATION OF UNCOMPENSATED OVERTIME (OCT 1997)
52.247-06	FINANCIAL STATEMENT (APR 1984)
52.250-05	SAFETY ACT--EQUITABLE ADJUSTMENT (FEB 2009)

B. DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT SOLICITATION PROVISIONS

252.209-7008	NOTICE OF PUBLICATION RELATING TO ORGANIZATIONAL CONFLICT OF INTEREST--MAJOR DEFENSE ACQUISITION PROGRAM (DEC 2010)
252.227-7028	TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)
252.234-7003	NOTICE OF COST AND SOFTWARE DATA REPORTING SYSTEM (NOV 2010)

C. AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT SOLICITATION PROVISIONS

5352.215-9000 FACILITY CLEARANCE (MAY 1996)

II. NOTICE: The following solicitation provisions pertinent to this section are hereby incorporated in full text:

FEDERAL ACQUISITION REGULATION SOLICITATION PROVISIONS IN FULL TEXT

52.252-01 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with

SPACE AND MISSILE SYSTEMS CENTER (SMC)

GLOBAL POSITIONING SYSTEMS DIRECTORATE (GPS)
SYSTEMS ENGINEERING AND INTEGRATION (SE&I)

Attachment 11L - SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

Request for Proposal

FA8807-11-R-0001

14 June 2013

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INTRODUCTION

The intent of this contract is to establish a long-term relationship with a single SE&I contractor team with responsibility for producing and managing the technical baseline in support of the Global Positioning Systems (GPS) Directorate. Prior to the award of the initial Systems Engineering & Integration (SE&I) contract, the Government's acquisition approach was to assign responsibility to a single development prime contractor to deliver the satellite segment, control segment, and the systems engineering, integration, and test (SEIT) of those segments. With the increasing complexity of the space and ground segment developments, backward/forward compatibility, and system integration, the Government has selected a different acquisition approach, namely to seek different contractors for each of the product segments (space, control, and user) and directly manage the SEIT function.

This SE&I contract is critical to the future success of the GPS Directorate. The GPS environment is extremely dynamic and multifaceted (sustaining, modernizing, developing, and managing the GPS mission). The SE&I contractor will provide the Directorate with a proactive technical management approach to enable more effective program execution. The Directorate's number one priority is to sustain capabilities for military and civil users worldwide. This involves maintaining a constellation of satellites, an intricate and complex ground infrastructure to command and control them, and hundreds of thousands of fielded GPS receivers to enable military and civil customers around the globe to carry out their missions each and every day. Modernization of the constellation with new signals and capabilities is the next big challenge. This involves synchronized changes to spacecraft, control segment, and user equipment, as well as the development of the next generation. Current efforts are underway to develop a new generation of satellites with capability evolved affordably over time, a new net-centric ground control segment, and a full spectrum of new modernized ground and space-based user receivers. Another challenge involves managing the GPS system and supporting US and international stakeholders. This involves managing a technical baseline, interfaces, and system performance. In addition, the Directorate supports Congressional, Department of Defense, Department of State, Civil agencies and International partners and allies' activities to ensures GPS remains the world's premier navigation and timing standard.

This contract will provide a highly capable SE&I contractor/team to produce and manage the GPS technical baseline in support of the GPS Directorate. The Government maintains complete oversight, final decision authority, and accountability for all key SE&I functional and technical baseline products; responsibility for key functions and products is assigned to the SE&I contractor. The Performance Work Statement (PWS) describes specific task areas for which the Government will maintain responsibility based on the following criteria: the Government has well-established internal expertise to effectively perform the task area; the Government has retained the task to help mitigate potential organizational conflict of interest (OCI) issues; or the Government has retained the task for small business. The SE&I contractor will function in an integrated team environment cooperating with the Government team, comprising military, civilian, Federally Funded Research and Development Center (FFRDC) contractors, and Systems Engineering and Technical Assistance (SETA) contractors; however, for all areas described in the PWS, the contractor will be responsible for that area's products, services, and deliverables, as well as providing advice and assistance to the Government. The scope of SE&I in this contract

ranges from performing system integration at the GPS enterprise level down to performing systems engineering for specific integrated product teams (IPT) at a segment level.

The SE&I's role in the accomplishment of the missions of the Directorate will include, but not be limited to, development and implementation of directives and standards; facilitation of improved and dynamic communications; development of new tools and techniques to predict issues early enough to change the outcome or minimize the effect on the enterprise; development and maintenance of a disciplined process for systems baseline documents and interfaces; and development and implementation of performance metrics that ensure continuous integration and operational capability improvements (measures of effectiveness). SMC/GP intends for its SE&I providers to be full mission partners in their systems engineering enterprise and activities. SMC/GP will, to the greatest extent possible, define SE&I work as tasks and deliverable end-items.

The successful GPS SE&I Offeror must have a proven track record and the internal resources or teammates that will provide the critical depth and breadth of engineering and management expertise capability….nothing less will suffice.

1 General Instructions

a. The Offeror's proposal must include all data and information requested in Section L and must be submitted in accordance with these instructions. In developing the proposal, the Offeror shall comply with all the requirements contained in the Request for Proposal (RFP). Non-conformance with the instructions provided in the RFP will result in an unfavorable proposal evaluation.
b. The proposal shall be clear, concise, and shall include sufficient detail for effective evaluation and for substantiating the validity of stated claims. The proposal should not simply rephrase or restate the Government's requirements, but rather provide convincing rationale to address how the Offeror intends to meet these requirements. The Offeror shall assume that the Government has no prior knowledge of its facilities and experience, and will make its evaluation based on the information presented in the Offeror's proposal. Should discussions be required, Offerors shall provide a place, near El Segundo, CA, to hold face-to-face meetings between the Government and the Offeror. The Offeror will record each meeting and provide copies of the video or DVD daily to the Government.
c. Elaborate brochures or documentation, binding, detailed artwork, or other embellishments are unnecessary and are not to be submitted.
d. The proposal acceptance period is specified in Section A of the model contract/solicitation. The Offeror shall make a clear statement in Section A of Volume V of the Offeror's proposal that the offer is valid for a minimum of 240 calendar days.
e. In accordance with FAR Subpart 4.8, Government Contract Files, the Government will retain one copy of all unsuccessful proposals. All other proposal copies will be destroyed.
f. The Procuring Contracting Officer (PCO) will promptly notify an Offeror of any decision to exclude it from the competitive range, whereupon the Offeror may request a debriefing in accordance with FAR 15.505. The PCO will notify unsuccessful Offerors in the competitive range of the source selection decision in accordance with FAR 15.506. Upon such

4 Volume II – Technical Capability/Technical Risk

In this volume, the Offeror shall describe its proposed approach for meeting the solicitation requirements addressed by each Technical Capability subfactor, as well as the risks to schedule, cost, or performance associated with its approach. The Government will evaluate the Offeror's proposed approach against the Technical Capability and Risk criteria in Section M. The Offeror's Technical Capability volume must be consistent with its Cost/Price volume.

4.1 General Instructions

a. The Technical Capability Volume shall be specific and complete. By submitting a proposal, the Offeror is representing that it will perform all the requirements specified in the solicitation. Do not merely reiterate the objectives or reformulate the requirements specified in the solicitation. Using the instructions outlined below, provide the actual methodology that would be used to address the criteria of these subfactors. The Technical Capability Volume shall be organized according to the outline for Volume II in Table 2.

b. The Government cannot assess as a "strength" any aspect of an Offeror's proposal associated with any Technical Capability subfactor that does not satisfy all elements of the definition of "strength". In justifying a proposed strength, it is incumbent upon the Offeror to identify in a table its suggested strengths (including the location by page and paragraph number where those suggested strengths may be found) and explain how a particular aspect of its proposal has merit or exceeds a specific requirement (and in the case of the latter, identify that requirement and how it is being exceeded in objective, quantifiable terms), and describe why this aspect of its proposal will be advantageous to the Government during contract performance. It is the Offeror's responsibility to ensure that any aspect of its proposal that it believes to be a "strength" satisfies all elements of a "strength" described in Section M-4.2.a.i. The Government reserves the right to identify Strengths not recommended by the Offeror.

TECHNICAL CAPABILITY/TECHNICAL RISK VOLUME TABLE OF CONTENTS

A. Subfactor 1 Systems Engineering and Integration

B. Subfactor 2 Domain Expertise

C. Subfactor 3 Start-Up Plan

D. Attachment TC1 Integrated Master Schedule (IMS)

E. Attachment TC2 Subcontractor, Assoc. Contractor, & Interdivisional Team Member Management Plan

F. Attachment TC3 Resumes of Personnel in Key Positions

G. Attachment TC4 Analyses of Offeror Changes

H. Attachment TC5 System Engineering Innovations

I. Attachment TC6 Small Business Participation Plan

J. Attachment TC7 Changes to Compliance Documents

communicate with any members of its team that are not physically present in the ESS facility.

v. The Government will videotape all parts of the Offeror's oral presentation (including the Offeror's creation of its response to the scenario, but excluding breaks). All parts of the Offeror's oral presentation including the Offeror's creation of its response to the scenarios will be viewed in person by, at a minimum, the SSEB chair, the PCO, and the legal advisor. Members of the SSEB, members of the SSA, and the SSAC chair may also attend. The Government team will not ask questions or provide comments during the oral presentation except as defined above. The Government will not answer Offeror questions on the scenario or written questions. If upon receipt of the integration scenario or the written questions the Offeror believes that any text in either document is ambiguous, the Offeror shall identify those ambiguities and explain its interpretation of those ambiguities in its response. Upon request, the PCO will provide the Offeror with a copy of the recording 14 calendar days after the last Offeror has been debriefed subsequent to contract award.

d. The Offeror's proposal shall demonstrate that all items delivered or otherwise furnished during performance of any of the tasks described in the PWS shall comply with 36 C.F.R. §§ 1194.21 and 1194.41.

4.2.1 Subfactor 1: Systems Engineering and Integration

4.2.1.1 Business Management Approach

a. The Offeror shall provide a Subcontractor Management Plan as Attachment TC2. The Offeror shall describe how subcontractor work will be fully integrated in the systems engineering framework, including relevant tools and processes. The Offeror shall describe its methodology to measure subcontractor performance and strategies to incentivize subcontractor performance.

b. The Offeror shall submit Attachment 10 (Rights in Data (Including Technical Data, Computer Software and Computer Software Documentation) to Volume V, in accordance with the instructions in Section L-7.3.11. In addition, the Offeror shall describe the analysis it conducted (including all assumptions made) to determine that the quantity associated with the licenses the Offeror will deliver to the Government listed in its completed Attachment 10, Table 2, Column 4, will be sufficient for the Government to successfully execute all programs that comprise the GPS Enterprise. The quantities proposed shall include all persons (e.g., Government personnel, covered government support contractors) identified in Attachment 10.c.(2).

c. The Offeror shall submit a Small Business Participation Plan in TC6 that describes how the small business requirements identified in Section M-4.2.1.1.c will be met.

4.2.1.2 Systems Engineering, Integration and Test

a. The Offeror shall describe how the Offeror's proposed PWS, IMP, CWBS, and IMS support the SE&I schedule for the tasks described in the PWS and support the government schedule in Figure 1. The Offeror shall also describe its ability and process to rapidly react, replan, and re-prioritize effort in response to government-directed schedule changes. The Offeror shall

c. The Offeror shall describe its approach to managing a Government-led system-level test program and performing Enterprise level testing and evaluation that is consistent with AFI 99-103, the GPS Enterprise TEMP, AFSPCI 99-103, and the GPS SEP.

d. The Offeror shall describe the technical and business processes it proposes to use in updates (redlines) to the Directorate Operating Instructions (OI), SEP, Enterprise E-TEMP, and any other Directorate documents in TC7. Any new proposed processes (not updates to existing processes) shall be described in Attachment TC5. The processes shall cover relevant internal contractor processes, connections between contractor processes and Directorate processes and proposed improvements to Directorate processes, including description, use and source of new or modified tools and associated Offeror, government, and stakeholder access and license rights to those new or modified tools and the data produced. Justifications and rationale for proposed modifications to compliance documents, such as OIs, the SEP, and E-TEMP as well as justification for proposed new technical and business processes, shall be discussed in Attachment TC4.

e. The Offeror shall provide its response to the following scenario:

   i. Three months ago, the GPS Directorate awarded the Offeror the SE&I contract, and the Offeror's performance has been satisfactory. HQ/AF has now mandated that the GPS Directorate reduce its Program Objective Memoranda for FY14 by 20 percent. AFSPC/CC has directed that the launch date for GPS III SV-1 (i.e. 3QFY15) must remain unchanged, so that the Launch and Control System (LCS)(i.e. SS-CS-800, effectivity 5) must be available to support that spacecraft for launch and that OCX must still be deployed not later than 3QFY16 so that 2SOPS can control that spacecraft. The GPS III program cannot change its launch date and OCX will have to support that launch as well. HQ/AF and AFSPC/CC have stated in writing that neither care which programs in the GPS Directorate's portfolio are cut as long as a 20 percent overall cut is achieved and the GPS III SV-1 launch dates and the OCX deployment date remains unaffected.

   ii. The Offeror's response shall:

      (1) Identify which programs in the GPS Directorate's portfolio shall be cancelled or restructured so as to achieve HQ/AF's and AFSPC/CC's mandates. If programs are proposed for cancellation, the Offeror shall provide an analysis caused by the impact of such cancellation upon constellation sustainment. If programs need to be restructured, the Offeror shall identify what specific capabilities provided by those programs shall be eliminated or deferred and provide an impact analysis and mitigation strategy of the elimination or deferral of such capabilities on constellation sustainment.

      (2) Recommend which PWS tasks should be deleted or modified so as to achieve HQ/AF's and AFSPC/CC's mandates.

      (3) Provide a response to (1) and (2) based upon the alternate assumption that the OCX deployment date may also be delayed by one year.

c. For small business Offerors and large business Offerors that participate in the Comprehensive Subcontract Plan (CSP) Test Program, the Small Business Participation Plan shall become Attachment 4 to the contract upon contract award.

Table 5 Small Business Participation Matrix

Category	Program Minimum	Offeror's Proposed Participation Dollars	Percent of Estimated Contract Value
Small Business	25%		
Large Business			
HUBZone Small Business	Best Effort		
Service-Disabled Veteran-Owned Small Business	Best Effort		
Small Disadvantaged Business	Best Effort		
Woman-Owned Small Business	Best Effort		
Total			100%

Note: The above small business participation thresholds represent the Government's minimum participation thresholds expressed as a percentage of total contract value. Offerors are encouraged to propose values greater than the thresholds listed. Note: The Federal government has set target goals for each of the subcategories as: HUBZone Small Business, 3%; Service-Disabled Veteran-Owned Small Business, 3%; Small Disadvantaged Business, 5%; Woman-Owned Small Business, 5%.

4.9 Attachment TC7 to Volume II: Changes to Compliance Documents

The Offeror shall provide modifications to existing processes as updates to the existing process documents in Attachment TC7 with track changes (i.e., redlines). Redlines shall include changes to tools used for processes. (Justification and rationale for the modified processes shall be discussed in TC4. New processes shall be submitted in TC5.)

5 Volume III – Cost/Price

5.1 General Instructions

5.1.1 Cost/Price Reasonableness and Realism

The purpose of these instructions is to assist the Offeror in submitting data other than certified cost or pricing data that is required to evaluate the reasonableness and realism of its proposed cost/price. Compliance with these instructions is mandatory, and failure to comply may result in

5.2.3 Section 3: Other Cost Information

5.2.3.1 Funding Profile

The Offeror shall submit funding requirements by each Government fiscal year, period of performance, and by CLINs using the format prescribed in Table 6 and Table 7. Funding requirements represent the amounts the Government must obligate or commit to the contract in each Government Fiscal Year for the contractor to execute the program as proposed. These estimated amounts shall include projected expenditures, cancellable and non-cancellable commitments, and termination expenses. Separately identify all incentive fee and profit. See Table 1 for Government funding profile provided by fiscal year. The Government will not provide specific allocation to various appropriation types (e.g., 3600 funds). The funding requirements for each CLIN should be defined consistent with the PWS, Section B of the Model contract, the definitions of the appropriation types in the DoD Financial Management Regulation 7000.14-R, and the schedule in Figure 1.

Table 6 Funding Profile by Fiscal Year

Funding Profile (by CLINs, Government Fiscal Years (FY))								
Gov't FYs / **CLIN Name (CLIN Numbers)**	**FY13**	**FY14**	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**	**FY20**
Development (CPIF) (0010, 0110, 0210, 0310, 0410, 0510)	Insert $ for CLIN 0010	Insert $ for CLIN 0010	Insert $ for CLINs 0010, 0110	Insert $ for CLIN 0110, 0210	Insert $ for CLIN 0210, 0310	Insert $ for CLIN 0310, 0410	Insert $ for CLIN 0410, 0510	Insert $ for CLIN 0510
Incentive Fee								
Development (FFP) (0020, 0120, 0220, 0320, 0420, 0520)	Insert $ for CLIN 0020	Insert $ for CLIN 0020	Insert $ for CLINs 0020, 0120	Insert $ for CLIN 0120, 0220	Insert $ for CLIN 0220, 0320	Insert $ for CLIN 0320, 0420	Insert $ for CLIN 0420, 0520	Insert $ for CLIN 0520
Profit								
Production (CPIF) (0030, 0130, 0230, 0330, 0430, 0530)	Insert $ for CLIN 0030	Insert $ for CLIN 0030	Insert $ for CLINs 0030, 0130	Insert $ for CLIN 0130, 0230	Insert $ for CLIN 0230, 0330	Insert $ for CLIN 0330, 0430	Insert $ for CLIN 0430, 0530	Insert $ for CLIN 0530
Incentive Fee								
Production (FFP) (0040, 0140, 0240, 0340, 0440, 0540)	Insert $ for CLIN 0040	Insert $ for CLIN 0040	Insert $ for CLINs 0040, 0140	Insert $ for CLIN 0140, 0240	Insert $ for CLIN 0240, 0340	Insert $ for CLIN 0340, 0440	Insert $ for CLIN 0440, 0540	Insert $ for CLIN 0540
Profit								
Grand Total								

Most CLINs will cross fiscal years. Please complete the table for the work planned during the specified fiscal year.

Table 9 CWBS Summary Schedule

CWBS Summary Schedule																			
CLIN Series (0X10-0X40)		FY13		FY14		FY15		FY16		FY17		FY18		FY19		FY20		Total	
CWBS No.	Description	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$
XXXX	Descriptive CWBS Name																		
	Labor - Prime																		
	Labor - Sub 1																		
	Labor - Sub n																		
	Labor - Interdivisional																		
	Material/ODC $ - Prime																		
	Material/ODC $ - Sub 1																		
	Material/ODC $ - Sub n																		
	Material/ODC $ - Interdivisional																		
	Total Cost - Prime																		
	Total Cost - Sub 1																		
	Total Cost - Sub n																		
	Total Cost - Interdivisional																		
:	:																		
:	:																		
Total																			

5.2.3.4 Organizational Breakdown Structure (OBS) Summary Schedule

The Offeror shall provide an OBS schedule by CLIN series (0X10-0X40), for all CLIN series, using the format/sample prescribed by Table 10. To permit a meaningful analysis, the Offeror shall provide information consistent with the OBS and provide detail to the level proposed. All hours shown in this table shall be consistent with hours stated in Table 8 and Table 9.

Table 10 OBS Summary Schedule

OBS Summary Schedule																			
CLIN Series (0X10-0X40)		FY13		FY14		FY15		FY16		FY17		FY18		FY19		FY20		Total	
*List all CWBS	Description	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$	Hrs	$
	Descriptive OBS Name																		
	Labor - Prime																		
	Labor - Sub 1																		
	Labor - Sub n																		
	Labor - Interdivisional																		
	Material/ODC $ - Prime																		
	Material/ODC $ - Sub 1																		
	Material/ODC $ - Sub n																		
	Material/ODC $ - Interdivisional																		
	Total Cost - Prime																		
	Total Cost - Sub 1																		
	Total Cost - Sub n																		
	Total Cost - Interdivisional																		
:	:																		
:	:																		
Total																			

5.2.3.5 Basis of Estimate (BOE) Sheets

The Offeror shall provide BOEs to support both proposed prime contractor, interdivisional, and subcontractor effort and shall include rationale for the labor, hardware, material, and other direct costs for each CWBS item. For CWBS items that change from CPIF to FFP in different option years, the BOEs for the entire period of performance shall be contained in a single file. Each

f. Material Estimating Rationale. The Offeror shall provide description, part number, required quantity, unit price, and total price for material in each CWBS. Identify types and quantities of required material, to include rationale for all material prices in the CWBS item and describe the method of price quoting. The Offeror shall include costs/prices for rights in data identified in Volume V, Attachment 10.

g. Special Studies. The Offeror shall provide labor rates and skill mix categories to be applied to the special studies CLIN.

5.2.3.6 Subcontractors, Inter-Divisional Transfers (IDTs), and Teaming Partners

a. The Offeror shall provide a listing of the proposed subcontractors, IDTs, and teaming partners using the format in Table 12. Submit a listing of the proposed subcontractors and inter-divisional transfers valued at $5,000,000 or above of total contract value showing (a) the supplier, (b) location of contractor, (c) description of effort, (d) type of contract, (e) price and hours proposed by each, (f) price and hours included in prime contractor's proposal to the Government, (g) evidence of adequate price competition, and (h) support for commercial item/service determination, if applicable. Those proposed subcontractors and inter-divisional transfers valued at less than $5,000,000 do not need to be separately identified, but are included as a total in this table. The total subcontract amounts must track back to the totals provided in the cost summary.

Table 12 Schedule of Probable Subcontractors/IDTs/Teaming Partners

Schedule of Probable Subcontractors/IDTs/Teaming Partners (Sample)						
Suppliers	Location	Description of Effort	Type of Contract	Subs Hours	Subs Price	Proposed Cost
Total Hours						

b. Provide rationale and any price/cost analysis supporting the reasonableness and realism of the subcontractor price/cost. If differences exist between the subcontractor's price and the prime contractor's price, such as adjustments for discounts or expected decreases to be achieved in negotiations, provide rationale for the difference. The prime contractor is responsible for the consistency of the cost data between the prime contractor submission and the subcontractor and interdivisional submission.

c. A separate cost volume, including cost formats, shall be submitted for each subcontractor, joint venture partners, teaming partners, and IDTs (including subsidiaries) whose performance will exceed $20 million of total contract value. (Note: If the BOEs for an IDT or subcontractor over the $20 million threshold is included and integrated into the prime contractor's consolidated BOE, the subcontractor proposal need not include separate BOEs as long as there is direct traceability between the BOEs and the subcontractor proposal estimates.)

The Offeror shall provide a detailed explanation on how each item listed above (and others the Offeror identifies not on the list) will be accomplished. The Offeror shall clearly identify how the cost will be treated, either as direct costs to the contract or included in an indirect cost pool, and if so, specify which one. If applicable, provide a breakout of the estimated costs by cost element and provide a basis of estimate to support the costs and show that there is no duplication between any direct or indirect cost, e.g. G&A. Address the cost allowability and allocation of the cost in accordance with the FAR and the Offeror's CAS Disclosure Statement.

5.2.3.10 Offeror Management Reduction

If estimated costs required to perform the proposed effort have been decreased due to an Offeror's management decision, provide a summary of the reduction by major cost element. Also, provide complete rationale for the reduction. If the management reduction does not impact the estimated cost to perform the effort, provide a description of the contractual mechanism proposed to make the management reduction contractually binding. NOTE: The Air Force does not encourage or require an Offeror to supplement DoD appropriations by bearing a portion of defense contract costs, whether through use of its Independent Research & Development (IR&D) funds or profit dollars.

5.2.3.11 Commonality with Other Programs

Any cost reductions made in the Offeror's proposal that are attributed to commonality with other programs, company funded efforts, or capitalization of equipment must be supported with the following:

a. Commonality
   i. Identify the specific program(s) and why it is applicable.
   ii. Address the cost allowability and allocation of this action in accordance with the FAR and the Offeror's CAS disclosure statement.
b. Company Funded Efforts: Identify the specific efforts, the planned start and end dates, the applicability to the current solicitation, the source of company funding and how the Offeror proposes to account for or allocate these costs in accordance with generally accepted accounting principles, and its CAS Disclosure Statement, if applicable.
c. Capital Equipment: Identify the specific item(s) capitalized and what other applications exist for the equipment, provide corporate approvals for each action, and address the cost allowability and allocation of the actions in accordance with the FAR and its CAS Disclosure Statement.

5.2.3.12 Intellectual Property Rights

As stated in Item 18 of the "Instructions for Completing DD Form 1423", "[t]he estimated data prices [the Offeror shall insert into that block] shall not include any amount for rights in data." Accordingly, for each estimated cost the Offeror inserts into Column 4 of Table 1, Column 5 of Table 2, Column 3 of Table 3, and Column 3 of Table 4 of Attachment 10 to Volume V that exceeds $0.00, the Offeror shall provide the following cost or pricing data:

a. A copy of its (or, if the owner of the data in question is a subcontractor, its subcontractor's) written corporate policy that describes its standard approach for calculating the value of all intellectual property in its corporate portfolio (e.g., patents, copyrights, trade secrets). If such a policy exists, provide an explanation as to how that policy was used to calculate the

estimated cost or fixed price inserted into Column 4 of Table 1, Column 5 of Table 2, Column 3 of Table 3, and Column 3 of Table 4 of Attachment 10 to Volume V for each CDRL. If such a policy exists but was not used to calculate the estimated cost or fixed price, explain why that policy was not used in that case. If no such written corporate policy exists, so state.

b. If the Offeror (or, if the owner of the intellectual property in question is a subcontractor, its subcontractor) calculated the value of all intellectual property in its portfolio and included such information into its financial statements (consolidated balance sheets) – irrespective of whether those financial statements are included in any filings submitted to the U.S. Securities and Exchange Commission – provide a copy of those financial statements. In the event the Offeror is not a publicly traded company, provide equivalent information. In either case, identify where the value of all intellectual property in the Offeror's portfolio is contained in those financial statements or equivalent information, and explain how the estimated cost/price (i.e., the value of that specific item of intellectual property) the Offeror inserted into Column 4 of Table 1, Column 5 of Table 2, Column 3 of Table 3, and Column 3 of Table 4 of Attachment 10 to Volume V associated with each CDRL is subsumed within the total value of all intellectual property within that portfolio reflected in the Offeror's financial statements. If those financial statements or equivalent information do not include such value of the rights associated with that CDRL, so state.

c. An identification of which traditional method(s) of calculating the value of intellectual property rights – e.g., cost approach, market approach, income approach – the Offeror used to calculate the value of the intellectual property associated with the data contained within that CDRL along with an explanation as to why that/those approach(es) were used for that CDRL.

   i. If the Offeror used the cost approach (i.e., the cost of reproducing data by purchasing it today, by replacing it with a substitute data of equal utility and capability, or by creating an absolute reproduction of the asset) identify all direct hard costs (e.g., materials, design costs), soft costs and other indirect costs including development time (e.g., software coding), overhead/G&A, marketing costs, legal costs, profit, and opportunity cost. If the Offeror asserts that it developed the data exclusively at private expense, it shall demonstrate how it tracked the allocation of private and government funds to the development of the item, component or process that was accomplished with those funds and broke or separated the accounting trail for development of those technologies to indirect cost pools (e.g., Independent Research and Development (IR&D), costs not allocated to a government contract, or any combination thereof). The Offeror shall also demonstrate that any such assertion that it developed the data exclusively at private expense is consistent with any Contract Performance Reports (or their equivalent) submitted to the Government under any Government contract. Unless the data is a commercial item or commercially-available-off-the-shelf item, the Offeror shall have the burden of proving that development of the data was funded exclusively at private expense (DFARS 252.227-7037(b), 252.227-7019(f)).

   ii. If the Offeror used the market approach, it shall provide actual market sales, rents, and transactions of the same or similar data using the following factors: the relevant industry, geographic constraints, exclusivity provisions, payment structures and mechanisms, timeframe, and the context of transactions. If the Offeror proposes to acquire commercial item computer software via GSA Federal Supply Schedules

pursuant to FAR 52.251-1 ("Government Supply Sources") under a CPIF or CPFF CLIN, it shall provide that pricing information.

iii. If the Offeror used the income approach, it shall explain how it analyzed the value today of future cash flows (using direct cash flow models, incremental cash flow models, price premium and excess earning models, relief from royalty analysis) or other measures of income (e.g., number of units, sales price, delivery schedule, profit margin, discount factor/rate) that can be estimated into the future for whatever remaining expected useful life the data may have. With respect to the delivery schedule, the Offeror shall also identify the length of time for which the income levels can be measured. With respect to the discount factor/rate, the Offeror shall identify the proposed discount and explain the basis for that proposed discount factor.

7 Volume V – Model Contract

7.1 Model Contract Sections

The purpose of this volume is to provide information to the Government for preparing the contract document and supporting file. The Offeror's proposal shall include a signed copy of the Model Contract, Sections A through K. This includes:

7.1.1 Volume V, Section A: Solicitation/Contract Form

The Offeror shall complete Blocks 12 to 16. Sign and date Blocks 17 and 18 of the SF33. Signature by the Offeror on the SF33 constitutes an offer, which the Government may accept. The "original" copy should be clearly marked and provided under a separate cover.

7.2 Volume V, Section B: Supplies or Services and Prices/Costs

The Offeror shall propose a target cost/fee at a percentage between 0.5% and 3% for CPIF CLINs. The Offeror shall propose a FFP for all FFP CLINs on the lines in the upper right. The Offeror shall propose $0 for the CPFF CLIN on the lines in the upper right.

7.2.1 Volume V, Section H: Special Contract Clauses

The Offeror shall complete the fill-ins indicted by "*" required by the following Special Contract Requirement Section H clauses:

Clause H.03 - Options, fill in the target cost and ceiling cost (for CPIF CLINS) and the Firm Fixed Price (for FFP CLINs) in the table.

Clause H.04 – GPS OCI (May 2012), fill in Sections (d) (3) (i) (A) and (B), and (d) (3) (ii).

Clause H.05 – Key Personnel Retention, fill in Section (e).

Clause H.07 – Releasability Under the Freedom of Information Act (March 2012), fill in Sections (b) (1), (2), and expand the list if there are more excepted items.

Clause H.08 - Special Studies, Section (i), fill in each of the columns of the table. The fixed fee shall not exceed 6% of the hourly labor rate.

7.2.2 Volume V, Section I: List of Attachments

The Offeror shall add any relevant clauses from the list below to Section I:

a. If the Offeror is a small business firm or nonprofit organization, then FAR 52.227-11, PATENT RIGHTS -- OWNERSHIP BY THE CONTRACTOR, and DFARS 252.227-7039, PATENTS - REPORTING OF SUBJECT INVENTIONS will be added. Otherwise, DFARS 252.227-7038, PATENT RIGHTS -- OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS), will be added.
b. Section I of this solicitation incorporates by reference the Cost Accounting Standards clause at FAR 52.230-6. The Offeror shall update Section I to contain those clauses required based on the Offeror's response to the Section K certification titled Cost Accounting Standard Notices and Certification (National Defense) that correspond to FAR 52.230-3, 52.230-4, 52.230-5, or any combination thereof.

c. The Offeror shall add the clause at FAR 52.229-10, STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX, if the performance is in whole or in part within the State of New Mexico and the contract directs or authorizes the contractor to acquire property as a direct cost under the contract.
d. If the Offeror is an educational institution, paragraph (a) of the clause at FAR 52.216-7, Allowable Cost and Payment shall be altered to refer to FAR Subpart 31.3 for determining allowable costs Similarly if the Offeror is a nonprofit organization (other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A-122), paragraph (a) of the clause at FAR 52.216-7 shall be altered to refer to FAR Subpart 31.7. In addition, if the Offeror is an educational institution, DFARS 252.209-7005, MILITARY RECRUITING ON CAMPUS, shall be added to Section I.
e. If the Offeror has a comprehensive subcontracting plan under the test program described in 219.702(a), DFARS 252.219-7004, SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) shall be used in lieu of FAR 52.219-9, FAR 52.219-10, FAR 52.219-16, and DFARS 252.219-7003.

7.2.3 Volume V, Section J: List of Attachments

The Offeror shall fill in the dates and page numbers for attachments.

7.2.4 Volume V, Section K: Representations and Certifications

a. The Offeror shall complete the clauses in Section K following the instructions therein.
b. The Offeror shall complete the Section K provision entitled "Identification and Assertion of Use, Release, or Disclosure Restrictions" (DFARS 252.227-7017) by inserting the phrase "See Attachment 10" and signing the certificate. .

7.3 Attachments to the Model Contract

The Offeror shall provide the following attachments to the Model Contract.

7.3.1 Exhibit A to Volume V: Contract Data Requirements List

a. The Offeror may propose clarifications, administrative fixes and Data Item Description (DID) modifications, and shall provide the following information:

    (1) Block F, Contractor.

    (2) Block 17-18, fill in as described in Exhibit A.

b. Should it be required to support proposed new processes or modifications to the existing processes, the Offeror may propose additional CDRLs.

7.3.2 Attachment 1 to Volume V: Performance Work Statement

A Government Performance Work Statement (GPWS) for the GPS Directorate SE&I contract is provided. The Offeror shall use the GPWS as the PWS to be attached to the contract with no additions or modifications.

with the Government. The IMP shall be a single plan for the entire effort, including associate and subcontractor activities that are compliant with SMC-S-001. There shall be an IMP section/subsection for each of the elements in the Offeror's proposed CWBS, as linked to the PWS. The IMP shall have traceability to IPT organizations to allocate responsibility and accountability for task/product completion and shall indicate primary and supporting IPTs. Specifically, the IMP shall:

1. Capture the core activities and processes necessary to implement the program,
2. Be written as an event-driven plan each section/subsection of which contains SAs and ACs needed to successfully complete each major program milestone (encompassing all functional disciplines) of all CWBS elements,
3. Measure program maturity by marking the initiation/conclusion of events/milestones, SAs, and associated completion criteria that describe the total work effort necessary to acquire a system which meets contract requirements,
4. Provide traceability from the IMP to activities in the CWBS and PWS to the IMS and to the IPT organization, and
5. Provide traceability to the Government Enterprise IMP.

ii. Specific Instructions

1. Events: The Offeror shall include definitions of each event at the beginning of the IMP. Events shall be properly sequenced. For each event, there shall be one or more entry or exit SAs. At a minimum, the IMP shall include the SE&I Enterprise Design Reviews (EDR) in accordance with SMC-S-21, "Technical Reviews and Audits for Systems, Equipments and Computer Software". The Offeror is encouraged to identify other reviews, milestones, and events that best reflect the proposed program approach.
2. Significant Accomplishments (SA): For each SA, there shall be one or more ACs, and each SA shall be sequenced in a manner that ensures a logical path is maintained throughout the effort. At a minimum, the IMP shall include SAs related to the technical baseline, integration and test activities leading up to reviews and deliveries.
3. Accomplishment Criteria (AC): ACs shall include sufficient detail to demonstrate that the accomplishment has been achieved consistent with the level of the design. The ACs should avoid using "percent completed" and citing to data item report numbers rather than identifying and summarizing results. At a minimum, the IMP shall include the following ACs: kickoff meetings (working meetings to clarify programmatic issues with the technical and contract team), detailed peer reviews, design audits, and independent reviews and their grading criteria. ACs shall include the use of TPMs and metrics to track detailed tasking in the IMS.

iii. Narratives: IMP narratives shall not be included.

7.3.11 Attachment 10 to Volume V: Rights in Data (Including Technical Data, Computer Software, and Computer Software Documentation)

The Offeror shall complete Attachment 10 in accordance with the following instructions:

a. The Government has determined its minimum needs for this acquisition include:

i. Unlimited Rights to all noncommercial technical data listed in Table 1 of Attachment 10 where the phrase "Unlimited" is stated in column 3 of the row associated with that item of technical data;

ii. Government Purpose Rights to all remaining noncommercial technical data and computer software listed in Table 1 of Attachment 10 where the phrase "Offeror to Complete" is stated in column 3 of the row associated with that item of technical data or computer software;

iii. Special License Rights to data other than technical data (e.g., schedule/milestone data, financial data) delivered to the Government described in Attachment 10 paragraphs c.(3,5); and

iv. Special License Rights to review all data used by the Contractor to create any CDRL delivered under this contract to verify the currency, accuracy and completeness of the data contained in those CDRLs described in Attachment 3 paragraph c.(4).

b. With respect to Section L-7.3.11.a.i, the Government made the determination that various CDRLs listed in Attachment 10 must be delivered with Unlimited Rights after reviewing the tailored Data Item Descriptions referenced in those CDRLs consistent with the statutorily-defined categories in 10 U.S.C. § 2320(a)(2)(F)(i)(II). With respect to Sections L-7.3.11.a.ii, the Government made the determination that various CDRLs listed in Attachment 10 must be delivered with at minimum Government Purpose Rights to meet the GPS Directorate's minimum needs consistent with the SE&I Acquisition Strategy.

c. Where there are valid reasons why an Offeror must develop entirely at private expense or provide previously developed technical data or computer software under this contract the Offeror may not be required, either as a condition of being responsive to this RFP or as a condition for award, to sell or otherwise relinquish to the Government any proprietary right in technical data or computer software developed at private expense, except for the items identified at DFARS 227.7103-5(a)(2) and (a)(4) through (a)(9), DFARS 227.7203-5(a)(3) through (6) and DFARS 227.7102-1.

d. Complete Table 1 in Attachment 10 in the following manner:

i. With regard to items of technical data associated with cells in Column 3 of that table labeled as "Unlimited", leave those cells as-is. If, however, the Offeror is not willing to sell Unlimited Rights to an item labeled as such in Column 3, place the following character ("—") in the corresponding cell in Column 3 of the table in Attachment 10 associated with that item.

ii. With regard to items of technical data or computer software associated with cells in Column 3 of that table labeled as "Offeror to Complete," insert either "Government Purpose" or "Unlimited" into each such cell. If, however, the Offeror is not willing to sell Government Purpose Rights to an item that contains the phrase "Offeror to Complete" in Column 3 for that item, place the following character ("—") in the corresponding cell in Column 3 of the table in Attachment 10 associated with that item.

iii. Insert a proposed estimated cost into each cell in Column 4 of that table for those items of data or computer software associated with that item's corresponding cell in Columns 1-2. If the Offeror is not willing to sell Unlimited Rights to an item labeled as such in Column 3 or Government Purpose Rights at minimum to an item labeled as "Offeror to Complete" in that column, the Offeror shall place the following character ("—") in the corresponding cell in Column 4 of the table in Attachment 10 associated with that item to signify that the Offeror is not willing to sell such rights to that item. The

Government notes that it is entitled to Unlimited Rights in technical data and computer software associated with certain items delivered under this contract in certain situations, even where those items were not developed exclusively with Government funding (see DFARS 252.227-7013(b)(1)(ii, iv-ix) and DFARS 252.227-7014(b)(1)(ii-vi)). Because CDRL A028 contains technical data and cost/financial/schedule data, the Offeror shall propose **one** estimated cost/price in Table 1 for the rights in technical data and cost/financial/ schedule data to be delivered for that CDRL.

e. Complete Table 2 in Attachment 10 in the following manner:
   i. In Column 1 of that table, identify the CDRL number which will contain that commercial item technical data or computer software.
   ii. In Column 2 of that table, identify the Data Item Title (Subtitle) of that CDRL.
   iii. In Column 3 of that table, identify the names of all vendors that will be supplying commercial item technical data or computer software in alphabetical order, the trade name(s) of the technical data or computer software applications(s) and the version number or issue date of that technical data or computer software application(s) (e.g., "Adobe Professional X"), and the license number(s) of that commercial item of technical data or computer software to be delivered or otherwise furnished as part of that CDRL. (Note: If the Offeror proposes to deliver any Public Domain/Open Source Software (PD/OSS), the Offeror shall only identify the base product in Column 3 – not the dependencies (e.g., PD/OSS licenses referenced in the proposed PD/OSS license)). The Government anticipates the Offeror may propose to reuse previously delivered technical data and computer software in subsequent CDRL deliverables. If the Offeror proposes to do so, all licenses associated with delivery of technical data or computer software in previous CDRL deliveries shall be listed in that column underneath that subsequent CDRL associated with those subsequent deliveries in addition to all licenses associated with delivery of technical data or computer software that were not the subject of previous CDRL deliveries.
   iv. In Column 4 of that table, insert the quantity associated with the licenses relating to the delivery of commercial item technical data, commercial item computer software, or commercial item software documentation the Offeror proposes to deliver to the Government in that CDRL or CLIN.
   v. In Column 5 of that table, insert an estimated cost/price into each cell associated with that item's corresponding cell in Columns 3-4 including only direct costs. (As used in this subsection and subsections L-7.3.11.f - L-7.3.11.h, the term "direct costs" is defined as the cost/price proposed to be charged the Offeror by a prospective subcontractor excluding any overhead or G&A the Offeror anticipates expending to acquire that commercial item technical data, computer software or computer software documentation from that prospective subcontractor.)

f. Complete Table 3 in Attachment 10 by inserting a proposed estimated cost/price into each cell associated with that item's corresponding cell in Columns 1-2 including only direct costs. If the Offeror is not willing to sell the rights described in Attachment 10 to an item listed in that table, the Offeror shall place the following character ("—") in the corresponding cells in Column 3 of that table associated with that item to signify that the Offeror is not willing to sell such rights to that item.

g. In subsection c.(4), replace the asterisk (**) with the estimated direct cost/price for Special License Right Category B. If the Offeror is not willing to sell the rights described in

Attachment 10 for the rights described in that subsection, the Offeror shall replace the asterisk (**) with the following character ("—").

h. Complete Table 4 in Attachment 10 by inserting a proposed estimated cost/price into the cell associated with that item's corresponding cell in Columns 1-2 including only direct costs. If the Offeror is not willing to sell the rights described in Attachment 10 to that item listed in that table, the Offeror shall place the following character ("—") in the corresponding cells in Column 3 of that table associated with that item to signify that the Offeror is not willing to sell such rights to that item.

i. In subsections d.(2-4), replace the asterisks ("**") with the Offeror's name in uppercase letters;

j. To ensure that the parties will maintain proper configuration control of all licenses throughout the performance of the resulting contract, create an "Appendix A" to Attachment 10 with a separate tab for each vendor listed in Table 2. Insert into that separate tab one copy of every license listed in column 3 of Table 2 associated with any technical data or computer software the Offeror will purchase from that vendor and subsequently deliver to the Government, including, but not limited to all licenses associated with any Public Domain/Open Source Software (PD/OSS)(including licenses to the base software application and all dependencies) proposed to be delivered to the Government under any CDRL listed in the order in which that license appears in that table. If an Offeror proposes to deliver such software to the Government, the base license(s) associated with that PD/OSS may incorporate by reference licenses from dependent PD/OSS. Under such circumstances, to minimize duplication of such dependent licenses in Appendix A the Offeror shall (1) list those dependent licenses on a separate sheet of paper immediately following a copy of the base license and indicate in which tab of Appendix A that/those dependent license(s) may be found, and (2) include only one copy of that/those dependent license(s) in a separate tab for that vendor. Each non-PD/OSS license contained in that appendix shall expressly refer to the identical vendor, trade name, version number and issue date of that technical data or computer software listed in Table 2. The Government expects that prior to inserting any proposed license into Appendix A, the Offeror will have carefully read the license to ensure that its terms and conditions are consistent with all requirements of this RFP. In this regard, Attachment 10.i includes an order of precedence clause placing the burden of compliance with those requirements on the prime contractor. In accordance with DFARS 227.7202-1(a), the Government is not required to acquire licenses to commercial computer software (or related documentation) where such licenses are inconsistent with Federal procurement law. Certain provisions in the Order of Precedence provision contained in Attachment 10.i, specifically, subsections (1), (4), (5), (6), (7), (9), (12), (14), (15) and (16), summarize Federal procurement law. The Government cannot accept any offer that proposes to modify those subsections in a manner that is inconsistent with Federal procurement law.

k. Should the Offeror propose additional CDRLs, the Offeror shall add the new CDRLs to the appropriate Table in Attachment 10, and fill out the required data described above.

7.3.12 Appendices to Volume V

The Offeror shall provide the following appendices which will not become part of the contract upon award. These appendices will be used to assess the Offeror's compliance with the terms and conditions of this solicitation.

SPACE AND MISSILE SYSTEMS CENTER (SMC)

GLOBAL POSITIONING SYSTEMS DIRECTORATE (GPS)
SYSTEMS ENGINEERING AND INTEGRATION (SE&I)

SECTION M - EVALUATION FACTORS FOR AWARD

Request for Proposal

FA8807-11-R-0001

April 4, 2013

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1 Basis for Contract Award

The Government will select the best overall offer, based upon an integrated assessment of Technical Capability/Technical Risk, Past Performance, and Cost/Price. This is a best value source selection conducted in accordance with the Federal Acquisition Regulation (FAR) Subpart 15.3, Source Selection, as supplemented by the Defense Federal Acquisition Regulation Supplement (DFARS), and the Air Force Federal Acquisition Regulation Supplement (AFFARS). These regulations are available electronically at the Air Force (AF) FARSite, http://farsite.hill.af.mil. A contract may be awarded to the Offeror who is deemed responsible in accordance with the FAR, as supplemented, whose proposal conforms to the solicitation's requirements (to include all stated terms, conditions, representations, certifications and all other information required by Section L of this solicitation) and is judged, based on the evaluation factors and subfactors to represent the best value to the Government. The Government seeks to award to the Offeror who gives the Air Force the greatest confidence that it will best meet or exceed the requirements for the proposed cost and fee. The source selection authority (SSA) will base the source selection decision on an integrated assessment of proposals against all source selection criteria in the solicitation (described below). While the Government source selection evaluation board (SSEB) and the SSA will strive for maximum objectivity, the source selection process, by its nature, is subjective and, therefore, professional judgment is implicit throughout the entire process.

2 General Evaluation Information

2.1 Number of Contracts to be Awarded

The Government intends to make a single contract award as a result of this solicitation. However, the Government reserves the right to not award a contract depending on the quality of the proposals submitted and the availability of funds.

2.2 Rejection of Unrealistic Offers

The Government may reject any proposal that is evaluated to be unrealistic in terms of program commitments, including contract terms and conditions, or unrealistically high or low in cost when compared to Government estimates, such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program.

2.3 Correction Potential of Proposals

The Government will consider, throughout the evaluation, the "correction potential" of any deficiency, in accordance with FAR 15.306. The judgment of such "correction potential" is within the sole discretion of the Government. An Offeror may be eliminated from the competitive range if an aspect of an Offeror's proposal does not meet the Government's requirements and is considered not correctable.

2.4 Alternate Proposals

Alternate proposals will not be considered.

3 Definitive Responsibility Criteria

Any proposal submitted in response to this solicitation must satisfy all of the following conditions as of the date of contract award. In the event that a proposal contains a deficiency

associated with any of these criteria, the Government will deem the proposal to be unacceptable irrespective of the Government's evaluation of the Offeror's proposal relative to the factors listed in Section M-4.

3.1 Security Clearances

All facilities (except SAP facilities) and personnel proposed to perform this contract are clearable to the security level required to perform work in the PWS, consistent with the security clearance levels required by the solicitation (see DD Form 254).

3.2 Funding Constraint

The proposed cost must not exceed the funding profile for any fiscal year identified in Section L, Table 1. The evaluation shall be made on the basis of a separate comparison for each fiscal year of the contract as well as a comparison between the proposed maximum contract Government liability (or, for cost reimbursable CLINs, the total price) and the total funding information. The Government makes no assurance that the projected funds will be available for this program nor shall this solicitation provision be the basis for a claim or request for equitable adjustment under the contract in the event the projected funds fail to materialize.

3.3 Certifications and Representations

All certifications and representations required by Section K of the solicitation must be completed.

3.4 Organizational Conflict of Interest Mitigation Plan

The Organizational Conflict of Interest Mitigation Plan must be acceptable.

3.5 Facility

The Offeror must propose a facility located within a 2-mile radius of the Space and Missile Systems Center Headquarters in El Segundo, CA, that complies with the requirements specified in Section 4.3.4.1 of the PWS (Attachment 1).

4 Evaluation Criteria

4.1 General

a. The Government will evaluate the Offeror's proposal with regard to its ability to satisfy the requirements of the solicitation. Award will be made to the Offeror proposing the combination most advantageous to the Government based on an integrated assessment of the evaluation factors and subfactors described below.
b. The Technical Capability/Technical Risk Factor is the most important factor. The Past Performance Factor is the second-most important factor and Cost/Price is the third-most important factor. In accordance with FAR 15.304(e), when combined, all evaluation factors, other than cost/price, are significantly more important than the Cost/Price Factor. The relative ranking of the Technical Capability/Risk subfactors is as follows: Systems Engineering and Integration, then Domain Expertise, and finally Start-Up Plan.
c. The matrix shown in Table 1 below summarizes the types of evaluation factors and subfactors, and the approach that will be used to determine best value. Table 2 provides the definition of the color ratings, and Table 3 provides the definitions of the risk level ratings.

Table 1 Evaluation Matrix

		Technical Capability and Technical Risk Subfactors		
		(Subfactors listed in priority order)		
		Systems Engineering and Integration	Domain Expertise	Start-Up Plan
Evaluation Factors	Technical Risk	Low	Low	Low
		Moderate	Moderate	Moderate
		High	High	High
	Technical Capability	Outstanding	Outstanding	Outstanding
		Good	Good	Good
		Acceptable	Acceptable	Acceptable
		Marginal	Marginal	Marginal
		Unacceptable	Unacceptable	Unacceptable
	Past Performance	Acceptable Unacceptable		
	Cost/Price	Realism		Reasonableness
		Yes	No	Yes / No
		Proposed Cost/Price: $_____		
		Most Probable Cost: $_____		

4.2 Factor 1 – Technical Capability/Technical Risk

a. The Technical evaluation provides for two distinct but related assessments: the Technical Capability Rating and the Technical Risk Rating.

b. The Technical Capability requirements will be evaluated in terms of proposal strengths and deficiencies. The Government reserves the right to accept or not accept the Offeror's assessment of "strengths". The Technical Capability Rating reflects the extent to which the Offeror's proposal satisfies the requirements of the RFP in accordance with the evaluation criteria. The Government will assign one of the color ratings listed in Table 2 below for each Technical subfactor based upon the strengths and deficiencies contained in the Offeror's proposal.

   i. A "strength" is an aspect of an Offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that is advantageous to the Government during contract performance.

   ii. A "deficiency" in the proposal is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Table 1 Technical Capability Evaluation Ratings

Color	Rating	Definition

Color	Rating	Definition
B	Outstanding	Proposal meets requirements and indicates an exceptional approach and understanding of requirements. The proposal contains multiple strengths and no deficiencies.
P	Good	Proposal meets requirements and indicates a thorough approach and understanding of requirements. The proposal contains at least one strength and no deficiencies.
G	Acceptable	Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Proposal has no strengths and no deficiencies.
Y	Marginal	Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements.
R	Unacceptable	Proposal does not meet requirements and contains one or more deficiencies and is unawardable.
Source – DoD Source Selection Procedures		

c. The Technical Risk requirements will be evaluated in terms of proposal weaknesses and significant weaknesses. The Technical Risk rating reflects the extent to which the Offeror's proposal increases the potential for disruption of schedule, increased cost, or degradation of performance, the need for increased oversight, and the likelihood of unsuccessful contract performance. The Government will assign one of the risk ratings listed in Table 3 for each Technical subfactor based on the weaknesses and significant weaknesses contained in the Offeror's proposal. In addition, whenever the Government adjusts a proposed element of cost upward associated with a CPIF CLIN or CPFF CLIN, or identifies price realism concerns for a FFP CLIN, it may also assign a weakness or significant weakness to the appropriate subfactor.

i. A "weakness" means a flaw in the proposal that increases the risk of unsuccessful contract performance.

ii. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

Table 2 Technical Risk Evaluation Ratings

Rating	Definition
Low	Has little potential to cause disruption of schedule, increased cost or degradation of performance. Normal contractor effort and normal Government monitoring will likely be able to overcome any difficulties.
Moderate	Can potentially cause disruption of schedule, increased cost, or degradation of performance. Special contractor emphasis and close Government monitoring will likely be able to overcome difficulties.
High	Is likely to cause significant disruption of schedule, increased cost or degradation of performance. Is unlikely to overcome any difficulties, even with special contractor emphasis and close Government monitoring.

4.2.1 Subfactor 1: Systems Engineering and Integration

The Government will evaluate the extent to which:

4.2.1.1 Business Management Approach

a. The proposed subcontract management strategy demonstrates that the prime contractor is fully in control of its team, is accountable, and does not place the burden of managing multiple team members on the Government. Agreements show subcontractor staffing will be in place when required by the plan. The proposed subcontract management strategy emphasizes a "one-team" approach and provides acceptable performance quality for all members of the team.

b. The Offeror proposes in Attachment 10 to Volume V, rights in data that satisfies the Government's minimum needs as described in this RFP. The Government will not assign a strength to an Offeror's proposal that proposes to deliver rights in data greater than the minimum specified in this RFP. The analysis conducted by the Offeror (including all assumptions made) demonstrates that the quantity associated with the licenses for commercial item technical data and computer software the Offeror proposes to deliver to the Government listed in Table 2 of its completed Attachment 10 will be sufficient for the Government to successfully execute all programs that comprise the GPS Enterprise.

c. First-tier subcontractors identified in the Offeror's Small Business Participation Plan will perform at least 25% of the proposed cost/price of the contract. The Government will not assign a strength for small business participation greater than 25%. The Government will assign a deficiency if the proposed percentage is less than 25%.

4.2.1.2 System Engineering, Integration and Test

a. The Offeror's Performance Work Statement (PWS), Integrated Master Plan (IMP), Contractor Work Breakdown Structure (CWBS), and Integrated Master Schedule (IMS) are clearly integrated with each other and contain well-defined events that capture the tasks in the PWS and demonstrate an ability to support successful enterprise integration and program execution. The Offeror's schedule risk assessment and critical path analysis is complete, identifies second and third tier critical paths, provides margin and potential mitigation for critical tasks, and provides margin to accommodate unexpected program events. The Offeror demonstrates a reasonable strategy for handling work at various contractor locations, which

will enable efficient and effective coordination. The Offeror's strategy does not require significant stakeholder travel or technology upgrades at government or other stakeholder facilities. The Offeror demonstrates an ability to efficiently and effectively respond to schedule changes with minimal impact to future milestones and contract cost.

b. The Offeror's response to the scenario demonstrates an integrated, effective, efficient, complete, and proactive strategy and plan for implementing the proposed changes to the technical baseline that enables consensus to be reached amongst the Government, Segment prime contractors and subcontractors, and associate contractors to consistently reduce technical disconnects between segments and ensure proper execution of the proposed change. The Offeror proposes reasonable and effective processes and tools that enable communications amongst all members of the Offeror's team, all segment prime contractors, and other federal agencies and demonstrate an acceptable understanding of the complexity of the GPS stakeholder environment and will facilitate proactive and accurate cost, schedule, and performance impact assessments of proposed changes to the technical baseline. The Offeror's proposed processes include sufficient checks and balances to produce high fidelity specification and ICD changes, are fully integrated into the GPS Directorate's change management process, and reduce rework of the segment prime contractor's technical documentation and hardware and software products. The Offeror's proposed schedule includes all tasks (including Government approval appropriate decision points) and dependencies between tasks needed to implement the proposed change to the technical baseline and successfully bring the requirements process to closure. The Offeror's schedule risk analysis identifies the major risks and provides feasible mitigation plans.

c. The Offeror's proposed test program management process appropriately defines roles and responsibilities for the test program, allocates qualified staffing, and demonstrates an efficient, integrated test program from segment to system development test, and support for Operational Testing. The Offeror's proposed testing approach, including lower level testing and support for Operational Testing, defines an appropriate enterprise or system level testing process that ensures integrated, and validated capabilities.

d. The Offeror's proposed technical and business processes demonstrate a comprehensive understanding of the current processes; describe detailed, clear, integrated, efficient, reasonable process improvements; describe an organized, efficient and integrated approach consistent with the Offeror's, government's and stakeholders' processes; and are comprehensively documented in TC5, the Systems Engineering Plan (SEP), Enterprise Test and Evaluation Master Plan (E-TEMP), updated GPS Directorate Operating Instructions (OIs), and other Directorate documents in TC7. The Offeror's internal processes are integrated with the government processes or are necessary for internal management, and avoid excess workload for the Offeror, government, other stakeholders, or segment prime contractors. Changes to the existing processes and new processes represent an improvement to the current process, and are implementable without adversely impacting the critical path of the segment prime contractor and government schedules. Additional or modified tools that can be acquired from a commercial source are available for government and other stakeholders without excessive cost and are acceptable for use on Government computers. Additional or modified tools that are proprietary to the Offeror or its subcontractors are accessible by government and other stakeholders as well as all members of the Offeror's team. If additional tools are proposed that produce data integral to the new processes, the data is described in a new CDRL or the data can be transferred to a format readable and useable by software that is available to the Government, and the Offeror proposes to grant the

Government license rights for this data that will permit the Government to use, release and disclose all such data amongst all necessary GPS stakeholders.

e. The Offeror's response to the scenario demonstrates a comprehensive understanding of the problem, the purpose of the various GPS programs, the roles of segment prime contractors, Government, and user community; and proposes a realistic, effective and integrated approach that will lead the government to an acceptable solution to reduce Directorate costs for the problem posed in the scenario. The Offeror's solution is responsive and thorough and demonstrates the capability to successfully identify and mitigate impacts arising from its recommended solutions. The SE&I tasks are clearly and appropriately defined. The Offeror's response to the scenario demonstrates timely and accurate cost, schedule, and performance impact assessments of the changes required in response to the scenario.

4.2.2 Subfactor 2: Domain Expertise

a. The Offeror presents a logical and streamlined approach to organizing personnel, consistent with government and stakeholder interfaces, and provides staffing and skills mix, with sufficient relevant expertise to meet the requirements of the PWS. The Offeror demonstrates a clear understanding of the skills and experience required to perform the SE&I GPS tasks and provides appropriate key personnel with demonstrated knowledge and expertise in critical PWS areas.

b. The Offeror demonstrates a realistic ability to retain key personnel and to minimize unwanted workforce turnover, while satisfying the requirements of the PWS. The Offeror demonstrates the ability to maintain domain expertise, appropriately cleared staff, and quality of work when key personnel turnover occurs.

c. The Offeror's analysis (including all assumptions made) demonstrates that the percentage of SAP-eligible personnel the Offeror proposes is sufficient to perform all the services required by the PWS. The personnel are applied to the appropriate WBS items.

d. Oral Presentation: The Government will not assign a strength to any part of the oral presentation. The Government will not conduct discussions regarding the Offeror's response to the integration scenario or its answers to the written questions, and the Offeror will not be given an opportunity to correct or revise its response to the scenario or its answers to the written questions, because to conduct such discussions would defeat the purpose of the oral presentation: To test under time constraints. The Government will evaluate the two parts separately.

   i. Part 1: The Offeror's response to the integration scenario provided as part of the oral presentation demonstrates a thorough understanding of the technical domain of the GPS Directorate and the role of the SE&I within it. The Offeror demonstrates the ability to logically think through problems, allocate tasks among team resources, consider multiple variables, consider alternatives and constraints, and reach reasonable solutions that are readily actionable by government decision makers (e.g., program managers). The Offeror's solutions are consistent with its proposed management, staffing, processes, procedures, tools, and schedule from the written proposal. The Offeror's responses are organized, clear, concise, and complete.

   ii. Part 2: Based on the completeness and accuracy of the answer provided by the Offeror to each question, the Government will assign a "satisfactory" or "unsatisfactory" grade to the answer. If the Government assigns an "unsatisfactory" assessment to three of the answers provided by the Offeror, the Government will assign a weakness to this part of the oral presentation. If the Government assigns an "unsatisfactory" assessment to four

SPACE AND MISSILE SYSTEMS CENTER (SMC)

SYSTEMS ENGINEERING AND INTEGRATION (SE&I)

ATTACHMENT 10 – Rights in Data (Including Technical Data, Computer Software, and Computer Software Documentation)

FOR

GLOBAL POSITIONING SYSTEMS DIRECTORATE

(GPS)

Request for Proposal

FA8807-11-R-0001

24 June 2013

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a. Introduction. The purpose of this Attachment 10 is to identify the rights the U.S. Government will acquire to all Systems Engineering & Integration technical data, computer software and computer software documentation delivered or otherwise provided to the Government during performance of this contract. Subsection c.(1) identifies the rights the U.S. Government will acquire to all such noncommercial technical data, computer software and computer software documentation. Subsection c.(2) identifies the rights the U.S. Government will acquire to all such commercial item technical data, computer software and computer software documentation. Subsection c.(3) identifies the rights the U.S. Government will acquire to all data except that to be delivered in CDRL A009 that is not technical data or computer software delivered or otherwise provided to the U.S. Government during performance of this contract. Subsection c.(5) identifies the rights the U.S. Government will acquire to all data to be delivered in CDRL A009 that is not technical data or computer software delivered or otherwise provided to the U.S. Government during performance of this contract. Subsection c.(4) identifies the rights the U.S. Government will acquire to all data used by the Contractor to create any CDRL listed in Tables 1-4 required to be delivered or otherwise provided to the U.S. Government during performance of this contract.

b. Definitions.

"Cost/financial/schedule data" is defined as recorded information, regardless of form or method of recording, including specific cost/financial/schedule/data contained in a computer database, of a financial, administrative, cost or pricing or management nature, or other information incidental to contract administration, delivered via Exhibit A.

"Commercial item" is defined in FAR 2.101.

"Computer software" is defined in DFARS 252.227-7014(a)(4).

"Computer software documentation" is defined in DFARS 252.227-7014(a)(5).

"Covered government support contractor" is defined in DFARS 252.227-7015(a)(2).

"Firmware" is defined in SMC Standard SMC-S-012.

"Licensee" is defined as the SE&I contractor.

"Licensor" is defined as the owner (e.g., subcontractor) of commercial item technical data, computer software, or computer software documentation.

"Technical data" is defined in DFARS 252.227-7013(a)(15).

c. Types of Rights.

(1) Rights in noncommercial technical data, computer software and computer software documentation. The Government shall have the rights in noncommercial technical data, computer software and computer software documentation described in

Table 1 below. All technical data, computer software and computer software documentation delivered or otherwise provided to the Government during performance of this contract under any CDRL is classified as noncommercial technical data, computer software, or computer software documentation unless expressly identified as commercial technical data, computer software, or computer software documentation in Table 2 below.

Table 1
Rights in Noncommercial Technical Data, Computer Software, and Computer Software Documentation

Column 1	Column 2	Column 3	Column 4
CDRL NO.	**DATA ITEM TITLE(SUBTITLE)**	**ASSERTED RIGHTS CATEGORY**	**ESTIMATED COST/ PRICE**
A003	Specs/TRDs	Unlimited	$
A004	Interface Control Documents / Interface Specifications	Unlimited	$
A005	DoD Architectural Framework Documentation	Offeror to Complete	$
A007	System Engineering Plan (SEP)	Unlimited	$
A008	Test and Evaluation Master Plan	Unlimited	$
A012	System Safety Support Plan (SSSP)	Unlimited	$
A014	Information Support Plan (ISP)	Unlimited	$
A015	Programmatic Environmental Safety and Health Evaluation (PESHE)	Unlimited	$
A016	Test Vectors	Offeror to Complete	$
A017	System/Inter-Segment Test Plan	Offeror to Complete	$
A018	System/Inter-Segment Test Procedure	Offeror to Complete	$
A019	System/Inter-Segment Test Report	Offeror to Complete	$
A020	Enterprise Technical Review Package	Offeror to Complete	$
A021	Integrated Test and Evaluation Plan (ITEP)	Offeror to Complete	$
A022	System Requirements Verification Plan (SRVP)	Offeror to Complete	$
A023	Requirements Verification Plan	Offeror to Complete	$
A024	Verification Completion Report	Offeror to Complete	$
A025	Modeling and Simulation (M&S) Support Plan	Offeror to Complete	$
A026	Information Assurance Acquisition Strategy	Offeror to Complete	$

Column 1	Column 2	Column 3	Column 4
CDRL NO.	**DATA ITEM TITLE(SUBTITLE)**	**ASSERTED RIGHTS CATEGORY**	**ESTIMATED COST/ PRICE**
A027	DOORS Database **(Note 1)**	Offeror to Complete	$
A028	Performance Incentive Value Plan (Technical data only)	Offeror to Complete	$

Note 1: CDRL A027 is a repository for data required to be delivered via CDRLs A003 (Specs/TRDs), A004 (ICD/interface specifications), and A005 (DoDAF documentation) listed in Tables 1-2.

(2) Rights in commercial technical data, computer software and computer software documentation. In addition to the rights the Government will obtain in commercial item technical data, computer software and computer software documentation listed in Table 2 and contained in Appendix A to this attachment, the Government will acquire the following rights to that technical data and computer software notwithstanding any statements to the contrary in any of the licenses listed in Table 2 that are contained in Appendix A:

(i) The Government shall have the right to use, perform, display or disclose that commercial item technical data, computer software and computer software documentation, in whole or in part, within the Government. The Government may not, without the written permission of the Contractor, release or disclose the commercial item technical data, computer software, and computer software documentation outside the Government or use the commercial item technical data and computer software for manufacture, except that the Government shall have the right to use, modify, reproduce, release, perform, display or disclose that commercial item technical data, computer software and computer software documentation to any covered government support contractor not to exceed the quantity specified in Column 4 of Table 2 for commercial item computer software.

(ii) The duration of all such licenses shall be, at minimum, for the period of performance of this contract (including options, if exercised) unless the commercial license specifies a longer period for the total quantity listed in Column 4 of Table 2 associated with the CDRLs listed in Column 1 of that table. The Contractor will be relieved of all responsibilities with respect to such licenses upon the end of the period of performance of this contract at which time the Government will assume responsibility for acquiring those licenses under existing or follow-on contracts.

(iii) License rights related to commercial item technical data described in, and granted to the U.S. Government under, DFARS 252.227-7015(b)(1) shall apply to all such technical data associated with delivered computer software

including, but not limited to, user's manuals, installation instructions, and operating instructions.

(iv) The ultimate purpose of this contract is for the Contractor to deliver to the U.S. Government technical data and computer software to be used by the GPS Directorate to develop, produce and sustain a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 51 U.S.C. § 50112). Accordingly, should the U.S. Government use, release or disclose the commercial item technical data, computer software, or computer software documentation in a manner inconsistent with the terms of any of the commercial licenses listed in Table 2 contained in Appendix A to this attachment, the U.S. Government shall not be required to remove, uninstall or stop using those Items or return such Items to the Contractor and the Contractor's remedy shall be limited to monetary damages.

The Contractor shall not add, delete or replace any commercial item technical data, computer software, or computer software documentation listed in Table 2 from any CDRL unless the Government has approved that addition, deletion or replacement and the contract has been modified to add, delete or replace that item from that table and delete or replace the applicable license(s) from Appendix A.

Table 2
Rights in Commercial Technical Data, Computer Software, and Computer Software Documentation

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	DATA ITEM TITLE (SUBTITLE)	VENDOR NAME; TECHNICAL DATA/SOFTWARE APPLICATION NAME; LICENSE NO.	QUANTITY	ESTIMATED COST/PRICE

(3) Special License Rights Category A ("SLRC-A"): Rights in cost/financial/schedule data identified in Table 2. The Government shall have the right to use, modify, perform, display or disclose all such delivered cost/financial/schedule data listed in Table 3 below, in whole or in part, within the Government. The Government may not, without the written permission of the Contractor, release or disclose that data outside the Government, use the data for manufacture, or authorize the data to be used by another party, except that the Government may reproduce, release or disclose such data or

authorize the use or reproduction of such data by the following persons outside the Government (including their subcontractors who are also covered government support contractors) to perform their respective contract(s) listed below:"

The Aerospace Corporation (Contract FA8802-09-C-0001)
MITRE Corporation (Contract FA8702-13-C-0001, Project No. 6S00 (Warfighter Support), Work Package 6SC0 (Global Positioning System)" and Quantech Services, Inc. (Contract FA8807-13-D-0001, Delivery Order GP01)

The Contractor agrees that the Government shall have the right to unilaterally add or delete covered government support contractors (and contracts) from this list at any time, and its exercise of that right shall not entitle the Contractor or its subcontractors to an equitable adjustment or a modification of any other terms and conditions of this contract.

Table 3
Rights in Delivered Cost/Financial/Schedule Data

Column 1	**Column 2**	**Column 3**
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**ESTIMATED COST/PRICE**
A001	Contract Funds Status Report (CFSR)	$
A002	Contact Status Report	$
A006	Operating Instructions (OIs)	$
A010	Data Accession List (DAL)	$
A011	Enterprise Integrated Master Plan (E-IMP)	$
A013	Small Business Subcontracting Data	$
A028	Performance Incentive Value Plan (Cost/financial/schedule data only)	See Table 1

(4) Special License Rights Category B ("SLRC-B"): The Government and the persons listed below (including their subcontractors) shall have the right to review all data used by the Contractor (except data classified as attorney-client privileged or attorney work-product privileged) to create any CDRL listed in Tables 1-4 required to be delivered under this contract (including, if necessary, at the Contractor's and subcontractors' facilities) to verify the currency, accuracy and completeness of the data contained in those CDRLs:

The Aerospace Corporation (Contract FA8802-09-C-0001)
MITRE Corporation (Contract FA8702-13-C-0001, Project No. 6S00 (Warfighter Support), Work Package 6SC0 (Global Positioning System)" and Quantech Services, Inc. (Contract FA8807-13-D-0001, Delivery Order GP01)

The estimated cost/price for this license is $____**_____. The Contractor agrees that the Government shall have the right to unilaterally add or delete covered government support contractors (and contracts) from this list at any time, and its exercise of that right shall not entitle the Contractor or its subcontractors to an equitable adjustment or a modification of any other terms and conditions of this contract.

(5) Special License Rights Category C ("SLCR-C"): Rights in cost/financial/schedule data identified in Table 4. The Government shall have the right to use, modify, perform, display or disclose all such delivered cost/financial/schedule data listed in Table 4 below, in whole or in part, within the Government. The Government may not, without the written permission of the Contractor, release or disclose that data outside the Government, use the data for manufacture, or authorize the data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of such data by the following persons outside the Government (including their subcontractors) to perform their respective contract(s) listed below:

Elements (Contract FA8807-11-C-0001)(ECG)
ITT Corp., Aerospace Communications (Contract FA8807-08-C-0004)(FMS GB Gram Type Cards-Poland)
L-3 Communications, IEC (Contract FA8807-06-C-0003)MUE)
L-3 Communications, IEC (Contract FA8807-12-C-0011)(MGUE)
Lockheed Martin (Contract FA8807-08-C-0010)(GPS Block III)
MITRE Corporation (Contract FA8702-13-C-0001, Project No. 6S00 (Warfighter Support) Work Package 6SC0 (Global Positioning System)
Raytheon Systems, Ltd. (Contract FA8807-04-C-0004)(ADAP)
Raytheon Company (Contract FA8807-05-D-0001)(MAGR-2K/2K-S)
Raytheon SAS (Contract FA8807-06-C-0004)(MUE)
Raytheon Company (Contract FA8807-10-C-0001)(OCX)
Raytheon SAS (Contract FA8807-12-C-0012)(MGUE)

Rockwell Collins, Inc. (Contract F04701-02-C-0011)(DAGR)
Rockwell, Collins, Inc. (Contract FA8807-09-C-0002)(DAGR Follow-on)
Rockwell Collins, Inc. (Contract FA8807-10-C-0002 (GEM IV Security Devices)
Rockwell Collins, Inc. (Contract FA8807-06-C-0001)(MUE)
Rockwell Collins, Inc. (Contract FA8807-12-C-0013)(MGUE)
Quantech Services, Inc. (Contract FA8807-13-D-0001, Delivery Order GP01)
The Aerospace Corporation (Contract FA8802-09-C-0001)
The Boeing Company (Contract F04701-96-C-0025)(GPS Block IIF)

The Contractor agrees that the Government shall have the right to unilaterally add or delete contractors (and contracts) from this list at any time, and its exercise of that right shall not entitle the Contractor or its subcontractors to an equitable adjustment or a modification of any other terms and conditions of this contract."

Table 4
Rights in Delivered Cost/Financial/Schedule Data

Column 1	Column 2	Column 3
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**ESTIMATED COST/PRICE**
A009	Enterprise Master Schedule (EMS)	$

d. Additional marking requirements.

(1) Commercial technical data, computer software, and computer software documentation: If the contents of any CDRL delivered to the Government contain commercial item technical data, computer software or computer software documentation, prior to delivery the Contractor shall physically attach a copy of this Attachment and a copy of the applicable commercial license(s) listed in Table 2 contained in Appendix A for that CDRL to that CDRL. The contractor shall also expressly identify by highlighting in red ink which specific items of commercial technical data located on which specific portions of that CDRL the release of which outside the Government is restricted by that/those license(s).

(2) Special License Rights Category A: If a CDRL listed in Table 3 will be delivered with Special License Rights Category A described in subsection c.(3) above, the Contractor shall affix to the cover page of that CDRL the legend prescribed by DFARS 252.227-7013(f)(4) and 252.227-7014(f)(4), delete the word "technical" from that legend, and insert the following text immediately after the phrase "License No." in that legend: "SLRC-A/____**___ PROPRIETARY". Under such circumstances, the Contractor shall also physically attach a copy of this Attachment to that CDRL.

(3) Special License Rights Category B: If a document described in subsection c.(4) is provided to the Government, the Contractor shall affix to the cover page of that document the legend contained in DFARS 252.227-7013(f)(4) delete the word "technical" from that legend, and insert the following text immediately after the phrase "License No.": "SLRC-B/___**___ PROPRIETARY". Under such circumstances, the Contractor shall also physically attach a copy of this Attachment to that CDRL.

(4) Special License Rights Category C: If a document described in subsection c.(5) is provided to the Government, the Contractor shall affix to the cover page of that document the legend contained in DFARS 252.227-7013(f)(4), delete the word "technical" from that legend, and insert the following text immediately after the phrase "License No.": "SLRC-C/___**___ PROPRIETARY". Under such circumstances, the Contractor shall also physically attach a copy of this Attachment to that CDRL.

(5) Since one CDRL (i.e., CDRL A028) requires the delivery of both technical data and cost/financial/schedule data, different license rights will apply to those portions of that CDRL that requires the delivery of technical data than those portions that require the delivery of cost/financial/schedule data. Under such circumstances, the contractor shall affix all restrictive markings required by Tables 1 and 3 to the cover sheet of the CDRL and shall expressly highlight in green which specific cost/financial/schedule data located on which specific portions of that CDRL the release of which outside the Government is restricted by the Special License Rights Category A ("SLRC-A") described in subsection c.(3) above.

(6) The Contractor acknowledges that, given the types of licenses described in subsections c.(3-5) that apply to (i) specific persons for (ii) specific purposes for (iii) specific items of data (iv) delivered at specific times during performance of this contract, failure to affix the proper restrictive marking to the appropriate data prior to delivering or otherwise providing that data to

the Government exponentially increases the risk that that data will be released to unauthorized persons for unauthorized purposes. Accordingly, in addition to the release from liability contained in DFARS 252.227-7013(b)(6) and 252.227-7014(b)(6), the Contractor agrees to release the Government from liability for any release or disclosure of data other than technical data, computer software, and computer software documentation made in accordance with this Attachment if any CDRL delivered to the Government does not comply in all respects with the marking requirements specified herein."

e. Allocability of Costs to CLINs. The estimated cost/price of the rights described above in subsection c.(1-5) associated with its corresponding CDRL is built into the estimated cost of the CPIF/CPFF/FFP CLIN under which the development/creation of that CDRL will occur or has occurred.

f. Updates. The price of any rights in data described above includes the price of the rights in data to any changes (e.g., updates, software maintenance patches, minor version changes (e.g., from V1.1 to V1.2 not V1.1 to V2.0), substitutions) made to that data by the Contractor anytime during performance of this contract.

g. License transference. Any license associated with any technical data, computer software, or computer software documentation delivered under any CLIN shall transfer upon delivery of that CDRL or CLIN to the Government.

h. Prohibition against nondisclosure agreements. Upon contract award, the Government obtains a waiver from the Contractor and all of its subcontractors from the requirement in DFARS 252.227-7015(b)(3)(iii) that a covered Government support contractor must enter into a non-disclosure agreement directly with the Contractor or any licensor regarding the covered Government support contractor's use of such commercial item technical data listed in Table 2. Similarly, neither the contractor nor any of its subcontractors shall require any recipient of commercial computer software listed in Table 2 or data listed in Tables 3-4 that is not a Government employee to sign non-disclosure agreements with respect to that software and data. Pursuant to 18 U.S.C. §§ 1832 and 1905, Government employees are already prohibited from releasing an owner's trade secrets without authorization from the owner. Therefore, neither the contractor nor any of its subcontractors shall require any Government employee to sign any nondisclosure agreement relative to the use, release or disclosure of any CDRL to be delivered under this contract or any data otherwise furnished to those employees by the contractor or any of its subcontractors.

i. Order of Precedence: Upon delivery of any commercial item technical data, computer software, computer software documentation, or any combination thereof, to the Government contained in any CDRL, the following provisions shall take precedence over conflicting provisions in any license associated with those items, notwithstanding any provisions in those licenses to the contrary through renewals or extensions, as needed, to this contract:

(1) The Government shall have the right to use, perform, display or disclose that commercial item technical data, computer software, or computer software documentation,

in whole or in part, within the Government not to exceed the quantity specified in Column 4 of Table 2 of Attachment 3 of Contract FA8807-13-C-0001.

(2) Upon contract award, the Government obtains a waiver from the Contractor from the requirement in DFARS 252.227-7015(b)(3)(iii) that a covered Government support contractor must enter into a non-disclosure agreement directly with the Contractor or any licensor regarding the covered Government support contractor's use of such data. The Government may not, without the written permission of the Contractor, release or disclose the commercial item technical data and computer software outside the Government or use the commercial item technical data and computer software for manufacture, except that the Government shall have the right to use, modify, reproduce, release, perform, display or disclose that commercial item technical data, computer software and computer software documentation to any covered government support contractor.

(3) The duration of this license shall be, at minimum, for the period of performance of Contract FA8807-11-R-0001 (including options, if exercised) unless the license specifies a longer period.

(4) License rights related to technical data described in, and granted to the U.S. Government under, DFARS 252.227-7015(b)(1) shall apply to all such technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.

(5) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the License shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(6) In accordance with FAR 52.232-39 – Unenforceability of Unauthorized Obligation, any provision in any license that would require the Government to indemnify the Contractor is unenforceable against the Government.

(7) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.

(8) Upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(9) Under no circumstances shall terms of the License or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(10) The Licensor shall comply with, and all delivered Items, shall conform to, all applicable Government Security/Classification rules and regulations applicable to this Agreement, in particular those set forth in the applicable DD254 (Department of Defense, Contract Security Classification Specification).

(11) The Licensor understands that the ultimate purpose of the Licensee entering into this License with the Licensor is for the Licensor to supply to the U.S. Government technical data and computer software to be used by the GPS Directorate to develop, produce and sustain a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 51 U.S.C. § 50112). Accordingly, should the U.S. Government use, release or disclose the Items described in this License in a manner inconsistent with the terms of this License, the U.S. Government shall not be required to remove, uninstall or stop using those Items or return such Items to the Licensee and the Licensor's remedy will be limited to monetary damages.

(12) In the event of inconsistencies between the License and Federal law (e.g., FAR 52.232-25 ("Prompt Payment"), 52.246-3 ("Inspection of Supplies—Cost Reimbursement")), Federal law shall apply.

(13) Copies of this license may be disclosed to third parties consistent with the Freedom of Information Act and Clause H.11 of Contract FA8807-13-C-0001.

(14) The Government shall not be required to comply with the terms and conditions of any License that is inconsistent with any applicable laws, regulations or policies listed in DFARS § 252.204-7008 ("Requirements for Contracts Involving Export-Controlled Items").

(15) Any claim the Licensee files with the U.S. Government on behalf of the Licensor, and any claim the U.S. Government files with the Licensor, shall be submitted within the period specified in FAR §52.233-01 ("Disputes") as modified by Contract FA8807-13-C-0004.

(16) No individual other than a warranted contracting officer shall have the authority to bind the Government contractually.

Appendix 2

Relevant Excerpts from GPS OCX Phase B RFP

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING DO-A2	PAGE 1 OF PAGES 79

2. CONTRACT NO.	3. SOLICITATION NO.	4. TYPE OF SOLICITATION	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.
	FA8807-09-R-0003	☐ SEALED BID (IFB) ☒ NEGOTIATED (RFP)	29 APR 2009	

7. ISSUED BY GPSW/PK CODE FA8807
SPACE & MISSILE SYSTEMS CENTER
483 N. AVIATION BLVD
EL SEGUNDO, CA 90245-2808
SARA E. LAWLYES 310-653-3451
SARA.LAWLYES@LOSANGELES.AF.MIL

8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. See attached Section L for proposal instructions.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE *(Include area code)* *(NO COLLECT CALLS)*	C. E-MAIL ADDRESS
	SARA E. LAWLYES	(310) 653-3451	Sara.Lawlyes@losangeles.af.mil

11. TABLE OF CONTENTS

(√)	SEC.	DESCRIPTION	PAGE(S)	(√)	SEC	DESCRIPTION	PAGE(S)
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√	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2			*PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACH.*	
√	C	DESCRIPTION/SPECS./WORK STATEMENT	25	√	J	LIST OF ATTACHMENTS	79
√	D	PACKAGING AND MARKING	26			*PART IV - REPRESENTATIONS AND INSTRUCTIONS*	
√	E	INSPECTION AND ACCEPTANCE	27	√	K	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS	K - 1
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OFFER (*Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within ___270___ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date of receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGEMENTS OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
	☐		

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:	23. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)*	ITEM
☐ 10 U.S.C. 2304(c) ( ) ☐ 41 U.S.C. 253(c) ( )		

24. ADMINISTERED BY *(If other than Item 7)* CODE	25. PAYMENT WILL BE MADE BY CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount

OCX BLOCK 1.0 DEVELOPMENT

0100		1	____*_____
		Lot	____*_____

Noun: OCX BLOCK 1.0 DEVELOPMENT
NSN: N - Not Applicable
Contract type: V - COST PLUS INCENTIVE FEE
Inspection: DESTINATION
Acceptance: DESTINATION
FOB: DESTINATION
Descriptive Data:
The Contractor shall furnish all supplies and services necessary to accomplish the work set forth in Attachment 1 'Statement of Work', dated *, paragraphs 3.1 (except 3.1.1.i), 3.2, 3.4, 3.9.1, 3.11-3.17, 3.18.2-3.18.6, and 4.1-4.10; and Attachment 4 'Integrated Master Plan', dated *, paragraphs * attached hereto and made a part hereof. Incentive fee shall be in accordance with FAR 52.216-10 'Incentive Fee'.

(CPIF/AF Completion)(3600 Funds)

Target Cost: $*
Target Fee: $*

Base Fee: $*

* To be inserted by the Offeror

Contract Clauses in this section are from the FAR, Defense FAR Sup, Air Force FAR Sup, and the Air Force Materiel Command FAR Sup, and are current through the following updates:

Database_Version: 6.10.8.2000; Issued: 4/22/2009; FAR: FAC 2005-32; DFAR: DCN20090115; DL.: DL 98-021; Class Deviations: CD 2009-O0001; AFFAR: 2002 Edition; AFMCFAR: AFMCAC 07-03; AFAC: AFAC 2009-0318; IPN: 98-009

I. NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

A. FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES

52.202-01	DEFINITIONS (JUL 2004)
52.203-03	GRATUITIES (APR 1984)
52.203-05	COVENANT AGAINST CONTINGENT FEES (APR 1984)
52.203-06	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)
52.203-07	ANTI-KICKBACK PROCEDURES (JUL 1995)
52.203-08	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008)
52.203-14	DISPLAY OF HOTLINE POSTER(S) (DEC 2007) Para (b)(3). CO inserts info for obtaining posters. 'Defense Hotline, Pentagon, Washington DC, hotline@dodig.mil, 800-424-9098'
52.204-02	SECURITY REQUIREMENTS (AUG 1996)
52.204-04	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)
52.204-07	CENTRAL CONTRACTOR REGISTRATION (APR 2008)
52.204-09	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)
52.204-10	REPORTING SUBCONTRACT AWARDS (SEP 2007)
52.209-06	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)
52.211-05	MATERIAL REQUIREMENTS (AUG 2000)
52.215-02	AUDIT AND RECORDS -- NEGOTIATION (MAR 2009)
52.215-08	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)
52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
52.215-13	SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
52.215-14	INTEGRITY OF UNIT PRICES (OCT 1997)
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)
52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
52.215-19	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
52.215-21	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997) - ALTERNATE III (OCT 1997) Alt III, Para (c), Submit the cost portion of the proposal via the following electronic media: 'CD-ROM, in addition to paper copy'
52.215-23	LIMITATION ON PASS-THROUGH CHARGES (OCT 2009)
52.216-07	ALLOWABLE COST AND PAYMENT (DEC 2002)
52.216-10	INCENTIVE FEE (MAR 1997)

52.232-22 LIMITATION OF FUNDS (APR 1984)
52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) - ALTERNATE I (APR 1984)
52.232-25 PROMPT PAYMENT (OCT 2008) - ALTERNATE I (FEB 2002)
52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER--CENTRAL CONTRACTOR REGISTRATION (OCT 2003)
52.233-01 DISPUTES (JUL 2002) - ALTERNATE I (DEC 1991)
(Notwithstanding the first sentence of subsection (d)(1), a claim by the Contractor shall be made in writing and submitted within 270 days after accrual of the claim to the Contracting Officer for a written decision.)
52.233-03 PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUN 1985)
52.233-04 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)
52.234-01 INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994)
52.237-02 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (APR 1984)
52.239-01 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)
52.242-01 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)
52.242-03 PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)
52.242-04 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)
52.242-13 BANKRUPTCY (JUL 1995)
52.243-02 CHANGES -- COST-REIMBURSEMENT (AUG 1987) - ALTERNATE V (APR 1984)
52.243-06 CHANGE ORDER ACCOUNTING (APR 1984)
52.243-07 NOTIFICATION OF CHANGES (APR 1984)
Para (b), Number of calendar days is (insert 30 for RDSS/C) '30'
Para (d), Number of calendar days is (insert 30 for RDSS/C) '30'
52.244-02 SUBCONTRACTS (JUN 2007)
Para (d), approval required on subcontracts: '$500,000 or development of a critical OCX component'
Para (j), Insert subcontracts evaluated during negotiations. '* To be inserted by Offeror.'
52.244-05 COMPETITION IN SUBCONTRACTING (DEC 1996)
52.244-06 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2009)
52.245-09 USE AND CHARGES (JUN 2007)
52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)
52.247-67 SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT (FEB 2006)
Para (c). Insert address. 'GPSW/PK, Attn: OCX Contracting Officer, 483 N. Aviation Blvd, El Segundo, CA 90245-2808'
52.248-01 VALUE ENGINEERING (FEB 2000)
Para (m). Contract number. '**
** To be inserted by the Government.'
52.249-06 TERMINATION (COST-REIMBURSEMENT) (MAY 2004)
52.249-14 EXCUSABLE DELAYS (APR 1984)
52.251-01 GOVERNMENT SUPPLY SOURCES (APR 1984)
52.253-01 COMPUTER GENERATED FORMS (JAN 1991)

B. DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT CONTRACT CLAUSES

252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (JAN 2009)
252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (DEC 2008)
252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JAN 2009)
252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)
252.204-7002 PAYMENT FOR SUBLINE ITEMS NOT SEPARATELY PRICED (DEC 1991)
252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)
252.204-7004 ALTERNATE A, CENTRAL CONTRACTOR REGISTRATION (SEP 2007)

252.204-7005	ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)
252.204-7008	REQUIREMENTS FOR CONTRACTS INVOLVING EXPORT-CONTROLLED ITEMS (JUL 2008)
252.205-7000	PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)
252.209-7004	SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)
252.211-7000	ACQUISITION STREAMLINING (DEC 1991)
252.211-7003	ITEM IDENTIFICATION AND VALUATION (AUG 2008) Para (c)(1)(ii). Items with acquisition cost less than $5,000. 'N/A' Para (c)(1)(iii). Attachment Nr. 'N/A'
252.211-7007	REPORTING OF GOVERNMENT-FURNISHED EQUIPMENT IN THE DOD ITEM UNIQUE IDENTIFICATION (IUID) REGISTRY (NOV 2008)
252.215-7000	PRICING ADJUSTMENTS (DEC 1991)
252.219-7003	SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 2007)
252.219-7004	SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (AUG 2008)
252.223-7001	HAZARD WARNING LABELS (DEC 1991)
252.223-7004	DRUG-FREE WORK FORCE (SEP 1988)
252.223-7006	PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)
252.225-7001	BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (JAN 2009)
252.225-7002	QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (APR 2003)
252.225-7004	REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA--SUBMISSION AFTER AWARD (MAY 2007)
252.225-7006	QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (MAY 2007)
252.225-7007	PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (SEP 2006)
252.225-7009	RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JUL 2009)
252.225-7012	PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (DEC 2008)
252.225-7013	DUTY- FREE ENTRY (DEC 2009)
252.225-7016	RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (MAR 2006)
252.225-7025	RESTRICTION ON ACQUISITION OF FORGINGS (JUL 2006)
252.225-7043	ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (MAR 2006) Para (d). Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from: 'HQ AFSFC/SFPA; telephone, DSN 945-7035/36 or commercial (210) 925-7035/36'
252.226-7001	UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004)
252.227-7000	NON-ESTOPPEL (OCT 1966)
252.227-7002	READJUSTMENT OF PAYMENTS (OCT 1966)
252.227-7013	RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS (NOV 1995)
252.227-7014	RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUN 1995)
252.227-7015	TECHNICAL DATA--COMMERCIAL ITEMS (NOV 1995)
252.227-7016	RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)
252.227-7019	VALIDATION OF ASSERTED RESTRICTIONS--COMPUTER SOFTWARE (JUN 1995)
252.227-7025	LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (JUN 1995)
252.227-7027	DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)
252.227-7030	TECHNICAL DATA--WITHHOLDING OF PAYMENT (MAR 2000)
252.227-7037	VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 1999)

DOCUMENT	PGS	DATE	TITLE
EXHIBIT A	215	29 APR 2009	CONTRACT DATA REQUIREMENTS LIST (CDRLS)
ATTACHMENT 1	69	29 APR 2009	STATEMENT OF WORK (SOW)
ATTACHMENT 2	128	11 JAN 2010	COMPLIANCE & REFERENCE DOCUMENT LIST & TAILORING
ATTACHMENT 3	9	29 APR 2009	WORK BREAKDOWN STRUCTURE (WBS)
ATTACHMENT 4	2	29 APR 2009	INTEGRATED MASTER PLAN (IMP)
ATTACHMENT 5	40	11 JAN 2010	AWARD FEE PLAN
ATTACHMENT 6	26	11 JAN 2010	CONTRACT SECURITY CLASSIFICATION SPECIFICATION (DD FORM 254)
ATTACHMENT 7	5	29 APR 2009	GOVERNMENT PROPERTY (GP) AND BASE SUPPORT LIST (BSL)
ATTACHMENT 8	14	29 APR 2009	RIGHTS IN DATA (INCLUDING TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION)
ATTACHMENT 9	2	29 APR 2009	SMALL BUSINESS SUBCONTRACTING PLAN
ATTACHMENT 10	2	29 APR 2009	ORGANIZATIONAL CONFLICT OF INTEREST (OCI) MITIGATION PLAN
ATTACHMENT 11	3	29 APR 2009	SPECIAL STUDIES
ATTACHMENT 12	4	29 APR 2009	HAZARDOUS MATERIALS LIST
ATTACHMENT 13	3	29 APR 2009	SYSTEM MODIFICATIONS
ATTACHMENT 14	3	29 APR 2009	CAPABILITY INSERTION PROGRAM
ATTACHMENT 15	11	11 JAN 2010	PERFORMANCE AND SCHEDULE INCENTIVE PLAN

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) Certification. If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it-

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

252.227-7017 IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUN 1995)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation--

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data--Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovative Research Program, the notification and identification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software	Asserted	Name of Person

to be Furnished With Restrictions*	Basis for Assertion**	Rights Category***	Asserting Restrictions****

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter "none" when all data or software will be submitted without restrictions.

Date _ _ _ _ _ _ _ _ _ _ _

Printed Name and Title _ _ _ _ _ _ _ _ _ _ _

_ _ _ _ _ _ _ _ _ _ _
Signature
_ _ _ _ _ _ _ _ _ _ _

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

252.234-7001 NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (APR 2008)

(a) If the offeror submits a proposal in the amount of $50,000,000 or more—

(1) The offeror shall provide documentation that the Cognizant Federal Agency (CFA) has determined that the proposed Earned Value Management System (EVMS) complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748) (current version at time of solicitation). The Government reserves the right to perform reviews of the EVMS when deemed necessary to verify compliance.

(2) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a)(1) of this provision, the offeror shall submit a comprehensive plan for compliance with the guidelines in ANSI/EIA-748.

I. NOTICE: The following solicitation provisions pertinent to this section are hereby incorporated by reference:

A. FEDERAL ACQUISITION REGULATION SOLICITATION PROVISIONS

52.211-02	AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) (JAN 2006)
52.211-14	NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY PREPAREDNESS, AND ENERGY PROGRAM USE (APR 2008) Contracting Officer indicates DX or DO Rated Order: 'DO'
52.215-01	INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (JAN 2004)
52.215-16	FACILITIES CAPITAL COST OF MONEY (JUN 2003)
52.215-20	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)
52.215-22	LIMITATIONS ON PASS-THROUGH CHARGES--IDENTIFICATION OF SUBCONTRACT EFFORT (OCT 2009)
52.216-01	TYPE OF CONTRACT (APR 1984) Type of contract is 'Cost-Plus-Incentive-Fee and Cost Plus Award-Fee'
52.219-24	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM--TARGETS (OCT 2000)
52.222-24	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)
52.233-02	SERVICE OF PROTEST (SEP 2006) Para (a) Official or location is 'GPSW/PK ATTN: Sara Lawlyes 483 N. Aviation Blvd El Segundo, CA 90245-2808'
52.237-08	RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (AUG 2003)
52.247-06	FINANCIAL STATEMENT (APR 1984)

B. DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT SOLICITATION PROVISIONS

252.211-7001	AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS NOT LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST), AND PLANS, DRAWINGS, AND OTHER PERTINENT DOCUMENTS (MAY 2006) Activity name is 'GPS Wing' Activity address is 'SPACE & MISSILE SYSTEMS CENTER, 483 N. AVIATION BLVD, EL SEGUNDO, 90245-2808'
252.227-7028	TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)

C. AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT SOLICITATION PROVISIONS

5352.215-9000 FACILITY CLEARANCE (MAY 1996)

II. NOTICE: The following solicitation provisions pertinent to this section are hereby incorporated in full text:

GPS Advanced Control Segment (OCX)

Instructions, Conditions, and Notices to Offerors

SECTION L

for

FA8807-09-R-0003

29 April 2009

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5.0 Volume II – Mission Capability

In this volume, the Offeror shall describe its proposed approach for meeting the solicitation requirements addressed by each Mission Capability subfactor, as well as the risks to schedule, cost, or performance associated with this approach. The Government will evaluate the Offeror's proposed approach against the Mission Capability and risk criteria in Section M. The Offeror's Mission Capability volume must be consistent with its Cost/Price volume and the associated Cost/Price risk.

5.1 General Instructions

a. The Mission Capability Volume shall be specific and complete. By submitting a proposal, the Offeror is representing that the proposed system will perform all the requirements specified in the solicitation. Do not merely reiterate the objectives or reformulate the requirements specified in the solicitation. Using the instructions outlined below, provide the actual methodology that would be used to address the criteria of these subfactors. The Mission Capability Volume shall be organized according to the outline for Volume II in Section L-2.3, Table 1.

b. The Government cannot assess as a "strength" any aspect of an Offeror's proposal associated with any Mission Capability subfactor that does not satisfy **all** elements of the definition of "Strength" in Section M-5.1.1.a.(1). In justifying a proposed strength, it is incumbent upon the Offeror to identify a specific requirement, describe how that requirement is being "exceeded" in objective, quantifiable or qualifiable terms, describe why exceeding the requirement is beneficial to the Government and either explain the extent to which the requirement (i) will be included in the contract or (ii) is inherent in the Offeror's process. In order to demonstrate that a significant aspect of the Offeror's proposal is "inherent in the Offeror's process," when discussing that process in its proposal the Offeror shall identify the process using appropriate bibliographical references (e.g., "XYZ Company Corporate Process No. 02-245 Rev A, dated 5 January 2002"). It is the Offeror's responsibility to ensure that any aspect of its proposal that it believes to be a "Strength" satisfies all elements listed in Section M-5.1.1.a.(1).

c. Wherever applicable, the Offeror shall describe how the activities and results of the Phase A contracts, including the MCEM effort, are applied to satisfy the GPS OCX requirements of this solicitation and reduce risk to the Phase B program.

5.2 Instructions for the Mission Capability Volume

The indicated information, at a minimum, shall be provided for the following subfactors set forth below. Throughout this volume, provide references to Volume VI (e.g., Offeror-proposed SS-CS-800, SOW, IMP, CWBS, CDRL) that reflect the proposed work with cross references to the IMS to show the accompanying schedule.

5.2.1 Subfactor 1: Program Management

5.2.1.1 Organization and Staffing (MC1, MC6)

a. The Offeror shall describe the participating companies proposed to execute OCX. Include all prime and subcontractors and Interdivisional Transfers (IDTs) whose total cost is greater than $50 million for the period of performance of this contract or who is the single source in the

industry for the product or component to be delivered, or whose performance falls on the critical path as reflected in the Offeror's IMS. Describe the relationships, roles and responsibilities of the participants.

b. The Offeror shall provide a program-specific IPT-based organizational chart that starts at the level of the Offeror's Chief Executive Officer and clearly identifies the entire chain of command down to the IPT lead level, specifying each party's name, title, and division name and location. The Offeror shall describe where all of its team members fit in the organization and identify the interdependencies, key relationships, and communication channels, and any key relationships with associate contractors. In addition, the Offeror shall describe its management approach for OCX (including the authority, accountability and responsibility of the Offeror's Program Manager to execute that program) identify the decision-making flow within the team, and identify the Cost Center for the project (e.g., the business center where project costs are collected and reported). The Offeror shall describe the Government's role in the Offeror's IPT structure.

c. The Offeror shall provide a detailed description of the key technical and management personnel proposed in H009 including responsibilities, accountabilities, and authorities. The Offeror shall provide resumes of key personnel in Attachment MC6 that reflects experience needed to successfully execute the program. The Offeror shall provide a staffing plan that identifies the personnel levels (prime, subcontractors, and IDTs) needed to support OCX throughout development, transition, and sustainment of Blocks 1.0 and 2.0, including a rationale for that proposed staffing plan. The staffing plan must be consistent with the proposed bases of estimates and staffing profile included in Volume V and must provide sufficient resources to execute the proposed program. The Offeror shall describe how it will ramp-up staffing to perform the proposed program on the schedule proposed in the IMS. The Offeror shall identify all development facilities required to execute this program and describe how their use supports program requirements.

5.2.1.2 <u>Management Approach</u> (MC1, MC5, MC7)

a. The Offeror shall describe an overall management approach for OCX program execution.

b. The Offeror shall describe how the Offeror's proposed SOW, IMP, CWBS, and IMS support the OCX delivery schedule. The Offeror shall explain how and when products from subcontractors, other prime contractor divisions, associate contractors (including GPS IIIA and AEP/LADO associate contractors), the Government (e.g., property deliveries and approvals), and suppliers will be required to support on-time delivery.

c. The Offeror shall describe the tools and processes proposed to manage performance, cost, and schedule. The Offeror shall discuss the frequency of use, intended utility, heritage, and benefit of each tool, specifically addressing the relationship between the IMS, EVMS, and other proposed tools.

d. The Offeror shall describe the technical and administrative management of prime, subcontractors, and IDTs. The Offeror shall identify special management controls proposed for critical path or higher risk subcontractor or interdivisional efforts. The Offeror shall describe how management controls allow the Offeror to maintain oversight and provide insight to the Government.

e. The Offeror shall describe its communications and collaboration strategy that illustrates how information will be shared with its subcontractors and vendors, other divisions of the prime contractor, associate contractors, and the Government.

f. The Offeror shall describe the management and technical boards (e.g., ERB, CCB, ROMB, SRB) it proposes to use to manage the technical and program baseline. Describe the roles and responsibilities of each participant in these boards, including the prime contractor and subcontractors or other divisions of the prime contractor whose total cost is greater than $50 million for the period of performance of this contract or who is the single source in the industry for the product or component to be delivered, or whose performance falls on the critical path as reflected in the Offeror's IMS, and the Government.

g. The Offeror shall describe how its proposed Volume VI, Attachment 8 will meet the Government's minimum needs as described in Section L-9.9.9 and will result in an executable OCX program. In addition, the Offeror shall describe the analysis it conducted (including all assumptions made) to determine that the quantity of proposed seats associated with the licenses the Offeror will deliver to the Government listed in its completed Attachment 8, Table 2, Column 4, will be sufficient for the Government to successfully execute the OCX program, and is consistent with the Offeror's proposed architecture. The quantities proposed shall include all persons (e.g., Government personnel, support services contractors, prime hardware/software development, and production manufacturers) described in Attachment 8.c.(2)(ii) for that license.

h. The Offeror shall describe its dependencies on the GP and BSL proposed in Volume VI, Attachment 7 and RFNI and Government-Provided Information proposed in Attachment MC7, to successfully execute its proposal. The Offeror shall identify the Government effort that is required to execute its program. The requested items and support shall appear in the Offeror's IMS and be consistent with the SOW and IMP.

5.2.1.3 Small Business Participation

The Offeror shall submit a Small Business Subcontracting Plan in Volume VI, Attachment 9 in accordance with the instructions in Section L-9.9.10.

5.2.1.4 Program Management Risk (MC1, MC5, MC7, MC8)

a. The Offeror shall provide an assessment of its top ten program management risks to delivery of OCX Blocks 1.0 and 2.0 in accordance with Section F (including providing primary mitigation plans that support execution of each risk "burn down"), including its ability to execute its proposed approach to CLINs 0100, 0200, 0300, 0350, 0600, and 0710 consistent with the funding profile for FY09-FY11 provided in Table 3, below. The Offeror shall designate one of the ten risks as risk of "Government asset and information availability" to meet the proposed IMS.

b. The Offeror shall provide a risk mitigation and "burn down" plan that is reflected in the IMP and IMS. The Offeror shall provide an analysis of prime, subcontractor, IDT, and Government responsibilities required effort to mitigate each risk.

c. The Offeror shall indicate the metrics to be collected and used to track progress towards burning down each risk.

Table 3 Projected OCX Funding
(Total Cost to the Government including All Fees, Profit, and Incentives)

FY09	FY10	FY11
$20M	$250M	$260M

5.2.2 Subfactor 2: Software & Architecture

This Subfactor evaluates the overall architecture and design of the OCX. While OCX is primarily a software intensive system, the Government must understand the entire segment design to perform its evaluation, and ensure that the contractor meets requirements within available funding and schedule.

5.2.2.1 OCX Segment Architecture & Design

a. The Offeror shall describe its segment architecture including hardware, software, quantities, locations, external and internal interfaces.

b. The Offeror shall describe its baseline design that implements the OCX segment architecture.

c. The Offeror shall describe its planned content for Block 1.0 and Block 2.0 and map to Effectivities in the redlined SS-CS-800.

5.2.2.2 Software Products (MC2, MC3)

a. The Offeror shall describe quantitatively and qualitatively all new software products and any products (including MCEM) it plans to reuse in Block 1.0, Block 2.0, or in Blocks 1.0 and 2.0 and how such products contribute to the OCX system in terms of development effort, integration effort, architectural flexibility, supportability, and maturity of technical solution. The Offeror shall describe how both new and reused software products incorporated into OCX will meet the standards of SMC-S-012 “Software Development Standard for Space Systems”.

b. For any reused software product the Offeror describes in response to Section L-5.2.2.2.a. above, the Offeror shall provide the following information: (1) name, (2)version, (3) vendor, (4) function and application of reused software product, (5) rationale for selection, (6) alternatives, (7) product customer base description, (8) supportability approach, and (9) heritage of the reused products in terms of defects per KSLOC over the product’s operational history. Utilizing the definitions in the Offeror’s IMP narrative, “Software Development Definition and Treatment of New vs. Reuse”, the Offeror shall describe the anticipated degree of modifications required for each reuse product.

5.2.2.3 Human Systems Integration (MC2, MC3, MC8, MC9, MC15)

a. The Offeror shall describe its approach (e.g., user involvement, prototyping) for integrating HSI process and products into the OCX design, including hardware, software, logistics, training, facilities and operational procedures, as described in the SDP, SAD, SEMP, ISP, and Operational Concept Description.

b. The Offeror shall describe its methodology for utilizing HSI-related products and activities to support automation and to optimize staffing profiles (number of personnel and skill level of personnel) for OCX operations and maintenance.

5.2.2.4 Software Architecture (MC3, MC16, MC17)

The Offeror shall describe how its:

a. Proposed software architecture satisfies SS-CS-800 requirements for modularity, flexibility, scalability, and expandability, and data rights proposed in Volume VI, Attachment 8 meet the Government's minimum needs as described in this RFP. Justify the selection of software that does not comply with DISR identified standard features or interfaces if such software is proposed to be used.

b. Proposed software architecture supports integration of new, reused, NDI, GOTS/COTS software, or any combination thereof, into OCX.

c. Proposed software architecture facilitates the addition of new requirements (i.e., Effectivities 17-40).

d. Proposed evolutionary approach would respond to a "software technical refresh" modification. Provide an example of the effort required to refresh a significant software element of the delivered OCX Block 2.0 that occurs two years after Block 2.0 becomes operational. Describe how the design, manufacture, and fielding of the modification improves reliability, maintainability, availability, and operability.

5.2.2.5 Processes (MC1, MC2, MC10)

a. The Offeror shall describe its overall software engineering approach in the SDP in MC2. The Offeror shall describe how the processes proposed in MC2 will be effectively implemented throughout the program's lifecycle for the following CMMI® Process Areas: Requirements Management, Verification, and Project Monitoring and Control. The Offeror shall describe how software reuse is incorporated throughout the software development life-cycle.

b. The Offeror shall provide a PIAP that describes action plans resulting from SCAMPI appraisal results and any other Organizational or Program appraisals. The Offeror shall include the action plans in the IMP, IMS, and SOW. The Offeror shall describe any PIAP risks and mitigation plans for completing these action plans.

5.2.2.6 Software Risk (MC1, MC8, MC16)

a. The Offeror shall provide an assessment of its top ten software risks to OCX Blocks 1.0 and 2.0. The Offeror shall include risks in areas such as requirements definition, software reuse, software development and test environments, schedule adherence, integration, testing, transition to operations, and transition to maintenance with supporting rationale, including primary mitigation plans that support execution of each risk "burn down".

b. The Offeror shall provide a risk mitigation and "burn down" plan that is reflected in the IMP and IMS. The Offeror shall provide an analysis of prime, subcontractor, IDT, and Government responsibilities required effort to mitigate each risk.

c. The Offeror shall indicate the metrics to be collected and used to track progress towards burning down each risk.

5.2.2.7 Net-Centricity (MC2, MC3)

The Offeror shall describe its processes, architecture strategy, and technical design solutions that it will employ to:

a. Conform to the DoD Net-Centric data strategy, as defined by DoDD 8320.02, Data Sharing in a Net-Centric Department of Defense, dated 23 April 2007, and its planned use of DoD enterprise metadata for semantic interoperability.

b. Separate application functionality from infrastructure in compliance with the net-centric scalability and extensibility requirements of SS-CS-800.

c. Prepare for the OCX Net-Ready KPP certification processes and criteria for infrastructure development, in accordance with the Interoperability and Supportability Assessor's Checklist, with rationale, in the Bidder's Library, and support future compliance with the OCX Net-Centricity requirements in Effectivity 30 with rationale for any compliance areas that cannot be met.

5.2.3 Subfactor 3: Systems Engineering, Integration, and Test

5.2.3.1 Systems Engineering Approach (MC8, MC17)

The Offeror shall describe how its approach for conducting systems engineering is consistent with the GPS Enterprise TEMP, and is in compliance with the GPSW SEP and SMC-S-001.

5.2.3.2 Integrated Logistics Support (MC1, MC9)

a. The Offeror shall describe its approach for conducting the supportability analyses required to satisfy OCX RMA requirements.

b. The Offeror shall describe its approach for assisting the Government and collaborating with OCX stakeholders in the development of a PBL sustainment strategy. The Offeror shall identify its OCX sustainment cost drivers and its process to address these cost drivers to continuously reduce life-cycle costs. The Offeror shall also describe how its approach adheres to the development system assurance processes (e.g., according to the standards in the SDP) and provides technical advisors to support transition and sustainment of the OCX system during Interim Contractor Support of each OCX Block.

c. The Offeror shall propose a Public Private Partnership strategy with organic candidate depots.

d. The Offeror shall propose an approach to transitioning all logistics elements within the OCX system from development to sustainment for Blocks 1.0 and 2.0 consistent with Section F and the Offeror's proposed IMS. The Offeror shall also discuss the extent to which the data rights it proposes in Attachment 8 of Volume VI meet the Government's minimum needs described in this RFP during such transitions from development to sustainment.

e. The Offeror shall describe its approach to support Level I and II Software Maintenance within a sustainment environment. Clearly describe the differences between Level I and Level II Software Maintenance. Include in the discussion how the approaches adhere to the same system assurance processes as in development (e.g., according to the standards of the SDP), and maintain a high state of OCX operational readiness. Provide a work plan for Level I and Level II Software Maintenance that assumes the Government exercises all the hours in H032 for year 1 and the contractor performs the work described in SOW paragraphs identified in the descriptive data for CLINs 2501 and 2601. Include (1) a description of the work to be performed, (2) maintenance crew size, (3) number of shifts and shift duration, (4) crew skill level, (5) estimated material usage, (6) sparing process, (7) concept of support to all OCX sites, and (8) types of expected travel and material.

f. The Offeror shall describe its approach to support Level I and II Hardware Maintenance within a sustainment environment as directed by the Government. Clearly describe the differences between Level I and Level II Hardware Maintenance. Include in the discussion how the approaches adhere to the same system assurance processes as in development (e.g., according to the standards of the SDP), and maintain a high state of OCX operational readiness. Provide a work plan for Level I and Level II Hardware Maintenance that assumes the Government exercises all the hours in H033 for year 1 and the contractor performs the work described in SOW paragraphs identified in the descriptive data for CLINs 2701 and 2801. Include (1) a description of the work to be performed, (2) maintenance crew size, (3) number of shifts and shift duration, (4) crew skill level, (5) estimated material usage, (6) sparing process, (7) concept of support to all OCX sites, and (8) types of expected travel and material.

g. The Offeror shall describe its approach to providing technical order support and maintenance.

h. The Offeror shall describe its approach to providing Interim Contractor Support. Provide a work plan that assumes the Government exercises all the hours in H030 for CLIN 2000 and the contractor performs the work described in SOW paragraphs identified in the descriptive data for CLIN 2000. Include (1) a description of the work to be performed, (2) maintenance crew size, (3) number of shifts and shift duration, (4) crew skill level, (5) estimated material usage, (6) sparing process, (7) concept of support to all OCX sites, and (8) types of expected travel and material.

5.2.3.3 Transition to Operations (MC1, MC18)

a. The Offeror shall describe in detail its proposed Control Segment transition plan for transitioning current operations to OCX Block 1.0 and from OCX Block 1.0 to OCX Block 2.0 to achieve RTO as defined in the SOW for each transition event, including, but not limited to, (1) processes (e.g., action item identification and resolution, test and transition schedule, problem report identification and resolution, working groups and integrated product teams), (2) transition of facilities, (3) equipment, (4) remote sites, (5) security, (6) information assurance, (7) communications, (8) CRYPTO, (9) resource planning/scheduling, (10) training systems, (11) data rights (as proposed in Volume VI, Attachment 8), (12) simulation certification, (13) technical order validation/verification, (14) operations and maintenance suitability, (15) operations and maintenance readiness (e.g., maintenance training, spares), (16) transition tools, (17) strategies, and (18) contingencies. The Offeror's plan shall be consistent with its proposed IMS, IMP, and SOW.

5.2.5 Attachment MC2 to Volume II: Software Development Plan and Associated Processes

a. Section 1: The Offeror shall provide an integrated SDP containing the information required by Volume VI, Exhibit A, CDRL A022. The appendices referenced in SDP Section 4.2.2, Standards for Software Products, shall not be delivered as part of the proposal.

b. Section 2: The Offeror shall provide its proposed OCX software engineering processes, including procedures, and work instructions that will be implemented by the prime and flowed-down to the subcontractor or IDT throughout the program's lifecycle for the following CMMI® Process Areas: Requirements Management, Verification, and Project Monitoring and Control.

5.2.6 Attachment MC3 to Volume II: Software Architecture Description

The Offeror shall describe its proposed software architecture that contains all information required by Volume VI, Exhibit A CDRL A055. All software applications listed in Volume VI, Attachment 8, Table 2, of the Offeror's proposal shall be described in this Attachment. The Offeror shall provide UML in HTML.

5.2.7 Attachment MC4 to Volume II: SS-CS-800

a. The Offeror may propose changes to the mapping of requirements to Effectivities 10-15, however the Offeror may not propose changes to any requirement in the SS-CS-800, including classified Appendix IC. The Offeror may also propose administrative changes, such as typographical and format errors, incorrect references or citations, etc. Under such circumstances, the Offeror shall provide the SS-CS-800 in MS Word, with changes from the Government-provided SS-CS-800 specification and classified appendices highlighted by using change bars or Track Changes in a manner that makes it clear what changes have been incorporated. The classified appendices shall be provided under separate cover.

b. The Offeror shall not propose changes to SS-CS-800 that also require corresponding changes to SS-SYS-800 and SS-SS-800.

c. Any changes to the Government's SS-CS-800 specification proposed by the Offeror shall be consistent with the format and instructions provided in MIL-STD-961E.

5.2.8 Attachment MC5 to Volume II: Analyses of Offeror Changes to Compliance Documents

a. Section 1: The Offeror shall provide sufficient rationale for any proposed changes to SS-CS-800 in MC4, other than typographical errors.

b. Section 2: The Offeror shall propose changes to Volume VI, Exhibit A, CDRL, to correct Government errors or omissions in that document, such as frequency of submission. The Offeror shall provide analysis and rationale for any such changes in this section. The Offeror shall provide Exhibit A as a part of the Volume VI submission. The Offeror shall use MS Word with changes from the Government-provided Exhibit A, highlighted by using change bars or Track Changes in a manner that makes it clear what changes have been incorporated.

c. Section 3: The Offeror shall propose changes to Volume VI, Attachment 1, GSOW that correct omissions, errors, provide lower level detail, or exceed GSOW requirements. The Offeror will propose SOW language for paragraph 3.18.3 Development Labs, consistent with its approach. The proposed approach must be reflected in the SOW. The Offeror shall not propose to reduce requirements stated in the GSOW. The Offeror shall (1) provide sufficient analysis or other supporting rationale for any proposed changes to the GSOW, (2) describe the benefit the Government will receive from such a proposed change, and (3) describe the technical, cost, and schedule risk associated with implementing that proposed change in this section. The Offeror shall provide the SOW as a part of the Volume VI submission. The Offeror shall use MS Word with changes from the GSOW highlighted by utilizing change bars or Track Changes in a manner that makes it clear what changes have been incorporated.

d. Section 4: The Offeror shall propose changes to Volume VI, Attachment 2, Compliance and Reference Documents List and Tailoring, to correct what it perceives to be clerical errors or omissions. Provide analyses and rationale for any changes proposed in this section. The Offeror shall provide the revised Attachment 2 as a part of the Volume VI submission. The Offeror shall use MS Word with changes highlighted by utilizing change bars or Track Changes in a manner that makes it clear what changes have been incorporated.

e. Section 5: The Offeror shall provide its analysis and rationale for any changes it proposes to the Government's WBS and include these changes in its Volume VI, Attachment 3: CWBS. Use MS Word with changes highlighted by utilizing change bars or Track Changes in a manner that makes it clear what changes have been incorporated.

f. Section 6: The Government expects the Offeror to fully comply with the license requirements for commercial software in paragraph i . of Volume VI, Attachment 8: Rights in Data (Including Technical Data, Computer Software, and Computer Software Documentation). Attachment 8 includes an order of precedence clause placing the burden of compliance with those requirements on the OCX prime contractor. In those cases where an Offeror is unable to negotiate fully compliant commercial licenses, the Offeror shall provide its analysis of the difference (i.e., gaps) between the Government's requirements and the rights offered. The Offeror shall analyze the risks associated with the gap, describe its risk mitigation approach, and ensure consistency with the corresponding discussion of the proposed costs included in Volume VIII, Cost/Price, Section L-8.4.6.d.(16). In accordance with DFARS 227.7202-1(a), the Government is not required to acquire licenses to commercial computer software (or related documentation) where such licenses are inconsistent with Federal procurement law. Certain provisions in the Order of Precedence clause contained in Attachment 8.i., specifically subsections (1), (4), (5), (6), (7), (10), (15), and (16), summarize Federal procurement law. The Government cannot accept any offer that proposes to modify those subsections in a manner that is inconsistent with Federal procurement law.

5.2.9 Attachment MC6 to Volume II: Resumes of Key Personnel

The Offeror shall provide resumes of program personnel in key positions identified in H009. The Offeror's format is acceptable. The Offeror shall relate the key person's experience, security clearance, and education to the position requirements. The Offeror shall include references to the CWBS element(s) for which each person will be responsible.

8.0 Volume V - Cost/Price

8.1 General Instructions

a. The Offeror shall submit a complete and fully supported, high-confidence cost proposal based on the application of reasonable estimating techniques, input parameters, and a rigorous statistical analysis of the potential variability of all the pricing and estimating input parameters. Compliance with these instructions is mandatory and its failure to comply may result in rejection of the Offeror's proposal. As used in this section, the WBS is the Government-provided Work Breakdown Structure in the RFP, and the CWBS is the Offeror's proposed Work Breakdown Structure. At contract award, the title of the CWBS will be changed to "WBS".

b. The Offeror shall propose 10 man years per year for GPS Inter-segment Overarching Systems Engineering, Integration, and Test/Program Management (SOW paragraphs 4.1- 4.4). The Offeror shall spread the hours across CLINs 0100 and 0200 in a manner consistent with its proposed approach to Blocks 1.0 and 2.0.

8.1.1 Cost or Pricing Information Requirements

In accordance with FAR 15.403-1(b) and 15.403-3(a), information other than cost or pricing data will be required to support price reasonableness or cost realism. Information shall be provided in accordance with the formats specified herein. This information is not considered cost or pricing data and thus certification is not required. If after receipt of proposals the PCO determines that there is insufficient information available to determine price reasonableness or cost realism and none of the exceptions at FAR 15.403-1 apply, the Offeror shall be required to submit cost or pricing data.

8.1.2 Substantiation Requirements for Estimating Techniques and Methods

a. The Offeror may use any generally accepted estimating technique, including contemporary estimating methods (e.g., Cost-to-Cost and Cost-to-Non-Cost Estimating Relationships) to develop its estimates. If necessary, reasonable and supportable allocation techniques may be used to spread hours and cost to lower levels of the proposed CWBS.

b. Substantiation is required for all costs included in the cost volume. General statements such as "estimates were derived from engineering analysis or judgment" are unacceptable. Statements that simply describe a historical program and the associated labor hours and material costs do not substantiate a cost estimate. The relationship of that program to the proposed system shall be demonstrated and justified as outlined below. If a "new or improved" engineering or manufacturing process is the basis for projected cost savings over historical systems, the Offeror shall provide a description of the (1) improvements, the (2) relationship to the previous process, and a (3) manner in which these improvements will be achieved. Specific savings in work hours and material shall be documented and justified with regard to the content and practicality of these improvements.

8.4.6 Bases of Estimate

a. The Offeror shall provide BOEs to support both proposed prime and subcontractor effort. See also section 8.1.2 for substantiation requirements.

b. BOEs shall include rationale for the labor, hardware, material, and other direct costs for each CWBS item. Each BOE shall provide supporting details at the third level of the Government's WBS, (e.g., 1.6.1, Nav Mission Software); lower level detail may be included within the BOEs if necessary to justify the cost estimate. The pricing details shall support the information provided in Table 9, CWBS Summary Schedule. If the BOE covers multiple CWBS items, the Offeror shall describe the method used to allocate amounts across each CWBS item or CLIN.

c. Lower level BOE details shall include estimate bases for software required by each Software Item (SI) (e.g., new, reused, commercial item products planned, and commercial item integration effort expected), hardware, material, and equivalent level of detail in other areas for all Offeror-defined Blocks 1.0 and 2.0. For each Block, the lower level details shall directly reference the lowest level WBS elements. For software elements, these BOEs shall address each build, where possible. Cost models shall be provided to the lowest WBS level consistent with the detailed BOE content.

d. Offeror formats are acceptable provided the following items are included:

(1) Pricing Summary: The Offeror shall include a pricing summary that identifies all prime, subcontractors, and IDT labor and material costs (and any other costs) that total the estimated cost for each CWBS item in CWBS Summary Schedule, Table 9.

(2) Task Description: The Offeror shall include a summary of all tasks being performed under this CWBS item.

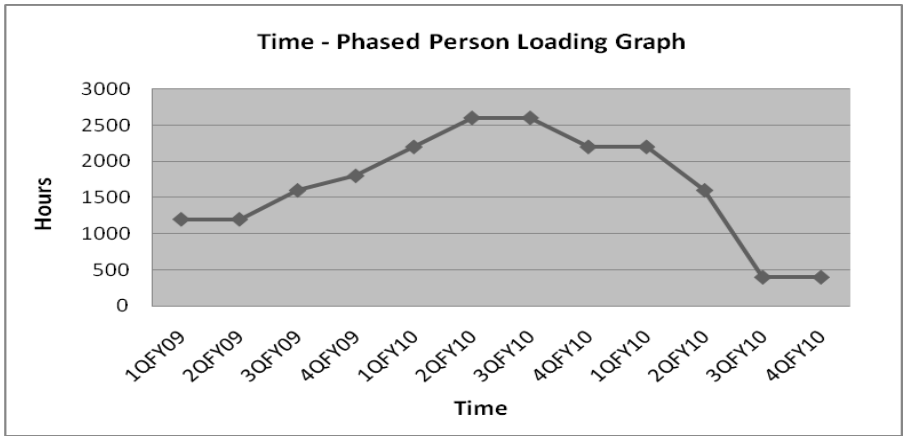
(3) Labor Hour Summary Estimating Rationale: The Offeror shall specify the hours for prime, subcontractor, and IDT labor, and describe the methodology used for estimating the number of labor hours for each OCX CWBS item. The Offeror shall include a discussion of the labor skill mix and time phasing of the effort over the period of performance.

(4) Historical Experience: The Offeror shall identify analogous programs, why programs are relevant and explain if factors were applied, the Offeror explain how they were derived, and how available cost data was adapted to current effort.

(5) Software Sizing: The Offeror shall provide estimates of the amount of software required by Software Item (SI) in Table 11, Software Sizing, below. Justify the estimates by providing rationale including, but not limited to, relevant data from similar efforts or existing products and include any effort required to integrate the existing product into the OCX architecture. Where relevant, the sizing estimate shall differentiate between newly developed, reused, selected commercial item, and expected commercial item integration sizing and detail the factors used to derive Equivalent Source Lines of Code (ESLOC) and labor effort from the software sizing for the various classes of software. As used in Table 10, Software Sizing, the term "Pre-Existing Reused Software" is defined as all existing software proposed to be reused in OCX. The term "SLOC Redelivered From

subcontractor(s) and interdivisional transfer(s) hours. All hours shown in Table 14, Time-Phased Person-Loading Graph, shall agree with those reflected in the Table 9, CWBS Summary Schedule. If the BOE is included in multiple CLINs, describe how the effort is allocated across the CLINs and show the results are consistent with Attachment MC1 to Volume II (IMS).

Table 14 - Time-Phased Person-Loading Graph



(12) Skill Mix Schedule: The Offeror shall also include for each CWBS element a skill mix identification and position description for the prime contractor, subcontractor, or IDT effort, using the format prescribed in Table 15, Labor Hour Summary. All hours shown in this attachment shall agree with those reflected in the CWBS Summary Schedule, Table 9. If the BOE is included in multiple CLINs, the Offeror shall describe how the effort is allocated across the CLINs and show the results in an extended version of the schedule.

Table 15 - Labor Hour Summary

Skill Mix	Gov't FY09	Gov't FY10	Gov't FY11	Etc.	Total
Senior Engineer					
Lead Engineer					
Technician					
Etc.					
Total Hours					

(13) Material Estimating: The Offeror shall include a rationale for all material priced in the OCX CWBS item and describe the method of quoting that material. A complete BOM shall accompany any hardware and commercial item software inputs in accordance with Table 17, Schedule of Major Material Items. This BOM must be organized by CLIN. The Offeror shall include costs for rights in data identified in Volume VI, Attachment 8 in the BOM response.

(14) Commercial/Government Furnished Item Software: The Offeror shall outline the methodology used to estimate the cost of each commercial item SW product and the cost associated with the process for identifying, selecting, implementing, configuring, licensing, testing, training, maintaining (including responding to vendor upgrades and regression testing), and integrating each commercial item SW product into Block 1.0, Block 2.0, or Blocks 1.0 and 2.0. Identify all assumptions associated with the inclusion of each commercial item SW product into a software system and provide the cost drivers and CERs for those systems. If the Offeror plans on modifying the source code of any COTS/GOTS package, the Offeror shall provide the details of this effort as reused code in the relevant sections above, including Section 8.4.6.d(5). The Offeror shall clearly identify how the costs associated with each instance of "glue code" or "wrappers" are determined in the Offeror's cost estimating procedure.

(15) Funded Schedule Margin: The Offeror shall include and clearly identify the funded schedule margin distributed along the critical and near critical path in each applicable BOE. The Offeror shall provide its rationale for the duration and composition of the elements of the cost for this margin.

(16) Cost of Gaps Between Attachment 8 Requirements and Proposed Commercial Licenses: For each gap between each specific Attachment 8 license requirement and the corresponding requirement negotiated with commercial software providers, the Offeror shall provide a cross reference matrix that summarizes the proposed costs to mitigate gaps between Attachment 8 requirements and the negotiated licenses. The matrix shall be presented by WBS spread by Government Fiscal Year and segregated by appropriation. Specific BOEs for each affected WBS where the mitigation approach is to occur shall contain the required detail for proposed costs and shall be consistent with the analysis required in Attachment MC5 paragraph f.

Table 16 – Summary of Cost of Attachment 8 Gap Risk

WBS (3600)	**Atch 8 subpara.**	**Proposal Pg. Ref.**	**Gov't FY09$**	**Gov't FY10$**	**Gov't FY11$**	**Etc.**	**Total**
WBS x.y.z.1.2							
Etc							
Total (3600)							
WBS (3400)							
WBS x.y.z.1.2							
Etc							
Total (3400)							
WBS (3080)							
WBS x.y.z.1.2							
Etc							
Total (3080)							

9.0 Volume VI - Contract Documentation

9.1 Model Contract/Representations and Certifications

The purpose of this volume is to provide information to the Government for preparing the contract document and supporting file. The Offeror's proposal shall include a signed copy of the Model Contract (SF Form 33). The Offeror shall complete Blocks 12 to 16 and sign and date Blocks 17 and 18. Signature by the Offeror on the SF33 constitutes an offer, which the Government may accept. The "original" copy shall be clearly marked and provided under a separate cover. The Offeror shall complete the asterisks throughout Sections A-K. All certifications and representations required by Section K of the solicitation must be completed as of the date of contract award. Offerors shall assume a contract award date of 15 January 2010 for purposes of pricing, inserting required dates, and understanding required delivery schedules and incentive provisions. If the actual award date slips, the Government will amend the RFP to adjust these dates to reflect a later contract award date.

9.2 Section B, Supplies or Services and Costs/Prices

a. The Offeror shall complete pricing information for CLINs 0100, 0200, 0300, 0350, 0600 and 0710 as part of the basic contract by inserting the proposed cost and fee amounts requested in the "Descriptive Data" and the Unit Price and Total Item Amount in the blanks provided for each CLIN.

b. CLIN 0700 is Not Separately Priced (NSP).

c. The Offeror shall not complete pricing information in Section B for Option CLINs 0400, 1000, 2000, 2100, 2200, 2300, 2400, 2501-2505, 2601-2605, 2701-2705, 2801-2805, 2901-2905, and 3000. Pricing for these CLINs will be inserted in the definitive contract after the Government obligates funding against these CLINs.

d. The Offeror shall propose fee as follows:

(1) For CPIF/AF CLINs 0100, 0200, 0300, 0350, 0600, and 0710, the Offeror shall propose a 5% target fee, a 7% maximum fee, a minimum fee of 0%, and a share ratio of 70/30 for overruns and underruns.

(2) For CPIF/AF CLINs 0100, 0200, 0300, 0350, 0600, and 0710, the Offeror shall propose a 5% performance incentive fee pool. This amount shall not be included in the unit price or total item amount proposed in Section B. See the Performance Incentive Plan at Attachment 15 for additional details.

(3) For CPIF/AF CLINs 0100, 0200, 0300, 0350, 0600, and 0710, the Offeror shall propose a 5% award fee pool and a 2% base fee. The 5% award fee amount shall not be included in the unit price and total item amount proposed in Section B. The 2% base fee shall be included in the unit price and total item amount proposed in Section B. See the Award Fee Plan at Attachment 5 for additional details.

(4) For CPAF Option CLINs 0400 (series), 1000 (series), 2000, 2100, 2200, 2300, 2400, 2501-2505, 2601-2605, 2701-2705, 2801-2805, 2901-2905, and 3000, the Offeror shall

The Offeror shall provide proposed tailoring to this draft OCI clause depending on the unique circumstances of the Offeror. The Offeror shall justify any proposed tailoring in Section 1 of Appendix B to Volume VI. The final version of this clause must be agreed to prior to contract award.

9.5.6 H020, Alternate Dispute Resolution

The Offeror shall insert its name in paragraph (a) where indicated by the asterisk (*).

9.5.7 H028, Option to Acquire Capability Insertion Program Tasks;
H029, Option to Acquire Special Studies
H030, Options to Acquire Interim Contractor Support (ICS) for Block 1.0
H031, Options to Acquire Transition Support
H032, Options to Acquire Software Maintenance
H033, Options to Acquire Hardware Maintenance
H034, Options to Acquire Technical Order Support
H035, Options to Acquire System Modifications

The Offeror shall fill in the tables in H028, H029, H030, H031, H032, H033, H034, and H035, where indicated by the asterisks (*), with the estimated cost per hour and potential award fee pool per hour for each CLIN or CY identified. The Offeror shall propose a potential award fee pool of 10% of the estimated cost per hour.

9.6 Section I, Contract Clauses

a. The Offeror shall complete fill-ins for incorporated by reference clauses FAR 52.244-02, and DFARS 252.251-7000, where indicated by the asterisks (*).

b. The Offeror shall complete the certification in full text clause DFARS 252.225-7014(c)(2).

9.7 Section J, List of Documents, Exhibits & Attachments

The Offeror shall update the number of pages and date of each attachment to be consistent with its proposal.

9.8 Section K, Representations, Certifications and Other Statements of Offerors

The Offeror shall provide all of the representations, certifications, and statements required by Section K. If the Offeror's information for any provision is included in ORCA, the Offeror shall state "In ORCA" for that provision and shall not complete the information in Section K. In order avoid inconsistency with the Offeror's proposed Attachment 8 of Volume VI, the Government strongly encourages the Offeror to complete DFARS 252.227-7017(d) with the phrase "See Attachment 8" and sign the certification.

9.9 Attachments to the Model Contract

The Offeror shall provide the attachments to the Model Contract as set forth below. The header or footer of each page of each attachment, excluding the cover page, shall include the attachment number, title, contract number, and page number (i.e., "X of Y").

event. Some BSL are a one-time issue. Not everything should or will need to go to the End Of Contract (EOC).

(5) RENTAL/LEASE - The cost of the item(s) if it/they were rented for the "Dates Required" or independent development costs associated with items not available for rental. Cost of the Item if lost or replaced.

(6) SOW/CWBS REFERENCES - Provide the cross references to the appropriate SOW and CWBS items.

(7) REASON FOR NEED - Justification or rationale of why this item(s) is/are required.

(8) REMARKS - Provide any additional comments.

9.9.9 Attachment 8 to Volume VI: Rights in Data (Including Technical Data, Computer Software, & Computer Software Documentation)

The Offeror shall complete Attachment 8 in accordance with the following instructions.

a. The Government has determined its minimum needs for this acquisition include:

(1) Unlimited Rights to all noncommercial technical data listed in Table 1 of Attachment 8 where the phrase "Unlimited" is stated in column 3 of the row associated with that item of technical data;

(2) Government Purpose Rights to all remaining noncommercial technical data and computer software listed in Table 1 of Attachment 8 where the phrase "Offeror to Complete" is stated in column 3 of the row associated with that item of technical data or computer software;

(3) With respect to all commercial item technical data and computer software licenses listed in Table 2 of Attachment 8, licenses that comply with Attachment 8.c.(2) and d. – i. of the RFP;

(4) Special License Rights to data other than technical data (e.g., schedule/milestone data, financial data) delivered to the Government described in Attachment 8.c.(3); and

(5) Special License Rights to review all data used by the Contractor to create any CDRL or CLIN delivered under this contract to verify the currency, accuracy and completeness of the data contained in those CDRLs/CLINs described in Attachment 8.c.(4).

With respect to paragraph a.(1), the Government made the determination that various CDRLs listed in Attachment 8 must be delivered with Unlimited Rights after reviewing the tailored Data Item Descriptions referenced in those CDRLs consistent with the statutorily-defined categories in 10 U.S.C. 2320(a)(2)(F)(i)(I). With respect to paragraph a.(2), the Government made the determination that various CDRLs listed in Attachment 8 must be delivered with Government Purpose Rights to meet the GPS Wing's minimum needs consistent with Federal law and the GPS III Increment A CDD.

b. All CLINs are cost-reimbursable CLINs. As such, the Government will be reimbursing the Contractor its allocable, allowable, and reasonable costs of performing the work to satisfy the requirements of this RFP. Where there are valid reasons why an Offeror must develop entirely at

private expense or provide previously developed technical data or computer software under this contract the Offeror may not be required, either as a condition of being responsive to this RFP or as a condition for award, to sell or otherwise relinquish to the Government any proprietary right in technical data or computer software developed at private expense, except for the items identified at DFARS 227.7103-5(a)(2) and (a)(4) through (a)(9), DFARS 227.7203-5(a)(3) through (6) and DFARS 227.7102-1.

c. The Offeror shall:

(1) Complete the Section K provision entitled "Identification and Assertion of Use, Release, or Disclosure Restrictions" (DFARS 252.227-7017) and Column 3 of Table 1 in Attachment 8 by identifying the specific type of data rights the Offeror asserts it will retain and ensure that the statements in both the Section K provision and Attachment 8 are consistent with each other in all respects,

(2) Complete Table 1 in Attachment 8 in the following manner:

(i) With regard to items of technical data associated with cells in Column 3 of that table labeled as "Unlimited", leave those cells as-is. If, however, the Offeror is not willing to sell Unlimited Rights to an item labeled as such in Column 3, place the following character ("--") in the corresponding cell in Column 3 of the table in Attachment 8 associated with that item.

(ii) With regard to items of technical data or computer software associated with cells in Column 3 of that table labeled as "Offeror to Complete," insert either "Government Purpose" or "Unlimited" into each such cell. If, however, the Offeror is not willing to sell Government Purpose Rights to an item that contains the phrase "Offeror to Complete" in Column 3 for that item, place the following character ("--") in the corresponding cell in Column 3 of the table in Attachment 8 associated with that item.

(iii) Insert a proposed estimated cost into each cell in Column 4 of that table for those items of data or computer software associated with that item's corresponding cell in Columns 1-2. Because CDRLs A033 and A063 contain technical data, computer software and computer software documentation, the Offeror shall propose **one** estimated cost for the rights in noncommercial technical data, computer software and computer software documentation to be delivered for **each** of those CDRLs. If the Offeror is not willing to sell Unlimited Rights to an item labeled as such in Column 3 or Government Purpose Rights at minimum to an item labeled as "Offeror to Complete" in that column, the Offeror shall place the following character ("--") in the corresponding cell in Column 4 of the table in Attachment 8 associated with that item to signify that the Offeror is not willing to sell such rights to that item. The Government notes that it is entitled to Unlimited Rights in technical data and computer software associated with certain items delivered under this contract in certain situations, even where those items were not developed exclusively with Government funding (see DFARS 252.227-7013(b)(1)(ii, iv-ix) and DFARS 252.227-7014(b)(1)(ii-vi).

(3) In Note 1, replace the asterisk (*) with the same phrase the Offeror filled-in with respect to the cell in Column 3 of the row associated with CDRL A037 ("Data Accession List")(i.e., either "Unlimited" or "Government Purpose"),

(4) Complete Table 2 in Attachment 8 in the following manner:

(i) In Column 1 of that table, identify the CDRL number or CLIN which will contain that commercial technical data or computer software.

(ii) In Column 2 of that table, identify the Data Item Title (Subtitle) of that CDRL or CLIN.

(iii) In Column 3 of that table, identify the name(s) of all vendor(s) that will be supplying commercial item technical data or computer software in alphabetical order, the trade name(s) of the technical data or computer software application(s) and the version number or issue date of that technical data or computer software (e.g., "Adobe Acrobat 9"), and the license number(s) of that commercial item technical data or computer software to be provided as part of that CDRL or CLIN. (**Note**: If the Offeror proposes to deliver any Public Domain/Open Source Software (PD/OSS), the Offeror shall only identify the base product in Column 3 – not the dependencies (e.g., PD/OSS licenses referenced in the proposed PD/OSS license)). As the Offeror is aware, the purpose of OCX is to implement an incremental development and acquisition approach based on an architectural foundation that allows the system to responsively and gracefully evolve to meet growing GPS mission requirements (otherwise known as block development). As a result, the Government anticipates the Offeror may propose to reuse previously delivered technical data and computer software in subsequent CDRL and CLIN deliveries. If the Offeror proposes to do so, all licenses associated with delivery of technical data or computer software in previous CDRL and CLIN deliveries shall be listed in that column underneath that subsequent CDRL or CLIN associated with those subsequent deliveries in addition to all licenses associated with delivery of technical data or computer software that were not the subject of previous CDRL or CLIN deliveries.

(iv) In Column 4 of that table, insert the quantity of seats associated with the licenses relating to the delivery of commercial item technical data, commercial item software, or commercial item software documentation the Offeror proposes to deliver to the Government in that CDRL or CLIN.

(v) In Column 5 of that table, insert a proposed estimated cost into each cell associated with that item's corresponding cell in Columns 1-2 including only direct costs. (As used in this subsection and subsection 9.9.9.c. (5,6), the term "direct costs" is defined as the cost/price proposed to be charged the Offeror by a prospective subcontractor excluding any overhead or G&A the Offeror anticipates expending to acquire that commercial item technical data, computer software or computer software documentation from that prospective subcontractor.) Because CDRLs A033 and A063 contain technical data, computer software and computer software documentation, the Offeror shall propose **one** estimated cost for the

rights in commercial technical data, computer software and computer software documentation to be delivered for **each** of those CDRLs.

(5) Complete Table 3 in Attachment 8 by inserting a proposed estimated cost into each cell associated with that item's corresponding cell in Columns 1-2 including only direct costs. If the Offeror is not willing to sell the rights described in Attachment 8.(c).(3) to an item listed in that table, the Offeror shall place the following character ("--") in the corresponding cells in Column 3 of that table associated with that item to signify that the Offeror is not willing to sell such rights to that item.

(6) In subsection c.(4), replace the asterisk (**) with the estimated direct cost for Special License Right Category B. If the Offeror is not willing to sell the rights described in Attachment 8.(c).(4) for the rights described in that subsection, the Offeror shall place the following character ("--") in the corresponding cells in Column 3 of that table associated with that item to signify that the Offeror is not willing to sell such rights to the Government.

(7) To ensure that the parties will maintain proper configuration control of all licenses throughout the performance of the resulting contract, create an "Appendix A" to Attachment 8 with a separate tab for each vendor listed in Table 2 (e.g., "Appendix A-1: Adobe"). Insert into that separate tab one copy of every license listed in column 3 of Table 2 associated with any technical data or computer software the Offeror will purchase from that vendor and subsequently deliver to the Government, including, but not limited to all licenses associated with any Public Domain/Open Source Software (PD/OSS)(including licenses to the base software application and all dependencies) proposed to be delivered to the Government under any CDRL or CLIN listed in the order in which that license appears in that table. If an Offeror proposes to deliver such software to the Government, the base license(s) associated with that PD/OSS may incorporate by reference licenses from dependent PD/OSS. Under such circumstances, to minimize duplication of such dependent licenses in Appendix A the Offeror shall (1) list those dependent licenses on a separate sheet of paper immediately following a copy of the base license and indicate in which tab of Appendix A that/those dependent license(s) may be found, and (2) include only one copy of that/those dependent license(s) in a separate tab for that vendor. Each non-PD/OSS license contained in that appendix shall expressly refer to the identical vendor, trade name, version number and issue date of that technical data or computer software listed in Table 2. The Government expects that prior to inserting any proposed license into Appendix A, the Offeror will have carefully read the license to ensure that its terms and conditions are consistent with all requirements of this RFP.

9.9.10 Attachment 9 to Volume VI: Small Business Subcontracting Plan

a. The Offeror shall submit a Small Business Subcontracting Plan as Volume VI, Attachment 9 that meets the minimum content requirements addressed in FAR 19.704 and 52.219-9, as supplemented. If the Offeror has an approved master subcontracting plan (see FAR 19.704(b) and 52.219-9(f)) or an approved comprehensive subcontracting plan (see DFARS 219.702), the Offeror shall submit a program specific addendum at Attachment 9 covering any additional information required by this solicitation. The addendum shall incorporate the master or

GPS Advanced Control Segment (OCX)

Evaluation Factors for Award

SECTION M

for

FA8807-09-R-0003

29 April 2009

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1.0 Program Overview

The Government has a need for a GPS Advanced Control Segment (OCX) with a flexible architecture that can rapidly adapt to the changing needs of today's warfighter. Given the current dynamic military operational environment, our warfighters need more capability than today's GPS Ground Segment can provide.

In particular, OCX must meet today's information assurance requirements to ensure protection of GPS data critical to determining warfighter position, velocity, and time; monitor and control new M-code encrypted GPS signal to ensure the battlefield advantage of American warfighters and civil signals (L1C, L2C, and L5); and connect GPS data to the Global Information Grid so that warfighters around the globe have immediate access to GPS data and constellation status.

OCX is urgently needed not only to enable new warfighter capabilities but to provide command and control of the GPS IIIA SV scheduled to launch in May 2014. As a result, the Government seeks an offering that has high confidence in meeting the schedule identified in Section F of this RFP, and delivers capability on time for launch of the first GPS IIIA SV.

OCX also supports civil users who are employing GPS in innovative ways for transportation, surveying, financial transactions, and many other activities. As a result, the Government also seeks an offering that meets PSICA requirements in Blocks 1.0 and 2.0; will be able to meet Effectivity 40 requirements in the SS-CS-800 if required to do so, and provides a cost-effective sustainment approach including effective trainers and simulators.

Finally, the Government seeks a Program Management; Software and Architecture; and System Engineering, Integration and Test approach that provides a flexible architecture for adding new capabilities, solid requirements management process to address new requirements without impacting delivery schedules, and confidence to operators and maintainers that the proposed approach will not adversely impact the system before, during, and after Transition to Operations.

4.0 Source Selection Matrix:

The matrix shown in Table 1 below summarizes the types of evaluation factors and subfactors, and the approach that will be used to obtain an integrated evaluation; i.e., determine best value.

Table 1 - Evaluation Matrix

Evaluation Factors (Descending order of importance)			MC Subfactors					
			Program Management		Software & Architecture		System Engineering, Integration & Test	
		Mission Capability	MC Technical Rating	MC Risk Rating	MC Technical Rating	MC Risk Rating	MC Technical Rating	MC Risk Rating
	Most important		Exceptional Acceptable Marginal Unacceptable	L, M, H, or U	Exceptional Acceptable Marginal Unacceptable	L, M, H, or U	Exceptional Acceptable Marginal Unacceptable	L, M, H, or U
	Next most important	Cost/Price Risk	Low					
			Moderate					
			High					
	Least important (Of = importance to each other)	Past Performance	Substantial Confidence					
			Satisfactory Confidence					
			Limited Confidence					
			No Confidence					
			Unknown Confidence					
		Cost/Price	Proposed Cost:		$			
			Most Probable Cost:		$			
			Realistic:		Y/N			
			Reasonable:		Y/N			

5.0 Factor 1 - Mission Capability

5.1 General

Each Mission Capability subfactor shall receive two separate and distinct ratings: a technical rating and a risk rating. These two ratings are presented together. Subfactor ratings shall not be rolled up into an overall color rating for the Mission Capability factor. Where the Offeror cites Phase A contract efforts, such as MCEM and SDR, in support of its proposal, the Government will assess how these efforts satisfy the requirements of, and reduce risk to, the Phase B program.

5.1.1 Mission Capability Technical Rating

a. The Mission Capability Technical Rating reflects the extent to which the Offeror's proposed approach, meets or does not meet the minimum performance or capability requirements in accordance with the stated evaluation criteria and solicitation requirements. The Government will assign a rating based upon the strengths, uncertainties, and deficiencies contained in the Offeror's proposal.

(1) A "strength" is a significant aspect of an Offeror's proposal that has merit and exceeds specified performance or capability requirements in a way that is advantageous to the government, and either will be included in the contract or is inherent in the Offeror's process.

(2) An "uncertainty" is a doubt regarding whether an aspect of the proposal meets a material performance or capability requirement. It requires additional information from the Offeror to further explain the proposal before the evaluator can complete his/her review and analysis and should generate the issuance of an EN.

(3) A "deficiency" is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increase the risk of unsuccessful contract performance to an unacceptable level.

b. The Government will apply one of the following color ratings listed in Table 2 below for each Mission Capability subfactor.

Table 2 - Mission Capability Technical Ratings

Color	Rating	Description
Blue	Exceptional	Exceeds specified minimum performance or capability requirements in a way beneficial to the Government. A proposal must have one or more strengths and no deficiencies to receive a blue.
Green	Acceptable	Meets specified minimum performance or capability requirements. A proposal must have no deficiencies to receive a green but may have one or more strengths.
Yellow	Marginal	There is doubt regarding whether an aspect of the proposal meets a specified minimum performance or capability requirement, but any such uncertainty is correctable.
Red	Unacceptable	Fails to meet specified minimum performance or capability requirements. The proposal has one or more deficiencies and is not awardable.

5.1.2 Mission Capability Risk Rating

a. The Mission Capability Risk Rating focuses on the weaknesses associated with the Offeror's proposed approach. The Government's assessment of Mission Capability Risk considers potential for disruption of schedule, increased cost, or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.

(1) A "weakness" is a flaw in the Offeror's proposal that increases the risk of unsuccessful contract performance.

(2) A "significant weakness" is a flaw in the Offeror's proposal that appreciably increases the risk of unsuccessful contract performance.

b. Whenever the Government adjusts a proposed element of cost upward, the Government may also assign a Weakness or Significant Weakness to the appropriate subfactor relative to its Mission Capability Risk rating.

c. The Government will apply one of the following risk ratings listed in Table 3 below for each Mission Capability subfactor.

Table 3 - Mission Capability Risk Ratings

Ratings	Description
Low (L)	Has little potential to cause disruption of schedule, increased cost, or degradation of performance. Normal contractor effort and normal Government monitoring will likely be able to overcome any difficulties.
Moderate (M)	Can potentially cause disruption of schedule, increased cost, or degradation of performance. Special contractor emphasis and close Government monitoring will likely be able to overcome difficulties.
High (H)	Likely to cause significant disruption of schedule, increased cost, or degradation of performance. Extraordinary contractor emphasis and rigorous Government monitoring may be able to overcome difficulties.
Unacceptable (U)	The existence of a significant weakness (or combination of weaknesses) that is very likely to cause unmitigated disruption of schedule, drastically increased cost, or severely degraded performance. Proposals with an unacceptable rating are not awardable.

5.2 Mission Capability Subfactors

5.2.1 Subfactor 1: Program Management

5.2.1.1 Organization and Staffing

The Government will evaluate the extent to which:

a. The Offeror proposes a team with appropriate relationships, roles, and responsibilities based on expertise, resources, breadth of experience, and domain knowledge required to execute the program.

b. The Offeror's proposed IPT structure identifies and defines roles, relationships, interdependencies, and communication channels among its team members, associate contractors, and the Government to create an integrated team, support decision-making processes and ensure unencumbered exchange of information. The program's placement within the corporate structure ensures visibility to corporate leadership with short lines of authority. The Offeror's Program Manager has authority, accountability and responsibility to execute a nationally important program of the size and complexity of OCX. The Government's role in the Offeror's IPT structure allows insight into prime and subcontractor taskings, issues, schedules, risks, problems and progress and supports the Government's ability to exercise its program oversight responsibilities.

c. The Offeror designated key personnel on the OCX program at the prime and subcontractor levels for critical technical and management positions. Key personnel proposed in H009 possess experience consistent with the responsibility, accountability, and authority of the positions

proposed. The Offeror's proposed staffing plan includes the levels of technical and management personnel required for OCX incremental development, transition, and sustainment support for Phase B program execution and is consistent with its proposed bases of estimates and staffing profile included in Volume V. The Offeror's ramp-up plan for Phase B is consistent with the schedule proposed in the IMS. The Offeror's proposed use of development facilities supports program requirements and is consistent with the IMP, IMS, and SOW.

5.2.1.2 Management Approach

The Government will evaluate the extent to which:

a. The Offeror's management approach demonstrates an understanding of the OCX technical and programmatic requirements and objectives. The Offeror's approach facilitates the planning, organizing, and managing of resources to execute the program consistent with the Government's funding and schedule constraints.

b. The Offeror's SOW, IMP, CWBS, and IMS are integrated and traceable to each other and:

(1) The Offeror's proposed SOW captures the tasks established in the GSOW and includes tasks unique to the Offeror's approach that supplement or compliment the GSOW tasks and support successful program execution.

(2) The Offeror's proposed IMP (i) contains the appropriate Events, SAs and ACs, (ii) includes details for prime and subcontractor efforts, (iii) includes entry and exit criteria for IMP Events and (iv) provides a mechanism to allow assessment of the maturity of products to be completed. IMP narratives provide contractually binding process details and support IMP Events, SAs and ACs. The IMP contains SAs and ACs that demonstrate the Offeror's understands the OCX role as part of an integrated GPS enterprise.

(3) The Offeror's proposed CWBS is traceable to the Government WBS. The CWBS dictionary is consistent with the Government WBS dictionary and enables evaluation of BOEs and proposed costs.

(4) The Offeror's proposed IMS:

i. Identifies key products from the prime, subcontractor, other prime contractor divisions, and suppliers that support on time delivery of contractual requirements.

ii. Identifies the proper phasing of tasks, planned meetings, milestone reviews, CDRL items, GP need dates, and GPS enterprise level integration events. For GP and BSL, the Government will evaluate the executability of on-time delivery of GP from the Government.

iii. Includes a giver/receiver list for GPS IIIA and other associate contractor products needed to support the IMS, IMP, CWBS and SOW.

iv. Provides traceability to the IMP, CWBS, SOW, CDRLs, and CLINs.

v. Includes a three-point schedule risk assessment that allows the Government to validate the Offeror's proposed schedule risk confidence levels, as well as

conduct its own independent schedule risk assessment. The Government will further evaluate proposal risk by performing Monte Carlo simulations as an input to its analysis of the proposed IMS including Offeror assumptions and use of the proposed three point schedule estimates (i.e., most likely, best case and worst case) using the @Risk tool in conjunction with Microsoft Project. Includes critical path analysis that identifies critical path and near critical path items and provides margin for critical components and margin to accommodate unexpected program events. Identifies the risk activities consistent with the risks the Offeror has identified in the proposal.

vi. Includes all required activities, as defined by the SOW and the compliance documents in Attachment 2, leading up to Government approvals required for development, transition, and operation of OCX.

c. The Offeror's proposed tools and processes provide structure, discipline, and visibility for successful, program execution within cost and schedule. The tools and processes have heritage within the Offeror's organization, are validated (when appropriate), and provide the Government information to make timely decisions. The Offeror demonstrates its ability to use its tools and processes in an integrated manner to provide visibility into program problems and progress and provide insight into cost and schedule impacts of proposed requirements changes.

d. The Offeror's administrative and technical management relationships with subcontractors and IDTs provide control over critical path or higher risk efforts and facilitate Government oversight and insight into key processes, problems, and progress.

e. The Offeror's proposed communications and collaboration strategy provides for disclosure of information to enable management of the program between the prime contractor and its subcontractors and vendors, other divisions of the prime contractor, associate contractors, the GPSW, and DCMA.

f. The Offeror's proposed roles and responsibilities of the management and technical boards for management of technical and program baseline are well defined to enable the Government to perform oversight, facilitate insight into problems and progress at its subcontractors and other divisions of the prime contractor, and are reflected in the IMP narrative.

g. The Offeror's proposal in Attachment 8 of Volume VI to provide data rights to the Government meets the Government's minimum needs as described in the RFP and does not inhibit the Government's ability to oversee development, and to operate and sustain the OCX system. The analysis conducted by the Offeror (including all assumptions made) demonstrates that the quantity of seats associated with the licenses for commercial item technical data and computer software the Offeror proposes to deliver to the Government listed in Table 2 of its completed Attachment 8 will be sufficient for the Government to execute the proposed OCX program and is consistent with the Offeror's proposed architecture.

h. The Offeror's proposed approach minimizes the dependencies on GP and BSL (Volume VI, Attachment 7) and RFNI and Government-Provided Information (MC 7) and reduces the Government's program execution burden. The items are consistent with the SOW and IMP and are included in the IMS at appropriate points and for appropriate durations.

5.2.1.3 Small Business Participation

The Government will evaluate:

a. The acceptability of the proposed Small Business Subcontracting Plan in Volume VI, Attachment 9 as outlined in FAR 19.7 and its supplements.

b. The complexity of the work subcontracted to small business entities. Complex work subcontracted to small business entities will be more highly rated than noncomplex work subcontracted to small business entities.

> (1) Complex work has quality characteristics, not wholly visible in the end item or result, for which contractual conformance must be established progressively through precise measurements, tests, and controls applied during design, development, test, purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or result or in conjunction with other items or results.
>
> (2) Noncomplex work has quality characteristics for which simple measurement and test of the end item or result are sufficient to determine conformance to contract requirements.

c. The percentage of total contract dollars subcontracted to small business entities. Higher percentages of total contract dollars subcontracted to small business entities will be more highly rated than lower percentages of total contract dollars subcontracted to small business entities. If the Offeror proposes a goal of less than 20% of the total contract dollars subcontracted to small business entities, it provided a reasonable explanation as to why 20% is not an achievable contract goal.

d. Utilization of the different types of small business entities. Higher diversity among the small business types (i.e., Small Business, Small Disadvantaged Business, Veteran-Owned Small Business, Service-Disabled Veteran-Owned Small Business, Women-Owned Small Business, HUBZone Small Business, and Historically Black Colleges and Universities and Minority Institutions) proposed for subcontracts will be more highly rated than lower diversity among the small business types proposed for subcontracts.

5.2.1.4 Program Management Risk

The Government will evaluate the extent to which:

a. The Offeror demonstrates an understanding of the top ten program management risks to delivering OCX Blocks 1.0 and 2.0 and includes primary mitigation plans that support execution of each risk “burn down”.

b. The Offeror’s proposed mitigation plans provide alternatives and decision points leading to actionable decisions to retire risks to support on time delivery. Mitigation plans, including prime, subcontractor, IDT, and Government efforts, are reflected in the IMP and IMS.

c. The Offeror’s proposed risk mitigation and “burn down” plans are supported by metrics to enable the monitoring of risk “burn down” progress.

5.2.2 Subfactor 2: Software & Architecture

5.2.2.1 OCX Segment Architecture & Design

The Government will evaluate the extent to which:

a. The Offeror's proposed OCX segment architecture represents a complete architectural baseline.

b. The Offeror's proposed segment baseline design implements the OCX segment architecture and can be accomplished consistent with the proposed cost and schedule.

c. The Offeror's proposed content for Block 1.0 and Block 2.0 meets the Government's minimum requirements for each Block outlined in GSOW Annex 1. The effectivities in the Offeror's redlined SS-CS-800 are mapped to reflect the proposed content for each Block.

5.2.2.2 Software Products

The Government will evaluate the extent to which:

a. The Offeror's approach to delivering new and reused software products will minimize development and integration effort, and enhance architectural flexibility, supportability, and maturity of the technical solution. The Offeror's approach ensures that new and reused software products incorporated into OCX meet the standards of SMC-S-012 "Software Development Standard for Space Systems" (Attachment 2 of Volume VI).

b. The Offeror's approach to evaluating, selecting and integrating reuseable software products (including MCEM) to meet OCX requirements ensures that all such products demonstrate maturity and appropriateness and can be incorporated into Blocks 1.0 and 2.0 in a manner consistent with Section 4.2.4 and Appendix B of SMC-S-012. The Offeror's IMP narrative, "Software Development Definition and Treatment of New vs. Reuse" describes the process used in this proposal (and to be used on Phase B) to accurately quantify the degree of modification to any reuse code to determine whether that reuse code will be developed and tested as new code. The Offeror's proposed effort is consistent with the aforementioned IMP narrative and Section M-3.4.

5.2.2.3 Human Systems Integration

The Government will evaluate the extent to which:

a. The Offeror's proposed approach (e.g., user involvement, prototyping) integrates the HSI process and products into the OCX design, including hardware, software, logistics, training, facilities and procedures.

b. The Offeror's proposed HSI methods support automation and optimize staffing profiles (number of personnel and skill level of personnel) to facilitate operations and maintenance.

5.2.2.4 Software Architecture

The Government will evaluate the extent to which:

a. The Offeror's proposed software architecture satisfies the modularity, flexibility, scalability, and expandability requirements in SS-CS-800. The Offeror's data rights proposed in Attachment 8 of Volume VI meet the Government's minimum needs as described in this RFP. Where the

Offeror proposes to use software that does not comply with DISR identified standard features or interfaces, it provides adequate justification as to why the function cannot be performed with software with such standard features and interfaces.

b. The Offeror's proposed software architecture accommodates integration of new, reuse, NDI, GOTS/COTS software, or any combination thereof, into OCX.

c. The Offeror's proposed software architecture allows for the addition of new requirements including, but not limited to, Effectivities 17-40, without impacting the Offeror's proposed design.

d. The Offeror demonstrates through its "software technical refresh" example that the design, manufacture, and fielding of the modification does not impact GPS operations, improves reliability, maintainability, availability, and operability, and provides an evolutionary growth path for OCX.

5.2.2.5 Processes

The Government will evaluate the extent to which:

a. The Offeror's proposed software engineering approach in MC2 complies with the SMC-S-012. The Offeror's proposed OCX software engineering processes in MC2 follow CMMI® Process Areas: Requirements Management, Verification, and Project Monitoring and Control. The Offeror's proposed incorporation of software reuse throughout the software development life-cycle complies with SMC-S-012.

b. The Offeror's proposed PIAP uses the SCAMPI B appraisal results (and results from any Organizational or Program appraisals performed) to improve the capability of the integrated team to develop OCX and reduce program risks. The proposed actions plans are evident in the IMP, IMS, and SOW. The Offeror provides a characterization of the PIAP risks and proposes risk mitigation plans.

5.2.2.6 Software Risk

The Government will evaluate the extent to which:

a. The Offeror demonstrates an understanding of the top ten software risks to delivering OCX Blocks 1.0 and 2.0 and includes primary mitigation plans that support execution of each risk "burn down".

b. The Offeror's proposed mitigation plans provide alternatives and decision points leading to actionable decisions to retire risks to support on time delivery. Mitigation plans, including prime, subcontractor, IDT, and Government efforts, are reflected in the IMP and IMS.

c. The Offeror's proposed risk mitigation and "burn down" plans are supported by metrics to enable the monitoring of risk "burn down" progress.

5.2.2.7 Net-Centricity

The Government will evaluate the extent to which the Offeror's processes, architecture, and technical design solution:

a. Conforms to the Department of Defense Net-Centric data strategy as defined by DoDD 8320.02, including the Data Sharing in a Net-Centric Department of Defense, dated 23 April 2007 and including the use of DoD enterprise metadata for semantic interoperability.

b. Separates application functionality from infrastructure to comply with the net-centric scalability and extensibility requirement of SS-CS-800.

c. Prepares for Net-Ready KPP certification processes and criteria for infrastructure development in accordance with the Interoperability and Supportability Assessor's Checklist in the Bidder's Library, and supports compliance with the OCX Net-Centricity requirements in Effectivity 30 with rationale for any compliance areas that cannot be met.

5.2.3 Subfactor 3: Systems Engineering, Integration and Test

5.2.3.1 Systems Engineering Approach

The Government will evaluate the extent to which the Offeror's proposed approach is consistent with the GPS Enterprise TEMP and complies with the GPSW SEP and SMC-S-001.

5.2.3.2 Integrated Logistics Support

The Government will evaluate the extent to which:

a. The Offeror's proposed approach for conducting supportability analysis satisfies OCX RMA requirements.

b. The Offeror's approach facilitates a collaborative environment in which the Government and OCX stakeholders develop a PBL sustainment strategy. The Offeror demonstrates an understanding of the sustainment cost drivers and the process to continuously reduce OCX life-cycle costs. The Offeror's approach maintains the development system assurance processes and provides technical advisors to support transition and sustainment during the Interim Contractor Support of each OCX Block.

c. The Offeror's proposed Public Private Partnership strategy with organic candidate depots maximizes the utilization of the Government's facilities, equipment, and personnel at DoD depot-level maintenance activities, implements best business practices and improves operations while sustaining core depot-level maintenance and repair competencies.

d. The Offeror's proposed approach to transitioning all logistics elements (e.g., technical data, Operations and Maintenance training and documentation, spares, facilities, pre-operational support, interim contract support) of the OCX system from development to sustainment for Blocks 1.0 and 2.0 is consistent with Section F and its proposed IMS for each product (e.g., MCS/AMCS, GSYS, CTS, GA, MS, DSAS) delivered as part of each Block. The rights in data proposed by the Offeror in Attachment 8 of Volume VI meet the Government's minimum needs as described in this RFP and support a smooth transition from development to sustainment.

e. The Offeror's proposed approach to Level I and Level II Software Maintenance highlights differences between Level I and Level II Software Maintenance, adheres to the same system assurance processes as in development, and ensures a high state of OCX operational readiness. The Offeror's work plan is consistent with the Bases of Estimate, IMP, IMS, and SOW.

f. The Offeror's proposed approach to Level I and Level II Hardware Maintenance highlights differences between Level I and Level II Hardware Maintenance, adheres to the same system assurance processes as in development, and ensures a high state of OCX operational readiness. The Offeror's work plan is consistent with the Bases of Estimate, IMP, IMS, and SOW.

g. The Offeror's proposed approach to providing technical order support and maintenance for GOTS and COTS products; work unit codes (WUCs); software user manuals (SUM); illustrated parts breakdowns (IPB); training materials; and engineering data and drawings supports the GPS Technical Order Management Authority (TOMA).

h. The Offeror's proposed Interim Contractor Support plan ensures a high state of readiness for transition activities and operational readiness following RTO. The Offeror's work plan is consistent with the Bases of Estimate, IMP, IMS, and SOW.

5.2.3.3 Transition to Operations

The Government will evaluate the extent to which:

a. The Offeror's proposed Control Segment transition plan for implementing activities that are required to achieve RTO as defined in the SOW for each transition event is in the IMS, IMP, and SOW and is consistent with the data rights proposed in Attachment 8 of Volume VI.

b. The Offeror's proposed transition approach does not impact GPS operations and the end users. The approach provides the capability to fall back to the previous increment at any time after start of transition.

c. The Offeror's proposed Transition Support plan ensures a high state of readiness for transition activities. The Offeror's work plan is consistent with the Bases of Estimate, IMP, IMS, and SOW.

5.2.3.4 GPS Enterprise Integration

The Government will evaluate the extent to which:

a. The Offeror's proposed processes and plans support GPS enterprise integration are in accord with the SEP and TEMP, and are reflected in its IMP, IMS, SOW and CWBS. The Offeror's IMS reflects key inter-segment dependencies between the Offeror, Government, and other segment contractors.

b. The Offeror's projected needs for simulators, test, and integration resources are consistent with its proposed IMS. The Offeror's projected needs (dates and duration) for access to the GPS IIIA contractor's simulation facilities, as reflected in its IMS, can be met through risk mitigation alternatives in the event that GPS IIIA materials are unavailable.

c. The Offeror's IMP and SEMP describe plans for participating in System Integration Demonstrations. The Offeror has demonstrated an understanding of ICC responsibilities and offers a collaborative approach for joint development of ICDs. The Offeror's processes for working with the Government and associate contractors minimize risks in both the space and ground segment development, and identifying and managing inter-segment risks. The Offeror time phases activities to avoid impacts to other GPS segments consistent with its proposed IMP, IMS, SOW, and SEMP, and meets identified need dates.

GPS Advanced Control Segment (OCX)

Contract Data Requirements List (CDRL)

and

CDRL Instructions

Exhibit A

for

FA8807-09-R-0003

29 April 2009

CONTRACT DATA REQUIREMENTS LIST
(1 Data Item)

Public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503. Please DO NOT RETURN your form to either of these addresses. Send completed form to the Government issuing Contracting Officer for the Contract/PR No. listed in Block E.

A. CONTRACT LINE ITEM NO.	B. EXHIBIT	C. CATEGORY:			
0700	A	TDP	X	TM	OTHER IPSC

D. SYSTEM / ITEM	E. CONTRACT / PR NO.	F. CONTRACTOR
GPS ADVANCED CONTROL SEGMENT	FA8807-09-R-0003	ADD CONTRACTOR'S NAME

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A033	SOFTWARE PRODUCT SPECIFICATION (SPS)	N/R

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-IPSC-81441A/T	SOW 3.1.3.3; 3.1.3.4; 3.13.1; 3.14; 3.15; 3.16; 3.17; 3.18.6	GPAS

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
LT		N/R	BLK 16

8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT 1SUBMISSION
A	N/R	BLK 16

16. REMARKS

This CDRL contains technical data and software.

BLK 4:

1. Add to paragraph 4 Content just before the phrase "The specification shall contain the following:": "Submit in DOORS format (see Attachment I of this document for DOORS Instructions), Microsoft Word (Government latest version), native format for executable software, and English ASCII text for source files. The SPS shall include, but not be limited to, software items as defined in the Software Development Plan (SDP). Software items include any of the following categories of software (including the software portion of firmware), ground operations software (e.g., mission planning, mission processing, mission support, telemetry, tracking and commanding, database; infrastructure and services), and support software used for requirements verification and validation of operations and sustainment (e.g., training, modeling, simulation analysis, database support, automated test equipment, maintenance). SPS(s)shall include Commercial Item (CI) software as defined in the SDP. Replace all references in DI-IPSC-81441A to " computer software configuration item" and "CSCI" with "software item". Contractor may organize an individual SPS to cover a group of software items rather than a separate SPS for each software item."

2. Paragraph 4.3.2 regarding delivery of source files in the referenced DID does not apply to CI products if the source file information is not available to the contractor.

3. Add to paragraph 4.3.2: "To show that the files match exactly, the SPS shall contain sufficient information to enable the Government to independently regenerate the executable software for the CSCI using the products delivered."

BLK 8: Government approval/disapproval/comments 45 CD after receipt.

14. DISTRIBUTION			
a. ADDRESSEE	b. COPIES		
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		Reg	Repro
*BLK 16			
DCMA		1	
15. TOTAL		1	

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D. SYSTEM / ITEM	E. CONTRACT / PR NO.	F. CONTRACTOR
GPS ADVANCED CONTROL SEGMENT	FA8807-09-R-0003	ADD CONTRACTOR'S NAME

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A033	SOFTWARE PRODUCT SPECIFICATION (SPS)	N/R

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-IPSC-81441A/T	SOW 3.1.3.3; 3.1.3.4; 3.13.1; 3.14; 3.15; 3.16; 3.17; 3.18.6	GPAS

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
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8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT 1SUBMISSION
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		Reg	Repro
*BLK 16			
DCMA		1	
15. TOTAL		1	

16. REMARKS

BLK 16 CONTINUED:

BLKs 12, 13: Submit data item on CD or DVD or suitable electronic media. Submit preliminary 60 CD before each software build delivery for operations or maintenance. Submit final 60 CD after each software build delivery for operations or maintenance. Submit at FCA/PCA. Update as changes occur or by PCO notification.

BLK 14: Classified portions of this CDRL shall be forwarded IAW the DD-254, and instructions contained in the “Contract Data Requirement List Instructions” of this document.

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GPS ADVANCED CONTROL SEGMENT	FA8807-09-R-0003	ADD CONTRACTOR'S NAME

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A055	TECHNICAL REPORT-STUDY/SERVICES	SOFTWARE ARCHITECTURE DESCRIPTION (SAD)

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-MISC-80508B/T	SOW 3.1.3.3; 3.13.1; 3.14; 3.15; 3.16; 3.17; 3.18.6; 4.10.13	GPAS

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION	14. DISTRIBUTION
LT		QTRLY	30 DAC	
8. APP CODE		**11. AS OF DATE**	**13. DATE OF SUBSEQUENT 1SUBMISSION**	
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*BLK 16			
DCMA		1	
15. TOTAL		1	

16. REMARKS

This CDRL contains technical data.

BLK 4: Software architecture. The SAD shall consist of the technical volume and the UML model or equivalent. The technical volume shall provide a graphical textual description of the software architecture and shall include the following aspects:

a. The architecture representation shall cover multiple architectural perspectives, to include both models and detailed textual descriptions of the logical organization, dynamic behavior, process decomposition, software organization, and physical realization of the software. The representation shall document the system components, system interfaces, component interfaces, their semantics, and the data and control dependencies among them.

b. A detailed description of how the software shall interact with the users and with other systems (similar to a DoDAF SV-2 but focused on software).

c. A logical representation of the architecture that models architectural components/services and the support of representation of both abstract (or logical) interfaces and interface implementations. In addition, this model must support component/service evolution through all phases of development of the software. This logical architectural representation shall indicate the functionality and key software interfaces associated with each logical component of the system relationships. All diagrams shall be accompanied by descriptions of the functionality and services provided by the components.

d. Diagrams that show the component interactions and collaborations. Component/ Service aggregation and composition relationships shall be documented. Sequencing of component interactions shall be provided. Document evolutionary or transitional aspects of the interactions.

e. High-level process information (i.e., a mapping of processes to system components).

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GPS ADVANCED CONTROL SEGMENT	FA8807-09-R-0003	ADD CONTRACTOR'S NAME

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A055	TECHNICAL REPORT-STUDY/SERVICES	SOFTWARE ARCHITECTURE DESCRIPTION (SAD)

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-MISC-80508B/T	SOW 3.1.3.3; 3.13.1; 3.14; 3.15; 3.16; 3.17; 3.18.6; 4.10.13	GPAS

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
LT		QTRLY	30 DAC

8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT 1SUBMISSION
A	N/R	BLK 16

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*BLK 16			
DCMA		1	
15. TOTAL		1	

16. REMARKS

BLK 16 CONTINUED:

f. A description and diagram of how the software is organized from a development viewpoint.

g. Diagrams showing the computer system hardware architecture with textual descriptions, description of the purpose of all hardware components and their interfaces, and hardware physical processing characteristics (e.g., CPU throughput, memory, bandwidth). A mapping of the software architectural components to the physical hardware where the implementation of those components shall reside.

h. A bi-directional mapping of the software and interface requirements to software architectural components and use cases.

i. Identification of CI software packages or other reuse software that are expected to be used to implement part or all of specific software architectural components, with identification of the associated software architectural component(s) or portions thereof and rationale for the choice of these products.

j. A description of architecture-wide design decisions that are not covered by the above items.

Examples include the following:

1. Applicable standards (e.g., interface standards, open system standards, graphical user interface (GUI) standards).
2. Application Program Interfaces (APIs) to be used.
3. Uniform exception handling and recovery methods.
4. Uniform data storage/access methods.
5. Algorithms that must be used.
6. Response times, reliability/maintainability/availability or other performance characteristics

G. PREPARED BY	H. DATE	I. APPROVED BY	J. DATE

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PAGE 2 OF 3 PAGES

CONTRACT DATA REQUIREMENTS LIST
(1 Data Item)

Public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503. Please DO NOT RETURN your form to either of these addresses. Send completed form to the Government issuing Contracting Officer for the Contract/PR No. listed in Block E.

A. CONTRACT LINE ITEM NO.	B. EXHIBIT	C. CATEGORY:			
0700	A	TDP	X	TM	OTHER MISC

D. SYSTEM / ITEM	E. CONTRACT / PR NO.	F. CONTRACTOR
GPS ADVANCED CONTROL SEGMENT	FA8807-09-R-0003	ADD CONTRACTOR'S NAME

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A055	TECHNICAL REPORT-STUDY/SERVICES	SOFTWARE ARCHITECTURE DESCRIPTION (SAD)

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-MISC-80508B/T	SOW 3.1.3.3; 3.13.1; 3.14; 3.15; 3.16; 3.17; 3.18.6; 4.10.13	GPAS

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
LT		QTRLY	30 DAC
8. APP CODE		**11. AS OF DATE**	**13. DATE OF SUBSEQUENT 1SUBMISSION**
A	D	N/R	BLK 16

14. DISTRIBUTION

a. ADDRESSEE	b. COPIES Draft	FINAL Reg	FINAL Repro
*BLK 16			
DCMA		1	
15. TOTAL		1	

16. REMARKS

BLK 16 CONTINUED:

not allocated to individual architectural components.

k. The UML models or suitable equivalent shall be provided in a format usable by the Government architecture analysis tool.

l. The updated or archived electronic artifacts shall always be made available to the Government via remote access.

m. Provide service view representation along with other architecture views.

BLK 8: Government approval/disapproval/comments 45 CD after receipt.

BLKs 12, 13: Submit the technical volume and UML models or suitable equivalent 30 CD after contract award. Submit the technical volume and UML models or suitable equivalent on the. 1st day of the month every quarter. Submit draft 45 CD prior to PDR. Submit 45 CD prior to CDR for each block if the last submission is more than 45 CD old. Update 10 CD after PCA. Submit 45 CD prior to Delta PDR for Block 3 and Block 4. Update for the last software delivery.

BLK 14: Electronic versions of the UML models or suitable equivalent are to be delivered via this data item in addition to the diagrams and descriptions provided in the report. Classified portions of this data item shall be forwarded IAW DD-254, and instructions contained in Appendix A of the document.

G. PREPARED BY	H. DATE	I. APPROVED BY	J. DATE

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PAGE 3 OF 3 PAGES

GPS Advanced Control Segment (OCX)

Attachment 1:

Government Statement of Work (GSOW)

for

FA8807-09-R-0003

29 April 2009

OCX Phase B
Government Statement of Work

INTRODUCTION: OCX - GPS Advanced Control Segment (GPS Ground System)

The GPS system is acquired by the Global Positioning Systems Wing (GPSW), Space and Missile Systems Center (SMC), Los Angeles AFB, El Segundo, California.

GPS is a satellite-based radio navigation system that provides accurate position, velocity, and time (PNT) for military and civil users worldwide. To achieve overall system capability requires three key but distinct segments: Command & Control, Space Vehicles, and User Equipment. System level requirements are allocated to these three segments which are synchronized to enable satisfaction of system performance standards and required operational capability.

This statement of work is associated with the Ground based command and control segment of GPS. The GPS Advanced Control Segment (OCX) will provide new capabilities to continue to ensure GPS remains the world standard for PNT and eliminates shortcomings and vulnerabilities inherent in the current architecture that threaten to severely impact vital military operations, civil commerce, transportation, and public safety.

The overall acquisition strategy is to incrementally develop a ground control segment that can introduce new capabilities through block deliveries to operations. This strategy will reduce overall execution risk, deliver new capability to the field faster, and enable a more predictable and executable cost, schedule, and performance baseline.

1. Scope

This GSOW covers design, development, testing, integration, verification, validation, deployment, transition to operations, and sustainment throughout the GPS OCX life cycle. Specifically, OCX shall support the assured integrity and continuity of the GPS control system in compliance with the GPS III Control Segment Specification (SS-CS-800). This GSOW tracks to the OCX Phase B Work Breakdown Structure (WBS) and describes the

effort required to complete OCX Blocks 1.0 and 2.0. It covers all tasks to achieve: command and control of the GPS IIA, IIR, IIR-M, IIF, and IIIA SVs, replace the OCS Master Control Station (MCS) with a new OCX MCS, replace the OCS Alternate Master Control Station (AMCS) with a new OCX AMCS, upgrade or replace the Air Force and NGA Monitor Stations associated with changes to communications networks, provide the ability to monitor all current GPS signals as well as L1C, L2C, L5 and M-Code and deliver new/upgraded support facilities. It includes modifications to the existing GPS Ground Antennas (GAs), if needed, to ensure compatibility with new/modified OCX interfaces. It also includes tasks for the evolution of the control segment to deliver a robust infrastructure for new information assurance, integrity, and net centricity requirements to support future NAVWAR and Effects Based Operations (EBO) capabilities. This GSOW also includes a capability insertion program which studies, analyzes, demonstrates, tests, and prototypes key technologies capabilities relevant to OCX Block 3.0 and OCX Block 4.0.

2. Applicable Documents

Attachment 2, "Compliance and Reference Document List and Tailoring", contains the compliance documents applicable to this contract.

3. Next Generation Control Segment (OCX) Requirements

3.1. OCX System Engineering/Program Management

The Contractor shall:

a. Design a system that meets all requirements of SS-CS-800 (effectivities 10-15) and other applicable specifications and ICDs and is operationally effective, suitable, sustainable, cost-effective, meets DoD security certification/accreditation requirements, facilitates interconnections with classified systems, and meets DoD net-readiness standards for interoperability, supportability and functional capability.

b. Apply Systems Engineering and Program Management to transition, ICS, sustainment, and the Capability Insertion Program.

3.1.1 OCX Systems Engineering (CDRL A001) (CDRL A037) (CDRL A054) (CDRL A059) (CDRL A063) (CDRL A060)

The contractor shall:

a. Prepare and maintain a Systems Engineering Management Plan (SEMP) and ensure that it is compatible with the Government-supplied SEP. (CDRL A037)

b. Implement the PCO approved SEMP and manage the Ground Segment systems engineering processes in accordance with SMC Standard SMC-S-001 "Systems Engineering". Analyze OCX system functional, performance, support, and interface

training plan also includes plans to aid in transition from interim contractor support to contractor sustainment support or government depot support as determined by the government.

f. Perform analysis of the training and training support needed to conduct a complete operations training program and provide necessary training integration support to ensure the OCX program is complementary with the GPS III Training program. Develop proficiency standards and training plans for all operations personnel (e.g., satellite operator positions, crew shift leaders, simulator operators, and system administration personnel).

g. Design, develop, build, integrate, test and checkout the Crew Training Simulator (CTS) in accordance with the government approved SDP. Ensure that the CTS allows operators to be trained and certified for GPS operations. Ensure that the CTS provides the functional equivalent from the user's point of view of the GCC (GPS Control Center) / GNOC (GPS NAVWAR Operations Center) and the alternate control centers (the AGCC/AGNOC.) Provide the capability for the CTS (or Standard Space Trainer (SST), if directed) to manage the training sessions as well as to record and store student performance data and report it.

3.6 OCX Data (CDRL A073)

The contractor shall:

a. Perform all efforts required to make available all OCX deliveries required by individual CDRL DD Form 1423.

b. All commercial and noncommercial computer programs (inclusive of firmware) delivered to the Government under CLINs 0100-0600, 1000-3000 and 6000 shall be identical to that/those computer programs (inclusive of firmware) delivered to the Government in CDRL A033. In addition to OCX developmental software, this also includes all COTS/GOTS, NDI, or proprietary software required to install, check-out, and use the OCX software. Maintain rigorous configuration management controls to ensure that all incremental software data deliveries and software item deliveries remain in synchronization at all times and are documented accordingly.

c. Transfer OCX delivered software to the Government with all files and manuals to ensure that it can be recreated from provided source files (e.g., "make" files).

d. Ensure that all software and associated products are correctly transferred from the contractor's database to the government's database.

GPS Advanced Control Segment (OCX)

Compliance & Reference Documents List

for

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29 April 2009

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3.8 SMC-S-012

1. Replace “contractual clauses” with “contractual requirements” throughout.

2. Section 1.2.2 Contract-specific application: Replace “Software installed in firmware is subject to all of the aforementioned provisions.” With “Software installed in firmware is subject to all of the aforementioned provisions except for software in complex hardware devices developed for this contract where the guidance of DO-254 applies.”

3. Section 1.2.2 Contract-specific application, second paragraph, second sentence: Replace "This standard shall apply to the following categories of software: onboard software (e.g., spacecraft, communications, payload); ground operations software (e.g., mission planning; mission processing; mission support; telemetry, tracking, and commanding; infrastructure and services); and other software used in satisfying, verifying, or validating requirements or used in performing or supporting operations or sustainment (e.g., training, simulation, analysis, database support, automatic test equipment, and maintenance)." with "This standard shall apply to the following categories of software (including the software portion of firmware): ground operations software (e.g., mission planning, mission support, telemetry, tracking and commanding, database, infrastructure and services), and other software used in satisfying, verifying and validating the requirements or used in performing or supporting operations or sustainment (e.g., applications, security safety, training, modeling, simulation analysis, database support, automated test equipment, test facility and environment, and maintenance)."

4. Section 1.2.2 Contract-specific application, second paragraph, third sentence: Replace “A *software team member* is any internal or external organization … the prime contractor or any other software team member." with "A *software team member* is any internal or external organization … the prime contractor or any other team member." These organizations include but are not limited to, intra-corporation software organizations, in-house service providers, developers, fabrication/manufacturing organizations, laboratories, joint venture partners, teaming partners, subsidiaries, and interdivisional transfer (IDT), and subcontractors,”

5. Section 3.1 Terms, insert the following terms in alphabetical order:
   - <u>Baseline:</u> The approved, recorded configuration of one or more configuration items, that thereafter serves as the basis for further development, and that is changed only through change control procedures.

   - <u>Change Review Activities</u>: Activities associated with the review of changes including confirmation that affected configuration items are configuration identified; assessment of the impact, and assessment of the problem or change, with decisions for action to be taken; feedback of problem report or change impact and decisions to affected processes.”

   - <u>Conformity Review</u>: A review is to obtain assurances, for a software product that the software life cycle processes are complete, software life cycle data is complete, and the Executable Object Code is controlled and can be regenerated. This review should determine that: (a) records of process activities are complete, software life cycle data

confidence for successful execution required within each equivalence class. As a default, the data sample should be of a size such that a 90% confidence of successful execution can be established for each equivalence class given that no failures are observed during the testing. [Reference: NIST, "Engineering Statistics Handbook", Chapter 1 and Chapter 6, Section 2].

- Software Configuration Management (SCM) Plan: That section of the software development plan (or a separate document) responsive to Appendix H par. 5.14.

- Software Construct: A software unit or software item dependent on the phase where it is applied. For example, a software construct means a software unit during unit testing; a software construct means a software item during software item qualification testing.

- Software Life Cycle Data: The set of documentation defined in the SDP, source code, software test procedures, software test reports, and any other artifact needed to recreate, document, or test any delivered software product.

- Software Partition: A separating, usually with the express purpose of isolating one or more attributes of the software, to prevent specific interactions and cross-coupling.

6. Section 4.1 Software Development Process, second paragraph, first sentence: Replace "The framework used to organize the major software activities is called the software development life cycle model. The developer shall select software life cycle model(s) appropriate to the software being developed and shall document the selected software life cycle model(s) in the SDP." with "The framework used to organize the major software activities is called the software development life cycle model. The developer shall select software life cycle model(s) appropriate to the software being developed and shall document the selected software life cycle model(s) and provide a description of each software life cycle environment in the SDP."

7. Section 4.2.1 Software development methods: Append "A clear description of how Information Assurance concepts and best practices are incorporated into the software development life-cycle including guidance from the DISA application security Technical Implementation Guides (STIGs) i.e., the "Application Security and Development" STIG."

8. Section 4.2.4 Reusable software products: Add a new paragraph after the end of the first paragraph: "The developer shall ensure that there is no functionality in the reusable software component that would inhibit operation unless explicitly specified and approved by the Government. This provision includes, but is not limited to, the periodic need to enter in a license code, or the presence of a physical key or similar device to enforce licensing conditions." For GPS OCX evaluation criteria for any commercial item software to be used with a software item developed in accordance with this standard, as tailored for the contract, shall include:
    a) Acceptability of reusable software product licensing
        1) Absence of unacceptable restrictions (e.g., expiring keys)
    b) Ability to provide required protection (safety, security, and privacy)

GPS Advanced Control Segment (OCX)

Rights in Data (Including Technical Data, Computer Software, and Computer Software Documentation)

Attachment 8

for

FA8807-09-R-0003

29 April 2009

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a. Introduction. The purpose of this Attachment is to identify the rights the U.S. Government will acquire to all OCX development, production and sustainment data, computer software and computer software documentation delivered or otherwise provided to the Government during performance of this contract. Subsection c.(1) identifies the rights the U.S. Government will acquire to all such noncommercial technical data, computer software and computer software documentation. Subsection c.(2) identifies the rights the U.S. Government will acquire to all such commercial item technical data, computer software and computer software documentation. Subsection c.(3) identifies the rights the U.S. Government will acquire to all data that is not technical data or computer software delivered or otherwise provided to the Government during performance of this contract. Subsection c.(4) identifies the rights the U.S. Government will acquire to all data used by the Contractor to create any CDRL or CLIN listed in Tables 1-3 required to be delivered under this contract.

b. Definitions.

"Data" includes technical data, computer software and computer software documentation (as those terms are defined in this subsection), schedule/milestone data, and financial data (including the Contractor's cost/schedule management system/records and accounting system), irrespective of whether that data is required to be delivered via Exhibit A.

"Commercial item" is defined in FAR § 2.101.

"Computer software" is defined in DFARS § 252.227-7014(a)(4).

"Computer software documentation is defined in DFARS § 252.227-7014(a)(5).

"Firmware" is defined in SMC Standard SMC-S-012.

"Licensee" is defined as the OCX contractor.

"Licensor" is defined as the owner (e.g., subcontractor) of commercial item technical data, computer software, or computer software documentation.

"Technical data" is defined in DFARS § 252.227-7013(a)(14).

c. Types of Rights.

(1) Rights in noncommercial technical data, computer software and computer software documentation. The Government shall have the rights in noncommercial technical data, computer software and computer software documentation described in Table 1 below. All technical data, computer software and computer software documentation delivered or otherwise provided to the Government during performance of this contract under any CDRL or CLIN is classified as noncommercial technical data, computer software, or computer software documentation unless expressly identified as commercial technical data, computer software, or computer software documentation in Table 2 below.

Table 1
Rights in Noncommercial Technical Data, Computer Software, and Computer Software Documentation

Column 1	Column 2	Column 3	Column 4
CDRL No.	**Data Item Title (Subtitle)**	**Asserted Rights Category**	**Estimated Cost**
A001	Conference Minutes	Offeror to Complete	$
A002	Program Protection Implementation Plan (PPIP)	Offeror to Complete	$
A003	Logistics Management Information (LMI) Data Product [Support Equipment, Data Products]	Unlimited	$
A004	Logistics Management Information (LMI) Summaries [Provisioning Support Equipment Summaries]	Unlimited	$
A005	Supplemental Data for Provisioning (SDFP)	Unlimited	$
A006	Engineering Change Proposal (ECP)	Unlimited	$
A007	Request for Deviation (RFD)	Unlimited	$
A008	Specification Change Notice (SCN)	Unlimited	$
A009	Interface Control Document (ICD)	Unlimited	$
A010	Request for Nomenclature (DD Form 61)	Offeror to Complete	$
A011	System/Subsystem Specification (SSS) [Prime Item, Critical Item Development Specification]	Unlimited	$
A012	Configuration Item Product Specification [Prime Item, Critical Item Product Specification]	Unlimited	$
A016	Human Engineering Test Plan	Offeror to Complete	$
A017	Human Engineering Test Report	Offeror to Complete	$
A018	Human Engineering System Analysis Report	Offeror to Complete	$
A019	Human Engineering Design Approach Document – Operator	Offeror to Complete	$
A020	Human Engineering Design Approach Document-Maintainer	Offeror to Complete	$
A021	Failure Mode Effects, and Criticality Analysis Report	Unlimited	$
A022	Software Development Plan (SDP)	Offeror to Complete	$
A023	Software Transition Plan (STRP)	Unlimited	$
A024	Operational Concept Description (OCD)	Unlimited	$
A025	System/Subsystem Specification (SSS)	Unlimited	$
A026	System/Subsystem Design Description (SSDD)	Unlimited	$
A027	Software Requirements Specification (SRS)	Unlimited	$
A028	Interface Requirements Specification (IRS)	Unlimited	$
A029	Database Design Description (DBDD)	Unlimited	$
A030	Software Test Plan (STP)	Offeror to Complete	$
A031	Software Test Description (STD)	Unlimited	$
A032	Software Test Report (STR)	Offeror to Complete	$

Column 1	Column 2	Column 3	Column 4
CDRL No.	**Data Item Title (Subtitle)**	**Asserted Rights Category**	**Estimated Cost**
A033	Software Product Specification (SPS)	**Technical Data:** Unlimited **Computer Software:** Offeror to Complete	$
A034	Software Version Description (SVD)	Unlimited	$
A035	Management Plan [Facilities Plan]	Unlimited	$
A036	Management Plan [System Security Management Plan]	Offeror to Complete	$
A037	Systems Engineering Management Plan (SEMP)	Offeror to Complete	$
A038	Contract Work Breakdown Structure (CWBS)	Offeror to Complete	$
A039	Data Accession List (DAL)	Offeror to Complete **(See Note 1)**	$
A043	Technical Report-Study/Services [Environmental Analysis Data Report]	Unlimited	$
A044	Technical Report-Study/Services [Key Management Plan]	Offeror to Complete	$
A045	Technical Report-Study/Services [Department of Defense Information Assurance Certification and Accreditation Process (DIACAP) Implementation Plan]	Offeror to Complete	$
A047	Technical Report-Study/Services [OCX Spares List]	Unlimited	$
A048	Technical Report-Study/Services [Integrated Support Plan]	Offeror to Complete	$
A049	Technical Report-Study/Services [Control Segment Positioning Signal Integrity and Continuity Assurance Plan (PSICAP)]	Offeror to Complete	$
A050	Technical Report-Study/Services [Control Segment Integrity and Continuity Assurance Assessment (ICAA)]	Offeror to Complete	$
A051	Technical Report-Study/Services [Control Segment Functional Hazard Assessment (FHA)]	Offeror to Complete	$
A052	Technical Report-Study/Services [Test Report]	Offeror to Complete	$
A053	Technical Report-Study/Services [Segment and Softw System Measurement Report (SSMR)]	Offeror to Complete	$
A054	Technical Report-Study/Services [Control Segment Transition Plan (CSTRP)]	Unlimited	
A055	Technical Report-Study/Services [Software Architecture Description (SAD)]	Unlimited	$
A056	Technical Report-Study/Services [Human Engineering Program Plan (HEPP)]	Offeror to Complete	$
A057	Technical Report-Study/Services [Master Software Build Plan (MSBP)]	Offeror to Complete	$

Column 1	Column 2	Column 3	Column 4
CDRL No.	**Data Item Title (Subtitle)**	**Asserted Rights Category**	**Estimated Cost**
A058	Technical Report-Study/Services [Department of Defense Information Assurance Certification and Accreditation Process (DIACAP) IA Control Validation Artifacts]	Offeror to Complete	$
A059	Technical Report-Study/Services [Design Review Data Package]	Offeror to Complete	$
A060	Technical Report-Study/Services [OCX Training System and Materials]	Unlimited	$
A061	Technical Report-Study/Services [Risk Assessment Report]	Offeror to Complete	$
A062	Technical Report-Study/Services [Modeling and Simulation Plan]	Offeror to Complete	$
A063	Technical Report-Study/Services [Modeling and Simulation Report]	**Technical Data:** Unlimited **Computer Software:** Offeror to Complete	$
A064	Technical Report-Study/Services [Special Studies]	Offeror to Complete	$
A065	Frequency Allocation Data [Spectrum Supportability]	Unlimited	$
A066	Maintenance Data Collection Record (MDCR) [Maintenance Data Collection/Sustainment]	Unlimited	$
A067	Test Plan	Offeror to Complete	$
A068	Test Procedure	Offeror to Complete	$
A069	Failure Summary and Analysis Report	Unlimited	$
A070	System Safety Program Plan	Unlimited	$
A071	System Safety Hazard Analysis Report (SSHA) [Preliminary Hazard List (PHL), Preliminary System Hazard Analysis (SHA), Subsystem Safety Hazard Analysis (SSHA), System Hazard Analysis (SHA), Operating and Support Hazard Analysis (O&SHA), Preliminary Hazard List (PHL)	Unlimited	$
A072	Safety Assessment Report (SAR)	Offeror to Complete	$
A073	Product Drawings/Models and Associated Lists	Unlimited	$
A074	Technical Manual (TM) Contractor Furnished Aeronautical Equipment or Contractor Furnished Equipment (CFAE/CFE) Notices	Unlimited	$
A076	Technical Manual Contract Requirements	Unlimited	$
A079	Technical Report – OCX Systems Description for Cost Analysis	Offeror to Complete	$

Note 1: The Government will acquire the same level of rights to the contents of all items listed in CDRL A039 as it will to the list itself (i.e., ___*___) .

(2) Rights in commercial technical data, computer software and computer software documentation. In addition to the rights the Government will obtain in commercial item technical data, computer software and computer software documentation listed in Table 2 and contained in Appendix A to this attachment, the Government will acquire the following rights to that technical data and computer software notwithstanding any statements to the contrary in any of the licenses listed in Table 2 that are contained in Appendix A:

(i) The Government shall have the right to use, perform, display or disclose that commercial item technical data, in whole or in part, within the Government.

(ii) The Government may not, without the written permission of the Contractor, release or disclose the commercial item technical data and commercial computer software outside the Government, modify, disassemble, decompile, or reverse engineer the commercial item technical data and commercial computer software or authorize other persons to do so, use the commercial item technical data and computer software for manufacture, or authorize the commercial item technical data and computer software to be used by another party, except that the Government may reproduce, release or disclose such data and software or authorize the use or reproduction of such data and software by the following persons outside the Government (including their subcontractors) to perform their respective contract(s) listed below:

The Aerospace Corporation (Contract FA8802-09-C-0001)
The Boeing Company (Contract F04701-96-C-0025)(GPS Block IIF)
Lockheed Martin Space Systems Company (Contracts F04701-89-C-0073 (GPS Block IIR), F04701FA8807-08-C-0010 (GPS Block IIIA))
MITRE Corporation (Contract FA8721-07-C-0001, Project No. 6642 (Warfighter Support), Task 664C (Global Positioning System)
Sandia Corporation (Contract DE-AC-04-94AL85000)
Science Applications International Corporation (Contract FA8807-07-C-0002)
Tecolote Corporation (Contract FA8802-07-F-1007)
United Launch Alliance (e.g., Contracts F04701-93-C-0004 (Delta II Medium Launch Vehicle III), F04701-98-D-0001 (Lockheed Martin Atlas V Commercial Launch Services), F04701-98-D-0002 (Boeing Delta IV Commercial Launch Services), FA8816-06-C-0002 (Lockheed Martin Atlas V EELV Launch Capability), FA8816-06-C-0004 (Lockheed Martin Atlas V EELV Launch Services), FA8816-06-C-0001 (Boeing Delta IV EELV Launch Capability), FA8811-08-C-0005 (Boeing Delta IV EELV Launch Services)
User Equipment Segment contractors
Any person who will deliver a secondary payload (e.g., DASS) to the Government for integration onto a GPS IIIA/B/C spacecraft.

The Contractor agrees that the Government shall have the right to unilaterally add or delete contractors from those subsections at any time subject to the quantity

listed for the applicable item in Column 4 of Table 2, and its exercise of that right shall not entitle the Contractor or its subcontractors to an equitable adjustment or a modification of any other terms and conditions of this contract.

(iii) The duration of all such licenses shall be, at minimum, for the period of performance of this contract (including options, if exercised) unless the license specifies a longer period for a total quantity of seats listed in Column 4 of Table 2 associated with the CDRLs/CLINs listed in Column 1 of that table. The Contractor will be relieved of all responsibilities with respect to such licenses upon the end of the period of performance of this contract at which time the Government will assume responsibility for acquiring those licenses under existing or follow-on contracts.

(iv) License rights related to technical data described in, and granted to the U.S. Government under, DFARS § 252.227-7015(b)(1) shall apply to all such technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.

(v) All such commercial item technical data, computer software and computer software documentation may be installed and used at any U.S. Government installation worldwide at which OCX equipment is located.

(vi) The ultimate purpose of this contract is for the Contractor to deliver to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release or disclose the commercial item technical data, computer software, or computer software documentation in a manner inconsistent with the terms of any of the licenses listed in Table 2 contained in Appendix A to this attachment, the U.S. Government shall not be required to deinstall and stop using those Items or return such Items to the Contractor and the Contractor's remedy shall be limited to monetary damages.

The Contractor shall not add, delete or replace any commercial item technical data, computer software, or computer software documentation listed in Table 3 from any CLIN or CDRL under which that technical data, computer software or computer software documentation will be delivered to the Government unless the Government has approved that addition, deletion or replacement and the contract has been modified to add, delete or replace that item from that table and delete or replace the applicable license(s) from Appendix A.

Table 2
Rights in Commercial Technical Data, Computer Software, and Computer Software Documentation

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**VENDOR NAME; TECHNICAL DATA/SOFTWARE APPLICATION NAME; LICENSE NO.**	**QUANTITY**	**ESTIMATED COST**
CLIN NO.	**CLIN NOUN DESCRIPTION**	**VENDOR NAME; SOFTWARE APPLICATION NAME; LICENSE NO.**		

(3) Special License Rights Category A ("SLRC-A"): Rights in data other than technical data, computer software or computer software documentation. The Government shall have the right to use, modify, perform, display or disclose all such data listed in Table 3 below, in whole or in part, within the Government. The Government may not, without the written permission of the Contractor, release or disclose that data outside the Government, use the data for manufacture, or authorize the data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of such data by the following persons outside the Government (including their subcontractors) to perform their respective contract(s) listed below:

The Aerospace Corporation (Contract FA8802-09-C-0001)
MITRE Corporation (Contract FA8721-07-C-0001, Project No. 6642 (Warfighter Support), Task 664C (Global Positioning System)
Tecolote Corporation (Contract FA8802-07-F-1007)
Science Applications International Corporation (Contract FA8807-07-C-0002)
Tecolote Research, Inc. (Contract W91WAW-08-D-0031, Delivery Order No. 0003)
Technomics (Contract W91WAW-08-C-0090)

The Contractor agrees that the Government shall have the right to unilaterally add or delete contractors (and contracts) from this list at any time, and its exercise of that right

shall not entitle the Contractor or its subcontractors to an equitable adjustment or a modification of any other terms and conditions of this contract.

Table 3
Rights in Data Other Than Technical Data, Computer Software or Computer Software Documentation

Column 1	Column 2	Column 3
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**ESTIMATED COST**
A013	Design-to-Cost/Life Cycle Cost and Variance) Analysis Report [Life Cycle Cost Report (LCCR)]	$
A014	Cost Data Summary Report (DD Form 1921)	$
A015	Functional Cost-Hour (DD Form 1921-1) [Contractor Cost Data Reporting]	$
A040	Contract Performance Report (CPR)	$
A041	Contract Funds Status Report (CFSR)	$
A042	Integrated Master Schedule (IMS)	$
A046	Progress Curve Report DD Form 1921-2 [Contractor Cost Data Reporting (DD Form 1921-2)]	$
A075	Software Resources Data Reporting: Initial Developer Report and Data Dictionary [Initial SRDR]	$
A077	Software Resources Data Reporting: Final Developer Report And Data Dictionary [Final SRDR]	$
A078	Cost and Software Data Reporting (CSDR) Plan Supporting Document [Resource Distribution Table (RDT) Program Plan]	$
A080	Contractor Business Data Report (DD Form 1921-3)	$

(4) Special License Rights Category B ("SLRC-B"): The Government and the persons listed below (including their subcontractors) shall have the right to review all data used by the Contractor to create any CDRL or CLIN listed in Tables 1-3 required to be delivered under this contract (including, if necessary, at the Contractor's and subcontractors' facilities) to verify the currency, accuracy and completeness of the data contained in those CDRLs/CLINs:

The Aerospace Corporation
MITRE Corporation
Tecolote Corporation
Science Applications International Corporation

The estimated cost for this license is $____**_____. The Contractor agrees that the Government shall have the right to unilaterally add or delete contractors (and contracts) from this list at any time, and its exercise of that right shall not entitle the Contractor or its subcontractors to an equitable adjustment or a modification of any other terms and conditions of this contract.

d. Marking requirements.

(1) If the contents of any CDRL delivered to the Government contain commercial item technical data, computer software or computer software documentation, prior to delivery the Contractor shall physically attach a copy of this Attachment and a copy of the applicable commercial license(s) listed in Table 2 contained in Appendix A for that CDRL to that CDRL, and expressly highlight in red which specific items of commercial technical data located on which specific portions of that CDRL the release of which outside the Government is restricted by that/those license(s). If a CDRL listed in Table 3 will be delivered with Special License Rights Category A described in subsection c.(3) above, the Contractor shall affix to the cover page of that CDRL the legend prescribed by DFARS §§ 252.227-7013(f)(4) and 252.227-7014(f)(4), delete the word "technical" from that legend, and insert the following text immediately after the phrase "License No." in that legend: "SLRC-A". If a document described in subsection c.(4) is provided to the Government, the Contractor shall affix to the cover page of that document the legend contained in DFARS §§ 252.227-7013(f)(4) and insert the following text immediately after the phrase "License No.": "SLRC-B". Under such circumstances, the Contractor shall also physically attach a copy of this Attachment to that CDRL.

(2) The Contractor acknowledges that, given the types of licenses described herein that apply to (i) specific persons for (ii) specific purposes for (iii) specific items of data (iv) delivered at specific times during performance of this contract, failure to properly affix the proper restricting marking to the appropriate data prior to delivering or otherwise providing that data to the Government exponentially increases the risk that that data will be released to unauthorized persons for unauthorized purposes. Accordingly, in addition to the release from liability contained in DFARS §§ 252.227-7013(b)(6) and 252.227-7014(b)(6), the Contractor agrees to release the Government from liability for any release or disclosure of data other than technical data, computer software, and computer software documentation made in accordance with this Attachment if any CDRL delivered to the Government does not comply in all respects with the marking requirements specified herein.

e. Allocability of Costs to CLINs. With the exception of CDRL A076, the estimated cost of the rights described above in subsection c.(1-3) associated with its corresponding CDRL is built into the estimated cost of CLIN 0700, which in turn is built into the estimated cost of the CLIN under which the development/creation of that CDRL will occur or has occurred. The estimated cost of the rights described above in subsection c.(1-3) associated with CDRL A076 is built into the estimated cost of CLIN 0710. Since the estimated cost for the rights described above in subsection c.(4) benefits all CLINs and all CDRLs to varying degrees, that estimated cost shall be allocated in reasonable proportion to the benefits received by each CLIN.

f. Updates. The estimated cost of any rights in data described above includes the estimated cost of the rights in data to any changes (e.g., updates, software maintenance patches, minor version changes (e.g., from V1.1 to V1.2 not V1.1 to V2.0), substitutions) made to that data by the Contractor anytime during performance of this contract.

g. Content of licenses for computer software delivered under any CLIN other than CLINs 0700 and 0710. All licenses to be furnished by the Contractor associated with any items containing commercial or noncommercial computer software (inclusive of firmware) delivered to the Government shall be identical to those licenses furnished by the Contractor associated with any computer software (inclusive of firmware) delivered by it to the Government in CDRL A033 ("Software Product Specification (SPS)") (CLIN 0700).

h. License transference. Any license associated with any technical data, computer software, or computer software documentation delivered under any CLIN shall transfer upon delivery of that CDRL or CLIN to the Government.

i. Order of Precedence: Upon delivery of any commercial item technical data, computer software, computer software documentation, or any combination thereof, to the Government contained in any CLIN or CDRL, the following provisions shall take precedence over conflicting provisions in any license associated with those items, notwithstanding any provisions in those licenses to the contrary through renewals or extensions, as needed, to this contract:

(1) The Government shall have the right to use, perform, display or disclose that commercial item technical data, in whole or in part, within the Government.

(2) The Government may not, without the written permission of the Licensor, release or disclose the commercial item technical data and commercial computer software outside the Government, use the commercial item technical data and computer software for manufacture, or authorize the commercial item technical data and computer software to be used by another party, except that the Government may reproduce, release or disclose such data and software or authorize the use or reproduction of such data and software by persons outside the Government (including their subcontractors) to perform their respective contract(s) listed below:

The Aerospace Corporation Contract FA8802-09-C-0001)
The Boeing Company (Contract F04701-96-C-0025)(GPS Block IIF)
Lockheed Martin Space Systems Company (Contracts F04701-89-C-0073 (GPS Block IIR), FA8807-08-C-0010 (GPS Block IIIA))
MITRE Corporation (Contract FA8721-07-C-0001, Project No. 6642 (Warfighter Support), Task 664C (Global Positioning System)
Sandia Corporation (Contract DE-AC-04-94AL85000)
Science Applications International Corporation (Contract FA8807-07-C-0002)
Tecolote Corporation (Contract FA8802-07-F-1007)
United Launch Alliance (e.g., Contracts F04701-93-C-0004 (Delta II Medium Launch Vehicle III), F04701-98-D-0001 (Lockheed Martin Atlas V Commercial Launch Services), F04701-98-D-0002 (Boeing Delta IV Commercial Launch Services), FA8816-06-C-0002 (Lockheed Martin Atlas V EELV Launch Capability), FA8816-06-C-

0004 (Lockheed Martin Atlas V EELV Launch Services), FA8816-06-C-0001 (Boeing Delta IV EELV Launch Capability), FA8811-08-C-0005 (Boeing Delta IV EELV Launch Services)

User Equipment Segment contractors

Any person who will deliver a secondary payload (e.g., DASS) to the Government for integration onto a GPS IIIA/B/C spacecraft

The Licensor agrees that the Government shall have the right to unilaterally add or delete contractors from those clauses at any time subject to the quantity listed for the applicable item in Column 4 of Table 2 of Attachment 8 to Contract FA8807-10-C-____, and its exercise of that right shall not entitle the Licensor to an equitable adjustment or a modification of any other terms and conditions of this contract.

(3) The duration of this license shall be, at minimum, for the period of performance of Contract FA8807-10-C-_____ (including options, if exercised) unless the license specifies a longer period.

(4) License rights related to technical data described in, and granted to the U.S. Government under, DFARS § 252.227-7015(b)(1) shall apply to all such technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.

(5) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the License shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(6) By law, the U.S. Government cannot enter into any indemnification agreement where the Government's liability is indefinite, indeterminate, unlimited and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this License shall be void.

(7) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.

(8) Upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(9) The Items provided hereunder may be installed and used at any U.S. Government installation worldwide at which OCX equipment is located consistent with the provisions of the contract between the U.S. Government and the Licensee.

(10) Under no circumstances shall terms of the License or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(11) The Licensor shall comply with, and all delivered Items, shall conform to, all applicable Government Security/Classification rules and regulations applicable to this Agreement, in particular those set forth in the applicable DD254 (Department of Defense, Contract Security Classification Specification).

(12) The Licensor understands that the ultimate purpose of the Licensee entering into this License with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release or disclose the Items described in this License in a manner inconsistent with the terms of this License, the U.S. Government shall not be required to deinstall and stop using those Items or return such Items to the Licensee and the Licensor's remedy will be limited to monetary damages..

(13) In the event of inconsistencies between the License and Federal law, Federal law shall apply.

(14) Copies of this license may be disclosed to third parties consistent with the Freedom of Information Act and Clause H010 of Contract FA8807-10-C-_____.

(15) The Government shall not be required to comply with the terms and conditions of any License that is inconsistent with any applicable laws, regulations or policies listed in DFARS § 252.204-7008 ("Requirements for Contracts Involving Export-Controlled Items").

(16) Any claim the Licensee files with the U.S. Government on behalf of the Licensor, and any claim the U.S. Government files with the Licensor, shall be submitted within the period specified in FAR §52.233-01 ("Disputes") as modified by Contract FA8807-10-C-____.

Appendix 3

Relevant Excerpts from GPS III RFP

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING DO-A2	PAGE 1 OF PAGES 68

2. CONTRACT NO.	3. SOLICITATION NO.	4. TYPE OF SOLICITATION	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.
	FA8807-06-R-0001	☐ SEALED BID (IFB) ☒ NEGOTIATED (RFP)		

7. ISSUED BY GPSW/PK CODE FA8807	8. ADDRESS OFFER TO *(If other than Item 7)*
SPACE & MISSILE SYSTEMS CENTER 483 N. AVIATION BLVD EL SEGUNDO, CA 90245-2808 SARA E. LAWLYES 310-653-3451 SARA.LAWLYES@LOSANGELES.AF.MIL	

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE *(Include area code)* *(NO COLLECT CALLS)*	C. E-MAIL ADDRESS
	TERRY L. SCHOOLEY	(310) 653-3174	Terry.Schooley@losangeles.af.mil

11. TABLE OF CONTENTS

(√)	SEC.	DESCRIPTION	PAGE(S)	(√)	SEC	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				*PART II - CONTRACT CLAUSES*	
√	A	SOLICITATION/CONTRACT FORM	1	√	I	CONTRACT CLAUSES	58
√	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2			*PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACH.*	
√	C	DESCRIPTION/SPECS./WORK STATEMENT	17	√	J	LIST OF ATTACHMENTS	**Error!**
√	D	PACKAGING AND MARKING	18			*PART IV - REPRESENTATIONS AND INSTRUCTIONS*	
√	E	INSPECTION AND ACCEPTANCE	19	√	K	REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS	K - 1
√	F	DELIVERIES OR PERFORMANCE	22				
√	G	CONTRACT ADMINISTRATION DATA	24	√	L	INSTRS, CONDS, AND NOTICES TO OFFERORS	L - 1
√	H	SPECIAL CONTRACT REQUIREMENTS	26	√	M	EVALUATION FACTORS FOR AWARD	M - 1

OFFER (*Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within ___240___ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date of receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGEMENTS OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
	☐		

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:	23. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)*	ITEM
☐ 10 U.S.C. 2304(c) ( ) ☐ 41 U.S.C. 253(c) ( )		

24. ADMINISTERED BY *(If other than Item 7)* CODE	25. PAYMENT WILL BE MADE BY CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount
0001		2 Each	_____ _____

Noun: SPACE VEHICLE R&D (SV1 & SV2)
NSN: N - Not Applicable
Contract type: V - COST PLUS INCENTIVE FEE
Inspection: DESTINATION
Acceptance: DESTINATION
FOB: DESTINATION
Descriptive Data:
The contractor shall furnish all supplies and services necessary to accomplish the work set forth in Attachment 1 'Statement of Work' dated * , paragraphs 1.0 through 3.0 (except paragraphs 3.1.1.4, 3.1.1.5, 3.1.7, 3.1.17.2, and 3.2.3); Attachment 4 'Integrated Master Plan' dated * paragraph * attached hereto and made a part hereof. Incentive fee shall be in accordance with SMC-H041 'Cost Plus Incentive Fee (CPIF) Share Ratio' and FAR 52.216-10 'Incentive Fee'. (3600 Funds) (CPIF/AF Completion & On-Orbit Incentive)

Target Cost: *
Target Fee: *
Min Fee: *
Max Fee: *

* To be inserted by the Offeror.

0002		1 Lot	_____ _____

Noun: DATA AND REPORTS
NSN: N - Not Applicable
DD1423 is Exhibit: A
Contract type: V - COST PLUS INCENTIVE FEE
Inspection: DESTINATION
Acceptance: DESTINATION
FOB: DESTINATION
Descriptive Data:
The contractor shall provide data and reports in accordance with Exhibit A, Contract Data Requirements List (CDRL) dated * attached hereto and made a part hereof . The cost of this CLIN is included in the costs of CLINs 0001, 0004, 0006 and 0007 (and Option CLINs 0011-0020, 0023 and 0024 if exercised).

Not Separately Priced.

* To be inserted by the Offeror.

ITEM	SUPPLIES OR SERVICES	Qty Purch Unit	Unit Price Total Item Amount
0025	OPTION CLIN (supply)		_____

Noun: RIGHTS IN TECH DATA, COMPUTER SOFTWARE, & COMPUTER SOFTWARE DOCUMENTATION
NSN: N - Not Applicable
Contract type: J - FIRM FIXED PRICE
Inspection: DESTINATION
Acceptance: DESTINATION
FOB: DESTINATION
Descriptive Data:
In the event this option is exercised in accordance with SMC-B003 'Option Exercise Dates', the contractor shall deliver rights in technical data, computer software, and computer software documentation in accordance with Attachment 13 'Technical Data/ Computer Software Rights' dated * attached hereto and made a part hereof, and SMC-F002 'Option CLIN Delivery/Period of Performance'. (3600/3020 Funds) (FFP)

* To be inserted by the Offeror.

NOTICE: The following contract clauses pertinent to this section are hereby incorporated in full text:

OTHER CONTRACT CLAUSES IN FULL TEXT

B054 IMPLEMENTATION OF LIMITATION OF FUNDS (DEC 2005) (TAILORED)

(a) Pursuant to the clause FAR 52.232-22 in Section I, entitled, 'Limitation of Funds', the total amount available for payment and allotted to this contract for CLINs 0001 and 0003 through 0007 is (to be inserted in the definitive contract). It is estimated that this amount is sufficient to cover performance through *.

(b) In addition to the amount allotted under the 'Limitation of Funds' clause, the additional amount of $ (to be inserted in the definitive contract) is obligated for payment of fee for work completed under CLINs 0003 and 0005.

*To be inserted by the Offeror.

SMC--B002 PRICES / COSTS (JUN 2007) (TAILORED)

(a) The totals for Cost Plus Incentive Fee/Award Fee CLINs 0001, 0004, 0006 and 0007 are as follows:

(1) Total Target Cost: $ **
(2) Total Target Fee: $ **
(3) Total Award Fee earned: $ TBD
(4) Total Incentive Fee earned IAW Attachment 6 'On-Orbit Incentive Plan': $ TBD

(b) The totals for Cost Plus Fixed Fee CLINs 0003 and 0005 are as follows:

(1) Total Estimated Cost: $ **
(2) Total Fixed Fee: $ **

(c) The total estimated amount of this contract [(a) + (b)] is: $ **

SMC--B003 OPTION EXERCISE DATES (JUN 2007) (TAILORED)

(a) The Government shall have the right to order the contractor to perform the efforts, as set forth in the option CLINs identified below, by the Procuring Contracting Officer's issuance of a unilateral modification exercising such right on or before the option exercise dates established below.

(b) The Government shall have the right to partially exercise Option CLIN 0025, "Rights in Technical Data, Computer Software, and Computer Software Documentation for GPS IIIA", for any rights in technical data and computer software associated with any Contract Data Requirement List (CDRL) item. Any partial exercise of this option shall not cancel the remainder of the partially exercised option for the items left unexercised. The appropriations to be obligated onto this CLIN to procure rights in technical data, computer software or computer software documentation associated with a particular item will be (1) the same type of appropriation used to procure that item of technical data, computer software or computer software documentation and (2) current in the year an option is exercised to procure the rights in technical data, computer software or computer software documentation associated with that item.

(c) Option CLINs 0011 through 0015 (Long Lead Items) and Option CLINs 0016 through 0020 (SVs 3-12 production) must be exercised sequentially in accordance with the option exercise dates below.

Option CLIN	Description	Option Exercise Date
0011	LONG LEAD ITEMS (SV3 & SV4)	15-Nov-2010
0012	LONG LEAD ITEMS (SV5 & SV6)	15-Nov-2010
0013	LONG LEAD ITEMS (SV7 & SV8)	15-Nov-2011
0014	LONG LEAD ITEMS (SV9 & SV10)	15-Nov-2012
0015	LONG LEAD ITEMS (SV11 & SV12)	15-Nov-2013
0016	SPACE VEHICLE PRODUCTION (SV3 & SV4)	15-Nov-2011
0017	SPACE VEHICLE PRODUCTION (SV5 & SV6)	15-Nov-2011
0018	SPACE VEHICLE PRODUCTION (SV7 & SV8)	15-Nov-2012
0019	SPACE VEHICLE PRODUCTION (SV9 & SV10)	15-Nov-2013
0020	SPACE VEHICLE PRODUCTION (SV11&SV12)	14-Nov-2014
0022	QUICK REACTION PRODUCTION	See SMC-H004
0023	ON ORBIT OPS ENG SUP R&D (SV1 & SV2)	06-Apr-2012
0024	ON ORBIT OPS ENG SUP PRODUCTION	See SMC-H046
0025	RIGHTS IN TECHNICAL DATA, SW, SW DOC	23-Jul-2027

Contract Clauses in this section are from the FAR, Defense FAR Sup, Air Force FAR Sup, and the Air Force Materiel Command FAR Sup, and are current through the following updates:

Database_Version: 6.10.x.600; Issued: 1/29/2008; FAR: FAC 2005-23; DFAR: DCN20080124; DL.: DL 98-021; Class Deviations: CD 2007o0011; AFFAR: 2002 Edition; AFMCFAR: AFMC 2007; AFAC: AFAC 2008-0128; IPN: 98-009

I. NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

A. FEDERAL ACQUISITION REGULATION CONTRACT CLAUSES

52.202-01	DEFINITIONS (JUL 2004)
52.203-03	GRATUITIES (APR 1984)
52.203-05	COVENANT AGAINST CONTINGENT FEES (APR 1984)
52.203-06	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006) - ALTERNATE I (OCT 1995)
52.203-07	ANTI-KICKBACK PROCEDURES (JUL 1995)
52.203-08	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2007)
52.204-02	SECURITY REQUIREMENTS (AUG 1996)
52.204-04	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)
52.204-07	CENTRAL CONTRACTOR REGISTRATION (JUL 2006)
52.204-09	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)
52.204-10	REPORTING SUBCONTRACT AWARDS (SEP 2007)
52.209-06	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)
52.211-05	MATERIAL REQUIREMENTS (AUG 2000)
52.215-02	AUDIT AND RECORDS -- NEGOTIATION (JUN 1999)
52.215-08	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)
52.215-09	CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM (OCT 1997) - ALTERNATE II (OCT 1997)
52.215-11	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
52.215-13	SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
52.215-14	INTEGRITY OF UNIT PRICES (OCT 1997)
52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)
52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)
52.215-19	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
52.215-21	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)
52.215-21	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997) - ALTERNATE I (OCT 1997) Alt I, Para (b)(1), The Contractor shall submit cost or pricing data and supporting attachments prepared in the following format: 'Paper copy and CD ROM'
52.215-21	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997) - ALTERNATE III (OCT 1997)

B. DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT CONTRACT CLAUSES

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (DEC 2004)
252.203-7002 DISPLAY OF DOD HOTLINE POSTER (DEC 1991)
252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)
252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)
252.204-7004 ALTERNATE A, CENTRAL CONTRACTOR REGISTRATION (SEP 2007)
252.204-7005 ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)
252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)
252.208-7000 INTENT TO FURNISH PRECIOUS METALS AS GOVERNMENT- FURNISHED MATERIAL (DEC 1991)
Para (b), Precious Metal, Quantity, Deliverable Item (NSN and Nomenclature): ' *'
252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (DEC 2006)
252.211-7000 ACQUISITION STREAMLINING (DEC 1991)
252.211-7003 ITEM IDENTIFICATION AND VALUATION (JUN 2005)
Para (c)(1)(ii). Items with acquisition cost less than $5,000. '*'
Para (c)(1)(iii). Attachment Nr. '*'
252.211-7007 ITEM UNIQUE IDENTIFICATION OF GOVERNMENT PROPERTY (SEP 2007)
Para (b)(2)(ii). Exhibit, Line Item, Item Description. '?????'
252.215-7000 PRICING ADJUSTMENTS (DEC 1991)
252.215-7004 EXCESSIVE PASS-THROUGH CHARGES (APR 2007)
252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) (APR 2007)
252.219-7004 SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (APR 2007)
252.223-7001 HAZARD WARNING LABELS (DEC 1991)
252.223-7002 SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994)
252.223-7003 CHANGE IN PLACE OF PERFORMANCE -- AMMUNITION AND EXPLOSIVES (DEC 1991)
252.223-7004 DRUG-FREE WORK FORCE (SEP 1988)
252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)
252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (JUN 2005)
252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (APR 2003)
252.225-7004 REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA--SUBMISSION AFTER AWARD (MAY 2007)
252.225-7006 QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (MAY 2007)
252.225-7007 PROHIBITION ON ACQUISITION OF UNITED STATES MUNITIONS LIST ITEMS FROM COMMUNIST CHINESE MILITARY COMPANIES (SEP 2006)
252.225-7012 PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (MAR 2008)
252.225-7013 DUTY- FREE ENTRY (OCT 2006)
252.225-7016 RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (MAR 2006)
252.225-7021 TRADE AGREEMENTS (MAR 2007)
252.225-7025 RESTRICTION ON ACQUISITION OF FORGINGS (JUL 2006)
252.226-7001 UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004)
252.227-7000 NON-ESTOPPEL (OCT 1966)
252.227-7001 RELEASE OF PAST INFRINGEMENT (AUG 1984)
Disposition of (description of subject matter): 'Signal Combining patents'
252.227-7013 RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS (NOV 1995)
252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUN 1995)
252.227-7015 TECHNICAL DATA--COMMERCIAL ITEMS (NOV 1995)

252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)
252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS--COMPUTER SOFTWARE (JUN 1995)
252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (JUN 1995)
252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (APR 1988)
252.227-7030 TECHNICAL DATA--WITHHOLDING OF PAYMENT (MAR 2000)
252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA (SEP 1999)
252.227-7038 PATENT RIGHTS--OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (DEC 2007)
252.228-7005 ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (DEC 1991)
252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)
252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (MAR 2008)
252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006)
252.235-7003 FREQUENCY AUTHORIZATION (DEC 1991)
252.235-7003 FREQUENCY AUTHORIZATION (DEC 1991) - ALTERNATE I (DEC 1991)
252.235-7010 ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER (MAY 1995)
Para (a), name of contracting agency(ies): 'United States Air Force'
Para (a), contract number(s): 'To be inserted in the definitive contract'
Para (b), name of contracting agency(ies): 'United States Air Force'
252.235-7011 FINAL SCIENTIFIC OR TECHNICAL REPORT (NOV 2004)
252.239-7000 PROTECTION AGAINST COMPROMISING EMANATIONS (JUN 2004)
252.239-7001 INFORMATION ASSURANCE CONTRACTOR TRAINING AND CERTIFICATION (JAN 2008)
252.242-7002 EARNED VALUE MANAGEMENT SYSTEM (MAR 2005)
Para (f), Subcontractors selected for application of EVMS: 'To be inserted in the definitive contract'
252.242-7004 MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (NOV 2005)
252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)
252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)
252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JAN 2008)
252.246-7001 WARRANTY OF DATA (DEC 1991)
252.246-7003 NOTIFICATION OF POTENTIAL SAFETY ISSUES (JAN 2007)
252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002)
252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (DEC 2006)
252.251-7000 ORDERING FROM GOVERNMENT SUPPLY SOURCES (NOV 2004)
Para (e), Contractor's address is '*'
Para (e), Government remittance address is 'To be inserted in the definitive contract'

C. AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT CONTRACT CLAUSES

5352.201-9101 OMBUDSMAN (AUG 2005)
Para (c). Ombudsmen names, addresses, phone numbers, fax, and email addresses.
'SMC/PK
Attn: Mr. James H. Gill
483 N. Aviation Blvd.
El Segundo, CA 90245-2808

Phone: (310) 653-1789
Email: James.Gill@losangeles.af.mil'
5352.204-9000 NOTIFICATION OF GOVERNMENT SECURITY ACTIVITY AND VISITOR GROUP SECURITY AGREEMENTS (APR 2003)

DOCUMENT	PGS	DATE	TITLE
EXHIBIT A	201	23 JUL 2007	CONTRACT DATA REQUIREMENTS LIST (CDRL)
ATTACHMENT 1	283	15 AUG 2007	STATEMENT OF WORK (SOW)
ATTACHMENT 2	1		RESERVED
ATTACHMENT 3	38	12 JUL 2007	CONTRACT WORK BREAKDOWN STRUCTURE (CWBS)
ATTACHMENT 4	2	12 JUL 2007	INTEGRATED MASTER PLAN (IMP)
ATTACHMENT 5	30	23 JUL 2007	AWARD FEE PLAN
ATTACHMENT 6	13	23 JUL 2007	ON-ORBIT INCENTIVE PLAN
ATTACHMENT 7	6	23 JUL 2007	LIST OF GOVERNMENT FURNISHED PROPERTY AND INFORMATION AND BASE SUPPORT LIST
ATTACHMENT 8	2	12 JUL 2007	SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS
ATTACHMENT 9A	16	12 JUL 2007	DD FORM 254 CONTRACT SECURITY CLASSIFICATION ATTACHMENTS
ATTACHMENT 9B	2	12 JUL 2007	DD FORM 254 CONTRACT SECURITY CLASSIFICATION
ATTACHMENT 10	2	12 JUL 2007	OCI MITIGATION PLAN
ATTACHMENT 11	2	12 JUL 2007	SPECIAL STUDIES
ATTACHMENT 12	1		RESERVED
ATTACHMENT 13	12	06 AUG 2007	RIGHTS IN TECHNICAL DATA, COMPUTER SOFTWARE AND COMPUTER SOFTWARE DOCUMENTATION
ATTACHMENT 14	2	12 JUL 2007	MAKE OR BUY STRATEGY AND MANAGEMENT PLAN
ATTACHMENT 15	3	12 JUL 2007	QUICK REACTION TASKS

252.227-7017 IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUN 1995)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation--

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data--Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documentation, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovative Research Program, the notification and identification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such item, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).

****Corporation, individual, or other person, as appropriate.

*****Enter "none" when all data or software will be submitted without restrictions.

Date _ _ _ _ _ _ _ _ _ _ _ _

Printed Name and Title _ _ _ _ _ _ _ _ _ _ _ _

_ _ _ _ _ _ _ _ _ _ _ _

Signature

_ _ _ _ _ _ _ _ _ _ _ _

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

C. AIR FORCE MATERIEL COMMAND FEDERAL ACQUISITION REGULATION SUPPLEMENT SOLICITATION PROVISIONS IN FULL TEXT

5352.215-9007 USE OF NON-GOVERNMENT ADVISORS (AFMC) (NOV 2007)

(a) Offerors are advised that technical and cost/price data submitted to the Government in response to this solicitation may be released to non-Government advisors for review and analysis. The non-Government advisor support will be provided by:

Name of firm(s)

Tecolote Research, Inc. 1 S. Los Carneros Drive, Suite 125 Goleta, CA 93117-5506	SETA Advisor to SSET
The Aerospace Corporation 2350 E. El Segundo Blvd El Segundo, CA 90245-4691	FFRDC Advisor to SSET
The Mitre Corporation 202 Burlington Road Bedford, MA 01730-1420	FFRDC Advisor to SSET and PRAG

(b) Offerors shall complete paragraph (b)(2) or provide written objection to disclosure as indicated in paragraph (b)(1). If the offeror objects to disclosure of a portion of the proposal, the consent in (b)(2) should be provided for the remainder of the proposal.

(1) Any objection to disclosure:

I. NOTICE: The following solicitation provisions pertinent to this section are hereby incorporated by reference:

A. FEDERAL ACQUISITION REGULATION SOLICITATION PROVISIONS

52.204-06	DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (OCT 2003)
52.211-02	AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) (JAN 2006)
52.211-14	NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE (SEP 1990) Rated Order: 'DO- A2'
52.215-01	INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (JAN 2004)
52.215-20	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) - ALTERNATE I (OCT 1997) Alt I, Para (b)(1), The offeror shall submit cost or pricing data and supporting attachments in the following format: 'CD ROM and one paper copy'
52.215-20	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) - ALTERNATE II (OCT 1997)
52.216-01	TYPE OF CONTRACT (APR 1984) Type of contract is 'Cost Plus Incentive Fee (CPIF), Cost Plus Award Fee (CPAF), Cost Plus Fixed Fee (CPFF) and Firm Fixed Price (FFP)'
52.219-24	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM--TARGETS (OCT 2000)
52.222-24	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)
52.232-38	SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (MAY 1999)
52.233-02	SERVICE OF PROTEST (SEP 2006) Para (a) Official or location is 'GPSW/PK ATTN: GPS III Procurement Contracting Officer 483 N. Aviation Blvd. El Segundo, CA 90254-2808'
52.237-08	RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (AUG 2003)

B. DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT SOLICITATION PROVISIONS

252.211-7001	AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS NOT LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST), AND PLANS, DRAWINGS, AND OTHER PERTINENT DOCUMENTS (MAY 2006) Activity name is 'GPS Wing' Activity address is 'See Block 8 of SF 33'
252.215-7003	EXCESSIVE PASS-THROUGH CHARGES--IDENTIFICATION OF SUBCONTRACT EFFORT (APR 2007)
252.227-7028	TECHNICAL DATA OR COMPUTER SOFTWARE PREVIOUSLY DELIVERED TO THE GOVERNMENT (JUN 1995)
252.242-7001	NOTICE OF EARNED VALUE MANAGEMENT SYSTEM (MAR 2005)

C. AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT SOLICITATION PROVISIONS

5352.215-9000	FACILITY CLEARANCE (MAY 1996)
5352.225-9004	SUBMISSION OF OFFERS IN OTHER THAN UNITED STATES CURRENCY (JUN 2006)

SECTION L

RFP FA8807-06-R-0001

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

FOR GPS III

EXECUTIVE VISION

The Global Positioning System (GPS) III program strategy will implement the "block development" and "back to basics" strategies for space development and acquisition and is intended to establish a new benchmark for low-risk, high-confidence space system acquisition. It will establish a long-term relationship with an industry partner to develop, acquire, and deliver critical new GPS space capabilities of high value to warfighters and civil users.

GPS III is based on a "Back to Basics" approach that establishes a firm foundation in sound systems engineering principles and program execution that emphasizes mission success. The Government has made it clear that it places a significant priority on a low-risk and high-confidence development, leading to on-time delivery and launch availability to both sustain the on-orbit GPS constellation and to deliver important new capabilities. It will reverse the problems of previous space programs that took on unnecessary technical risks, cost risks, and schedule risks, and that all too often resulted in cost overruns, schedule delays, performance shortfalls, and program restructures or terminations.

GPS III's incremental approach allows industry to offer a much lower risk program with earlier delivery of valuable military and civil capabilities to operations. The space vehicle will be developed in three blocks: GPS IIIA, GPS IIIB, and GPS IIIC. The GPS IIIA space vehicle will deliver notable enhancements over the GPS IIF and IIR-M baselines. This vehicle will include a new L1C (civil) Galileo-compatible signal, enhanced M-code Earth Coverage power and a graceful growth path to full warfighter capabilities by GPS IIIC. GPS IIIA uses a "time certain" development approach for on-schedule launch availability of the first vehicle in 60-66 months, but no later than 72 months. In addition, positive and negative cost, schedule, and mission success incentives are planned. The Capability Insertion Program will provide a graceful growth path from GPS IIIA to GPS IIIC. This Capability Insertion Program will develop, qualify, integrate, demonstrate, and insert future required capabilities on GPS IIIB and GPS IIIC on a low-risk, high confidence approach. To ensure system compatibility and synchronization of military and civil capabilities, the Government intends to choose a partner able to reach across the interface to facilitate good systems integration with the Government team and associate contractors across the segments (i.e., space, control system, and user equipment). It is especially important to ensure the space segment contractor has a well conceived approach to work the very complex satellite telemetry, tracking, and commanding (TT&C) and mission control interfaces with the Next Generation Control Segment (OCX) contractor.

The source selection includes four Evaluation factors: Past Performance (PP), Mission Capability (MC), Proposal Risk (PR), and Cost (Cost). The priority is: PP = MC = PR > Cost. The seven Subfactors for Mission Capability and Proposal Risk are: GPS IIIA Design, Development, and Test; Graceful Growth; Systems Engineering and Integration; Program Execution; Systems Effectiveness & Suitability; Software Development; and Small Business Subcontracting Plan.

To reiterate the most important points, the Government expects GPS IIIA to be a model for low-risk, high-confidence development, acquisition excellence delivering valuable user capabilities on-cost and on-schedule, outstanding teamwork, and a strong focus on "Back to Basics" systems engineering and program execution that provides a sharp focus on mission success.

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2.6 Cross Referencing

To the greatest extent possible, each volume shall be written on a stand alone basis so that its contents may be evaluated with a minimum of cross-referencing to other volumes of the proposal with the exception of references to the IMP, SOW, WBS, IMS, GFP, Base Support, and Rights in Technical Data, Computer Software and Computer Software Documentation. All other information required for proposal evaluation that is not found in its designated volume will be assumed to have been omitted from the proposal. Cross-referencing within a proposal volume is permitted where its use would conserve space without impairing clarity. The Offeror shall use a common paragraph numbering and outline system for the volumes and attachments of the proposal.

2.7 Indexing

Each volume shall contain a detailed table of contents to delineate the subparagraphs within that volume. Tab indexing shall be used to identify sections.

2.8 Mission Capability (MC) Attachments

a. Section L refers to Attachments MC1 through MC16, which will be used as reference material to assist in the evaluation of Mission Capability Subfactors and must support the Offeror's proposed approach. The instructions for several MC Attachments require the Offerors to provide the content of a specific item as identified in Exhibit A, Contract Data Requirements List. Although Offerors who have previously submitted documents to the GPS Wing that address the requirements of an MC Attachment are encouraged to submit that same document with revisions indicated by change bars, use of previously submitted documentation is not required. Except as otherwise indicated in the RFP, contractor format is acceptable.

b. Use of second tier references in any MC Attachments is not acceptable. For example, statements such as the following are unacceptable: "Specific processes at our subcontractor will be in accordance with Subcontractor Process Plan XYX" or "This process will be done using our corporate process XYZ". Instead, Offerors must extract the applicable process information from those documents and include it in the MC Attachments. This information shall also be included in Integrated Master Plan (IMP) narratives when appropriate.

c. For all MC Attachments having an associated CDRL (except MC3: Software Architecture Design), the Government reserves the right to review the data item prior to contract award and, where appropriate, include the data item as a Compliance Document in the Statement of Work.

2.9 Rights in Technical Data, Computer Software and Computer Software Documentation

a. The Government has determined that, in accordance with 10 U.S.C. 2320(a)(2)(B,C,D), SMCI 63-104, and the GPS IIIA Acquisition Strategy dated Mar 07, its minimum needs for this acquisition include

(1) Unlimited Rights to all noncommercial technical data listed in Table 1 of Attachment 13 where the phrase "Unlimited" is stated in column 4 of the row associated with that item of technical data,

(2) Unlimited Rights or **Government Purpose Rights** to all remaining noncommercial technical data and computer software delivered under this contract where the phrase

"Offeror to Complete" is stated in column 4 of the row associated with that item of technical data or computer software,

(3) the special license described in subsection (d) of Attachment 13 for any noncommercial technical data or computer software listed in Table 1 of that attachment where the phrase "See subsection (d)" is stated in column 4 of the row associated with that item of technical data or computer software, and

(4) A perpetual license to all commercial technical data and computer software for (a) a sufficient number of licenses for GPS program purposes, (b) that grants the Government unrestricted rights to items described in DFARS 252.227-7015(b)(1), (c) that is consistent with Federal procurement law (e.g., choice of law provisions, forums that would adjudicate any disputes, provisions that require the Government to indemnify the licensor), (see FAR § 2.101 for the definition of "commercial item"), and (d) that permits the Government to use, release or disclose that commercial item technical data and computer software outside the Government consistent with the license specified in Attachment 13(b).

b. CLINs 0001-0007 and 00023 are cost-reimbursable CLINs that require the contractor to conduct research and development. As such, the Government will be reimbursing the contractor its allocable, allowable, and reasonable costs of performing such work and thus assumes that an Offeror need not use any technical data or computer software developed completely at private expense to perform any of the requirements. Accordingly, the Government does not envision any circumstance where, in completing the Section K clause entitled "Identification and Assertion of Use, Release, or Disclosure Restriction" (DFARS 252.227-7017), an Offeror will deliver less than Unlimited Rights to the Government for any technical data or computer software delivered under this RFP. If this assumption is correct, Offerors shall:

(1) Complete the Section K provision DFARS 252.227-7017 and column 4 of Table 1 in Attachment 13 consistent with that assumption, (i.e., for any cell that is not labeled "N/A", insert the word "Unlimited" into each cell of that Column labeled as "Offeror to Complete" and leave the remaining cells in that column unchanged) and ensure that the statements in both the Section K provision and Attachment 13 are consistent with each other in all respects.

(2) Highlight the Offeror's intent to provide the Government with Unlimited Rights to all technical data and computer software delivered under this contract as described in Section L-4.2.4.6.

(3) Fill-in a proposed price in the cell in Column 5 associated with each item listed in Table 1 of Attachment 13 associated with a particular item of technical data or computer software in its Cost/Price Volume that is not labeled as "N/A" and then provide a total price for all items. Because CDRLs A026, A032, A039, A057, A065, and A082 contain technical data, computer software and computer software documentation, the Offeror shall propose a price for the technical data, computer software and computer software documentation rights to be delivered for each of those CDRLs. The Offeror may extend the table to add additional rows associated with a particular CDRL if its technical approach dictates submission of multiple deliverables (sub-CDRLs, e.g., CDRL A047.1, A047.2) under that CDRL. The Offeror may also add additional cells in column 5

associated with those additional rows. The Government notes that it is entitled to Unlimited Rights in technical data and computer software associated with certain items delivered under this contract in certain situations, even where those items were not developed exclusively with Government funding (see DFARS 252.227-7013(b)(1)(ii, iv–ix), and DFAFS 252.227-7017(b)(1)(ii-vi)), and

(4) Delete Table 2, all references to Table 2, the third sentence of (a)(1), any references to "commercial" in (a)(4), subsection (b), the last sentence of (c), and (e).

c. Where the Government's assumption as described in subsection a. above is incorrect and there are valid reasons why an Offeror must develop entirely at private expense or provide previously developed technical data or computer software under this contract the Offerors may not be required, either as a condition of being responsive to this RFP or as a condition for award, to sell or otherwise relinquish to the Government any proprietary right in technical data or computer software developed at private expense, except for the items identified at DFARS 227.7103-5(a)(2) and (a)(4) through (a)(9), DFARS 227.7203-5(a)(3) through (6) and DFARS 227.7102-1. Accordingly, if an Offeror believes the Government's assumption is incorrect, Offerors shall so indicate by:

(1) Completing the Section K provision entitled "Identification and Assertion of Use, Release, or Disclosure Restrictions" (DFARS 252.227-7017) and column 4 of the table in Attachment 13 by identifying the specific type of noncommercial and commercial technical data/computer software rights the Offeror asserts it will retain and ensure that the statements in both the Section K provision and Attachment 13 are consistent with each other in all respects,

(2) Highlighting the Offeror's intent as described in Section L-4.2.4.6 to provide the Government with Unlimited Rights to all noncommercial technical data listed in Table 1 of Attachment 13 where the phrase "Unlimited" is stated in column 4 of the row associated with that item of technical data, Unlimited Rights or Government Purpose Rights to all remaining noncommercial technical data and computer software delivered under this contract where the phrase "Offeror to Complete" is stated in column 4 of the row associated with that item of technical data or computer software, the special license described in subsection (d) of Attachment 13 for any noncommercial technical data or computer software listed in Table 1 of that attachment where the phrase "See subsection (d)" is stated in column 4 of the row associated with that item of technical data or computer software, and a perpetual license to all commercial item technical data and computer software for (a) a sufficient number of licenses for GPS program purposes, (b) that grants the Government unrestricted rights to items described in DFARS 252.227-7015(b)(1), (c) that is consistent with Federal procurement law and (d) that permits the Government to use, release or disclose that commercial item technical data and computer software outside the Government consistent with the license specified in Attachment 13(b),

(3) Completing Table 1 in Attachment 13 in the following manner:

i. With regard to items of technical data or computer software associated with cells in column 4 of that table in Attachment 13 labeled as "Offeror to Complete," insert either "Government Purpose" or "Unlimited" into each such cell,

ii. With regard to items of technical data associated with cells in column 4 of that table in Attachment 13 labeled as “Unlimited,” “N/A,” or “See subsection (d),” leave those cells as-is,

iii. Insert a proposed price into each cell in column 5 of that table in Attachment 13 for those items of technical data or computer software associated with that item's corresponding cell in column 4 that is not labeled as 'N/A.' The Offeror may extend the table to add additional rows associated with a particular CDRL if its technical approach dictates submission of multiple deliverables (sub-CDRLs, e.g., CDRL A047.1, A047.2) under that CDRL but shall not modify column 4 associated with those additional rows in any way. Under such circumstances, the Offeror may also add additional cells in column 5 associated with those additional rows. [Note: For some CDRLs, Columns 4 and 5 of Table 1 of Attachment 13 contain cells describing differing levels of rights (e.g., CDRL A027 has cells labeled as both “Offeror to Complete” and “Subsection (d)”) and request proposed pricing for each level of rights. This bifurcation is not intended to suggest that the content of the CDRL would be different depending upon the level of rights to be provided. In both cases, the content of the CDRL would include everything required by that CDRL. Clause SMC-B003 states the Government has the right to partially exercise Option CLIN 0025. Thus, the purpose of the additional cells is to require the Offeror to propose a price for both “Subsection (d)” rights as well as “Unlimited” or “Government Purpose” Rights for that CDRL content so that after contract award the Government will have the right to partially exercise that option for a particular CDRL to acquire “Subsection (d)” rights or acquire “Government Purpose” or “Unlimited” Rights depending upon which level is proposed by the Offeror. In addition, if the Government has already exercised the option for “Subsection (d)” rights, it can partially exercise the option for “Government Purpose” or “Unlimited” Rights depending upon which level the Offeror proposed, thereby upgrading the level of rights it originally purchased.] If the Offeror is not willing to sell Unlimited Rights to an item labeled as such in column 4, Government Purpose Rights at minimum to an item labeled as "Offeror to Complete" in column 4, or the Special License Rights labeled as "See subsection (d)" in column 4, the Offeror shall place the following character ("--") in the corresponding cell in column 5 of the table in Attachment 13 associated with that item to signify that the Offeror is not willing to sell such rights to that item. The Government notes that it is entitled to Unlimited Rights in technical data and computer software associated with certain items delivered under this contract in certain situations, even where those items were not developed exclusively with Government funding (see DFARS 252.227-7013(b)(1)(ii, iv-ix) and DFARS 252.227-7014(b)(1)(ii-vi), and

(4) Completing Table 2 in Attachment 13 in the following manner:

i. In Column 1 of that table in Attachment 13, identifying the CDRL number which will contain that commercial technical data or computer software.

ii. In Column 2 of that table in Attachment 13, identify the Data Item Title (Subtitle) of that CDRL,

iii. In Column 3 of that table in Attachment 13, identify the name of the vendor that will be supplying that commercial technical data or computer software, the trade name of the technical data/software application and the license number of that commercial technical data or computer software to be provided as part of that CDRL or CLIN,

iv. Physically attach a copy of every license listed in column 3 of that table.

(5) In paragraph (b)(1), fill in the asterisked item (*) with the quantity of licenses relating to the delivery of commercial item technical data, commercial item software, or commercial item technical data and commercial item software the Offeror proposes to deliver to the Government.

(6) In paragraphs (b)(2), (c), and (e), fill in the asterisked item (**) with the name of the software application (e.g., “Microsoft Office 2003”) that the Offeror will be acquiring from a manufacturer of personal computers (e.g., “Dell”) that that manufacturer of hardware will load into that personal computer prior to delivery to the Offeror that will in turn be delivered to the Government under CLIN(s) 0006 and 0007.

4 Volume II – Mission Capability

Mission Capability and Proposal Risk will be addressed in the Mission Capability Volume. In this volume, address the proposed approach to meeting the requirements of each Mission Capability subfactor, as well as the risks in the proposed approach in terms of mission capability/performance, cost, and schedule.

4.1 General Instructions

The Mission Capability Volume shall be specific and complete. By submitting a proposal, the Offeror is representing that its firm will perform all the requirements specified in the solicitation. Do not merely reiterate the objectives or reformulate the requirements specified in the solicitation. Using the instructions outlined below, provide the actual methodology that would be used for satisfying these Subfactors. The Mission Capability Volume shall be organized according to the outline for Volume II in L-2.3, Table 1.

4.2 Instructions for the Mission Capability Volume

a. The indicated information, as a minimum, shall be provided for the following subfactors. Throughout this volume, provide references to Volume V (Offeror-proposed Space Segment Specification SS-SS-800B, SOW, IMP, CWBS, CDRL) that reflect the proposed work with cross references to the IMS to show the accompanying schedule.

b. In the Government-supplied SS-SS-800B specification, “GPS IIIA” denotes requirements that are imposed on all GPS IIIA satellites. In the Offeror-proposed version of SS-SS-800B, define “GPS IIIA” as the requirements that shall be met by the GPS IIIA SS, including all GPS IIIA SVs.

c. In the Government-supplied SS-SS-800B specification, “fully capable GPS III” denotes a requirement that is imposed on all of the GPS IIIC satellites. In the Offeror-proposed version of SS-SS-800B, define “fully capable GPS IIIC” as the requirements that shall be met by the GPS IIIC SS, including all GPS IIIC SVs.

4.2.1 Subfactor 1: System Engineering and Integration (SE&I)

The intent of this subfactor is to solicit the Offeror’s SE&I approach and address how the processes and products described below will be used to achieve the program objectives outlined in the SOO. Refer to the SEMP in Attachment MC12 and to the IMP narratives for supporting detail.

4.2.1.1 System Engineering Processes

The Offeror shall describe the system engineering processes that it and its subcontractors will use on GPS IIIA for the duration of the contract, including its approach to developing and maintaining multiple concurrent technical baselines for GPS IIIA and the capability risk reduction and maturation for GPS IIIB and IIIC. The Offeror shall demonstrate its approach to maintaining continuity of a core team of system engineering personnel and show how segment-level SE&I is well integrated with System-level SE&I activities.

4.2.4 Subfactor 4: Program Execution

The intent of this subfactor is to solicit the Offeror's Program Execution approach and how the processes and products described below will be used to achieve the SOO. As defined in this subfactor, a major/critical subcontractor is any subcontractor whose total cost (R&D and Production) is greater than $100 million or who is the single source in the industry for the product or component to be delivered, or who provides major units of the navigation payload, or who falls on the critical path to first launch as reflected in the Offeror's IMS (Attachment MC1).

4.2.4.1 Organization and Staffing

a. The Offeror shall describe the companies participating on the GPS III team, their relationships, and their roles on the program. Include all participating divisions and locations (prime, major/critical subcontractors, joint venture partners, subsidiaries, work done by other divisions of the prime) and whether teaming agreements or subcontracts are in place.

b. The Offeror shall provide a program-specific IPT-based organizational chart that starts at the level of the Offeror's Chief Executive Officer and clearly identifies the entire chain of command down to the IPT lead level, specifying each party's name, title, and division name and location. Describe the Government's role in this IPT structure. Show where all team members fit in the organization and identify the interdependencies, key relationships, and communication channels. Clearly describe the management approach for GPS III. Identify the decision-making flow within the team. Clearly identify the Cost Center for the project (e.g., the business center where project costs are collected and reported).

c. The Offeror shall provide a detailed description of the key positions on the program, the technical staffing, and key facilities to be used in performing the contemplated contract. Discuss plans to attract and retain the highest quality personnel to the program for both prime and major/critical subcontractors, and specifically discuss plans to incentivize the best talent to stay on the program to ensure mission success. Provide a staffing plan that identifies all key personnel (Offeror, subcontractors, and joint venture partners) during GPS IIIA, including those required to execute the capability risk reduction and maturation efforts under CLIN 0004 and to ensure proper support to the Government as it advances through subsequent key decision points in its incremental development. The staffing plan shall identify the staffing level profiles for the existing programs from which GPS IIIA manpower will be provided. Provide resumes of key personnel as Attachment MC6 that reflect experience needed to successfully execute the program. Identify the percentage of time committed to the GPS IIIA program for each of the key personnel. If less than 100%, provide sufficient justification that those individuals can execute the duties of the associated key positions within the time designated. Provide a plan for maintaining equivalent level of expertise for those positions through acquisition phases and contract duration. The Offeror shall discuss its plans to resolve issues of facilities contention with other programs.

4.2.4.2 Management Approach

a. The Offeror shall describe an overall management approach to successfully execute this program.

b. The Offeror shall explain how the SOW, IMP, CWBS, and IMS support the delivery schedule for GPS IIIA development and production satellites and how subcontractor, other prime

particular fiscal year. The Offeror shall not exceed the available funding in any fiscal year listed in the following table for all work under this contract. The Offeror shall provide its rationale for how work is allocated between CLINs 0001, 0004, 0006, and 0007. To that end, the Offeror shall prioritize its proposed work to ensure it completes CLIN 0001, 0006, and 0007 in a low risk program that can be achieved with high confidence and meet the Government's required delivery schedule. The Offeror shall propose, as the second priority, an aggressive capability risk reduction and maturation program to be accomplished under CLIN 0004.

Table 3 Projected GPS III Space Vehicle Funding (Total Cost to the Government including All Fees, Profit, and Incentives)

Type of Funds	FY08 $M	FY09 $M	FY10 $M	FY11 $M	FY12 $M	FY13 $M
3600	106.8	315.5	315.8	323.5	256.55	218.0
3020	0.0	0.0	0.0	142.3	505.7	753.1

4.2.4.5 Manufacturing Management (MC16)

The Offeror shall describe the proposed prime and subcontractor manufacturing strategy to assure low risk manufacture, integration, and test of space vehicles and associated hardware to achieve on-time delivery and mission success. Refer to Attachment MC16 (Manufacturing Management Plan), the Manufacturing, Producibility, and I&T IMP Narrative, and the TRA in Attachment MC14 for additional detail. The Offeror shall include the following as proposed specifically for GPS IIIA and describe how these elements will be adapted for GPS IIIB and IIIC:

a. Use of key manufacturing considerations such as: (1) efficient manufacturing, producibility, and I&T; (2) advanced manufacturing technologies, processes, systems; (3) modern technology, production equipment, and hardware and software production systems to enforce on-time delivery of space vehicle, increase productivities of the Offerors, and reduce life-cycle costs during the research and development phase and the production phase of the program; and (4) proposed policies, objectives, controls, and proven approaches.

b. A description of the Offeror's investments or proposed investments in proven manufacturing technology production equipment, processes, and organization of work systems. Discuss investments in workers' skill and experience.

c. A description of the Offeror's process to determine the appropriate manufacturing readiness level prior to incorporation into the SV.

4.2.4.6 Rights in Technical Data, Computer Software, and Computer Software Documentation

As described in Section L-2.9.b and c, in Volume V the Offeror shall provide a completed copy of the Section K certification DFARS 252.227-7017, "Identification and Assertion of Use, Release, or Disclosure Restrictions" and a completed copy of Attachment 13, identifying what, if any, restrictions on the Government's rights to use, release or disclose the technical data or computer software will exist for each CDRL under this contract. In addition, if the Offeror proposes to deliver commercial item technical data, commercial item software, or both, in Volume II the Offeror shall also describe the analysis it conducted (including all assumptions

made) to determine that the quantity of licenses the Offeror proposes to deliver to the Government will be sufficient for GPS program purposes.

4.2.5 Subfactor 5: Systems Effectiveness and Suitability

The intent of this subfactor is to solicit the Offeror's Systems Effectiveness and Suitability approach and address how the processes and products described below will be used to achieve the objectives in the SOO.

4.2.5.1 Satellite Replenishment Timelines

The Offeror shall provide detailed timelines demonstrating compliance with the Offeror-proposed SS-SS-800B call up and initial on-orbit operations requirements along with supporting information regarding needed on-orbit calibration timelines.

4.2.5.2 Integrated Logistics Support (ILS)

The Offeror shall describe its ILS program with references to the Integrated Support Plan in Attachment MC15 for supporting detail and shall include applicable elements of prime and subcontractor processes from Attachment MC15 in the ILS IMP Narrative and reflect those elements in the IMS.

4.2.5.3 Parts, Material, and Process Control

The Offeror shall describe its parts, materials and process control procedures with references to the PMP Management Plan in Attachment MC9 for supporting detail.

4.2.5.4 Diminishing Manufacturing Sources and Material Shortages

a. The Offeror shall describe its approach to addressing risks associated with the DMSMS supporting the GPS III program including how these factors are evaluated and incorporated into the PMP design, selection, and qualification process.

b. The Offeror shall identify critical and unique GPS III industrial base issues and the proposed risk mitigation approach for those issues.

4.2.5.5 Quality Assurance

The Offeror shall describe its quality system program with reference to Attachment MC10 for supporting detail.

4.2.5.6 Reliability and Maintainability

a. The Offeror shall provide specific references to the SOW, CWBS, IMP, IMS, or other similar documents submitted with the proposal to support the following responses.

b. The Offeror shall describe how it would incorporate software reliability, recovery times, and recovery probabilities into its reliability and maintainability allocations, analyses, and assessments. Specifically, the Offeror shall describe how it will use data from past operating experience with reused software for model parameter estimation, assessment of failure modes, and assessment of maintainability. The Offeror shall also describe how it will use data from past operating experience with on-orbit anomaly detection and resolution for parameter estimation, assessment of failure modes, and assessment of maintainability.

in addition to percent of subcontracted amount" of the proposed effort as a part of their Small Business Subcontracting Plan or, if applicable, as an addendum to the contractor's comprehensive subcontracting plan. Offerors shall also categorize subcontractors to describe the diversity of subcontracted work on GPS IIIA. See Clause L-1.5.1 for additional information.

4.2.8 Attachment MC1 to Volume II: Integrated Master Schedule

a. The intent of this section is to obtain a functionally integrated understanding of the proposal. It is also to demonstrate the interrelationships between the technical effort, cost, schedule, and management for the work proposed. The Government expects to achieve high confidence that the program is structured to be executable using the time-phased resources described in this proposal.

b. The Offeror shall provide an IMS containing the information required by Exhibit A, CDRL A043. This information shall be provided at the lowest CWBS level reflected in the Offeror's proposed Attachment 3 of the Model Contract and shall provide detailed task timing of the work effort described in the IMP and be traceable to the CWBS, SOW, CLINs, and IPTs. The IMS must be able to roll up to level 4. The IMS shall include all activities performed by the contractor, their subcontractors, and Government activities supported by the contractor. The IMS shall include CLINs 0001, 0006, 0007, and option CLINs 0011 through 0020, 0023 and 0024. CLIN 0004 shall be contained in an IMS annex that covers all proposed activity up to SS-level PDR for GPS IIIB and IIIC. In addition, Offerors must demonstrate that the schedule for proposed capability risk reduction and maturation can be completed in time to support low risk and high confidence GPS IIIB and IIIC follow on efforts.

c. In addition, the Offeror shall provide a schedule risk assessment with this volume with analytical evidence that indicates the confidence level of the IMS presented. Offerors shall provide three-point estimates for activity durations down to CWBS level 4, as well as identify critical path and near critical path items regardless of CWBS level. Near critical path items are tasks that are within five calendar days of the critical path. The Offeror must enter schedule assumptions in a specified field of MS Project (e.g., a Text Field).

4.2.9 Attachment MC2 to Volume II: Software Development Plan

The Offeror shall provide an integrated SDP containing the information required by Exhibit A, CDRL A022. The appendices referenced in SDP Section 4.2.2, Standards for Software Products, shall not be delivered as part of the proposal.

4.2.10 Attachment MC3 to Volume II: Software Architecture Description

The Offeror shall describe its proposed software architecture that contains all information required by Exhibit A, CDRL A059.

4.2.11 Attachment MC4 to Volume II: CMMI® Engineering Process Questionnaire

The Offeror shall provide responses to the CMMI® Class C EPQ provided in Annex F of Section L. The CMMI® Class C EPQ response shall be a unified response from the prime and subcontractors with significant software responsibility.

4.2.12 Attachment MC5 to Volume II: SS-SS-800B and Analyses of Offeror Changes to

7 Volume V –Contract Documentation

7.1 Model Contract/Representations and Certifications

The purpose of this volume is to provide information to the Government for preparing the contract document and supporting file. The Offeror's proposal shall include a signed copy of the Model Contract (SF Form 33). The Offeror shall complete Blocks 12 to 16 and sign and date Blocks 17 and 18. Signature by the Offeror on the SF33 constitutes an offer, which the Government may accept. The "original" copy should be clearly marked and provided under a separate cover. The Offeror shall complete asterisks throughout sections A-K. All certifications and representations required by Section K of the solicitation must be completed as of the date of contract award. Offerors shall assume a contract award date of 7 April 2008 for purposes of pricing, inserting required dates, and understanding required delivery schedules and incentive provisions. If the actual award date slips, the Government will amend the RFP to adjust these dates to reflect a later contract award date.

7.2 Section B, Supplies or Services and Costs/Prices

a. The Offeror shall complete pricing information for CLINs 0001, 0004, 0006, and 0007 as part of the basic contract by inserting the proposed target cost, target fee, maximum fee, and minimum fee amounts for each CLIN.

b. CLIN 0002 is Not Separately Priced (NSP) as the estimated cost is to be respectively accounted for in CLINs 0001, 0004, 0006, 0007, 0011 – 0020, 0023 and 0024.

c. The Offeror shall complete pricing information for Option CLINs 0011 through 0020 by inserting the proposed target cost, target fee, maximum fee, and minimum fee amounts for each CLIN. The option exercise dates and delivery/acceptance dates for these options are located in SMC-B003 and SMC-F002 respectively.

d. The Offeror shall not complete pricing information for CLIN 0003, 0005, and Option CLIN 0022. Prices for these will be inserted in the definitive contract after the Government obligates funding against these CLINs. The Offeror shall complete pricing information for Option CLINs 0023 and 0024 by inserting the estimated cost, fixed fee, and total.

e. Offerors are not to address CLINs marked reserved.

f. The Offeror shall propose a fixed fee of no more than 10% for CLIN 0003, 0005, and Option CLINs 0022, 0023 and 0024.

g. For CPIF R&D CLINs 0001, 0004, 0006, and 0007 the Offeror shall propose a 3-5% target fee, a 7% maximum fee, a share ratio of 70/30, and a minimum fee no greater than 3%. For CPIF Production Option CLINs 0011 through 0020, the Offeror shall propose a 6-8% target fee, a maximum fee of 10%, a 70/30 share ratio, and a minimum fee of no greater than 3%. At 115% of target cost the share ratio shall become 0/100 for both R&D and Production CPIF CLINs (see SMC-H041). In addition, offers of less than a 3% minimum fee will be considered as representing the Offeror's confidence in its cost proposal and its desire to accept responsibility for cost control. Proposals for minimum fees of less than 0% are acceptable with supporting rationale.

h. For the Award Fee R&D CLINs 0001, 0004, 0006, and 0007 Offerors shall propose a 10 -12% award fee pool with 70% of the proposed amount allocated to objective criteria and 30% to subjective criteria. For the Award Fee Production CLINs 0011 through 0020, Offerors shall propose a 7-9% fee pool with 50-60% allocated to objective criteria and 40-50% allocated to subjective criteria. See the Award Fee Plan at Attachment 5 for additional details.

i. Offerors shall not propose less than the minimum in each fee range. The combined target fee for CPIF plus the amount proposed for Award Fee shall equal 15%, exclusive of the cost of money.

j. The Offeror shall not complete cost information in CLINs 0003, 0005 and Option CLIN 0022. The Government will complete that information when work is directed.

k. See L-2.9 for instructions on filling in Attachment 13.

l. The amounts shown in SMC-B002 will be updated at contract award.

7.3 Section G, Contract Administration Data

The Offeror shall provide the information requested in G005 and G015.

7.4 Section H, Special Contract Requirement

7.4.1 SMC-H002, Special Studies

The Offeror shall fill in paragraph (f) with the cost per hour, fixed fee per hour and total CPFF per hour for each Fiscal Year in the table.

7.4.2 SMC-H004, Quick Reaction Support

The Offeror shall fill in paragraph (i) with the cost per hour, fixed fee per hour and total CPFF per hour for each Fiscal Year in the table.

7.4.3 SMC-H011, Global Positioning System Organizational Conflict Of Interest

The Offeror shall provide proposed tailoring to this draft OCI clause depending on the unique circumstances of the Offeror. The final version of this clause will be agreed to prior to contract award.

7.4.4 SMC-H026 Releasability Under The Freedom Of Information Act (MAY 2007)

a. Offerors shall fill-in subsection (b) with a list of each price or specific sentence fragment in the Offeror's model contract and its attachments that it believes contains trade secrets and commercial or financial information that is privileged or confidential that it believes may be exempt under the FOIA.

b. In addition, with respect to any **non-cost/price information** the Offeror chooses to list in SMC-H026 (b), the Offeror shall provide clear and convincing evidence that disclosure of any of that information would cause substantial harm to its present or future competitive position. If release of any of the requested material would prejudice an Offeror's commercial interests, the Offeror shall provide *detailed* written reasons that identify the *specific* information (i.e., specific sentence fragments in an attachment in Section J of the model contract) and the harm public release will cause by describing (1) the general custom or usage in the Offeror's business regarding that specific item of information, (2) the manner in which the Offeror believes a

b. Company/Division Address, Identifying Codes, and Applicable Designations: Provide company/division's street address, county and facility code; CAGE code; DUNS) code; size of business (large or small); and labor surplus area designation. This same information must be provided if the work is to be performed by another facility and indicate whether such facility is a division, affiliate, or subcontractor, and the percentage of work to be performed at each location.

7.8 Cognizant Government Offices

Provide mailing addresses, telephone numbers, fax numbers, and facility codes for the Contract Administration Office, DCAA, and Government Paying Office. Provide the name, telephone numbers, and fax numbers for the ACO.

7.9 Administrative Changes

Provide a letter stating that administrative changes by the Government to the ConWrite system pages or other pages as a result of the Offeror's proposal are acceptable and will not invalidate the offer.

7.10 Earned Value Management System Documentation

For the Offeror and all subcontractors (over $50M) provide evidence of an EVMS that has been formally approved by DCMA. If the Offeror's EVMS has not been formally approved by DCMA, provide a detailed plan that implement ANSI/ EIA-748 prior to contract award. Provide evidence that DCMA concurs with your proposed EVMS implementation plan(s). See Section I, SMC--I009 252.242-7001, "Notice of Earned Value Management System".

7.11 Attachments to the Model Contract

The Offeror shall provide the following attachments to the Model Contract.

7.11.1 Exhibit A to Volume V: Contract Data Requirements List

The Offeror may propose alternatives with recommend substitutions, tailoring or eliminations of the required data item. Substantiate each recommendation in terms of the alternative's best value to government and associated cost and schedule savings. The Offeror shall propose CDRL items in conjunction with the IMP and SOW.

In each DD Form 1423, the Offeror shall provide the following information:

a. Block 5, Contract Reference, shall contain the appropriate SOW references.

b. Block D, Appropriate CLIN references.

c. Block E, Contract number.

d. Block F, Contractor.

e. CDRL A034: Offerors may propose changes to the approved Contract Cost and Software Data Reporting (CSDR) Plan, DD Form 2794.

f. CDRL A020 and A021: Offerors shall propose tailoring of the DD Form 2630 that is consistent with the data normally collected by the Offeror.

Accountability Office and the U.S. Court of Federal Claims. If no potential OCIs are identified, the Offeror shall so state in which case this Attachment is not required.

e. If the contractor plans to propose a tailored version of SMC-H011, it shall ensure that its OCI Mitigation Plan details the rationale for changes. For instance, if the Offeror proposes to implement GPS IIIA without organizational separation, geographical separation, or data separation and protection, its OCI mitigation plan must clearly indicate why this does not bias judgment or objectivity.

7.11.12 Attachment 11 to Volume V: Special Studies

The Offeror is not required to provide an input to this section. It is an attachment to the model contract in which special studies will be maintained.

7.11.13 Reserved

7.11.14Attachment 13 to Volume V: Rights in Technical Data, Computer Software, & Computer Software Documentation.

The Offeror shall complete Attachment 13 in accordance with the instructions in L-2.9.

7.11.15 Attachment 14 to Volume V: Make or Buy Strategy and Management Plan.

The Offeror shall complete Attachment 14 and include the contents required by FAR 15.407-2(e).

7.11.16 Attachment 15 to Volume V: Quick Reaction Tasks

This Attachment shall be completed after contract award when tasks are issued.

SECTION M

RFP FA8807-06-R-0001

EVALUATION FACTORS FOR AWARD

FOR GPS III

EXECUTIVE VISION

The Global Positioning System (GPS) III program strategy will implement the "block development" and "back to basics" strategies for space development and acquisition and is intended to establish a new benchmark for low-risk, high-confidence, space system acquisition. It will establish a long-term relationship with an industry partner to develop, acquire, and deliver critical new GPS space capabilities of high value to warfighters and civil users.

GPS III is based on a "Back to Basics" approach that establishes a firm foundation in sound systems engineering principles and program execution that emphasizes mission success. The Government has made it clear that it places a significant priority on a low-risk and high-confidence development, leading to on-time delivery and launch availability to both sustain the on-orbit GPS constellation and to deliver important new capabilities. It will reverse the problems of previous space programs that took on unnecessary technical risks, cost risks, and schedule risks, and that all too often resulted in cost overruns, schedule delays, performance shortfalls, and program restructures or terminations.

GPS III's incremental approach allows industry to offer a much lower risk program with earlier delivery of valuable military and civil capabilities to operations. The space vehicle will be developed in three blocks: GPS IIIA, GPS IIIB, and GPS IIIC. The GPS IIIA space vehicle will deliver notable enhancements over the GPS IIF and IIR-M baselines. This vehicle will include a new L1C (civil) Galileo-compatible signal, enhanced M-code Earth Coverage power and a graceful growth path to full warfighter capabilities by GPS IIIC. GPS IIIA uses a "time certain" development approach for on-schedule launch availability of the first vehicle in 60-66 months, but no later than 72 months. In addition, positive and negative cost, schedule, and mission success incentives are planned. The Capability Insertion Program will provide a graceful growth path from GPS IIIA to GPS IIIC. This Capability Insertion Program will develop, qualify, integrate, demonstrate, and insert future required capabilities on GPS IIIB and GPS IIIC on a low-risk, high confidence approach. To ensure system compatibility and synchronization of military and civil capabilities, the Government intends to choose a partner able to reach across the interface to facilitate good systems integration with the Government team and associate contractors across the segments (i.e., space, control system, and user equipment). It is especially important to ensure the space segment contractor has a well conceived approach to work the very complex satellite telemetry, tracking, and commanding (TT&C) and mission control interfaces with the Next Generation Control Segment (OCX) contractor.

The source selection includes four Evaluation factors: Past Performance (PP), Mission Capability (MC), Proposal Risk (PR), and Cost (Cost). The priority is: PP = MC = PR > Cost. The seven Subfactors for Mission Capability and Proposal Risk are: GPS IIIA Design, Development, and Test; Graceful Growth; Systems Engineering and Integration; Program Execution; Systems Effectiveness & Suitability; Software Development; and Small Business Subcontracting Plan.

To reiterate the most important points, the Government expects GPS IIIA to be a model for low-risk, high-confidence development, acquisition excellence delivering valuable user capabilities on-cost and on-schedule, outstanding teamwork, and a strong focus on "Back to Basics" systems engineering and program execution that provides a sharp focus on mission success.

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3 Source Selection Evaluation Matrix

The matrix shown in Table 1 below summarizes the types of evaluation factors and subfactors, and the approach that will be used to obtain an integrated evaluation; i.e., determine best value.

Table 1 Evaluation Matrix

			Past Performance, Mission Capability and Proposal Risk Subfactors						
			(Subfactors listed in priority order)						
			High →						**Low**
			GPS IIIA Design, Development & Test	Graceful Growth	System Engineering & Integration	Program Execution	Systems Effectiveness & Suitability	Software Development	Small Business Subcontracting Plan
Evaluation Factors	Equal Factors	Past Performance	High Confidence Significant Confidence Satisfactory Confidence Unknown Confidence Little Confidence No Confidence						
		Mission Capability	**B**	**B**	**B**	**B**	**B**	**B**	**B**
			G	**G**	**G**	**G**	**G**	**G**	**G**
			Y	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**
			R	**R**	**R**	**R**	**R**	**R**	**R**
		Proposal Risk	**L** **M** **H**	**L** **M** **H**	**L** **M** **H**	**L** **M** **H**	**L** **M** **H**	**L** **M** **H**	**L** **M** **H**
	Least Important Factor	Cost/Price	**Realism**			**Reasonableness**			
			Yes	**No**		**Yes**		**No**	
			Proposed Cost: $_____Probable Cost: $_____						
			Cost Risk			**H** **M** **L**			

4 Evaluation Criteria

4.1 General

The Government will assess the Offeror's proposal with regard to its ability to satisfy the instructions in Section L. The Government will evaluate the mission capability requirements for each subfactor in terms of proposal strengths, uncertainties, and deficiencies to result in subfactor color ratings. A "deficiency" in the proposal is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increase the risk of unsuccessful contract performance to an unacceptable level. "Strength" is a significant, outstanding, or exceptional aspect of an Offeror's proposal that has merit and exceeds specified performance or capability requirements in a way that is advantageous to the Government, and either will be included in the contract or is inherent in the Offeror's process. "Uncertainty" is a doubt regarding whether an aspect of the proposal meets or potentially exceeds a material performance or capability requirement. It requires additional information from the Offeror to further explain the proposal before the evaluator can complete his/her review and analysis. The color rating depicts how well the Offeror's proposal meets the Mission Capability Subfactor requirements in accordance with the stated evaluation criteria and solicitation requirements. Each subfactor within the Mission Capability Factor will receive one of the four color ratings described in AFFARS 5315.305(a)(3)(i) as shown in Table 2 below. Subfactor ratings will not be combined into a single color rating for the Mission Capability Factor.

4.2 Factor 1 – Mission Capability

This section provides the criteria by which the Government will evaluate the Mission Capability Subfactors. The rating definitions in Table 2 below will be used to evaluate each of the Mission Capability Subfactors.

Table 2 Mission Capability Evaluation Ratings

Color	Rating	Definition
B	Exceptional	Exceeds specified minimum performance or capability requirements in a way beneficial to the Government; proposal must have one or more strengths and no deficiencies to receive a blue.
G	Acceptable	Meets specified minimum performance or capability requirements delineated in the Request for Proposal; proposal rated green must have no deficiencies but may have one or more strengths.
Y	Marginal	Does not clearly meet some specified minimum performance or capability requirements delineated in the Request for Proposal, but any such uncertainty is correctable.
R	Unacceptable	Fails to meet specified minimum performance or capability requirements; proposal has one or more deficiencies. Proposals with an unacceptable rating are not awardable.
Source – AFFARS 5315.304, MP5315.3		

4.2.1 Subfactor 1: System Engineering and Integration (SE&I)

The Government will evaluate the extent to which this section and the applicable IMP Narrative are consistent as well as the following:

4.2.1.1 System Engineering Processes

The Offeror demonstrates a comprehensive, mature set of system engineering processes that will be applied to GPS IIIA and to the capability risk reduction and maturation activities on the program. The Offeror describes how these processes will be applied consistently as the program evolves to GPS IIIC and how the core team of personnel who manage them will maintain a high level of competency. The Offeror's segment-level SE&I and system-of-systems SE&I activities ensure internal integration of space segment subsystems and compatibility of GPS segments and interfaces with external systems. The SEMP and IMP narratives document the Offeror's approach, are consistent with the GPS Wing SEP, and provide benefit to the Government. SE&I activities are fully addressed in the SOW.

4.2.1.2 Trade Studies Supporting Approach

Critical program decision points and the overall requirements allocation process are supported by the Offeror's key trade studies, models, demonstrations, and simulations. The Offeror's trade studies address performance, technology readiness levels, cost, schedule, and risk impacts. In

changes to roles and responsibilities do not adversely affect the ability to perform the VV&A function.

g. The Offeror has analyzed its L-Band signal verification implementation, properly identified any required changes, and proposed a realizable, comprehensive, and effective approach.

4.2.4 Subfactor 4: Program Execution

The Government will evaluate the extent to which:

4.2.4.1 Organization and Staffing

a. The Offeror clearly describes the team proposed to execute GPS III. Relationships and roles are clear, complete, and provide confidence in the ability of the Offeror to execute the program.

b. The Offeror proposes an integrated and effective IPT structure including the role, key relationships, interdependencies, and communications of team members, associate contractors, and the Government. Program organization is effective and appropriate. The program is placed within the corporate structure to ensure proper visibility to senior decision makers. The PM has sufficient authority, accountability and responsibility to execute a nationally important program of the size and complexity of GPS III. The Government has sufficient insight to prime and subcontractor problems and progress and is in a position to exercise its program oversight responsibilities.

c. The critical roles on the program at the prime and subcontractor levels are designated as key positions. Key prime and subcontractor personnel possess sufficient experience in their discipline and are included in the Key Personnel Retention clause. The percentage of time dedicated to the GPS IIIA program is identified for each of the key personnel and is sufficient to execute the duties of the associated position. The Offeror and its subcontractors have realistic plans to attract and retain highly qualified key personnel from contract award throughout the life of the program. The Offeror also provides a realistic staffing plan for technical and management personnel for GPS IIIA development and production, the Capability Insertion Program CLIN 0004, and the need to define each subsequent GPS III Block's capabilities by the KDP-B Milestone decision for that Block. Sources or staffing are clearly identified and the timing for obtaining these sources is achievable. The flow of personnel and program hardware and software using proposed facilities support program requirements without major disruption.

4.2.4.2 Management Approach

a. The Offeror demonstrates a comprehensive understanding of GPS III technical and programmatic requirements and objectives by planning, organizing, and managing resources to successfully execute the program within funding and schedule constraints.

b. The Offeror's proposal represents a consistent, realistic, and achievable low risk plan to build, integrate, test, and deliver SVs consistent with the proposed delivery schedule for GPS IIIA development and production satellites. The Offeror's SOW, IMP, CWBS, and IMS are integrated and traceable to each other. They provide visibility into development, production and delivery of GPS IIIA, capability risk reduction and maturation, GSS simulator, and on-orbit operations.

(1) The Offeror's proposed SOW captures the essential tasks provided in the Government-provided draft SOW and includes tasks unique to the Offeror's approach.

(3) Clearly defines and assigns highly qualified technical and administrative key personnel who are experienced in managing the major/critical subcontractors, other divisions of the Offeror, and effectively interfacing with associate contractors.

b. The Offeror provides a Make or Buy Strategy and Management Plan that contains a viable, affordable, and realistic strategy. The Offeror has obtained firm subcontractor schedule commitments to begin work as reflected in the IMS. For subcontracts that do not begin immediately after contract award, the Offeror has a viable make or buy plan, process and selection criteria to award subcontracts in a timely fashion and support program schedule commitments. The Make or Buy plan ensures competition at the lowest tier possible through the contract duration and reduces parts obsolescence and development risk.

c. The proposed plan to maintain technologies and capabilities in atomic frequency standards encourages innovative development and capability improvements under CLIN 0004 for future blocks.

d. Agreements between the Offeror and other performing divisions of its corporation are in place, work is clearly defined, management relationships are agreed to, and staffing is in place to begin work when the IMS shows it is required after contract award.

e. The process and strategy for interacting with subcontractors, other divisions of the prime contractor, the GPS Wing, other GPS segment contractors, other associate contractors, the System Integrator, and DCMA provides full and timely disclosure of information to enable orderly management of the program. Roles and responsibilities are clearly defined. The Offeror's proposed tools facilitate communication and data sharing between the prime contractor, subcontractors, associate contractors, and the Government.

4.2.4.4 Funding for GPS IIIA

The Offeror's proposal may be executed within available funding in the fiscal years listed in section 4.2.4.4, Table 3 of Section L. The Offeror proposes to complete the work under CLIN 0001, 0006, and 0007 as the first priority and to complete the work under CLIN 0004 as a second priority, resulting in a low risk program that can be achieved with high confidence and that meets the Government's required delivery schedule for CLINs 0001, 0002, 0004, 0006, and 0007 in Section F of the model contract.

4.2.4.5 Manufacturing Management (MC16)

a. The Offeror has proposed key prime and subcontractor manufacturing producibility, integration, and test considerations that will ensure a low risk and on-time delivery of SVs, increase productivity, and reduce life-cycle costs during the R & D and production phases of the program. Processes, advanced manufacturing technologies, and systems contribute to manufacturable and producible SVs.

b. The Offerors' investment or proposed investments ensure a low risk approach through use of proven manufacturing technology production equipment, processes, and organization of work systems with demonstrated workers' skill and experience.

c. The Offeror's TRA ensures that manufacturing processes and technologies are matured to the appropriate readiness level before implementation.

4.2.4.6 Rights in Technical Data, Computer Software, and Computer Software Documentation

With respect to noncommercial technical data and computer software, the Offeror is willing to provide or sell to the Government no less than Unlimited Rights to all technical data labeled as such in column 4 of Table 1 in Attachment 13, Government Purpose Rights to all remaining noncommercial technical data and computer software delivered under this contract as indicated in the Offeror's Attachment 13 where the phrase "Offeror to Complete" was stated in column 4 of the row associated with that item of technical data or computer software, and the special license described in subsection (d) of Attachment 13 for any noncommercial technical data or computer software listed in Table 1 of that attachment where the phrase "See subsection (d)" is stated in column 4 of the row associated with that item of technical data and the resultant effects of the Offeror's enumerated restrictions (if any) on the Government's ability to use, release or disclose technical data and computer software delivered during contract performance. If the Offeror proposes to deliver to the Government any commercial item technical data and computer software, the Government will also evaluate the extent to which the Offeror is willing to provide or sell to the Government consistent with Federal procurement law (a) not less than a perpetual license to that technical data and software for (b) a sufficient number of licenses for GPS program purposes as described in the Offeror's completed Table 2 of Attachment 13, (c) unrestricted rights to items described in DFARS 252.227-7015(b)(1), and (d) a license that permits the Government to use, release or disclose that commercial item technical data and computer software outside the Government consistent with the license specified in Attachment 13(b). In addition, the Government will evaluate the adequacy of the analysis conducted by the Offeror (including all assumptions made) to determine that the quantity of licenses for such commercial item technical data and computer software the Offeror proposes to deliver to the Government in its completed Attachment 13 will be sufficient for GPS program purposes.

4.2.5 Subfactor 5: Systems Effectiveness and Suitability

The Government will evaluate the extent to which:

4.2.5.1 Satellite Replenishment Timelines

The Offeror's proposed overall approach to launch call up and initial on-orbit operations is technically sound and meets or exceeds requirements with significant advantages to the Government. The proposed timelines are both realistic and achievable.

4.2.5.2 Integrated Logistics Support (Attachment MC15)

The summary of the Offeror's ISP demonstrates an in-depth understanding of the elements of the Integrated Logistic Support as well as the specific logistic challenges within the GPS III program. The Offeror has included applicable elements of prime and subcontractor processes from Attachment MC15 in the ILS IMP Narrative and the elements are reflected realistically as activities in the IMS including:

a. An SV design that allows for preparation for storage, performance of state-of-health checks periodically during storage, required maintenance after removal from storage, and performance of pre-shipment health checks. The SV allows for long term storage at the contractor's site with no effect to the systems reliability, availability and on orbit life.

b. A viable packaging, handling and transportation concept that reduces risk of damage to the SV, SV subsystems, Support Equipment, and simulators and reduces associated logistics footprint and costs.

6 Factor 3 – Proposal Risk

a. There is no separate proposal volume for the Proposal Risk Factor. The proposal risk assessment focuses on the weaknesses and significant weaknesses associated with the Offeror's approach to meeting the requirements of the solicitation which includes an assessment of the potential for disruption of schedule, increased cost, degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance. A "weakness" means a flaw in the proposal that increases the risk of unsuccessful contract performance. A "significant weakness" in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance. Each mission capability subfactor will receive one of the following proposal risk ratings:

Table 6 Proposal Risk Evaluation Ratings

Rating	Definition
High	Likely to cause significant disruption of schedule, increased cost or degradation of performance. Risk may be unacceptable even with special contractor emphasis and close Government monitoring.
Moderate	Can potentially cause some disruption of schedule, increased cost, or degradation of performance. Special contractor emphasis and close Government monitoring will probably be able to overcome difficulties.
Low	Has little potential to cause disruption of schedule, increased cost, or degradation of performance. Normal contractor effort and normal Government monitoring will probably be able to overcome difficulties.

b. The Government will further evaluate proposal risk by performing Monte Carlo simulations as an input to its analysis of the proposed IMS including Offeror assumptions and use of the proposed three-point schedule estimates (i.e., most likely, best case, and worst case) using the @Risk tool in conjunction with Microsoft Project.

7 Factor 4 – Cost/Price

7.1 Probable Cost

a. The Offeror's cost/price proposal will be evaluated by the PC computed by the Government for the basic requirements (basic award) and all options. Evaluation of options shall not obligate the Government to exercise such options. The Offeror's proposed estimated costs shall not be controlling for source selection purposes. PC shall be calculated by adding together the results of the Government's evaluation of the Offeror's proposed costs/prices as follows:

(1) CPIF/AF and CPFF completion CLINs: Government estimate of anticipated performance costs and proposed fee,

(2) CPFF Term CLINs: Estimated cost will be determined by multiplying the number of hours specified in the special provision by Government fiscal year against the Government evaluated hourly rates per Government fiscal year.

(3) CLIN 0025 (Rights in Technical Data, Computer Software, and Computer Software Documentation): The Government will take the total proposed price from Attachment 13 and add it to the Government's most probable cost estimate for the remaining CLINs. Where the Government has requested more than one price for the rights to a CDRL item, the Government will use the proposed subsection (d) rights price unless the Offeror has proposed a lower price for rights greater than that associated with that subsection. Where the Offeror extends Table 1 to create subCDRLs, the Government will add the prices proposed for the rights associated with those subCDRLs to the probable cost. For example, if the Offeror has proposed more than one subCDRL for CDRL A026, the Government would add the price proposed for Unlimited Rights in Technical Data to either the sum of the prices proposed for the rights described in subsection (d) for all those subCDRLs or the sum of the prices proposed for software labeled "Offeror to Complete" for all those subCDRLs, whichever is lower. As a second example, for CDRL A011, the Government would add the price proposed for Unlimited Rights in Technical Data to the price proposed for the subsection (d) rights.

EXHIBIT A

RFP FA8807-06-R-0001

CONTRACT DATA REQUIREMENTS LIST (CDRL)

FOR GPS III

CONTRACT DATA REQUIREMENTS LIST
(1 Data Item)

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A. CONTRACT LINE ITEM NO.	B. EXHIBIT	C. CATEGORY:				
0002	A	TDP	X	TM	OTHER	IPSC

D. SYSTEM / ITEM	E. CONTRACT / PR NO.	F. CONTRACTOR
GPS III	FA8807-06-R-0001	N/R

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A032	SOFTWARE PRODUCT SPECIFICATION (SPS)	N/R

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-IPSC-81441A/T	BLK 16	GPS BLK III SQ

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
LT		N/R	BLK 16

8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION
A	N/R	BLK 16

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15. TOTAL		1	

16. REMARKS

BLK 4: In DI-IPSC-81441A, Replace all references to “computer software configuration item” and “CSCI” with “software item” and “SI” respectively.

1. One or more Software Product Specifications (SPS) shall be prepared for all software items in the following categories of software (including the software portion of firmware): onboard software (e.g., spacecraft, communications, payloads, and integrity) and other software used in satisfying, verifying or validating requirements or used in performing supporting operations or sustainment (e.g., training, modeling, simulation, analysis, database support, automatic test equipment, maintenance).
2. SPS(s) shall include commercial item software and commercially-available off-the-shelf (COTS) item software that resides in onboard equipment.
3. The contractor may organize an individual SPS to cover a group of software items rather than a separate SPS for each software item.
4. This data shall include both the flight software executable and source codes.

BLK 5: SOW 3.1.1.1.7c; 3.1.1.1.7.3e; 3.1.1.1.7.4.a; 3.1.7.a; 3.1.12.18; 3.1.13.13.1; 3.1.13.13.2.2; 3.1.13.13.2.2.1; 3.1.13.13.5.1; 3.2.3; 4.1.12.18; 4.1.13.13.1; 4.1.13.13.2.2; 4.1.13.13.2.2.1; 4.1.13.13.5.1; 4.2.3; 5.1.1.1.7.3e; 5.1.1.1.7.4a; 5.1.7a; 5.1.12.18; 5.1.13.13.1; 5.1.13.13.2.2; 5.1.13.13.2.2.1; 5.1.13.13.2.2.2; 5.1.13.13.5.1; 5.1.13.13.5.2; 5.2.3

BLK 8: Government approval/disapproval/comments 45 CD after receipt.

BLKs 12, 13: Submit preliminary 60 CD prior to each software build delivery to operations or maintenance. Submit final 60 CD after completion of each software build that is delivered for operations or maintenance.

G. PREPARED BY	H. DATE	I. APPROVED BY	J. DATE

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A. CONTRACT LINE ITEM NO.	B. EXHIBIT	C. CATEGORY:				
0002	A	TDP	X	TM	OTHER	MISC

D. SYSTEM / ITEM	E. CONTRACT / PR NO.	F. CONTRACTOR
GPS III	FA8807-06-R-0001	N/R

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A059	TECHNICAL REPORT STUDY/SERVICES	SOFTWARE ARCHITECTURE DESCRIPTION (SAD)

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-MISC-80508B/T	BLK 16	GPS BLK III SQ

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
LT		N/R	BLK 16

8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION
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REMARKS

BLK 4: In DI-MISC-80508B tailor as follows, Contractor format is acceptable.

A. The Software Architecture Description (SAD) documents the software architecture. The architecture representation contains multiple perspectives, including both models and detailed textual descriptions of the logical organization, dynamic behavior, process decomposition, software organization, and physical realization of the software. The software architecture description consists of a collection of components with well-defined interface and service semantics that operate over an underlying infrastructure.

B. One SAD shall be prepared for all software items in the following categories of software (including the software portion of firmware): onboard software (e.g., spacecraft, communications, payload); and other software used in satisfying, verifying, or validating requirements or used in performing or supporting operations or sustainment (e.g., training).

C. Software Architecture Requirements:

1) The software architecture shall be component based, meaning the architecture will consist of a collection of components with well defined interface and service semantics that operate over an underlying infrastructure.

2) The software architecture shall be consistent with the system architecture and design.

3) The software architecture representation shall cover multiple architecture perspectives, including both models and detailed textual descriptions of the logical organization, dynamic behavior, process decomposition, software organization, and physical realization of the software.

4) The software architecture representation shall document the software components, their semantics, the interfaces (data and control) among them, and external software-software and software-hardware interfaces.

5) The software architecture representation shall be internally consistent.

6) Use of graphical architecture modeling techniques, e.g., Unified Modeling Language (UML), is required.

7) Use of software engineering tools and techniques for representing, documenting, and analyzing the software architecture, including consistency analysis and requirements mapping

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A. CONTRACT LINE ITEM NO.	B. EXHIBIT	C. CATEGORY:			
0002	A	TDP	X	TM	OTHER MISC

D. SYSTEM / ITEM	E. CONTRACT / PR NO.	F. CONTRACTOR
GPS III	FA8807-06-R-0001	N/R

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A059	TECHNICAL REPORT STUDY/SERVICES	SOFTWARE ARCHITECTURE DESCRIPTION (SAD)

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-MISC-80508B/T	BLK 16	GPS BLK III SQ

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
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16. REMARKS

BLK 16 CONTINUED:

to the architecture is required.

8) The software architecture representation shall be developed IAW the detailed methods, techniques, and tools specified in the contractor team's Software Development Plan (SDP).

9) The software architecture level of detail shall evolve from high level architecture components and interfaces to lower level components and interfaces that transition to the software design.

D. The Software Architecture Description shall include:

1) A high-level description and diagram(s) of the software architecture

2) A description of how the software architecture integrates into the system architecture.

3) Significant driving requirements and their impact on the architecture.

4) Architecture style(s), layers, and constraints being used.

5) A detailed description, expressed in a set of use cases (or equivalent), of how the software will interact with the users and with other systems

6) A representation of the architecture that models abstract (or logical) architecture components and interfaces. This logical architecture representation shall indicate the functionality and key software interfaces associated with each logical component of the segment and system, including dependency relationships. All diagrams shall be accompanied by descriptions of the functionality and services provided by the components

7) Dynamic Behavior:

a) Diagrams that show the component interactions and collaborations required by each use case (or equivalent.

b) Sequencing of component interactions shall be provided.

c) States and modes, and transitions among them shall be provided.

8). Process information:

a) A mapping of high level processes to system components.

b) An enumeration and description of executable processes and a mapping between software

H. DATE	I. APPROVED BY	J. DATE

CONTRACT DATA REQUIREMENTS LIST
(1 Data Item)

Public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503. Please DO NOT RETURN your form to either of these addresses. Send completed form to the Government issuing Contracting Officer for the Contract/PR No. listed in Block E.

A. CONTRACT LINE ITEM NO.	B. EXHIBIT	C. CATEGORY:				
0002	A	TDP	X	TM	OTHER	MISC

D. SYSTEM / ITEM	E. CONTRACT / PR NO.	F. CONTRACTOR
GPS III	FA8807-06-R-0001	N/R

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A059	TECHNICAL REPORT STUDY/SERVICES	SOFTWARE ARCHITECTURE DESCRIPTION (SAD)

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-MISC-80508B/T	BLK 16	GPS BLK III SQ

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
LT		N/R	BLK 16

8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION
N/R	N/R	BLK 16

D

14. DISTRIBUTION

a. ADDRESSEE	b. COPIES Draft	FINAL Reg	FINAL Repro
DCMA		1	
15. TOTAL		1	

16. REMARKS

BLK 16 CONTINUED:

components and the executable processes.

9) A description and diagrams of how the software components are organized from a development viewpoint.

10) Physical Information

a) Diagrams that show the computer system hardware architecture, with textual descriptions, and a description of the purpose of each hardware component and its interfaces and hardware physical processing characteristics (e.g., CPU, throughput, memory, bandwidth).

b) A mapping of the software architecture components to the physical hardware on which the implementation of those components will reside.

11) A bi-directional mapping of the software and interface requirements to software architecture components and use cases (or equivalent).

12) Identification of commercial item software products that are expected to implement part or all of specific software architecture components.

a) Relationship of each commercial item to the software architecture component(s) it implements and whether it is partial or complete implementation.

b) Rationale for choice of commercial item products and specific commercial item products.

13) Identification of reuse software components that are expected to implement specific software architecture component(s) or portions thereof.

a) Relationship of each reuse component to the software architecture component(s) it implements and whether it is partial or complete implementation.

b) For each reuse component, description of what is being reused (design, algorithms, code) and the magnitude of expected modifications to the reuse software component.

c) Rationale for reuse and choice of specific reuse components.

14) Description of how and where the architecture supports Modular Open Software Architecture (MOSA) principles.

(For more information see http://www.acq.osd.mil/osjtf/mosapart.html).

G. PREPARED BY	H. DATE	I. APPROVED BY	J. DATE

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CONTRACT DATA REQUIREMENTS LIST
(1 Data Item)

Public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503. Please DO NOT RETURN your form to either of these addresses. Send completed form to the Government issuing Contracting Officer for the Contract/PR No. listed in Block E.

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D. SYSTEM / ITEM	E. CONTRACT / PR NO.	F. CONTRACTOR
GPS III	FA8807-06-R-0001	N/R

1. DATA ITEM NO.	2. TITLE OF DATA ITEM	3. SUBTITLE
A059	TECHNICAL REPORT STUDY/SERVICES	SOFTWARE ARCHITECTURE DESCRIPTION (SAD)

4. AUTHORITY *(Data Acquisition Document No.)*	5. CONTRACT REFERENCE	6. REQUIRING OFFICE
DI-MISC-80508B/T	BLK 16	GPS BLK III SQ

7. DD 250 REQ	9. DIST STATEMENT REQUIRED	10. FREQUENCY	12. DATE OF FIRST SUBMISSION
LT		N/R	BLK 16

8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION
N/R	N/R	BLK 16

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14. DISTRIBUTION

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DCMA		1	

16. REMARKS

BLK 16 CONTINUED:

15) Architecture-wide design decisions that are not covered by the above items. Examples include the following:

a) Applicable standards (e.g., interface standards, open system standards, graphical user interface (GUI) standards)

b) All applicable interfaces to be used including: Application Program Interfaces (APIs)

c) Uniform exception handling and recovery methods

d) Uniform data storage and access methods

e) Algorithms that must be used

f) Response times, reliability, maintainability, and availability or other performance characteristics not allocated to individual architecture components

g) A description of major architecture trade-offs performed and rationale for decisions.

E. Electronic versions of the software architecture representations shall also be delivered via this CDRL item in addition to the diagrams and descriptions provided in this report. The contractor shall coordinate with the government to ensure that the electronic and printed software architecture representations are in a format usable by the Government.

BLK 5: SOW 3.1.1.1.7.3b,e; 5.1.1.1.7.3.b,e

BLKs 12, 13: For a waterfall software life cycle: Submit preliminary 30 CD prior to PDR. Submit final 30 CD prior to CDR. For an iterative software life cycle: Submit preliminary 30 CD prior to PDR or 30 CD prior to the first software build architecture review, whichever comes. first. Submit updates 30 CD prior to CDR. Submit updates 30 CD prior to each software build architecture review. Submit final 30 CD prior to the software architecture review for the last build.

15. TOTAL		1	

G. PREPARED BY	H. DATE	I. APPROVED BY	J. DATE

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ATTACHMENT 1

RFP FA8807-06-R-0001

STATEMENT OF WORK

FOR GPS III

1.0 Introduction

a. This document contains the Statement of Work (SOW) for the Global Positioning System (GPS) III program. The SOW defines the tasks and processes required to deliver Space Vehicles that meets the requirements of the compliance documents.

b. This SOW has three tasking sections to enable the separation of the work by appropriation and contract CLIN. These sections are Development, Production, and Capabilities Insertion Program.

c. The following definitions are clarification of terms used in this SOW:

GPS:

The GPS system includes three major segments: the Space Segment, Control Segment, and the User Segment.

Global Positioning System GPS III Space Segment

The space segment will consist primarily of the constellation of GPS III space vehicles, space vehicles in manufacturing and test, space vehicle-to-launch vehicle adapter, space vehicle simulators and space vehicle test equipment, ground equipment, and transporters.

Global Positioning System Control Segment

The Control Segment will consist of the Next Generation Operational Control System (OCX) which includes: the Master Control Station (MCS) and GPS Support Facility at Schriever AFB, CO, and the Alternate Master Control Station (AMCS) at Vandenberg AFB, CA; world-wide Ground Antennas (GA) and Monitor Stations (MS).

Global Positioning System User Segment

The User Segment consists of user equipment deployed worldwide with military and civilian users for receipt of positioning, navigation, and timing signals.

Global Positioning System Space Vehicle

The Space Vehicle consists of the Spacecraft Bus, the Navigation Payload and the Nuclear Detection Payload and Space Vehicle peculiar support equipment.

3.1.1.1.7.1 Software Development and Maintenance Planning

a. Develop and maintain an integrated SDP over all team members for all software items in the following categories of software (including the software portion of firmware): onboard software (e.g., spacecraft, communications, payload) and other software used in satisfying, verifying, or validating requirements or used in performing or supporting operations or sustainment (e.g., training, modeling, simulation, analysis, database support, automatic test equipment, test facility and environment, and maintenance). (CDRL A022)

b. Plan the builds and the requirements to be met in each build. A build functionality matrix can be used to depict the functionality and requirements for each build. (CDRL A022)

c. Plan the integration, regression, and qualification testing of software items for each build. (CDRL A029)

d. Develop and maintain a plan for analyzing and correcting all problems found (e.g. discrepancy resolution (DR) plan) during all phases of software life cycle.

3.1.1.1.7.2 Software Process and Monitoring

a. Conduct Capability Maturity Model ® Integration (SM) (CMMI ®) process appraisals in accordance with clause SMC-H028 of the contract.

b. Collect, analyze, and report software metrics data, including at a minimum the metrics in the Segment and Software Metrics Report (SSMR). (CDRL A058)

c. Evaluate software products and control the software development through proactive analysis and corrective action (e.g., cost, schedule, tasks, progress of peer reviews, product metrics, integration, verification).

d. Maintain consistency among software products (e.g., requirements, architecture, design, code, test cases)

3.1.1.1.7.3 Segment-wide Software Design and Software Interfaces

a. Support system, segment, and subsystem requirements flowdown and allocate requirements to software items. (CDRL A025) (CDRL A026)

b. Support segment-level design and develop overall segment-wide software architecture. (CDRL A059)

c. Identify, track, and resolve the software and interface issues between software items and subsystems. (CDRL A025) (CDRL A026) (CDRL A058)

d. Identify, track, and resolve computer hardware resource utilization margin issues.

e. Implement and maintain the flight software, databases, and support software required to support integration, verification, launch preparation, and operations. All commercial and noncommercial computer programs (inclusive of firmware) delivered to the Government under CLINs 0001, 0006, 0007 and 0016-0020 shall be identical to that/those computer programs (inclusive of firmware) to be delivered to the Government in CDRL A032 (CLIN 0002). (CDRL A022) (CDRL A025) (CDRL A026) (CDRL A027) (CDRL A028) (CDRL A029) (CDRL A030) (CDRL A031) (CDRL A032) (CDRL A033) (CDRL A034) (CDRL A058) (CDRL A059)

17. TOR-2004(3909)-3537, Revision B Software Development Standard for Space Systems

a. Replace “contractual clauses” with “contractual requirements” throughout.

b. Paragraph 1.2.2 Contract-specific application, first paragraph, fifth sentence: Replace “Software installed in firmware is subject to all of the aforementioned provisions.” with “For software installed as firmware, if software development effort is required, or the firmware is reprogrammable on-orbit, or the firmware is TRL 6 or lower, software installed as firmware is subject to all of the aforementioned provisions.”

c. Paragraph 1.2.2 Contract-specific application, second paragraph, second sentence: Replace "This standard shall apply to the following categories of software: onboard software (e.g., spacecraft, communications, payload); ground operations software (e.g., mission planning; mission processing; mission support; telemetry, tracking, and commanding; infrastructure and services); and other software used in satisfying, verifying, or validating requirements or used in performing or supporting operations or sustainment (e.g., training, simulation, analysis, database support, automatic test equipment, and maintenance)." with " This standard shall apply to the following categories of software, including the software portion of firmware: onboard software (e.g., spacecraft, communications, payload); and other software used in satisfying, verifying, or validating requirements or used in performing or supporting operations or sustainment (e.g., applications, security, safety, training, modeling, simulation, analysis, database support, automatic test equipment, test facility and environment, and maintenance)."

d. Paragraph 1.2.2 Contract-specific application, second paragraph, third and fourth sentences: Replace "A *software team member* is any internal or external organization … the prime contractor or any other software team member. These organizations include, but are not limited to, intra-corporation software organizations, in-house service providers, developers, fabrication/manufacturing organizations, laboratories, and subcontractors." with ""A *software team member* is any internal or external organization … the prime contractor or any other team member. These organizations include, but are not limited to, intra-corporation software organizations, in-house service providers, developers, fabrication/manufacturing organizations, laboratories, joint venture partners, teaming partners, subsidiaries, and interdivisional transfer (IDT), and subcontractors."

e. Paragraph 3.1 Terms, insert the following terms in alphabetical order:

<u>Baseline</u>. The approved, recorded configuration of one or more configuration items, that thereafter serves as the basis for further development, and that is changed only through change control procedures.

<u>Change review activities</u>. Activities associated with the review of changes including confirmation that affected configuration items are configuration identified; assessment of the impact, and assessment of the problem or change, with decisions for action to be taken; feedback of problem report or change impact and decisions to affected processes.

<u>Conformity review</u>. A review is to obtain assurances, for a software product that the software life cycle processes are complete, software life cycle data is complete, and the Executable Object Code is controlled and can be regenerated. This review should determine that: (a) records of

Software configuration management (SCM) plan. That section of the software development plan (or a separate document) responsive to Appendix H par. 5.14.

Software life cycle data. The set of documentation defined in the SDP, source code, software test procedures, software test reports, and any other artifact needed to recreate, document, or test any delivered software product.

Software partition. A separation, usually with the express purpose of isolating one or more attributes of the software, to prevent specific interactions and cross-coupling.

f. Paragraph 4.1 Software development process, second paragraph, first sentence: Replace "The framework used to organize the major software activities is called the software development life cycle model. The developer shall select software life cycle model(s) appropriate to the software being developed and shall document the selected software life cycle model(s) in the SDP." with "The framework used to organize the major software activities is called the software development life cycle model. The developer shall select software life cycle model(s) appropriate to the software being developed and shall document the selected software life cycle model(s) and provide a description of each software life cycle environment in the SDP."

g. Paragraph 4.2.3 Traceability, second sentence: Replace "System/Segment Specification DID, Interface Requirements Specification DID, Software Requirements Specification DID, System/Segment Design Description DID, Software Design Description DID, Software Test Plan DID, Software Test Description DID, Software Test Report (STR) DID, and Software Product Specification DID." with "System/Subsystem Specification (CDRL A024), Interface Requirements Specification (CDRL A026), Software Requirements Specification (CDRL A025), System/Subsystem Design Description (CDRL A109), Software Architecture Description (CDRL A059), Software Design Description (CDRL A027), Software Test Plan (CDRL A029), Software Test Description (CDRL A030), Software Test Report (STR) (CDRL A031), and Software Product Specification (CDRL A032)."

h. Paragraph 4.2.4 Reusable software products: Add two new paragraphs after the end of first paragraph: "The developer shall ensure that there is no functionality in the reusable software component that would inhibit operation unless explicitly specified and approved by the Government. This provision applies to, but is not limited to, the periodic need to enter in a license code, or the presence of a physical key or similar device to enforce licensing conditions.

Evaluation criteria for any commercial item software to be used with software developed in accordance with this standard, as tailored for the contract, shall include:

a) Ability to provide required protection (safety, security and privacy)

1) Provided inherently in the COTS or reusable software product, or

2) Able to be provided around the COTS or reusable software product by system design and implementation.

b) Reliability/maturity

1) As evidenced by established track record, or

2) As evidenced by prototype evaluation within the system context."

ATTACHMENT 13

RFP FA8807-06-R-0001

RIGHTS IN TECHNICAL DATA, COMPUTER SOFTWARE, AND COMPUTER SOFTWARE DOCUMENTATION FOR GPS III

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TECHNICAL DATA/COMPUTER SOFTWARE RIGHTS

(a) Table 1 identifies the rights the U.S. Government may acquire to all GPS III non-commercial development, production and sustainment technical data, computer software and computer software documentation applied or created during performance of this contract delivered to the Government. Table 2 identifies the rights the U.S. Government may acquire to all commercial technical data, computer software and computer software documentation delivered to the Government under this contract.

(1) The contractor agrees that the price for any rights procured under CLIN 0025 described in Table 1 associated with any noncommercial technical data, computer software or computer software documentation created under CLIN 0002 includes all direct and indirect costs and profit/fee for the rights to use, modify, perform, display, or disclose that technical data and computer software inside and outside the Government consistent with the license identified for that CDRL in Table 1 and Table 2. The price for any rights in commercial technical data, computer software and computer software documentation described in Table 2 that will be contained in any CDRL listed in Table 1 is built into the price listed for that CDRL in Column 5, Table 1. The Contractor agrees that the price for any rights associated with the use, release or disclosure of any computer programs (inclusive of firmware) delivered under CLINs 0001, 0006, 0007 and 0016-0020 includes all direct and indirect costs and profit/fee for the rights to use, modify, perform, display, or disclose that/those computer programs (inclusive of firmware) inside and outside the Government consistent with the licenses identified in this Attachment. The Contractor shall allocate all costs and profit/fee for any rights in technical data, computer software and computer software documentation contained in a CDRL identified in Tables 1 and 2 only to the price for those rights identified in Table 1 for that CDRL. The Contractor shall allocate all costs and profit/fee for any rights associated with the use, release or disclosure of any computer programs (inclusive of firmware) are delivered under CLINs 0001, 0006, 0007 and 0016-0020 only to that/those CLIN(s) which will be delivered with that/those computer program(s) (inclusive of firmware). Any statements to the contrary in any attachment to this contract (e.g., Attachments 1, 3 and 4) are hereby null and void.

(2) If any of the technical data or computer software listed below is changed (e.g., updates software maintenance patches, version changes, new releases, substitutions) after the partial exercise of the options associated with that technical data or computer software, the Contractor shall deliver the rights to the changed technical data or computer software at no additional cost to the U.S. Government.

(3) When used in columns 4 and 5 of Table 1, the symbol ("—") indicates that the U.S. Government is not entitled to purchase the technical data/computer software rights for itself associated with that CDRL. A $0 (zero) indicates that the rights associated with that CDRL are available to the U.S. Government at no cost. An "N/A" means "Not Applicable" (i.e., the CDRL does not contain technical data or computer software).

(4) All licenses to be furnished by the Contractor associated with any commercial or noncommercial computer programs (inclusive of firmware) delivered to the Government under CLINs 0001, 0006, 0007 and 0016-0020 shall be identical to those licenses to be furnished by the Contractor associated with any computer programs (inclusive of

firmware) to be delivered by the Contractor to the Government in CDRL A032 ('Software Product Specification (SPS)') (CLIN 0002).

(5) Any license associated with any technical data, computer software, or computer software documentation delivered under CLINs 0001, 0002, 0006, 0007, 0016, 0017, 0018, 0019 and 0020 shall transfer upon exercise(s) of the option to procure that license exercised in accordance with Clause SMC-B003 and delivery of that CDRL or CLIN to the Government.

Table 1 Rights in Technical Data, Computer Software and Computer Software Documentation

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**CLIN**	**Asserted Rights Category**	**PRICE**
A001	Conference Agenda		N/A	N/A
A002	Conference Minutes		N/A	N/A
A003	Program Protection Implementation Plan (PPIP)		Offeror to Complete	$
A004	Logistics Management Information (LMI) Summaries (Integrated Support Plan)		Unlimited	$
A005	Test Requirements Document (Unit Level)		Offeror to Complete	$
A006	Engineering Change Proposal (ECP)		Unlimited	$
A007	Request for Deviation (RFD)		Unlimited	$
A008	Specification Change Notice (SCN)		Offeror to Complete	$
A009	Contractor's Configuration Management Plan		Offeror to Complete	$
A010	Interface Control Document (ICD)		Unlimited	$
A011	Configuration Item Development Specification (Space Vehicle Prime Item and Lower Tier Critical Item Development Specification) – Prime Item (B1)		Unlimited	$
	Configuration Item Development Specification (Space Vehicle Prime Item and Lower Tier Critical Item Development Specification) – Lower Tier (B2)		See subsection (d)	$
A012	Configuration Item Product Fabrication Specification (Space Vehicle C1B, Prime Item PT II and C1 and C2 Product Specifications) – Space Vehicle C1B, Prime Item PT II		Unlimited	$
	Configuration Item Product Fabrication Specification (Space Vehicle C1B, Prime Item PT II and C1 and C2 Product Specifications) – C1 and C2 Product Specifications		See subsection (d)	$
A013	Product Drawings/Models and Associated Lists		Unlimited	$
A014	Electromagnetic Interference Control Procedures (EMICP)		See subsection (d)	$
A015	Electromagnetic Interference Test Report (EMITR)		Offeror to Complete	$
A016	Electromagnetic Interference Test Procedure (EMITP)		Offeror to Complete	$

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**CLIN**	**Asserted Rights Category**	**PRICE**
A017	Electromagnetic Environmental Effects (E3) Integration and Analysis Report (E31AR)		Unlimited	$
A018	Nuclear Hardness and Survivability Design Analysis Report		Offeror to Complete	$
A019	Design-to-Cost/Life Cycle Cost and Variance Analysis Report (Life Cycle Cost Report (LCCR) Analysis Report)		N/A	N/A
A020	Cost Data Summary Report (DD Form 1921)		N/A	N/A
A021	Functional Cost-Hour and Progress Curve Report (DD Form 1921-1) (Contractor Cost Data Reporting)		N/A	N/A
A022	Software Development Plan (SDP)		See subsection (d)	$
A023	Operational Concept Description (OCD)		Unlimited	$
A024	System/Subsystem Specification (SSS)		Unlimited	$
A025	Software Requirements Specification (SRS)		Unlimited	$
A026	Interface Requirements Specification (IRS)		**Tech Data** Unlimited	$
			Software See subsection (d)	$
A027	Software Design Description (SDD)		**Software** See subsection (d)*	$
			Software Offeror to Complete*	$
A028	Database Design Description (DBDD)		See subsection (d)	$
A029	Software Test Plan (STP)		See subsection (d)	$
A030	Software Test Description (STD)		See subsection (d)	$
A031	Software Test Report (STR)		See subsection (d)	$
A032	Software Product Specification (SPS)		**Tech Data** Unlimited	$
			Software See subsection (d)*	$
			Software Offeror to Complete*	$
A033	Software Version Description (SVD)		Unlimited	$
A034	Software Resources Data Report (SRDR)(Initial and Final SRDR)		N/A	N/A
A035	Orbital Operations Handbook		Unlimited	$
A036	Program Plan (New Technology Insertion Plan)		Offeror to Complete	$
A037	System Engineering Management Plan (SEMP)		Offeror to Complete	$
A038	Contact Work Breakdown Structure (CWBS)		Unlimited	$
A039	Data Accession List (DAL) – Category 1		**Tech Data** Unlimited	$

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**CLIN**	**Asserted Rights Category**	**PRICE**
	Data Accession List (DAL) – Category 2		**Tech Data** See subsection (d)*	$
	Data Accession List (DAL) – Category 3		**Software** Offeror to Complete*	$
	Data Accession List (DAL) – Category 4		**Software** See subsection (d)*	$
A040	Contract Performance Report (CPR)(Development and Production CPR)		N/A	N/A
A041	Contract Funds Status Report (CFSR)		N/A	N/A
A042	DoD Architecture Framework Documentation – Segment		Unlimited	$
	DoD Architecture Framework Documentation - Subsegment		See subsection (d)	$
A043	Integrated Master Schedule (IMS)		N/A	N/A
A044	Technical Report Study/Services (Integrity and Continuity Functional Hazard Assessment)		Offeror to Complete	$
A045	Technical Report Study/Services (Technical Performance Measurement)		Unlimited	$
A046	Technical Report Study/Services (Capabilities Insertion Program Plan)		Offeror to Complete	$
A047	Technical Report Study/Services (Design Review Data Package)		See subsection (d)	$
A048	Technical Report Study/Services (SV Requirements Verification Plan and Matrix)		Unlimited	$
A049	Technical Report Study/Services (Risk Assessment)		Offeror to Complete	$
A050	Technical Report Study/Services (Risk Management Plan)		See subsection (d)	$
A051	Technical Report Study/Services (Comprehensive DIACAP Package (CDP))		Unlimited	$
A052	Technical Report Study/Services (Positioning Signal Integrity and Continuity Assurance Plan (PSICAP))		Offeror to Complete	$
A053	Technical Report Study/Services (Preliminary Integrity Continuity Assurance Assessment (PICAA) and Final Integrity Continuity Assurance Assessment (FICAA))		Unlimited	$
A054	Technical Report Study/Services (Manufacturing Management Program and Risk Management Plan)		Offeror to Complete	$
A055	Technical Report Study/Services (Environmental Analysis Data Report)		Unlimited	$
A056	Technical Report Study/Services (Mass Properties Program Plan)		Offeror to Complete	$
A057	Technical Report Study/Services (Independent Stability and Control Analysis (ISACA) Data Set)		**Tech Data** See subsection (d)	$
			Software See subsection (d)	$
A058	Technical Report Study/Services (Segment and		N/A	N/A

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**CLIN**	**Asserted Rights Category**	**PRICE**
	Software Measurement Report)			
A059	Technical Report Study/Services (Software Architecture Description (SAD)		Unlimited	$
A060	Technical Report Study/Services (Trade Studies)		Offeror to Complete	$
A061	Technical Report Study/Services (Modeling and Simulation Plan)		Offeror to Complete	$
A062	Technical Report Study/Services (Subcontractor Management Plan)		N/A	N/A
A063	Technical Report Study/Services (Special Studies)		Offeror to Complete	$
A064	Technical Report Study/Services (NDS Integration Data and Test Data Report)		Unlimited	$
A065	Technical Report Study/Services (Modeling and Simulation Reports)		**Tech Data** Unlimited	$
			Software See subsection (d)*	$
			Software Offeror to Complete*	$
A066	Parts Management Plan (Parts, Materials and Process Control Program Plan)		Offeror to Complete	$
A067	Frequency Allocation Data (Spectrum Supportability)		Unlimited	$
A068	As-Designed Parts, Materials and Processes List (ADPMPL)		See subsection (d)	$
A069	Parts, Materials, and Processes Selection List (PMPSL)		Offeror to Complete	$
A070	Test Procedure		See subsection (d)	$
A071	Test Plans/Procedures (Satellite Test Plan)		Unlimited	$
A072	Government Industry Data Exchange Program (GIDEP), Alert/Safe-Alert Report (includes Alerts, Safe Alerts, Industry Notices, and Internal Contractor Problem Notifications)		Unlimited	$
A073	Government Industry Data Exchange Program (GIDEP) Alert/Safe-Alert Response		Unlimited	$
A074	Quality System Plan		See subsection (d)	$
A075	Reliability Test Plan		Offeror to Complete	$
A076	Reliability Test Reports		Offeror to Complete	$
A077	Reliability Allocations, Assessments, and Analysis Report		See subsection (d)	$
A078	Failure Modes, Effects, and Criticality Analysis Report		Offeror to Complete	$
A079	Failure Analysis and Corrective Action Report		Offeror to Complete	$
A080	Technical Operating Report (Nuclear Hardness Assurance Plan)		Offeror to Complete	$
A081	Technical Operating Report (Requirements		Offeror to	$

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**CLIN**	**Asserted Rights Category**	**PRICE**
	Traceability Matrix)		Complete	
A082	Technical Operating Report (M-Code Test Plan and Test Vector Set)		**Tech Data** Unlimited	$
			Software Offeror to Complete*	$
A083	Technical Operating Report (GPS Solar Force Model)		Offeror to Complete	$
A084	Technical Operating Report (System Security Management Plan (SSMP))		N/A	N/A
A085	Technical Operating Report (Key Management Architecture (KMA) and Design (KMD))		Unlimited	$
A086	Technical Operating Report (Test Vector Response Data)		Offeror to Complete	$
A087	Technical Operating Report (Proactive DMSMS Mitigation Plan (PDMP))		Offeror to Complete	$
A088	Technical Operating Report (Reliability Program Plan)		Offeror to Complete	$
A089	Technical Operating Report (Survivability Test Report)		Offeror to Complete	$
A090	Technical Operating Report (Survivability Program Management Plan)		Offeror to Complete	$
A091	Technical Operating Report (GPS Performance and Trending Analysis Report (GPATR))		Unlimited	$
A092	Technical Operating Report (Subsystem Design Analyses)		See subsection (d)	$
A093	Technical Operating Report (Thermal and Geometric Math Model (TMM and GMM))		See subsection (d)	$
A094	Technical Operating Report (NDS Timing Relationship Data)		Unlimited	$
A095	Technical Operating Report (Dynamic Structural Model)		Offeror to Complete	$
A096	Technical Operating Report (GPS Satellite Simulator (GSS) User's Manual)		Unlimited	$
A097	Technical Operating Report (GPS Non-Flight Satellite Test Bed (GNST) User's Manual)		Unlimited	$
A098	Technical Operating Report (Design Review Assessment Reports)		Unlimited	$
A099	Technical Operating Report (Mass Properties Report for Missile and Space Systems)		Offeror to Complete	$
A100	System Safety Hazard Analysis Report (SSHA)(Subsystem Safety Hazard Analysis, System Hazard Analysis, Radiation Hazard Analysis, and Operating and Support Hazard Analysis)		Offeror to Complete	$
A101	Safety Assessment Report (SAR)		Unlimited	$
A102	Health Hazard Assessment Report (HHAR)		Unlimited	$
A103	Explosive Hazard Classification Data		Unlimited	$
A104	Mishap Risk Assessment Report (MRAR) (Missile System Pre-Launch Safety Package (MSPSP))		Unlimited	$
A105	System Safety Program Plan (SSPP)		Offeror to	$

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**CLIN**	**Asserted Rights Category**	**PRICE**
			Complete	
A106	Program Requirements Document		Unlimited	$
A107	Test Reports – General		Offeror to Complete	$
A108	Acceptance Test Report (Space Vehicle Data Package)		Unlimited	$
A109	System/Subsystem Design Description (SSDD) – System Level		Unlimited	$
	System/Subsystem Design Description (SSDD) – Subsystem Level		See subsection (d)	$
A110	Scientific and Technical Reports (Data Collection)		N/A	N/A
A111	Technical Report Study/Services (Specification Tree)		Offeror to Complete	$
A112	Progress Curve Report (DD Form 1921-2) (Contractor Cost Data Report)		N/A	N/A

* See subsection (c) below.

(b) Table 2 lists the commercial technical data, commercial computer software and commercial computer software documentation licenses the Government will acquire to all such technical data and computer software and the CDRL that shall contain the commercial item technical data, commercial computer software and commercial computer software documentation to which the identified license(s) pertain(s).

(1) The Government will acquire ___*____ perpetual licenses to that technical data and software for GPS program purposes. Those licenses are physically attached thereto. Any inconsistency between the content of those licenses and the requirement that the Contractor furnish a perpetual license to that technical data and computer software to the Government for GPS program purposes shall be resolved by giving precedence to the requirement that the Contractor furnish a perpetual license to that technical data and computer software to the Government for GPS program purposes.

(2) Except for the licenses associated with _____**_____, in addition to the licenses in commercial item technical data, commercial computer software and commercial computer software documentation appended to this attachment that are listed in Table 2, the Government shall have the right to use, modify, perform, display or disclose that commercial item technical data and the right to use, modify, reproduce, release, perform, display or disclose that commercial computer software and computer software documentation, in whole or in part, within the Government. The Government may not, without the written permission of the contractor, release or disclose the commercial item technical data and commercial computer software outside the Government, use the commercial item technical data and computer software for manufacture, or authorize the commercial item technical data and computer software to be used by another party, except that the Government may reproduce, release or disclose such data and software or authorize the use or reproduction of such data and software by persons outside the Government that are listed in Clauses SMC-H009 “Enabling Clause for General System

Engineering and Integration (GSE&I)(Aerospace Corporation)", SMC-H010 "Enabling Clause for Government Technical Group", and the OCX, User Equipment Segment, and EELV contractors, and their subcontractors to perform their respective contracts for GPS program purposes, provided such companies have executed non-disclosure agreements as provided by DFARS 227.7103-7 and also where the company is a competitor or potential competitor of the Contractor an Organizational Conflict of Interest Mitigation Plan has been approved by the Government. The contractor agrees that the Government shall have the right to unilaterally add or delete contractors from those clauses at any time, and its exercise of that right shall not entitle the contractor to an equitable adjustment or a modification of any other terms and conditions of this contract.

Table 2 Commercial Technical Data/Computer Software License List

Column 1	**Column 2**	**Column 3**
CDRL NO.	**DATA ITEM TITLE (SUBTITLE)**	**VENDOR NAME; TECHNICAL DATA/SOFTWARE APPLICATION NAME; LICENSE NO.**
CLIN NO.	**CLIN NOUN DESCRIPTION**	**VENDOR NAME; SOFTWARE APPLICATION NAME; LICENSE NO.**
0001	Space Vehicle R&D (SV1 & SV2)	
0006	GPS Satellite Simulator	
0007	Bus Real Time Simulator	
0016	Space Vehicle Production (SV3 & SV4)	
0017	Space Vehicle Production (SV5 & SV6)	
0018	Space Vehicle Production (SV7 & SV8)	
0019	Space Vehicle Production (SV9 & SV10)	
0020	Space Vehicle Production (SV11 & SV12	

(c) Marking requirements. The cover page of any CDRL delivered to the Government that contains noncommercial technical data, computer software or computer software documentation shall contain the Special License Rights restrictive marking prescribed by DFARS 252.227-7013(f)(4) and 252.227-7014(f)(4) or the Government Purpose Rights restricted marking prescribed by DFARS 252.227-7013(f)(2) and 252.227-7014(f)(2), depending upon which option the Government has exercised at the time that CDRL is delivered to the Government. If at the time of delivery the Government has exercised the option to acquire the Special License Rights described in subsection (d) of this Attachment to that CDRL, the Contractor shall (1) physically attach a copy of Attachment 13 and a current copy of Clauses SMC-H009 and SMC-H020 to that CDRL prior to it being delivered to the Government. Except for the licenses associated with ____**_____, if commercial technical data or computer software will be delivered as part of that CDRL, the Contractor shall also physically attach a copy of the applicable commercial license(s) listed in Table 2 for that CDRL to that CDRL prior to it being delivered to the Government, and expressly highlight in red which specific items of commercial technical data located on which

specific portions of that CDRL the release of which outside the Government is restricted by that/those license(s).

(d) Special License Rights for CDRLs A011, A012, A014, A022, A026, A027, A028, A029, A030, A032, A039, A042, A047, A050, A057, A065, A068, A070, A074, A077, A092, A093, and A109: All noncommercial technical data and computer software delivered under CLIN 0002 of this contract via the CDRLs listed in this subsection shall be delivered with the following special license rights:

(1) In addition to those rights specified in subsections (d)(2) and (d)(3) below, the Government shall have Limited Rights in noncommercial technical data and Restricted Rights in noncommercial computer software.

(2) The Government shall have the right to use, modify, perform, display or disclose that noncommercial computer software, in whole or in part, within the Government. The Government may not, without the written permission of the Contractor,, release or disclose that computer software outside the Government, use the computer software for manufacture, or authorize the computer software to be used by any other party, except as specified below.

(3) The Government shall have the right to use, modify, perform, display, or disclose that noncommercial technical data and the right to use, modify, reproduce, release, perform, display or disclose that noncommercial computer software and computer software documentation, in whole or in part, within the Government. The Government may not, without the written permission of the Contractor, release or disclose the noncommercial technical data and computer software outside the Government, use the noncommercial technical data and computer software for manufacture, or authorize the noncommercial technical data and computer software to be used by another party, except that the Government may reproduce, release or disclose such noncommercial technical data and software or authorize the use or reproduction of such noncommercial technical data and software by persons outside the Government and their subcontractors that are listed in Clauses SMC-H009 "Enabling Clause for General System Engineering and Integration (GSE&I)(Aerospace Corporation)", SMC-H010 "Enabling Clause for Government Technical Group", and the OCX, User Equipment Segment and EELV contractors, and their subcontractors to perform their respective contracts. The Contractor agrees that the Government shall have the right to unilaterally add or delete contractors from those clauses at any time, and its exercise of that right shall not entitle the Contractor to an equitable adjustment or a modification of any other terms and conditions of this contract.

(e) Subcontractor flowdown. Except for the licenses associated with _____**_____, the Contractor ("Licensee") shall include the following clause into any agreement between it and its subcontractors ("Licensors") that require the delivery of commercial item technical data, computer software or computer software documentation, and this clause shall be in effect during the period stated in subsection (b) of this Attachment:

This Addendum is entered into between _____ ("Licensee") and _____ ("Licensor") and relates to the commercial item technical data, computer software or computer software documentation ("Items") licensed to the Licensee by the Licensor through the Licensee's License Agreement ("Agreement"), and this Addendum is incorporated by reference into the Agreement. The Addendum terms will come into effect if and when the Agreement is transferred to the

Government. All references to such Items shall include all software updates (e.g., software maintenance patches, version changes, new releases) and future substitutions made by the Licensor. Upon delivery of that/those Items, Licensor and Licensee agree that the following provisions in this Addendum shall take precedence over conflicting provisions, if any, in the Agreement notwithstanding any provisions in the Agreement to the contrary:

(1) License rights related to technical data granted to the U.S. Government under DFARS 252.227-7015(b)(1) shall apply to all technical data associated with delivered computer software including, but not limited to, user's manuals, installation instructions, and operating instructions.

(2) Disputes arising between the Licensee and the U.S. Government pertaining to the provisions of the Agreement shall be subject to the Contract Disputes Act. Furthermore, the jurisdiction and forum for disputes hereunder upon delivery to the U.S. Government shall be the Armed Services Board of Contract Appeals (ASBCA) or the U.S. Court of Federal Claims (COFC), as appropriate.

(3) By law, the U.S. Government cannot enter into any indemnification agreement where the Government's liability is indefinite, indeterminate, unlimited and in violation of the Anti-Deficiency Act; therefore, any such indemnification provision in this Agreement shall be void.

(4) In the event the Licensee files a claim with the U.S. Government on behalf of the Licensor and prevails in a dispute with the Government relating to that claim, the Licensor agrees that damages and remedies awarded shall exclude attorney's fees.

(5) Upon receiving written consent by the U.S. Government, the Licensor may be permitted to enter Government installations for purposes such as software usage audits or other forms of inspection.

(6) The Items provided hereunder may be installed and used at any U.S. Government installation worldwide consistent with the provisions of the contract between the U.S. Government and the Licensee (e.g., limitations on number of executing instances of software, number of users, other processing volume limitations).

(7) Under no circumstances shall terms of the Agreement or any modifications thereto renew automatically so as to obligate funds in advance of funds being appropriated in contravention of the Anti-Deficiency Act.

(8) Licensor shall comply with, and all delivered Items, shall conform to, all applicable Government Security/Classification rules and regulations applicable to this Agreement, in particular those set forth in the applicable DD254 (Department of Defense, Contract Security Classification Specification).

(9) Licensor understands that the ultimate purpose of the Licensee entering into this Agreement with the Licensor is for the Licensor to supply to the U.S. Government a critical component of a weapons system whose continued sustainment is mandated by Federal law (10 U.S.C. § 2281, 42 U.S.C. § 14712). Accordingly, should the U.S. Government use, release or disclose the Items described in this Agreement in a manner inconsistent with the terms of this Agreement, the U.S. Government shall not be required to deinstall and stop using those Items or return such Items to the Licensee.

(10) In the event of inconsistencies between the Agreement and Federal law, Federal law shall apply.

(11) Copies of this license may be disclosed to third parties consistent with the Freedom of Information Act and Clause SMC-H026 of Contract FA8807-08-C-_____.

(12) The Agreement and this Addendum shall apply through renewals or extensions, as needed, through and including the period of performance of CLIN 1100 of Contract FA8807-08-C-_____.

Appendix 4

Technical Data/Computer Software Rights Checklist for Reviewing RFPs

TECHNICAL DATA/COMPUTER SOFTWARE RIGHTS CHECKLIST FOR REVIEWING REQUESTS FOR PROPOSALS (VERSION 4)

0. Understand the pedigree of the program's minimum needs.

a. Review the program's Capability Development/Capability Production Document (CDD/CPD) for any requirements for rights in technical data/computer software the Joint Requirements Oversight Council imposed upon the program.

b. Assist the program office in drafting the Intellectual Property (IP) Strategy portions of the program's acquisition strategy that will describe what requirements for rights in technical data/computer software the Milestone Decision Authority imposed upon the program (Interim DoDI 5000.02 §§ 5.d.(3)(a)5., (4)(c), (14)(b)1., Encl. 1 Table 2, Encl. 2 § 7.d., Encl. 3 § 8, Encl. 4 § 5.a.(1)(d), Encl. 6 § 2.a.(1)(a)5.; AFI63-101 §§ 6.9.9, 6.12, 6.13.1.7; AFI63-131 § 2.13.8).

1. Review the tasking statements that describe the program's minimum needs.

a. Review the performance specification.

(1) Understand what supplies or services will be procured.

(2) Think about who will probably be the intended non-Government employee recipients of technical data and computer software the contractor will develop/produce during contract performance and for what purposes that technical data or computer software will be used by those intended recipients for what duration of time throughout the program's life-cycle.

b. Statement of Work (SOW/Performance Work Statement (PWS)/Statement of Objectives (SOO)

(1) Must include tasking statements that require production/development and delivery of CDRLs contained in Exhibit A.

(2) Must require delivery of software portion of firmware identical to that delivered via Contract Data Requirements Lists (CDR)L.

(3) Must require the contractor to deliver software that does not contain functionality inhibiting operation (e.g., periodic need to enter in a license code, physical key to enforce licensing restrictions) unless otherwise approved by the program office.

c. Exhibit A:

(1) Ensure that a complete set of CDRLs identifying all technical data, computer software and other data is included (DoD 5010.12-M § C3.3.1).

(2) Validate the pedigree of the need for each CDRL (e.g., what regulation requires it be delivered).

(3) Validate that each CDRL invokes the latest version of the Data Item Description (DID).

(4) Ensure that the tailoring of that DID in BLK 16 of each DDForm 1423 is consistent with the format/content of that DID and contains all content the program offices desires be delivered.

(5) Ensure that BLK 5 of each DDForm 1423 invokes the applicable SOW paragraphs.

(6) In BLK 8, validate that "approval" (vice "review") of that CDRL is required.

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(7) Ensure the first sentence in BLK 16 of each DDForm 1423 states whether that CDRL requires delivery of (a) only technical data, (b) only computer software, (c) both technical data and computer software, or (d) neither technical data nor computer software (e.g., cost/financial/ schedule data).

(8) For each CDRL, analyze the program office's minimum needs for technical data/computer software rights as follows:

(a) If the language in the DID invoked along with its tailoring OR discussions with the author indicate the CDRL contains noncommercial/commercial technical data and is (i) form/fit/function data, (ii) data necessary for installation/operation/maintenance/training purposes, (iii) data that is a correction or change to data furnished by the Government, or (iv) data otherwise publicly releasable or has been released without restrictions, the program office should acquire Unlimited Rights unless its minimum needs may be satisfied by acquiring a level of licenses rights (e.g., Specifically Negotiated License Rights) no lower than Limited Rights – but it cannot surrender rights below the level of Government Purpose Rights if relinquishment would unduly restrict future competition. If that data is (i) studies, analyses, test data or similar data produced under the contract, (ii) data previously acquired with Unlimited Rights, or (iii) data previously acquired with Government Purpose Rights or Limited Rights and those restrictions have expired, the program office should acquire Unlimited Rights unless its minimum needs may be satisfied by acquiring a level of license rights (e.g., Specifically Negotiated License Rights) no lower than Limited Rights.

(b) If the noncommercial computer software to be delivered is (i) corrections/changes to that software furnished by the Government, (ii) publicly available software, (iii) software whose restrictions have expired, the program office may acquire Unlimited Rights. Ask the author to which non-Government employees that software must be released or disclosed to those employees (e.g., Independent Validation & Verification? Depot-level maintenance? Competing follow-on contracts?).

(c) If commercial computer software is to be delivered, ask the author to which non-Government employees that software must be released or disclosed and for what purposes it must be released or disclosed to those employees (e.g., Independent Validation & Verification? Depot-level maintenance? Competing follow-on contracts?).

(d) If cost/financial/schedule data is to be delivered, ask the author to which non-Government employees that data must be released or disclosed and for what purposes it must be released or disclosed to those employees.

2. Section B: Consider recommending the program office include a priced option for future delivery of technical data and computer software rights if such rights will not be acquired upon contract award.

3. Section H: Consider recommending the program office obtain a warranty for computer software acquired fixed-price.

4. Section I: Ensure that the RFP incorporates by reference DFARS §§ 252.227-7013, 252.227-7014, 252.227-7015, 252.227-7016, 252.227-7025, 252.227-7027, 252.227-7030, 252.227-7037, and 2562.246-7001.

5. Section J:

a. See Step 1 above.

b. Ensure an attachment describes licenses to be provided that includes pricing tables that map proposed licenses to specific CDRLs (and in the case of software, to specific CLINs) so the source selection team can quickly identify potential licensing problems associated with a specific CDRL/CLIN, and can quickly determine whether delivered CDRls/CLINs are properly marked after award.

(1) Baseline the level of license rights on a CDRL-by-CDRL basis and identify <u>who</u> the program office can release/disclose that CDRL to for <u>what purposes</u> for what <u>duration of time</u>.

(i) Do not have more than one level of noncommercial license rights or more than one level of commercial license rights per CDRL (and, in the case of software, CLIN).

(ii) Eliminate the need to obtain DCAA audit assistance to determine which party funded the development of which CDRL.

(iii) Do not permit the prime contractor or any subcontractor to require program office support services contractors to enter into bilateral NDAs before a CDRL can be released/disclosed to those support services contractors.

(2) Require delivery of firmware licenses identical to those associated with computer programs delivered under a specific CDRL.

(3) Require all commercial licenses to be contained in an Appendix.

(4) Require licenses to transfer to program office upon CDRL delivery.

(5) Include marking requirements.

(6) Prohibit the contractor from adding, deleting, or replacing any commercial item technical data, computer software, or computer software documentation listed in the pricing tables for any CLIN or CDRL unless the Government has approved that addition, deletion or replacement and the contract has been modified to add, delete or replace that item from that table and deleted or replaced the applicable license(s).

(7) Include provisions negating text in commercial licenses that violate Federal procurement law (e.g., ADA, CDA, ITAR) or that don't otherwise satisfy the program office's needs (e.g., Security Classification Guide, CDD/CPD).

6. Section K: Include DFARS § 252.227-7017.

7. Section L:

a. To start the bid protest clock ticking on solicitation improprieties, explain the pedigree of the program office's minimum needs for certain licenses (e.g., 10 U.S.C. § 2320? The program's CDD/CPD? The program's acquisition strategy?).

b. Describe how the offeror's Technical volume should explain how proposed licenses will satisfy the program office's minimum needs (including precisely where the offeror's proposed software applications to which its proposed licenses pertain are located/used in the offeror's architecture).

c. Describe how the offeror should price its proposed licenses.

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d. Describe how the offeror should complete the Section J data rights attachment.

e. Include DFARS § 252.227-7028.

8. Section M: To make it difficult for an awardee to claim after award that new assertions made after award are based upon "new information or inadvertent omissions . . . [that]would not have materially affected the source selection decision" (DFARS §§ 252.227-7013(e)(e), 252.227-7014(e)(3)):

a. Create appropriate Technical evaluation criteria to evaluate content of proposed licenses.

b. Explain how proposed costs/prices for rights proposed will be used as part of the program office's cost/price evaluation.

Appendix 5

Technical Data/Computer Software Rights Lessons Learned

TECHNICAL DATA/COMPUTER SOFTWARE RIGHTS LESSONS LEARNED (VERSION 2)

1. Issue draft RFPs containing proposed technical data/computer software rights provisions to obtain feedback from industry.

2. Schedule an Industry Day with potential offerors devoted exclusively to technical data/computer software rights:

a. Require that potential offerors' in-house counsel attend – and makes sure the offeror has identified that individual as their in-house counsel and that that in-house counsel is an active member in good standing of a state bar association (AFRPC Rules 4.2, 5.5(b)). Since the program attorney will probably be involved in negotiating licensing issues during discussions, this approach will establish the relationship between offerors' in-house counsel and the government program attorney prior to RFP release.

b. Brief potential offerors on the contents of the draft RFP. Explain the pedigree of the Government's minimum needs; e.g., by statute Unlimited/Unrestricted rights to certain types of technical data is non-negotiable.

c. Emphasize the Government expects that prior to submission offerors will have carefully reviewed all proposed licenses for consistency with RFP requirements.

3. Do not assume that Offerors will "get it right" the first time in their initial proposal

a. Assume that establishing a competitive range and conducting discussions to resolve technical data/software rights issues will be required

b. Build enough time into the source selection schedule to resolve those issues (i.e., 3-4 months in parallel with non-technical data/software rights discussions).

4. Evaluators on the Source Selection Evaluation Team must read every sentence of every proposed license (e.g., 4000+ pages of text in 8pt typeface) for potential problems:

a. General issues:

(1) Verify offeror proposed all content required by Section L instructions.

(2) Read the Section K (DFARS § 252.227-7017) certification/representation.

(3) Analyze whether the scope of the license to a specific deliverable is less than that required by the RFP.

b. COTS (DFARS § 227.7202-1(a))

(1) Review proposed licenses for inconsistencies with federal procurement law:

(i) Carefully investigate whether proposed modifications to a "COTS" software application satisfy the definition of a "commercial item".

(ii) Identify provisions that violate the CDA: (A) disputes are subject to arbitration or litigation in a specific state court, (B) which substantive state law will govern disputes, and (C) statutes of limitation on filing claims.

(iii) Identify automatic renewal provisions that violate the ADA.

(iv) Identify provisions requiring the US to pay the licensor's attorneys fees that may violate the EAJA.

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(v) Identify provisions prohibiting disclosure of the license itself that may violate the FOIA.

(vi) Identify provisions that violate the EAR/ITAR.

(vii) If any licenses are proposed to be acquired via GSA FSS: (a) proposed software applications must be listed on the proposed FSS, (b) the proposed FSS must not expire prior to contract award, and (c) the proposed price for that license must be no higher than that listed in the FSS.

(2) Review proposed licenses for consistency with user needs/operational considerations:

(i) The quantity of licenses proposed to be used at each location where a software application is to be installed may be (a) insufficient or (b) inconsistent with the offeror's proposed architecture.

(ii) Provisions may state the software application is not intended for use in weapons systems – Ask the offeror why that is the case.

(iii) Analyze provisions that contain geographic restrictions; e.g., product may only be used in the U.S. but the weapons system will be deployed overseas.

(iv) Determine whether any license term will expire before period of performance of the contract ends.

(v) Identify whether provisions that require the software application to be deinstalled and returned to the licensor if the USG violates the terms of the license will inhibit operational use of the system.

(vi) Determine whether provisions that state the developer will be maintaining the software will prevent that software from being maintained because the software will be installed in a classified facility – but the developer proposes to have foreign persons conduct that maintenance.

(vii) Identify provisions requiring the customer to periodically enter in a license code to enforce license conditions.

(viii) Identify provisions that require recipients to enter into NDAs with the developer – but that do not describe the content of such NDAs.

(ix) For Open Source Software (OSS), carefully review the license terms that describe under what conditions the source code of any modified OSS must be disseminated to the general public and whether those conditions violate the EAR/ITAR or the program's Security Classification Guide.

c. Determine whether the Offeror proposes to create an Integrated Digital Environment and host CDRLs on its servers. If so, require offerors to propose enforceable contract language and appropriate CDRLs.