

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

FOURTH EDITION
AUGUST 2011

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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. For business entities, intellectual property is considered its “lifeblood” which it actively guards and for which it charges 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, upgrade/modification, interoperability with other systems, transfer of technologies to other programs/systems/ platforms).

This handbook¹ is designed to provide you with a practical “cradle-to-grave” handbook 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. Suggested improvements or corrections to this handbook are welcome and should be submitted 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@losangeles.af.mil.

Due to the size of the appendices to this handbook, relevant portions of Appendices 1 and 2 are highlighted in yellow in the soft copy so readers can quickly find those excerpts. Readers may wish to print out a 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 quickly find a relevant portion in an appendix the rationale for which is discussed in the narrative portion of this handbook.

This handbook is not designed to furnish legal advice to specific problems and should neither be cited nor relied upon 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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¹ SMC/JA issued the first edition of this handbook in June 2009, the second edition in January 2010 and the third edition in January 2011.

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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* (15 October 2001), innovation requires substantial financial investment and effort over a long period of time 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 secrets² 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 due to the ambiguity of such regulations because they are not ambiguous. This conclusion is supported by the fact that since the regulations became the subject of a substantial rewrite in 1995 they have spawned relatively little litigation.

Rather, the dilemma is caused by their length and their format. Specifically, they take up over 100 single-spaced pages in the Defense Federal Acquisition Regulation Supplement (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 recently³ has any other DoD organization⁴ or private publishing company⁵ ever issued a publication like this one – a user-friendly resource that provides a detailed “cradle-to-

² 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. Civil Code § 3426.1(d) (West 2011)). 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)) since 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”.

³ Office of the Staff Judge Advocate, Air Force Material Command, *Air Force Material Command JA Data Rights Handbook* (May 2010).

⁴ Compare, e.g., *Defense Acquisition Guidebook* (July 29, 2011 ed.), available at <https://acc.dau.mil/CommunityBrowser.aspx?id=346680>; Office of the Undersecretary of Defense (Acquisition, Technology & Logistics),

grave” approach to acquiring technical data and computer software rights starting from the moment the program office is 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.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?” Basically, there are four reasons. First, law, regulation, and policy require we be concerned. Second, acquiring such rights has a critical impact on the cost and affordability of technology which should not be treated as a separate or distinct issue that can be negotiated apart from contract performance requirements or cost/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.

Intellectual Property: Navigating 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://acc.dau.mil/NOAGuidebook>; *Guidebook for Acquisition of Naval Software Intensive Systems* Version 1.0 (September 2008), available at <https://acquisition.navy.mil/rda/content/view/full/6079>; Space and Naval Warfare Systems Command (SPAWAR) Contract Management Process Guide (CPMG) Version.4.0 (September 2007), available at http://enterprise.spawar.navy.mil/cmpg/public_cmpg_index.htm; Army Material Command, *Army Guide for the Preparation of a Program Product Data Management Strategy (DMS)* (August 31, 2010), available at <http://meetings.abanet.org/webupload/commupload/PC408000/newsletterpubs/armyguide.pdf>; Dayn T. Beam, *A Legal Analysis of the Statutory and Contractual Allocation of Data Rights in Federal Contracts Subject to 10 U.S.C. 2320* (May 21, 2009 Revisions), available at <http://www.redstone.army.mil/legal/intellect.html>; Dayn T. Beam, *A Practical Guide for the Understanding, Acquiring, Using, Transferring, and Disposition of Intellectual Property by DoD Personnel* (October 11, 2006), available at <http://www.redstone.army.mil/legal/intellect.html>; 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)* (November 1, 2009), available at <http://www.cendi.gov/publications/index.html>.

⁵ See, e.g., James G. McEwen, David S. Block & Richard M. Gray, *Intellectual Property in Government Contracts: Protecting and Enforcing IP at the State and Federal Level* (2009); Ralph C. Nash, Jr. & Leonard Rawicz, *Intellectual Property in Government Contracts* (6th ed. 2008).

⁶ An Integrated Product Team led by AF/A4ID (Transformation Directorate, Deputy Chief of Staff for Logistics, Installations and Mission Support) has created a *Product Data Acquisition Guidance* Web-based aid, available at <https://www.my.af.mil/gcss-af/USAF/site/ACQUISITION/ACE/PLM> (last visited August 3, 2011). The purpose of that *Guidance* is to “provide practitioners (e.g. PMs) guidance to comply with policy and to secure needed data to enable the AF to support weapon systems. This guidance provides RFP language, DFARS clauses, CDRLs, DIDs, and a Data Management Strategy template to ensure that product data is priced or acquired appropriately during the acquisition and sustainment life cycle.”

As regards the first reason, permanent legislation (10 U.S.C. §§ 2320, 2321) 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 for computer software as well. Memoranda issued by USD(AT&L) on 20 April 2011, 3 November 2010, 14 September 2010 and 19 July 2007, ASD(NII)/DoD CIO on 16 October 2009, the Secretary of the Air Force on 3 May 2006, the Acting Assistant Secretary of the Air Force (Acquisition) on 4 February 2010, and the Air Force Service Acquisition Executive on 14 January 2011, as well as DoD Directive 5230.24 (“Distribution Statements on Technical Documents”), DoD Instruction 5000.02 (“Operation of the Defense Acquisition System”), TO 00-5-3 (“Technical Manual, Methods and Procedures: AF Technical Order Life Cycle Management”), AFPD20-1/63-1 (“Acquisition and Sustainment Life Cycle Management”), AFI23-105 (“Spare Parts Breakout Program”), AFI61-204 (“Disseminating Scientific and Technical Information”), AFI63-101 (“Acquisition and Sustainment Life Cycle Management”), AFI63-131 (“Modification Program Management”), AFI63-1201 (“Life Cycle Systems Engineering”), SMCI20-101 (“Space System Sustainment Planning and Management”) and SMCI63-104 (“Software Acquisition Instruction”), reflect senior leadership’s concerns regarding this topic. These concerns are primarily based upon the second reason. Specifically, if we do not acquire sufficient rights in technical data and computer software prior to award, we may relinquish the opportunity to enhance competition and preserve core logistics capabilities, thereby locking ourselves into a position whereby the incumbent can force us 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 us a license to use, release or disclose that technical data or computer software to individuals other than Government employees at any price.

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. But it may not have acquired sufficient rights to use, release or disclose that technical data or 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 a person who purchases a movie on a digital video disc (DVD) could erase the movie and transfer the blank DVD to anyone. But buying the DVD does not automatically give you the right to do anything you want with it (e.g., showing 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 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) while 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.

So here is the critical point: Under only very unique circumstances does the Government acquire title or ownership to technical data or computer software developed under DoD contracts – *even if it 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 SETA contractor, or an 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 generated 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 – because 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 of time. In certain cases, the Government might acquire ownership of technical data or computer software (e.g., where a Government employee actually invented the technology on government time and using government resources). Normally, however, the DoD will be negotiating over license rights and not ownership in technical data or computer software to be delivered 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 release of 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 be a violation of the two criminal statutes mentioned above. With this concept in mind, we now turn to discussing the “what”; i.e., the terminology applicable to this subject.

II. Terminology.

Experience indicates 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. 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. §§ 2320-2321, Federal Acquisition Regulation (FAR) Subparts 2.1, 15.3, 15.4, 46.3, 46.7, and DFARS Subparts 207.1, 209.5, 215.4, 225.70, 227.71, 227.72 and 246.7, except for the provisions in those Subparts 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 than those clauses required by the DFARS. The subject of procuring technical data and computer software via SBIR contracts and task orders, delivery orders, and/or 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.

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”)(13 June 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 discussed in greater detail below, one of your most important challenges is to carefully determine what those “agency needs” are.) Once particular items of technical data or computer software have been identified that the program office 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 to be delivered. They must also establish procedures for determining the acceptability of that technical data and computer software, identify separate

Contract Line Item Numbers (CLINs) for that technical data and computer software, require offerors to separately price each item, require offerors to identify technical data or computer software to be furnished with restrictions, and require contractors to identify technical data to be delivered 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 listed at page 19 below. Similarly, offerors and contractors shall not be prohibited or discouraged 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.

With respect to items previously developed exclusively at private expense, DoD is also prohibited by regulation 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 listed at pages 20 below. Similarly, offerors shall not be prohibited or discouraged 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 that* offerors are put on notice of that fact in the RFP. In other words, the program office's evaluation of the offeror's proposal to furnish a certain level of technical data and computer software rights may be used as part of the program office's "best value" determination – but (with certain exceptions discussed later in this handbook) 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 below, that fact 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 true. As discussed below, under certain circumstances the program office may – and in some cases must – obtain Unlimited Rights even if the technical data or computer software was developed at private expense. The following discussion also differentiates between rights in noncommercial technical data and computer software and rights in commercial technical data and computer software.

D. Noncommercial Rights.

There are four types of rights the program office can purchase associated with noncommercial technical data (i.e., Unlimited Rights, Government Purpose Rights, Limited Rights, Specifically Negotiated License Rights) and four types of rights the program office can purchase 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, 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, 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, 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” *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 evaluational 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 such Limited Rights technical data is provided to a recipient for purposes of emergency repair or overhaul, the recipient shall be required to 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, 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 a Government contract where that contract contains DFARS § 252.227-7025. (DFARS § 252.227-7014(a)(15)).

5. Specifically Negotiated License Rights: 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. Noncommercial technical data or computer software marked with Specifically Negotiated License Rights cannot be released outside the Government *unless*

(1) the conditions specified in that license – which should be incorporated by reference into the contract and physically attached to the contract referenced in that restrictive marking – 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. If, however, the technical data is of a certain type (see Section III.C.1. below), the contractor may never restrict the Government from releasing or disclosing such technical data outside the Government – and the Government is prohibited from negotiating away its Unlimited Rights to use, release, or disclose such technical data.

E. Commercial Rights.

The types of rights the Government acquires in commercial technical data or computer software are different than those associated with noncommercial items. Specifically, if technical data pertaining to commercial items is procured, the Government will have the “unrestricted” right to use, release, or disclose such technical data 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 (or has waived the requirement for an NDA in writing).

Since there is no standard clause in the DFARS establishing the Government’s rights in commercial computer software – including Open Source Software (OSS) – such software must be acquired under licenses customarily provided to the public unless those licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs. Such software shall be obtained 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 all CDDs/CPDs to 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 require 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 sustainment – even though 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 determining what critical technical data or computer software must be delivered to the program. 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 results of this analysis should be able to be summarized in no more than a paragraph of text in the CDD/CPD (and clearly identified in the table of contents under the heading “Rights in Technical Data and Computer Software”) that identifies those items, their associated license rights – and *why* those items and their associated license rights are needed in order to enable the system’s reliability, maintainability, operational availability, supportability and minimize its logistics footprint, enhance its mobility, and reduce the total ownership cost.

There are five reasons why the importance of including that paragraph into those critical requirements documents cannot be overstated. 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-520 for additional information on preparation of such requirements documents. In turn, MIL-HDBK-520 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 technical data (a mandate that applies equally to rights in computer software). 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 Request for Proposals (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 be able to 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 any requirement can be challenged by a bid protester as unduly restrictive of competition. If, however, the CDD/CPD contains the information described above – especially the rationale for needing such technical data and computer software and their associated license rights – it is likely that that determination by the Vice Chairman of the Joint Chiefs of Staff will be given great weight by 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) reviewing a bid protester’s assertion to the contrary.

Fourth, inclusion of such requirements and their rationale into the CDD/CPD will make it difficult for any successor program manager to relax such requirements after the contract has been awarded based upon (1) the erroneous assumption that such relaxation will reduce the total ownership cost of the program or (2) “seller’s remorse” (described below) with respect to the rights the contractor 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 – and then wait the weeks (if not months) it will take for that manufacturer to repair that system and return it to that area of operation.

B. Formulating the Acquisition Strategy/Plan.

First, all members of the acquisition team that will be evaluating offerors’ proposals relative to technical data and computer software rights should 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 seven-step checklist to determine what the technology development strategy/acquisition plan (for acquisitions that have not yet obtained Milestone B approval) or acquisition strategy/plan (for acquisitions that have obtained Milestone B approval) should say with respect to the types of rights the Directorate believes it should acquire to successfully execute the acquisition program in question:

1. The acquisition team must procure those rights the Government is required by statute, regulation and policy to procure. Further details regarding this matter are provided below.

2. The acquisition team must attempt to procure those rights required to be procured by the program’s CCDD or CPD. Although not all CDDs or CPDs may contain such requirements, do 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, each page of the CDD or CPD must be carefully scrutinized for such requirements.

3. DoDI 5000.02 requires that program managers for ACAT I and II programs assess the long term technical data needs of their systems and reflect that assessment in a Data Management Strategy (DMS) that (1) is integrated with other life cycle sustainment planning and included in the acquisition strategy, (2) assesses the data required to design, manufacture and sustain the system, as well as to support re-competition for production, sustainment or upgrades, and (3) addresses the merits of including a priced contract option for the future delivery of technical data and intellectual property rights not acquired upon initial contract award and shall consider the contractor's responsibility to verify any assertion of restricted use and release of data. More specifically, AFI63-101 states that acquisition of technical data and associated rights for the system's total life cycle sustainment described in the DMS shall be addressed at Acquisition Strategy Panels, reviews and in the system's Life Cycle Management Plan. (It also states that the system's Systems Engineering Plan must assess claimed restrictions on the use of engineering data and the cost effectiveness of securing or obtaining Unlimited Rights or Government Purpose Rights to Limited Rights technical data.) Likewise, AFI63-131 states that modification program 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 weapons systems cited in AFPD10-9 or AFI10-901 must include (1) a description of the system 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 being acquired. That is why AFI63-101 states that data rights assessments and requirements shall (1) consider the product support life cycle strategy (e.g., material management, training, cataloging, configuration management, engineering, Diminishing Manufacturing Sources/Material Shortages (DMSMS), technology refreshment, maintenance/repair within the TO limits and specifically engineered outside of TO limits, and reliability management), and (2) collaborate and/or support other associated activities/elements such as source of repair and supply decisions, core capability requirements, limitations on the performance of depot-level maintenance, and preservation of competition.

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" – which, according to Webster's Dictionary 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. – is synonymous with those terms. Second, if a development/production contractor is providing such support services contractors “access”, then that “access” is being provided directly by that firm 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 the critical importance of the program office determining 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 does DoDI 5000.02, AFI63-101, AFI63-131 and SMCI63-104 require the program office procure?

(4) What rights does the CDD/CPD require that 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 of time? For example, will that technical data or computer software be used by, released to, or disclosed to only Government employees? Will it need to be used, released or disclosed to depot-level maintenance services contractors? Will that technical data or computer software need to be used by, released to, or disclosed to the awardee’s competitors? Will it be used to compete follow-on acquisitions for the supplies/services acquired under the contemplated acquisition?

4. The provisions ultimately included in the RFP must be structured 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 RFP was structured in the manner recommended below, it will be difficult for a contractor to make such assertions after award. The reason why is because the program office will be able prove the negative: It will be able to point to specific language in the Proposal Analysis Report and Source Selection Decision Document that supported the award of the contract in question – or even better yet, admissions by the awardee contained in its responses to Evaluation Notices issued by the program office during discussions – that proves that, had the program office known of those additional restrictions prior to award, those omissions *would* have materially affected the source selection decision. 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 ultimately included in the RFP must be unambiguous and therefore enforceable. To that end, they must precisely identify what specific CDRLs can be used, released or disclosed to which specific persons/entities who are not Government employees and for which specific purposes for which specific period of time (otherwise known as “mapping” various restrictions to applicable CDRLs). The reason why is because if licenses are not “mapped” to specific CDRLs in the RFP, it will be difficult for the program office to analyze whether the proposed licenses satisfy its minimum needs prior to award. And for the reasons discussed below, if licenses are not “mapped” to specific CDRLs in the resulting contract it will be virtually impossible for the program office to successfully complete such a “mapping” exercise after contract award.

6. Because of the adverse consequences that might result, there is always a risk in implementing some novel approach to acquiring technical data and computer software rights for an ACAT I program – defined as 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 – that has never been tried before. Preferably, the provisions ultimately included in the RFP by the acquisition team should have been battle-tested in a program of similar magnitude. For example, during contract administration of that program of similar magnitude, they minimized if not eliminated disagreements between the parties. That is not to say, however, that a “one-size-fits-all” approach is appropriate – each program has its unique characteristics which must be taken into consideration during formulation of 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 contract that 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 violates a fundamental principle of error-free design – “simplify where you can, and build in constraints to block errors”⁷ – and thus 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, all contents of a specific CDRL deliverable should be governed by 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 to determine whether the contractor (1) developed an accounting system capable of tracking the allocation of private and government funds to the developmental work that was 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 – for if it can, the contractor can demonstrate that a particular item, component or process (or all items, components or processes) described in a particular CDRL was developed exclusively at private expense.⁸ 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. And 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.

Complicating the matter further would be if the audit report reveals that some noncommercial items, components or processes described in that CDRL were developed

⁷ 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).

⁸ 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).

exclusively at private expense (e.g., IR&D), other noncommercial items, components or processes described in that CDRL were developed with both contractor and Government funding (“mixed funding”), and yet other noncommercial items, components or processes described in that CDRL were developed 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: All contents of a specific CDRL should be governed by a single level of license rights to the maximum extent practicable. 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 – because 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 provisions in the RFP should obtain an express waiver from the contractor of the need for those “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 to be delivered 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 than those 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.

After the program office has used this seven-step checklist, it will then be able to succinctly articulate its data management strategy in its technology development strategy/acquisition strategy/acquisition plan to comply with PDUSD(AT&L)’s Sample Technology Development Strategy/Acquisition Strategy Outline. Consistent with that outline, the program office’s technical data rights 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 state what those objective are), describe the types of CDRLs the contractor will deliver during contract performance that will achieve those objectives, describe how those CDRLs will be stored, managed, and reviewed by the program office, identify the rights the program office will acquire to those CDRLs, list the DFARS clauses that will be included into the resulting contract(s), and identify the estimated cost of the rights to those CDRLs.

(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).

(3) A business case calculation, conducted in concert with the engineering tradeoff analysis, that outlines the approach for using open systems architectures and acquiring technical data rights.

(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).

C. Drafting the RFP.

As stated above, AFI63-101 requires that source selections consider Government rights to technical data (a mandate that applies equally to rights in computer software) – but it does not provide detailed guidance relative to structuring 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, a provision offerors use to identify use, release and disclosure restrictions (DFARS § 252.227-7017) does not require that the offeror “map” such restrictions to specific CDRLs. If this omission is not corrected 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 commercially available off-the-shelf (COTS) software, there is no clause establishing 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 into the contract prior to award, it may be in for an unpleasant surprise after award when it realizes the license prevents the use, release or disclosure of that software to certain entities to whom it must release such software in order to successfully execute 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 of the program office acquiring insufficient rights in technical data and computer software in order to successfully execute 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 the framework described below has been used successfully on a Navy ACAT I program and is currently in use on two SMC ACAT I programs. For further details, see Appendices 1 and 2.) Any other approach that satisfies the objectives described above would be equally acceptable. Again, however, experience demonstrates that unless an approach similar to the above is implemented from the outset, what could result is 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 – thus resulting in delays in award of the resulting contract.

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

DoD 5010.12-M and the DFARS require that all technical data delivered under a DoD contract must be provided via a DD Form 1423 (CDRL). Similarly, it has been the practice of the military departments to acquire computer software via DD Form 1423. (The DD Form 1423 is used to assist in defining delivery obligations, not in establishing the Government's rights to use, release or disclose the delivered intellectual property outside the Government.) There are two reasons why it is essential that a program office comply with this mandate. First, this approach bounds the scope of the technical data and computer software which will be delivered to the program office – because the program office acquires only “inchoate” rights in that technical data or computer software which is not a deliverable under the contract. Second, 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 in drafting the RFP to properly acquire rights in technical data and computer software is to create the appropriate CDRLs, which includes ensuring the content of those CDRLs (including any tailoring of referenced Data Item Descriptions (DID)) encompasses 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 why the CDRL is needed (e.g., what regulation requires it be delivered), 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 uses the King's English properly), and why “approval (vice “review”) of that CDRL is required.) In other words, CDRL content is critical – for if some item of technical data or computer software was not expressly described in a particular CDRL 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.

In this regard, it should be noted that in-house counsel for some defense contractors cannot even agree *amongst themselves* whether the Government acquires rights to various items of technical data – that are not classified as “deliverables” via a DD Form 1423 – where the Government only acquired electronic “access” via some type of Integrated Digital Environment (IDE). That fact strongly counsels in favor of a program office making every scrap of technical data, computer software, and cost/financial/schedule data needed 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 neither technical data nor computer software (e.g., 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 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 following analysis must be repeated 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, 10 U.S.C. § 2320 requires that the program office acquire Unlimited Rights in that technical data. This position is nonnegotiable – no government employee from the President on down has the authority to relinquish such rights under any DoD contract.

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, then the program office may – but is not required to – obtain Unlimited Rights in such data.

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, 10 U.S.C. § 2320 requires that the program office obtain Unlimited Rights in that technical data. Again, this position is nonnegotiable – no government employee from the President on down has the authority to relinquish such rights under any DoD contract.

If those sources describe **noncommercial** computer software, is it (1) corrections/changes to computer software or computer software documentation furnished to the contractor by the Government, (2) 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, (3) computer software or associated documentation obtained with Unlimited Rights under another Government contract or as a result of negotiations, or (4) computer software and associated documentation furnished under another Government contract under restrictive conditions that have expired? If so, the Government may – but is not required to – obtain Unlimited Rights in that computer software.

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?

If the CDRL item (either noncommercial technical data or noncommercial computer software) does not fit within the enumerated categories listed above, will that item be developed exclusively with Government funds? If so, the program office may – but is not required to – obtain Unlimited Rights to use, release, or disclose that item. If not, will the item be developed in part with Government funds? If so, the program office may – but is not required to – obtain Government Purpose Rights. As stated above, however, the Government cannot negotiate specifically negotiated license rights in noncommercial technical data that are less than Limited Rights, or specifically negotiated license rights in noncommercial computer software that are less than Restricted Rights.

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

Where the Government pays the full or partial cost for development of technical data or computer software, the acquisition of rights in that intellectual property should be obtained at no additional cost/price. For the reasons stated above, however, it is prudent to structure the contract to require the offeror to identify the cost/price to 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 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) should be identified in a different CLIN than the cost/price for the rights to use, release or disclose that technical data or computer software. The DFARS and DoDI 5000.02 state 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 were not acquired 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 delivery 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 development of certain items of technical data or computer software to be delivered as part of a CDRL will be conducted 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 certain items of technical data or computer software to be delivered as part of a CDRL were developed 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 also consider creating an additional firm-fixed-price option CLIN entitled "Rights in Data (Including Technical Data, Computer Software, and Computer Software Documentation)" that references 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 computer software is being delivered under a fixed-price CLIN, consider obtaining a warranty for that software. In contrast, if the computer software is being delivered under a cost-reimbursable CLIN, the Government is prohibited from obtaining a warranty for that software.

b. Consider including an option exercise clause. The clause should state the program office has the right to exercise the firm-fixed-price Option CLIN for Rights in Technical Data, Computer Software, and Computer Software Documentation 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). The Air Force's financial management regulations state 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, it is advisable to state that the appropriations to be obligated onto that CLIN to procure rights in technical data, computer software or computer software documentation to be delivered as part of a CDRL shall be the same type of appropriation used to procure that item and 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.

c. Include a Data Rights Attachment. In 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 separates 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. 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. Fill-in the first and second columns using the information in Exhibit A. Based upon the answers provided to the questions listed above, fill-in the third

column with either “Unlimited”, “Government Purpose” or “Offeror to Complete.” (If a Specifically Negotiated License will satisfy the program office’s needs, then that concept should instead be identified in the table.) The third column will be filled-in by the offeror for each level of rights associated with each CDRL. If a Specifically Negotiated License will satisfy the program office’s needs, 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 to be delivered to the program office by the contractor. This table should 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. Fill-in the first and second columns; the third through fifth columns will be filled-in by the offeror.

(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 to be delivered to the program office by the contractor. 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. Fill-in the first and second columns; the third column will be filled-in by the offeror.

(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 costs for various licenses procured under various CLINs should be allocated in reasonable proportion to the benefits received by each CLIN.

(5) In many cases, firmware will be delivered 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 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 shall 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 will be affixed to which CDRLs, and require that a copy of the attachment and all applicable commercial licenses be physically attached to the CDRL prior to delivery to the Government. The purpose of this requirement is to create a self-contained package so that any recipient of that CDRL decades after award will have all information in their possession needed to determine what use, release and disclosure restrictions apply to which specific items of commercial technical data located in which specific portions of the CDRL – and will not need to hunt around for a hard or soft copy of that 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) In many cases, subcontractor commercial technical data and computer software licenses contain provisions that violate Federal procurement law (e.g., disputes provisions, indemnification provisions that violate the Anti-Deficiency Act, choice of law provisions, attorneys fees, right of entry onto Government installations to audit whether the license has been violated, automatic renewal provisions that violate the Anti-Deficiency Act, 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.

Moreover, 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 expressly nullify those provisions. Examples of such provisions include geographic restrictions and provisions that require the customer to stop using, 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 in order to substantially comply 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 uninstallation is physically possible the Air Force would have to declare that system to be non-operational until such time as 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 an injunction that could be issued against the Air Force the breach of which constitutes contempt of court which could result in jail time).

d. Statement of Work (SOW)/Compliance & Reference Documents List: 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, a sentence should be included in the SOW that requires the software portion of firmware delivered as part of an end item (e.g., space vehicle, launch vehicle) be identical to that contained in a CDRL. Also, the SOW should require that 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).

6. Section K (Representations, certifications, and other statements of offerors). Insert DFARS §§ 252.227-7017 ("Identification and Assertion of Use, Release, or Disclosure Restrictions") and 252.227-7028 ("Technical Data or Computer Software Previously Delivered to the Government"). The former 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. A protester could claim that the contents of the RFP exceed the program office's minimum needs for rights in technical data and computer software rights.

Accordingly, it is advisable for the program office to explain in Section L those minimum needs and the underlying rationale for 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 created after the protest was filed. Immediately thereafter, 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 so as to warn offerors they should not propose the Government have to pay an additional cost for acquiring those rights. 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, the instructions should require the offeror to submit as an attachment to its Technical volume a Software Architectural Description (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. Finally, provide instructions regarding how offerors shall complete DFARS § 252.227-7017 and that Data Rights Attachment and require offerors to provide copies of all commercial technical data and computer software licenses to be delivered to the Government.

8. Section M (Evaluation factors for award). 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 successfully execute the program. (For example, DoDI 5000.02 discusses this concept within the context of systems engineering. The Department of Defense Source Selection Procedures Guide states that the purpose of the Technical factor is to assess the offeror's proposed approach as detailed in its proposal to satisfy the Government's requirements. Accordingly, it would be appropriate to evaluate this topic under a Systems Engineering subfactor within the Technical factor.) 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 and will result in an executable program underneath the appropriate subfactor(s). Explain how the prices the offeror proposes for the rights in technical data and computer software it proposes to deliver to the Government after award will be used as part of the Government's cost/price evaluation.

D. Prior to RFP release.

To reduce the potential for bid protests relating to the provisions described above and to ensure the program office has conducted appropriate market research, when it issues the draft RFP the program office should highlight the existence of the provisions described above, describe how the Government arrived at its minimum needs, and invite potential offerors to comment on the proposed terms and conditions so as to address potential offerors' legitimate concerns while at the same time educating potential offerors as to the program office's requirements. 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 may also require 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, one solution to this problem might be to modify 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), moving that content to a second CDRL – and then describing 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.

E. 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 uncertainties, 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, it may be necessary 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. If any Specifically Negotiated License Rights are negotiated between the parties, amend the RFP such that that license is incorporated by reference into the Data Rights Attachment and thus is physically attached to the proposed contract.

Occasionally, an offeror may “overachieve” by proposing 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 problem this situation creates is that in attempting to obtain a strength assessment under a particular Technical subfactor for proposing that additional content, the offeror may very well have injected a feature into its proposal that the program office would assess as a deficiency under a different Technical subfactor since 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: (1) advise the offeror to delete that additional content and propose to deliver technical data and computer software rights consistent with the program office’s minimum needs specified in the RFP, or (2) if the program office believes such additional content is necessary, 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 its minimum needs for that CDRL.

2. Specific Guidance

According to the Federal Acquisition Regulation, the Source Selection Authority’s (SSA) decision shall be based 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 are concerned. Assuming the program office has structured its RFP in a manner similar to that which is 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 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 2 (OCX Phase B RFP Attachment 8)) 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 all commercial item or COTS licenses are mapped 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 to be delivered 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 is proposing to deliver to the program office with various use, release disclosure restrictions in the proposed license is in fact a "COTS item" or a "commercial item." The former term is defined by the FAR 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). In contrast, the latter term is defined by the FAR 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. "Minor" is defined 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 to be considered 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. Similarly, 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.”) The SSEB would be well-advised to 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 to be made 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 will be modified? (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. 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, 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, 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, point out that fact to the offeror during discussions and modify the order of precedence clause in the Data Rights Attachment accordingly.

For example, some commercial software licenses expressly state that that software is not designed or intended for use in weapons 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, such a disclaimer 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? Upon discovering such a disclaimer in a proposed commercial license, the SSEB should answer the following questions to determine whether the proposed use of that commercial software to execute the program should be classified as a deficiency, uncertainty, weakness or significant weakness: (1) 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 a modification to overcome those inadequacies?

An offeror's proposed use of Open Source Software (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 intends that the offeror modify that software to successfully perform the contract, it would not be possible to comply with such license terms for to do so might violate export control laws and the program's Security Classification Guide. Similarly, provisions in an OSS license that provide limited or no warranty may violate DoDI 8500.2 ("Information (IA) Assurance Implementation"), 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"). As indicated above, hardware does not meet the definition of "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 21 June 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, verify that the offeror has done so in its Data Rights Attachment. In contrast, if the RFP requires the offeror to propose the costs of licenses under a cost-reimbursable CLIN (or CLINs), verify that the offeror has proposed costs in the Basis of Estimates (BOE) 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. Also, verify that the costs proposed in its Cost Volume are identical to those proposed in its Data Rights Attachment.

j. Sometimes an offeror may propose to create a data repository (also known as an IDE) within which various items of technical data, computer software, and cost/financial/schedule information – irrespective of whether those items are described in DD Form 1423s and are therefore identified as "deliverables" – will reside. Such an approach is authorized by the DFARS as long as certain procedures described in those regulations are followed. For the following reasons, however, a program office should never accept an offeror's proposal to have such a repository reside on that offeror's servers (as opposed to Government servers). First, for the reasons stated above, having mere electronic "access" to – vice "delivery" of – such technical data, computer software and cost/financial/schedule information is highly inadvisable. Second, if the program office were to authorize the use of an IDE on a contractor's servers, the program office would not have physical custody or control over any CDRL residing within that depository. As a result, the contractor could electronically shut off the program office's ability to use, release or disclose that technical data or computer software outside the Government (irrespective of whatever restricting markings may or may not be affixed to that CDRL) for any reason – or no reason at all. Meanwhile, the program comes to a screeching halt.

F. Sole Source Negotiations.

The approach described above for evaluating an offeror's proposal to sell or otherwise deliver rights in technical data and computer software to the Government during a source selection applies equally during sole source negotiations, with one significant addition: 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. 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 goes on to say that such data are factual (not judgmental, although they include the data forming the basis for that judgment); they 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; and that they include, 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 that mandates 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 other textbook or guide issued by any DoD activity or the private sector 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 cost or pricing data:

1. If the offeror has a written corporate policy that describes its standard approach for calculating the value of its intellectual property, require the offeror to provide a copy of that policy in its proposal along with an explanation as to how that policy was used to calculate the value of the rights proposed to be delivered to that 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, have the offeror explain why that policy was not used in this case. If no such policy exists, have the offeror affirmatively state that is the case.

2. Require the offeror to identify in its proposal where in its most-current Form 10-K (its annual report) filed with the U.S. Securities and Exchange Commission (SEC) – which are usually available on the offeror’s Website under the “Investor Relations” tab – identifies the value of the rights to that specific item of technical data or computer software. (Sometimes the

financial statements contained in Form 10-Ks classify such intellectual property as “goodwill and intangible assets,” since intellectual property is a subset of the family of intangible assets as well as a subset of a company’s overall goodwill.) If the financial statements contained in that Form 10-K identifies the value of all the offeror’s intellectual property in the aggregate, require the offeror to provide as part of its proposal the cost or pricing data that identifies what value of the rights to that specific item of technical data or computer software is subsumed under that aggregated value. Conversely, if the offeror has not included the value of the rights to that specific item of technical data or computer software in those financial statements, that fact suggests the value of that intellectual property is nominal, because that is what the offeror has represented to its shareholders, to Wall Street – and to the SEC.

3. Modify as necessary and then use one or more 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.⁹ The program office should determine which of the following four approaches would be the most appropriate one to 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 four approaches are as follows:

a. 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 quality, 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.

b. The *market approach* analyzes actual market sales, rents, and transactions 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).

c. 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 that can be estimated into the future for whatever remaining expected useful life the technical data or computer software may have. This approach is implemented using the following three steps: (1) establish the future cash flows relevant to the technical data or computer software, (2) determine the length of time for which the income levels can be measured, and (3) determine the discount rate.

d. The *relief from royalty approach* calculates the present value of a stream of royalties that the technical data or computer software would have received using comparable historical data.

4. Irrespective of which of these four approaches the program office chooses to use, the result must then be discounted to present value.

⁹ Weston Anson, *IP Valuation and Management* 11, 47-59 (2010).

5. Repeat the preceding steps to calculate the value of the level of rights associated with each item of technical data and computer software.

It may be difficult for the reader to conceive how any of the four evaluation approaches described above could be used to estimate the value of rights to a specific item of technical data acquired under a DoD contract. Accordingly, the following not-too-hypothetical scenario is provided 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 value of that intellectual property to the incumbent will be greatly reduced since it 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 that would otherwise have been performed by the incumbent 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.

G. Post-Award.

1. CDRL review upon delivery.

What is true in war is true after award in the context of technical data and computer software rights: Complacency kills. And like in war, 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 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 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. But by that time the program office will just have to live with those constraints on its ability to successfully execute the program. Of course, if the program can no longer be successfully executed due to such a breakdown in discipline, the program manager may have to explain to his/her Milestone Decision Authority 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 conclude that this is a minor issue that must not get in the way of the parties achieving some allegedly critical milestone, or those personnel conclude that the issue can either be swept under the proverbial rug or the matter can be deferred 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: (1) a Constitutional violation (because the program office will have never received consideration for relinquishing its intellectual property rights without obtaining authority from Congress to do so), (2) a violation of 10 U.S.C. § 2320 (i.e., the technical data in question is of the type which the Government must acquire Unlimited Rights), or (3) a violation of the CICA (i.e., the competition under which the source selection was run 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 pretty soon 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 their replacements will have to untie the Gordian Knot caused by mismarked CDRL deliverables or missing content in the CDRLs that is now desperately needed by those replacements in order to successfully execute 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 it will take to successfully bring reality back into alignment with the terms and conditions of the contract.

The third way is for the program office to become 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 any markings should be affixed 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 first thing the recipient should do is ensure the cover page of the CDRL contains technical data rights restrictive legends *identical* to the restrictive legends required by the Data Rights Attachment described above for that CDRL and that no restrictive legends 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 legends 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 that will probably be affixed to that CDRL will either 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 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 which the contractor must then correct at its own expense. If it 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 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 of time. Then – *and only then* – should the recipient review the content of the CDRL for accuracy and completeness. Assuming the program office has structured its Data Rights Attachment in a manner similar to that described above and has 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 CDRL may be disclosed to and for what purpose(s):

(1) Is the data contained in a CDRL? If the answer is no, read the license contained in subsection c.(4) of the Data Rights Attachment (*see* Appendix 2 (OCX Phase B RFP Attachment 8)) 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, carefully read the license contained in subsection c.(3) to learn to whom that data may be used, released, or disclosed and for what purposes. 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 go 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 reader should go to question (4). If the answer is yes, carefully read that license (or those licenses) and subsection c.(2) to determine to whom and for what purposes that commercial item technical data or software may be used, disclosed or released to for what purposes. 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, notify the PCO immediately.

(4) Since the CDRL contains only noncommercial technical data or computer software, skim down Column 1 of Table 1 of the Data Rights Attachment until you find 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 it may be used, released or disclosed to anyone for any purpose. If, however, any restrictive markings are contained on that CDRL, notify the PCO immediately. If that cell contains the word “Government Purpose”, that term should be in the restrictive marking on the CDRL and it may be used, released or disclosed to authorized persons for government purposes. If, however, those words are not in the restrictive marking on the CDRL, 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 the technical data and computer software delivered under the awarded contract may be released 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. It may therefore be released outside the Government without restrictions.

Page 7 describes to whom and for what purposes noncommercial technical data or computer software marked with Government Purpose Rights restrictive legends may be used, released, or disclosed. Page 7 also describes to whom and for what purposes noncommercial technical data marked with Limited Rights restrictive legends may be used, released or disclosed. Pages 7-8 describe to whom and for what purposes noncommercial computer software marked with Restricted Rights legends may be used, released or disclosed. Page 8 also describes to whom and for what purposes noncommercial technical data or computer software marked with Specifically Negotiated License Rights may be use, released or disclosed. Commercial technical data and computer software may only be released 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, before any “covered Government support contractor” receives any CDRL from the program office with “Limited Rights” restrictive markings affixed to it or that CDRL contains commercial technical data the content of which the Government did not acquire “Unrestricted Rights”, the recipient of that CDRL must ensure that that “covered Government support contractor’s” NDA between it and the contractor who created that CDRL is on file with the Contracting Officer before releasing that CDRL to that “covered Government support contractor” – assuming 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 technical data or computer software is delivered 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 what “inchoate” rights it 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 which it bargained for 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, as stated in 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”), 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 contract must be modified 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 A attachment to add those items and obtain pricing 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.

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

Occasionally, it is necessary to conduct an analysis of the rights in technical data and computer software the program office purchased under one or a myriad of contracts over the past decade (or more) under circumstances where the program office 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 such an analysis may be required include, but are not limited to (1) 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 acquisitions, and (2) determining whether technical data or computer software delivered to the program office may be released to support services contractors so those support services contractors can advise the Government regarding the accuracy and completeness of that technical data or computer software. The types of documents SMC/JAQ will need to perform such an analysis include, but are not limited to (1) copies of all relevant contracts, (2) copies of FAR/DFARS standard clauses incorporated by reference into the contract (note that by the time such an analysis commences, those clauses might be difficult to obtain if they have since been superseded by a more current version or have been deleted from the FAR/DFARS), and (3) copies of the technical data/computer software (i.e., CDRLs) in dispute, as the restrictive marking on cover page of those CDRLs should indicate what use, release and disclosure restrictions apply to those CDRLs.

As can be imagined, completing 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 can literally take months – and litigation, if that becomes necessary to force the contractor to remove an “unjustified” marking, can take as much as 9.5 years to resolve (by which time the value of that technical data or computer software may be negligible). Thus, the benefits of structuring the RFP using the approach recommended above are: (1) it will help facilitate proper acquisition planning, (2) it will reduce the probability that a complicated technical data/computer software rights analysis will need to be completed years after a contract has been awarded, and (3) 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, they can be mastered by anyone who takes the time to understand “why”, “what”, “how” and “when” such rights should be acquired. And 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 GPS IIIA
RFP

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ➔	RATING DO-A2	PAGE OF PAGES 1 68			
2. CONTRACT NO.	3. SOLICITATION NO. FA8807-06-R-0001	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.			
ISSUED BY GPSW/PK SPACE & MISSILE SYSTEMS CENTER 483 N. AVIATION BLVD EL SEGUNDO, CA 90245-2808 SARA E. LAWLYES 310-653-3451 SARA.LAWLYES@LOSANGELES.AF.MIL		CODE FA8807	8. ADDRESS OFFER TO (If other than Item 7)				
NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".							
SOLICITATION							
9.							
10. FOR INFORMATION CALL: ➔	A. NAME TERRY L. SCHOOLEY	B. TELEPHONE (Include area code) (NO COLLECT CALLS) (310) 653-3174	C. E-MAIL ADDRESS 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	√	L	INSTRS, CONDS, AND NOTICES TO OFFERORS	L - 1
√	G	CONTRACT ADMINISTRATION DATA	24	√	M	EVALUATION FACTORS FOR AWARD	M - 1
√	H	SPECIAL CONTRACT REQUIREMENTS	26				
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. <input type="checkbox"/>		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: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 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
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0001		2 Each	_____
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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	_____
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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)

PART III - LIST OF DOCUMENTS, EXHIBITS & ATTACHMENTS
SECTION J - LIST OF ATTACHMENTS

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)

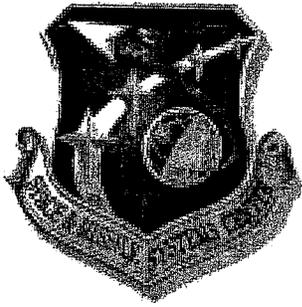
Tecolote Research, Inc. 1 S. Los Carneros Drive, Suite 125 Goleta, CA 93117-5506	SETA Advisor to SSET
----------------------------------------------------------------------------------------	-------------------------

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:



SECTION L

RFP FA8807-06-R-0001

INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

FOR GPS III

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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 DAFS 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.

4.2.4 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	FY09	FY10	FY11	FY12	FY13
	\$M	\$M	\$M	\$M	\$M	\$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.

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-B-003 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

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

7.11.14 Attachment 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

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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.

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.



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)

ANNEX TO STATEMENT OF WORK

TAILORING TO APPLICABLE DOCUMENTS

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:

Baseline. 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.

Change review activities. 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.

Conformity review. 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 CDRL NO.	Column 2 DATA ITEM TITLE (SUBTITLE)	Column 3 CLIN	Column 4 Asserted Rights Category	Column 5 PRICE
A001	Conference Agenda		N/A	N/A
A002	Conference Minutes		N/A	N/A
A003	Program Protection Implementation Plan (PIP)		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	\$

ATTACHMENT 13: TECHNICAL DATA RESTRICTIONS

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	\$

ATTACHMENT 13: TECHNICAL DATA RESTRICTIONS

Column 1 CIRT NO.	Column 2 DATA ITEM TITLE (SUBTITLE)	Column 3 CLIN	Column 4 Assessed Rights Category	Column 5 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

ATTACHMENT 13: TECHNICAL DATA RESTRICTIONS

Column 1 CDRL NO	Column 2 Description of Technical Data	Column 3 CDRL	Column 4 Assessed Rights	Column 5 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	\$

ATTACHMENT 13: TECHNICAL DATA RESTRICTIONS

Column 1	Column 2	Column 3	Column 4	Column 5
CDRL NO.	DATA ITEM TITLE (SUBTITLE)	CDL	Access 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	\$

ATTACHMENT 13: TECHNICAL DATA RESTRICTIONS

Column 1 CDRL NO.	Column 2 DATA ITEM TITLE (SUBTITLE)	Column 3 CLIN	Column 4 Associated Rights Category	Column 5 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

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 2: Relevant Excerpts from OCX
Phase B RFP**

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) <input checked="" type="checkbox"/>		RATING DO-A2	PAGE OF PAGES 1 79		
2. CONTRACT NO.		3. SOLICITATION NO. FA8807-09-R-0003		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)			
5. DATE ISSUED 29 APR 2009		6. REQUISITION/PURCHASE NO.					
7. ISSUED BY GPSW/PK 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: <input checked="" type="checkbox"/>		A. NAME SARA E. LAWLYES		B. TELEPHONE (Include area code) (NO COLLECT CALLS) (310) 653-3451			
C. E-MAIL ADDRESS Sara.Lawlyes@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	62
√	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
√	F	DELIVERIES OR PERFORMANCE	30	√	L	INSTRS. CONDS, AND NOTICES TO OFFERORS	L - 1
√	G	CONTRACT ADMINISTRATION DATA	32	√	M	EVALUATION FACTORS FOR AWARD	M - 1
√	H	SPECIAL CONTRACT REQUIREMENTS	34				
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 <u>270</u> 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) <input checked="" type="checkbox"/>		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. <input type="checkbox"/>		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: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()				23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) <input checked="" type="checkbox"/> 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
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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'
52.216-07	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 (MAR 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)
- 252.215-7004 EXCESSIVE PASS-THROUGH CHARGES (MAY 2008)
- 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 (OCT 2006)
- 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****
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*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.



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 Management Approach (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.

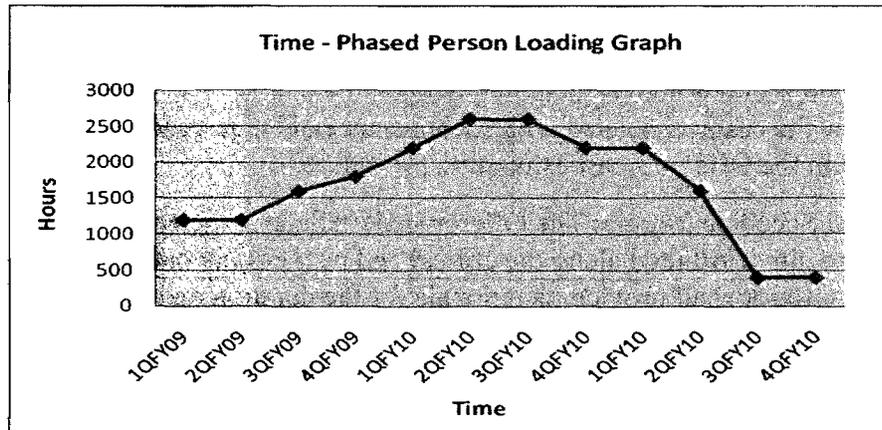
(3) Labor Hour Summary Estimating Rationale: The Offeror shall specify the hours for prime, subcontractor, and IDT labor, and describe the methodology used for estimating the number of labor hours for each OCX CWBS item. The Offeror shall include a discussion of the labor skill mix and time phasing of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

SECTION L: REPRESENTATIONS AND INSTRUCTIONS

(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 to 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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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 reusable 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 sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any 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. 0700		B. EXHIBIT A		C. CATEGORY: TDP X TM OTHER IPSC						
D. SYSTEM / ITEM GPS ADVANCED CONTROL SEGMENT			E. CONTRACT / PR NO. FA8807-09-R-0003		F. CONTRACTOR ADD CONTRACTOR'S NAME					
1. DATA ITEM NO. A033	2. TITLE OF DATA ITEM SOFTWARE PRODUCT SPECIFICATION (SPS)				3. SUBTITLE N/R					
4. AUTHORITY (Data Acquisition Document No.) DI-IPSC-81441A/T		5. CONTRACT REFERENCE SOW 3.1.3.3; 3.1.3.4; 3.13.1; 3.14; 3.15; 3.16; 3.17; 3.18.6			6. REQUIRING OFFICE GPAS					
7. DD 250 REQ LT	9. DIST STATEMENT REQUIRED D	10. FREQUENCY N/R	12. DATE OF FIRST SUBMISSION BLK 16	14. DISTRIBUTION						
8. APP CODE A		11. AS OF DATE N/R	13. DATE OF SUBSEQUENT 1SUBMISSION BLK 16					a. ADDRESSEE		b. COPIES
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.				Draft		FINAL				
						Reg	Repro			
				15. TOTAL						1
G. PREPARED BY			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. 0700		B. EXHIBIT A		C. CATEGORY: TDP X TM OTHER MISC			
D. SYSTEM / ITEM GPS ADVANCED CONTROL SEGMENT			E. CONTRACT / PR NO. FA8807-09-R-0003		F. CONTRACTOR ADD CONTRACTOR'S NAME		
1. DATA ITEM NO. A055	2. TITLE OF DATA ITEM TECHNICAL REPORT-STUDY/SERVICES			3. SUBTITLE SOFTWARE ARCHITECTURE DESCRIPTION (SAD)			
4. AUTHORITY (Data Acquisition Document No.) DI-MISC-80508B/T		5. CONTRACT REFERENCE SOW 3.1.3.3; 3.13.1; 3.14; 3.15; 3.16; 3.17; 3.18.6; 4.10.13		6. REQUIRING OFFICE GPAS			
7. DD 250 REQ LT	9. DIST STATEMENT REQUIRED D	10. FREQUENCY QTRLY	12. DATE OF FIRST SUBMISSION 30 DAC	14. DISTRIBUTION			
8. APP CODE A		11. AS OF DATE N/R	13. DATE OF SUBSEQUENT SUBMISSION BLK 16	a. ADDRESSEE		b. COPIES	
<p>16. REMARKS</p> <p>This CDRL contains technical data.</p> <p>BLK 4: <u>Software architecture</u>. 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:</p> <p>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.</p> <p>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).</p> <p>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.</p> <p>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.</p> <p>e. High-level process information (i.e., a mapping of processes to system components).</p>				*BLK 16			
				DCMA		1	
				15. TOTAL			
G. PREPARED BY		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. 0700		B. EXHIBIT A	C. CATEGORY: TDP X TM OTHER MISC						
D. SYSTEM / ITEM GPS ADVANCED CONTROL SEGMENT		E. CONTRACT / PR NO. FA8807-09-R-0003		F. CONTRACTOR ADD CONTRACTOR'S NAME					
1. DATA ITEM NO. A055	2. TITLE OF DATA ITEM TECHNICAL REPORT-STUDY/SERVICES		3. SUBTITLE SOFTWARE ARCHITECTURE DESCRIPTION (SAD)						
4. AUTHORITY (Data Acquisition Document No.) DI-MISC-80508B/T		5. CONTRACT REFERENCE SOW 3.1.3.3; 3.13.1; 3.14; 3.15; 3.16; 3.17; 3.18.6; 4.10.13		6. REQUIRING OFFICE GPAS					
7. DD 250 REQ LT	9. DIST STATEMENT REQUIRED D	10. FREQUENCY QTRLY	12. DATE OF FIRST SUBMISSION 30 DAC	14. DISTRIBUTION a. ADDRESSEE b. COPIES Draft FINAL Reg Repro					
8. APP CODE A		11. AS OF DATE N/R	13. DATE OF SUBSEQUENT SUBMISSION BLK 16						
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.				*BLK 16					
				DCMA			1		
				15. TOTAL			1		
				G. PREPARED BY		H. DATE	I. APPROVED BY		J. DATE

TDP OPTION SELECTION WORKSHEET PRODUCT DRAWINGS AND ASSOCIATED LISTS			
A. CONTRACT NO.		B. EXHIBIT/ATTACHMENT NO.	C. Q.L.N.
			D. CODE (DATA ITEM NO.)
1. DELIVERABLE PRODUCT (X and complete as applicable.)			
a. ORIGINALS (Specify current design assembly's full size reproducible drawing or digital data file) on which to rest the revision record (recognized as official) (Identify specification, type, grade and class, etc.)			
b. REPRODUCTIONS (Identify specifications, type, grade and class, etc., and quantity of each)			
c. DIGITAL DATA (Identify specification, exchange media, etc., and specify original (master) or copy)			
X Determined with Government Approval			
2. CASE CODE AND DOCUMENT NUMBERS (X ONE)			
X a. CONTRACTOR			
b. GOVERNMENT Complete (1) and (2) or (3)			
(1) Use CASE Code		(2) Use Document Numbers	(3) To Be Assigned By:
3. DRAWING FORMATS AND DRAWING FORMS (X one and complete as applicable)			
X a. CONTRACTOR FORMATS. Forms to be supplied by contractor.			
b. GOVERNMENT FORMATS. Forms to be supplied by contractor. Samples supplied by (Specify)			
c. GOVERNMENT FORMATS. Forms to be supplied as Government Furnished Material by (Specify)			
4. TYPES OF DRAWINGS SELECTION (X one)			
X a. CONTRACTOR SELECTS		b. GOVERNMENT SELECTS (Specify in item 5)	
5. ASSOCIATED LISTS (X and complete as applicable)			
X	a. PARTS LISTS (X one)	(1) Integral	(2) Separate
	b. DATA LISTS (X one)	(1) Not Required	(2) Required (Specify levels of assembly)
	c. INDEX LISTS (X one)	(1) Not Required	(2) Required (Specify levels of assembly)
X	d. WARNING LISTS (X one)	(1) Not Required	(2) Required (Specify levels of assembly)
	e. INDENTURED DATA LISTS (X one)	(1) Not Required	(2) Required (Specify levels of assembly)
	f. APPLICATION LISTS (X one)	(1) Not Required	(2) Required (Specify levels of assembly)
6. DETAILS (X one)			
X a. MULTIPLE DRAWINGS PERMITTED		b. NO VOICETAIL DRAWINGS MANDATORY	
7. APPLICABILITY OF STANDARDS. The following Standards apply: X as applicable			
X	a. ASME Y14.100, ENGINEERING DRAWING PRACTICES (COMMERCIAL)	B. X	c. ASME Y14.100, WITH APPENDICES B, C, D, E
		C. X	d. ASME Y14.34 ASSOCIATED LISTS
		D. X	e. EXISTING STANDARDS DO NOT APPLY
		E. X	
8. OTHER TAILORING (Attach additional sheets as necessary)			
Std. Wiring List shall be integral to drawing.			

TDP Option Selection Worksheet-Product Drawings and Associated L.S.



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 SEMF 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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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:
 - **Baseline:** 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.
 - **Change Review Activities:** 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.”
 - **Conformity Review:** 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 CDRL No.	Column 2 Data Item Title (Subtitle)	Column 3 Asserted Rights Category	Column 4 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	\$

ATTACHMENT 8: RIGHTS IN TECHNICAL DATA

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 Software 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	\$

ATTACHMENT 8: RIGHTS IN TECHNICAL DATA

Column 1 CDRL No.	Column 2 Data Item Title (S/N/ID)	Column 3 Asserted Rights Category	Column 4 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 CDRL NO.	Column 2 DESCRIPTION OF THE CDRL	Column 3 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: Technical Data/Computer Software Rights Lessons Learned

**TECHNICAL DATA/COMPUTER SOFTWARE RIGHTS LESSONS LEARNED
(VERSION 1)**

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 (AFRPC Rule 4.2). 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 indemnification provisions or 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.

(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.

Appendix 4: Technical Data/Computer Software Rights Checklist for Reviewing RFPs

TECHNICAL DATA/COMPUTER SOFTWARE RIGHTS CHECKLIST FOR REVIEWING REQUESTS FOR PROPOSALS (RFP) (VERSION 2)

0. Understand the pedigree of the program's minimum needs.

- a. Review the program's Capability Development Document/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 Data Management Strategy (DMS) portions of the program's Technology Development Strategy (TDS)(for ACAT I) or acquisition strategy (for ACAT I and below) that will describe what requirements for rights in technical data/computer software the Milestone Decision Authority imposed upon the program (DoDI 5000.02 Encls. 2 § 5.c.(7)(g), 4 Table 2-1, 12 § 9; AFI63-101 §§ 3.90, 3.91.4.3, 3.92.7.2; AFI63-131 §§ 2.14.11, 5.2.10).

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 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)/Statement of Objectives (SOO):
 - (1) Must require delivery of software portion of firmware identical to that delivered via CDRL.
 - (2) 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 Contract Data Requirements Lists (CDRL) 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 correct 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 office 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.
 - (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., schedule/financial 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 must acquire Unlimited/Unrestricted Rights (10 U.S.C. § 2320). 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 may obtain Unlimited 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 previously acquired with Unlimited Rights, or (iv) 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 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?).
 - (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 schedule/financial 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 rights are not to 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 252.246-7001.

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 who the program office can release/discard that CDRL to for what purposes for what duration of time:
 - (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 to require program office support services contractors to enter into bilateral NDAs with the prime 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) 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).

7. **Section K:** Include DFARS § 252.227-7017.

8. **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 TDS?).
- b. Describe how the offeror's Mission Capability volume should explain how proposed licenses will satisfy program office's minimum needs (including precisely where proposed software applications to which licenses pertain are located/used in offeror's architecture).
- c. Describe how offeror should price proposed licenses.
- d. Describe how offeror should complete the Section J data rights attachment.

9. **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)(3), 252.227-7014(e)(3)):

- a. Create appropriate Mission Capability evaluation criteria (e.g., within Systems Engineering subfactor) 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.