21 Apr 26

MEMORANDUM FOR NAICS CODE 332710 – MACHINE SHOPS

FROM: AFMC/AFTC/PZIA (Arnold)
100 Kindel Drive
Arnold AFB, TN 37389-1332

SUBJECT: Agreement Articles: Arc Heater Component Manufacturing and Supply

Article Definitions

As used throughout this Agreement, the following terms shall have the meanings set forth below:

- Acceptance: The Government's formal, written acknowledgement that a prototype, deliverable, or milestone has been successfully demonstrated to meet the pre-defined Acceptance Criteria.
- Acceptance Criteria: The technical requirements detailed in the Government-provided Technical Data Package (TDP), including all drawings and specifications, to which a delivered component must conform to be accepted by the Government.
- Agreement: This Other Transaction (OT) Agreement, executed under the authority of 10 U.S.C. § 4022, including all attachments and subsequent modifications.
- Agreements Officer (AO): The Government official with the authority to enter into, administer, and modify this Other Transaction Agreement on behalf of the Government.
- Consequential Damages: Indirect, special, incidental, or punitive damages, including but not limited to, lost profits, loss of use, loss of revenue, or loss of data.
- Contractor / Performer/ Vendor: The non-government party to this Agreement.
- Controlled Unclassified Information (CUI): Information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls.
- Cure Notice: A written notice from the non-breaching Party that details a material failure of performance and provides the breaching Party with a specified period to correct the failure.
- Cyber Incident: An action taken through the use of computer networks that results in a compromise or an actual or potentially adverse effect on an information system or the Controlled Unclassified Information (CUI) residing therein.
- Cybersecurity Maturity Model Certification (CMMC): The DoD's framework for verifying that a Performer has implemented the required cybersecurity standards to protect CUI.

- Direct Damages: The damages that arise naturally and foreseeably from a breach of this Agreement in the usual course of events. This does not include Consequential Damages as defined above.
- Equitable Settlement: A negotiated amount intended to fairly compensate a Party for work performed and costs incurred, particularly in the event of a termination.
- Force Majeure: An event beyond the reasonable control of a Party and without their fault or negligence that delays or prevents performance of an obligation under this Agreement. Such events may include, but are not limited to, acts of God, acts of a public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes.
- Government Purpose Rights: The right for the Government to use, modify, reproduce, and disclose technical data or computer software within the Government without restriction; and to release or disclose it outside the Government and permit its use *for U.S. Government purposes only*.
- Latent Defect: A hidden defect in a delivered item that existed at the time of acceptance but was not discoverable through a reasonable inspection or the execution of the Acceptance Criteria.
- Limited Rights (for Technical Data): The right for the Government to use, modify, and reproduce technical data within the Government only. The Government may not disclose the data outside the Government or use it for manufacturing without the Performer's express written permission.
- Milestone: A specific, demonstrable event or accomplishment. This includes the ten (10) individual one-year performance periods of the Agreement, and any "sub-milestone" established by a formal modification to authorize the delivery of specific hardware components.
- Modification: A formal, written change to this Agreement that is signed by the authorized representatives of both Parties.
- Party / Parties: The Government and the Performer, individually or collectively.
- Restricted Rights (for Computer Software): The right for the Government to use computer software within the Government only. The Government may not decompile, reverse engineer, or disclose the software outside the Government without the Performer's express written permission.
- Statement of Objectives (SOO) / Statement of Work (SOW): The attachment to this Agreement that describes the scope of work, tasks, and deliverables required of the Performer.
- Unlimited Rights: The right for the Government to use, modify, reproduce, disclose, perform, display, or release technical data or computer software in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

Article: Demonstration and Acceptance

A. Inspection and Conformance Verification

1. Conformance to Technical Data: The Performer shall be responsible for ensuring all delivered components strictly conform to the Government-provided Technical Data Package (TDP), including all drawings and specifications. All verification activities will be conducted in accordance with the Performer's Government-approved quality plan.
2. Government Inspection: The Government reserves the right to inspect any or all components to be delivered under this agreement at the Performer's facility or at the destination. The Performer shall provide and maintain an inspection system acceptable to the Government covering the supplies under this agreement.
3. Notification of Readiness: For any components requiring Government source inspection prior to shipment, the Performer shall notify the Agreements Officer in writing at least fifteen (15) days in advance of the components being ready for inspection.
4. Records of Inspection: The Performer shall maintain records of all inspection work, including material certifications and dimensional verifications, and shall make them available to the Government upon request.

B. Acceptance

Final acceptance under this Agreement is contingent upon the achievement of the key outcomes that define each successful prototype phase. Acceptance shall be granted only after the conditions for each phase are met. The Agreements Officer will provide formal written notice of acceptance where applicable.

1. Acceptance of Business Process Prototype: Acceptance of this initial prototype is granted upon the Government's formal determination that the Performer's whitepaper submission is suitable for establishing a long-term agreement. The award of this Agreement by the Agreements Officer constitutes the formal acceptance of the Business Process Prototype.
2. Acceptance of Proof of Concept (POC) Prototype: This phase serves as a technical validation step, which may be required at the Government's discretion for any new vendor onboarded to this Agreement. Acceptance of a POC Prototype is granted when:
    - The Performer successfully manufactures and delivers a representative component requested by the Government for this purpose.
    - The Government completes its inspection and formally verifies that the delivered POC component is in strict conformance with the TDP.
    - Successful acceptance of a POC Prototype qualifies a new vendor to compete for and receive production-level orders for Operational Utility Prototypes.
3. Acceptance of Operational Utility Prototypes: Acceptance of Operational Utility Prototypes is an ongoing process that applies to the physical hardware delivered against each production order. Acceptance for each delivery of components is contingent upon:

- The successful completion of destination inspection by the Government, verifying that the delivered components conform to the TDP.
- The Government's formal acceptance of any accompanying inspection and certification records provided by the Performer.

Final acceptance of delivered components will be documented by a designated Government quality assurance representative.

Article: Assignment of Payments

The Performer may assign its rights to receive payments due under this Agreement to a bank, trust company, or other financing institution. Any such assignment must be made in writing and provided to the Agreements Officer and the designated payment office.

However, the Performer may not assign its rights to receive payment if such payment is made directly by a third party.

Article: Agreement Modifications

A. Mutual Agreement for Changes
Either Party may propose changes to the scope, schedule, price, or other material terms of this Agreement. All such changes shall be subject to negotiation between the Parties.

B. Formalization of Changes
No change shall be effective until it is captured in a formal, written modification to this Agreement, signed by the authorized representatives of both the Government and the Performer.

C. Administrative Changes
Purely administrative changes, such as updating points of contact or correcting accounting information, may be made unilaterally by the Government's Agreements Officer via written notice to the Performer.

Article: Collaborative Dispute Resolution

A. Guiding Principles
The Parties shall engage in timely, cooperative, and good-faith communication to resolve any dispute, claim, or disagreement arising from or related to this Agreement. All disputes, including but not limited to allegations of breach, shall be first resolved exclusively under the procedures set forth in this Article.

B. Resolution Process

1. Initial Resolution: When disputes, misunderstandings, or disagreements arise, the Parties agree to make reasonable efforts to resolve them through discussion and mutual agreement at the earliest opportunity between their respective Project Managers.

2. Senior-Level Escalation: If the Parties are unable to reach a mutually agreed solution within fifteen (15) business days, the matter shall be considered a conflict to be resolved between the Government's Agreements Officer and Legal Team and the Performer's designated senior leadership and Legal Team.
3. Formal Notice: If the conflict remains unresolved by mutual agreement, the aggrieved Party shall formally document the dispute by notifying the other Party through the cognizant Agreements Officer. The notification shall include the relevant facts, the unresolved issues, the clarification or remedy sought, and the rationale for why the requested remedy is appropriate.
4. Written Response: The Party receiving the notice shall provide a written response detailing its position and a proposed resolution within thirty (30) business days.
5. Seeking Further Relief: Upon the issuance of the final decision, and only after the escalation procedures above have been exhausted, the aggrieved Party may pursue any available relief. The Performer acknowledges that state courts and agencies lack jurisdiction over the Federal Government. Therefore, any litigation shall be brought exclusively in a United States Federal Court of competent jurisdiction. The Contract Disputes Act shall not apply to this Agreement. Nothing in this Agreement shall be construed as a waiver of the Government's sovereign immunity or consent to suit except as otherwise authorized by law

C. Alternative Dispute Resolution (ADR)
At any stage, the Parties may mutually agree in writing to utilize an ADR procedure to resolve a dispute.

- Selection of Neutral: Any appointed mediator or arbitrator shall be mutually agreed upon by both Parties. If the Parties cannot agree on a neutral party within thirty (30) days, they shall request a list of qualified neutrals from a reputable ADR organization (such as the American Arbitration Association or JAMS) to facilitate the selection.
- Costs: Unless otherwise agreed to in writing, the costs of arbitration or mediation shall be shared equally by both Parties.

Article: Excusable Delays

A. Definition
Neither the Government nor the Performer shall be considered in breach or default of this Agreement for a failure or delay in performance caused by an event beyond their reasonable control and without their fault or negligence. Such events, often referred to as Force Majeure, may include, but are not limited to: acts of God, acts of a public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

B. Notification and Mitigation
The Party affected by such an event shall provide prompt written notice to the other Party, describing the event, its cause, and its anticipated impact on performance. The affected Party shall also make all reasonable efforts to mitigate the effects of the event and minimize any delay.

C. Agreement Adjustment
Upon receipt of the notice, the Parties shall promptly consult to determine the appropriate path forward. If the event results in a material impact on the Agreement's cost or schedule, the Parties shall negotiate an equitable adjustment to the relevant terms of the Agreement, to be captured in a formal modification.

Article: Intellectual Property Indemnification

A. Indemnification
The Performer shall defend and indemnify the Government and its officers, employees, and agents against liability, including costs, for any claim of patent, trademark, or copyright infringement arising from the prototype or services delivered under this Agreement (the "Claim").

B. Exceptions to Indemnification
This indemnification shall not apply to any Claim to the extent it arises from:

1. The Performer's compliance with specific, detailed written specifications or design direction provided by the Government;
2. The use of Government-Furnished Information, software, or property; or
3. A modification to the prototype or service made by the Government without the Performer's consent.

C. Procedure
In the event of a Claim:

1. The Government shall provide prompt written notice of the Claim to the Performer.
2. Once the Performer has indemnified the Government, the Performer shall have the right to control the defense and settlement of the Claim.
3. The Government shall provide reasonable information and assistance to the Performer, at the Performer's expense, in the defense of the Claim.
4. The Performer shall not agree to any settlement that imposes a financial obligation or admits liability on the part of the Government without the Government's prior written consent, which shall not be unreasonably withheld.

Article: Payment and Invoicing

A. Basis for Payment
The Performer shall be paid on a Firm-Fixed-Price (FFP) basis for all components ordered by the Government. Payment is contingent upon the successful delivery, inspection, and formal acceptance of the components as specified in each individual order modification.

B. Invoicing Instructions

Upon the Government's formal acceptance of the components delivered against a specific order modification, the Performer is authorized to submit a proper invoice for the accepted components. Each invoice must, at a minimum, reference this Agreement number and the specific modification number that authorized the order. Invoices shall be submitted electronically in accordance with the instructions provided in an attachment to this Agreement.

C. Payment Terms
The Government shall make payment within thirty (30) days of receiving a proper and accurate invoice.

D. Overpayments and Other Debts

1. Overpayments: If the Government has made an overpayment or duplicate payment, the Performer shall promptly remit the excess amount to the payment office cited in this Agreement. The remittance shall include a description of the overpayment, the Agreement number, and the affected milestone.
2. Other Debts: Any amount payable from the Performer to the Government shall be considered a debt. The Parties shall first seek to resolve any debts by mutual agreement. If unresolved, amounts due to the Government may accrue interest in accordance with applicable U.S. Treasury regulations.

E. Invoicing
The contractor shall submit invoices through Wide Area Workflow (WAWF), https://wawf.eb.mil/, and incorporate the data from the table below:

Invoice Type:	Combo
Pay Official DoDAAC:	F03000
Issue By DoDAAC:	FA9101
Admin DoDAAC:	FA9101
Inspect By DoDAAC:	TBD
Ship To Code:	FY1476
WAWF POC:	disa.global.servicedesk.mbx.eb - ticket-requests@mail.mil
Contact the WAWF helpdesk at 866-618-5988, if assistance is needed.	

Article: Risk of Loss

The Performer shall bear all risk of loss or damage to the prototype and any other items delivered under this Agreement until they are formally accepted by the Government, as defined in the "Demonstration and Acceptance" article.

The Performer's responsibility includes the safe transport and delivery of all items to the destination(s) specified in this Agreement, including Arnold Air Force Base, TN.

Article: Taxes and Duties

The Performer is responsible for identifying and paying all applicable Federal, State, and local taxes and duties associated with its performance under this Agreement.

The mutually agreed-upon price of this Agreement is all-inclusive, and the Government shall not be responsible for, nor shall the price be adjusted to accommodate, such taxes or duties.

Article: Termination for Convenience

A. Government's Right to Terminate
The Government may terminate this Agreement, in whole or in part, for its convenience by providing written notice to the Performer.

B. Performer's Obligations
Upon receipt of the termination notice, the Performer shall:

1. Immediately cease all work as directed in the notice.
2. Place no further subcontracts or orders for materials or services, except as necessary for completing the non-terminated portion of the Agreement.
3. Take all reasonable steps to minimize costs allocable to the work covered by the notice.

C. Settlement and Payment
Following termination, the Parties shall negotiate a fair and equitable settlement. The Government shall pay the Performer for:

1. All work acceptably performed and milestones completed prior to the effective date of termination.
2. Reasonable, demonstrable costs incurred by the Performer as a direct result of the termination, such as costs for settling subcontracts.

For the purpose of this settlement, the Performer is not required to comply with the Cost Accounting Standards or the cost principles of the Federal Acquisition Regulation (FAR). However, the Government reserves the right to audit only those records necessary to verify the specific costs claimed as part of the termination settlement. The Performer shall not be paid for any costs that could have been reasonably avoided.

Article: Termination for Default

A. General Default and Cure Notice

For any failure by the Performer to perform a material obligation under this Agreement, the Government may provide a written "cure notice" to the Performer. The notice shall describe the failure in reasonable detail and state the Government’s intent to terminate if the failure is not corrected. The Performer shall

have thirty (30) days from receipt of the notice (or a longer period if mutually agreed in writing) to cure the failure to the Government's reasonable satisfaction. If the Performer fails to cure the material failure within the specified period, the Government may terminate this Agreement for default, in whole or in part. Material failures include, but are not limited to, failure to deliver articles conforming to the TDP or failure to meet agreed-upon delivery schedules.

B. Immediate Termination for Critical Breach

Notwithstanding the cure period described in Section A, the Government may terminate this Agreement for default, effective immediately upon written notice, for any breach that is of such a serious nature that it is not susceptible to cure. Such breaches include, but are not limited to, fraud, willful misconduct, or a systemic failure of the Performer's quality management system that results in the delivery of non-conforming articles and demonstrates a disregard for the Government's technical requirements.

C. Rights and Remedies

In the event of a termination for default under either Section A or B, the Government shall pay the Performer the agreed-upon price for any articles that have been delivered and accepted by the Government prior to the effective date of termination. The Government may require the Performer to deliver to the Government any completed articles or work in progress, and the Performer shall be compensated in an amount agreed upon by both parties for such deliverables. The rights and remedies of the Government in this article are in addition to any other rights and remedies provided by law or under this Agreement.

Article: Title and Ownership

A. Title to Deliverables
Title to the prototype and any other physical items delivered by the Performer under this Agreement shall pass to the Government upon the Government's formal written acceptance of those items. This transfer of title is effective regardless of when or where the Government takes physical possession.

B. Title to Government Property
Title to any property furnished by the Government to the Performer for use under this Agreement ("Government-Furnished Property") shall remain with the Government at all times.

Article: Limited Warranty

A. Scope of Warranty

The Performer warrants that all articles delivered under this Agreement will be free from defects in material and workmanship and will conform to the technical specifications outlined in the Government-provided Technical Data Package (TDP).

B. Warranty Period

This warranty shall remain in effect for a period of one (1) year from the date of the Government's formal acceptance of each individual article.

C. Remedy

Should any article fail to conform to this warranty within the specified warranty period, the Government shall provide written notice to the Performer. The Performer shall, at its own expense, promptly repair or replace the defective article. The Performer shall be responsible for all costs associated with delivering the repaired or replaced article to Arnold AFB, TN.

D. Exclusions

This warranty does not extend to any defect or failure resulting from:

1. Normal wear and tear, which is expected during arc heater operations;
2. Improper installation or maintenance of the article performed by the Government; or
3. Operation of the article by the Government outside of the known operational parameters of the arc heater facility.

Article: Limitation of Liability

A. Disclaimer of Consequential Damages
IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT...

B. Cap on Direct Damages
Except for the obligations set forth in the "Intellectual Property Indemnification" article and liability for willful misconduct, each Party's total cumulative liability to the other for direct damages arising from or related to this Agreement shall not exceed the total price of this Agreement. For the purposes of this article, the "total price" is defined as the sum of all funds paid or obligated to be paid by the Government for the base effort and any options that have been formally exercised.

Article: Compliance with Law and Agreement Status

A. General Compliance
The Performer shall comply with all Federal, State, and local laws that are generally applicable to commercial businesses operating within the United States.

B. Status of this Agreement
The Parties agree and acknowledge that this Agreement is an Other Transaction executed under the authority of 10 U.S.C. § 4022. It is not a procurement contract and is therefore not subject to the Federal Acquisition Regulation (FAR) or its supplements, except for any law or regulation that is made specifically applicable to Other Transactions by Federal statute.

Article: Specific Statutory Requirements

A. Agreement Status
The Parties acknowledge that this Agreement is an Other Transaction executed under the authority of 10 U.S.C. § 4022 and is not a Federal procurement contract. As such, it is not subject to the laws and regulations specifically applicable to procurement contracts.

B. Applicable Statute
The Performer agrees to comply with 31 U.S.C. § 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," which is made applicable to this Agreement by law. This statute requires the Performer to certify that it has not and will not use federally appropriated funds to lobby any Federal agency or Congress in connection with the award or modification of this Agreement.

Article: Third-Party Terms of Service (TOS) and End User License Agreements (EULAs)

A. Context
The Parties acknowledge that performance under this Agreement may require the use of commercial products or services (e.g., software, cloud services) that are subject to a provider's standard EULA or TOS.

B. Unenforceable Provisions
The U.S. Government is prohibited by Federal law (including the Anti-Deficiency Act, 31 U.S.C. § 1341) from agreeing to certain terms commonly found in commercial EULAs and TOS. Accordingly, any provision that would create an open-ended or undefined financial obligation for the Government, including but not limited to clauses requiring indemnification of the provider, is unenforceable against the Government and shall be deemed stricken from such EULA or TOS.

C. Acceptance of Terms
No action by a Government employee or authorized end-user, including the act of clicking "I agree" to a "click-wrap" or "browse-wrap" agreement, shall be construed as binding the Government to any unenforceable provision as described in Paragraph B.

D. Exception
This article does not apply to any indemnification by the Government that is expressly authorized by a separate Federal statute.

Article: Limitation of Obligation and Milestone Funding

A. Incremental Funding
This Agreement is/may be incrementally funded. The total estimated value of the Agreement is $[Total Estimated Value]; however, only a portion of this amount is currently available for performance. The Government's total liability under this Agreement is limited to the amount of funds allotted.

B. Funds Currently Allotted
The total amount of funds currently allotted and available for payment by the Government under this Agreement is $[Amount Currently Allotted].

C. Performer's Obligation to Limit Work
The Performer is authorized to perform work and incur costs up to the total amount of funds currently allotted. The Performer is not authorized, and agrees it shall not, continue work or incur costs beyond this point. The Government will not be obligated to reimburse the Performer for any costs incurred in excess of the funds allotted.

D. Notification Requirement
The Performer shall monitor its expenditures and shall notify the Agreements Officer in writing at least sixty (60) days before it anticipates that its costs will exceed 80% of the currently allotted funds. This notification shall include an estimate of the additional funding and the date required to continue performance without interruption.

E. Funding of Future Work
The Government anticipates allotting additional funds for subsequent milestones as work progresses and subject to the availability of appropriations. The allotment of any additional funds shall be made via a formal, written modification to this Agreement signed by both Parties. Nothing in this Article shall be construed as obligating the Government to allot additional funds at any time.

Article: Intellectual Property Rights

A. Guiding Principles

In accordance with the framework established in the Request for Whitepaper, the Parties agree to the following allocation of rights for all technical data generated or delivered under this Agreement. This structure is intended to protect the Performer's pre-existing intellectual property while providing the Government with sufficient rights to meet its operational and sustainment needs for the articles procured under this Agreement.

B. Definitions

1. "Unlimited Rights": The rights of the Government to use, disclose, reproduce, prepare derivative works, distribute, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

2. "Background IP": All technical data developed exclusively at private expense and not first produced, conceived, or reduced to practice in the performance of this Agreement.

3. "Foreground IP": All technical data first produced, conceived, or reduced to practice in the performance of this Agreement. This explicitly includes the technical data delivered as part of the accepted Business Process Prototype.

4. "Government Purpose Rights (GPR)": The rights to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and to release or

disclose such technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for any United States Government purpose.

C. Allocation of Rights for This Agreement

1. Background IP: Ownership of Background IP shall remain with the Performer. The Performer is not required to deliver its Background IP to the Government, but the Government's rights in the Foreground IP shall be sufficient to allow for the use and sustainment of the delivered hardware.
2. Foreground IP: The Government shall receive, at a minimum, Government Purpose Rights (GPR) for all Foreground IP.

D. Marking of Data

All technical data delivered with less than unlimited rights must be clearly marked with an appropriate restrictive legend. The Performer shall identify any asserted restrictions on technical data in an attachment to this Agreement. Any technical data delivered without a restrictive marking shall be presumed to have been delivered with Unlimited Rights.

E. Sub-agreements

The Performer shall include this Article, suitably modified to identify the parties, in all sub-agreements to ensure the Government acquires the rights it is entitled to from all subcontractors at any tier.

Article: Stop-Work Order

A. Issuance of Order
The Agreements Officer (AO) may, at any time, by written order to the Performer, require the Performer to stop all, or any part, of the work required by this Agreement for a specified period. Upon receipt of the order, the Performer shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order.

B. Action Following Stoppage
Upon the conclusion of the stop-work period, the AO shall either:

1. Cancel the Stop-Work Order and direct the Performer to resume work; or
2. Terminate the work covered by the order in accordance with the "Termination" article of this Agreement.

C. Equitable Adjustment
If a Stop-Work Order is canceled and the Performer resumes work, the Parties shall negotiate an equitable adjustment to the delivery schedule, price, or any other term of the Agreement affected by the work stoppage, provided that:

1. The stop-work order resulted in an increase in the time or cost required for the performance of any part of this Agreement; and

2. The Performer notifies the AO of its intent to seek an adjustment within thirty (30) days after the work resumes.

Article: Delivery

A. Delivery Responsibility
The Performer shall be responsible for all costs and arrangements related to the packaging, transportation, and delivery of all items and deliverables to the destination(s) specified in this Agreement, including Arnold Air Force Base, TN.

B. Risk of Loss
Risk of loss or damage to all items and deliverables shall remain with the Performer until the Government's formal written acceptance of those items, as further defined in the "Testing, Demonstration, and Acceptance" article.

C. Good Order and Condition
All items shall be delivered in good order and condition, conforming to the requirements of this Agreement. The Performer shall provide the Government with a delivery schedule and necessary shipping documentation.

Article: Defense Priorities and Allocation System (DPAS)

This Agreement is a rated order, certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and Allocations System (DPAS). The Performer shall comply with all applicable requirements of the DPAS regulation (15 CFR Part 700).

Article: System for Award Management (SAM)

The Performer shall maintain an active registration in the System for Award Management (SAM) for the purposes of entity validation and electronic payment processing. This registration must be maintained throughout the entire period of performance of this Agreement, including through final payment.

The Parties agree that this requirement is for administrative and payment purposes only and does not incorporate the standard Federal Acquisition Regulation (FAR) "Representations and Certifications" from the SAM.gov portal into this Other Transaction Agreement. The Performer's binding representations for this Agreement are exclusively those stated in the "Performer Representations" article.

Article: Country of Origin

A. Policy
It is the policy of the Department of Defense to prioritize products and components manufactured in the United States or its qualifying countries.

B. Performer Representation
The Performer represents that, to the best of its ability and knowledge, the end products delivered under this Agreement will be manufactured in the United States or a "qualifying country." For the purposes of this article, a "qualifying country" is defined as a country that has a reciprocal defense procurement memorandum of understanding or international agreement with the United States. As of the date of this Agreement, these countries include: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

C. Waiver
The Government's Agreements Officer may authorize the acquisition of products from other countries if it is determined to be in the Government's best interest for the successful execution of this prototype project.

Article: Cyber Incident Reporting and Response

A. Definition of Cyber Incident
For the purposes of this article, a "Cyber Incident" is an action taken through the use of computer networks that results in a compromise or an actual or potentially adverse effect on the Performer's information system or the Controlled Unclassified Information (CUI) residing therein.

B. Incident Reporting Requirement

1. Rapid Reporting: When the Performer discovers a Cyber Incident, it shall rapidly report the incident (within 72 hours) to the Department of Defense at the DIBNet portal: https://dibnet.dod.mil.

2. Access Certificate: The Performer is responsible for obtaining and maintaining the required DoD-approved medium assurance certificate to access the DIBNet portal for reporting.

C. Post-Incident Cooperation
Following a Cyber Incident report, the Performer shall:

1. Preserve Data: Preserve and protect images of all known affected information systems and all relevant monitoring and packet capture data for at least 90 days from the submission of the report.

2. Provide Access: Upon request from the Agreements Officer, provide the Government with access to additional information or equipment necessary to conduct a forensic analysis and damage assessment.

3. Submit Malicious Software: Submit any malicious software discovered in connection with the incident to the DoD Cyber Crime Center (DC3) in accordance with their instructions.

D. Protection of Performer Information
The Government shall protect any of the Performer's confidential or proprietary information that is shared

during an incident investigation to the maximum extent permitted by law, including through the exercise of applicable Freedom of Information Act (FOIA) exemptions.

E. Sub-agreements
The Performer shall flow down the substance of these reporting and cooperation requirements to all sub-agreements where CUI is handled. The Performer shall require its subcontractors to rapidly report any Cyber Incident directly to the Performer, who is then responsible for reporting to the DoD in accordance with this article.

Article: Prohibited Sources

A. Prohibition on Certain Telecommunications and Video Surveillance Equipment (Section 889)
In accordance with Section 889 of the National Defense Authorization Act for Fiscal Year 2019, the Performer is prohibited from providing or using telecommunications or video surveillance equipment or services produced or provided by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or their subsidiaries.

B. Prohibition on Covered Defense Telecommunications Equipment or Services (Section 1656)
In accordance with Section 1656 of the National Defense Authorization Act for Fiscal Year 2018, the Performer is prohibited from providing any equipment, system, or service that uses telecommunications equipment or services from The People’s Republic of China or The Russian Federation in systems supporting DoD's nuclear deterrence or homeland defense missions.

C. Prohibition on Kaspersky Lab Products and Services (Section 1634)
In accordance with Section 1634 of the National Defense Authorization Act for Fiscal Year 2018, the Performer is prohibited from providing to the Government, or using in the performance of this Agreement, any hardware, software, or service developed or provided, in whole or in part, by Kaspersky Lab or its affiliates.

D. Prohibition on Certain Items from Communist Chinese Military Companies (Section 1261)
In accordance with Section 1261 of the National Defense Authorization Act for Fiscal Year 2021, the Performer is prohibited from acquiring any items covered by the United States Munitions List (USML) or the "600 series" of the Commerce Control List (CCL), directly or indirectly, from any entity identified as a "Communist Chinese military company" by the Department of Defense.

E. Performer Representation
By executing this Agreement, the Performer represents that it will not provide or use any items, equipment, or services prohibited by the statutes referenced in Paragraphs A, B, C, and D.

F. Reporting and Flowdown
The Performer shall promptly report any discovery of such prohibited equipment, products, or services to the Agreements Officer and shall flow down the substance of this entire article to all sub-agreements.

Article: Prohibition on ByteDance Covered Applications

A. Prohibition
In accordance with the "No TikTok on Government Devices Act," the Performer is prohibited from having or using a "covered application" on any "project information technology."

B. Definitions

1. Covered Application: Means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or its affiliates.
2. Project Information Technology: Means any information technology (including computers, mobile devices, and software) used by the Performer or its employees in the performance of this Agreement. This also includes any information technology owned or managed by the Government that the Performer may use.

C. Exception
This prohibition does not apply if the Agreements Officer provides prior written notification to the Performer that a mission-critical exception has been granted in accordance with Federal policy.

D. Sub-agreements
The Performer shall flow down the substance of this article to all sub-agreements at any tier.

Article: Comptroller General Access to Records

In accordance with 10 U.S.C. § 4022(c)(1), the Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any records of the Performer, or any of its subcontractors, that directly pertain to this Agreement. This right of access shall exist for a period of three (3) years after final payment under this Agreement.

Article: Agreement Structure and Ordering

A. Agreement Phases

This prototype effort is structured into two distinct phases, as defined in the Request for Whitepaper:

1. Business Process Prototype: This initial phase is considered complete upon the bilateral execution of this Agreement, which constitutes the Government's formal acceptance of the Performer's proposed manufacturing processes and 5-year pricing structure.
2. Operational Utility Prototype: This second phase encompasses the entire ten-year period of performance of the Agreement. A successful prototype in this phase is the ongoing, on-demand manufacture and delivery of hardware components in accordance with the terms of this Agreement.

B. Ordering Process

1. Yearly Milestones: The ten-year period of performance is structured into ten (10) individual one-year milestones. This Agreement, at the time of award, authorizes the framework but does not obligate funds for hardware orders.
2. Placement of Orders: The Government is under no obligation to place any orders. When a requirement for specific components arises, the Government will issue a request to the Performer. The delivery of hardware components shall only be authorized through the execution of a formal, bilateral written modification to this Agreement.
3. Order Modification: Each bilateral modification will establish a specific "sub-milestone" for that order within the current yearly milestone. The modification will define the exact scope (part numbers and quantities), delivery schedule, and total price for that specific order, and will be the vehicle for obligating the necessary funds. Work shall not commence on any order until the bilateral modification authorizing that order is fully executed.

Article: Duty-Free Entry

A. Policy and Purpose
To reduce the cost of performance, the Government will assist the Performer in obtaining duty-free entry for qualifying foreign supplies that are imported into the United States for the sole purpose of performing work under this Agreement.

B. Performer Responsibilities

1. Pricing: The Performer represents that the price of this Agreement excludes any U.S. customs duties for items it intends to import under this provision.
2. Notification: The Performer shall provide written notification to the Agreements Officer (AO) for any foreign supplies it intends to import duty-free. This notification must be provided with sufficient lead time for the Government to execute the necessary documentation.
3. Administration: The Performer is responsible for preparing and processing all necessary U.S. Customs and shipping documentation. When shipping items directly to a U.S. military installation, then at least two elements are required related to Duty-Free Entry, as follows:

   - Duty-Free Entry should be listed in the shipping documents

   - Include the notation “UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify Commander, Defense Contract Management Agency (DCMA), St. Louis, MO, ATTN: Duty Free Entry Team, 1222 Spruce Street, Room 9.300, St. Louis, MO 63103-2812, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates.”

C. Government Responsibilities
Upon request from the Performer, the Government's authorized representative will execute the necessary Duty-Free Entry Certificates and provide reasonable assistance to the Performer in coordinating with U.S. Customs.

D. Improper Use
The Performer shall be solely responsible for and agrees to pay any and all customs duties if items imported duty-free under this provision are used for any purpose other than the performance of this Agreement.

E. Flowdown
The Performer shall flow down the substance of this article to all sub-agreements where foreign supplies may be imported for the performance of this Agreement.

Article: Security and Data Handling Requirements

A. General
The Performer acknowledges that the Technical Data Package (TDP), the Statement of Objectives (SOO), and other technical data associated with this Agreement are Controlled Unclassified Information (CUI), designated as Distribution D, and are subject to U.S. export control laws and regulations. As a material condition of this Agreement, the Performer shall implement and maintain the necessary safeguards to provide adequate security and protect this information from unauthorized disclosure.

B. Joint Certification Program (JCP)
The Performer shall maintain a current and valid certification under the United States/Canada Joint Certification Program (JCP). The Government will validate the Performer's DD Form 2345 status via the Defense Logistics Agency (DLA).

C. Cybersecurity Requirements and CMMC
The Performer shall protect all CUI in accordance with the following cybersecurity framework:

1. Compliance Prior to 10 November 2026: From the effective date of this Agreement until 10 November 2026, the Performer may demonstrate compliance through one of the following two paths:
    - (i) CMMC Level 2 C3PAO Certification: Possess a current Cybersecurity Maturity Model Certification (CMMC) Level 2 assessment conducted by an authorized Certified Third-Party Assessment Organization (C3PAO).
    - (ii) Alternative Compliance Path: Possess a current (no older than three years) NIST SP 800-171 DoD Assessment posted in the Supplier Performance Risk System (SPRS) and actively execute a compliance roadmap to achieve CMMC Level 2 C3PAO certification.
2. Mandatory Certification After 10 November 2026: On and after 10 November 2026, the Alternative Compliance Path expires. For the remaining duration of the Agreement, the Performer must possess and maintain a current CMMC Level 2 C3PAO Certification.

3. Annual Affirmation: The Performer shall complete on an annual basis, and maintain as current, an affirmation of continuous compliance with the required CMMC level or NIST SP 800-171 implementation in the SPRS.

D. Cyber Incident Reporting and Response
If the Performer discovers a cyber incident that affects an information system processing, storing, or transmitting CUI under this Agreement, the Performer shall:

1. Rapid Reporting: Conduct a review for evidence of compromise and rapidly report the cyber incident to the DoD at https://dibnet.dod.mil within 72 hours of discovery.

2. Malicious Software: If malicious software is discovered and isolated in connection with a reported cyber incident, submit the malicious software to the DoD Cyber Crime Center (DC3) in accordance with provided instructions.

3. Media Preservation: Preserve and protect images of all known affected information systems and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report.

4. Forensic Access: Upon request by the Government, provide access to additional information or equipment that is necessary to conduct a forensic analysis or damage assessment.

E. Government Assessments
The Performer shall provide access to its facilities, systems, and personnel necessary for the Government to conduct a Medium or High NIST SP 800-171 DoD Assessment if deemed necessary by the Government. The results of any such Government-conducted assessment will take precedence over any self-assessments or third-party assessments and will be posted to SPRS.

F. Sub-agreements
The Performer shall flow down the substance of this Section to all sub-agreements and subcontracts, at any tier, where the subcontractor will process, store, or transmit CUI in performance of the work. The Performer shall ensure subcontractors possess the appropriate CMMC status prior to award and comply with all incident reporting and SPRS affirmation requirements.

G. Government Validation and Breach
The Government reserves the right to validate the Performer's and its subcontractors' cybersecurity status via SPRS or other designated Government systems at any time. Failure to adhere to incident reporting requirements, or failure to achieve and maintain the mandatory CMMC Level 2 C3PAO certification by the deadline specified herein, shall be considered a material breach of this Agreement and may be immediate grounds for Termination for Default.

Article: Order of Precedence

In the event of any inconsistency, ambiguity, or conflict among the documents comprising this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Formal Modifications to this Agreement: Any bilateral, written modification signed by the authorized representatives of both Parties, including modifications that authorize specific hardware orders, shall take precedence over all other documents.

2. The Body of this Agreement: The terms and conditions contained within the main body of this Agreement (these Articles) shall take precedence over all attachments.

3. The Statement of Objectives (SOO) and Technical Data Package (TDP): The SOO (Attachment 1) and its associated Government-owned TDP (including all drawings) define the technical requirements for the work and shall take precedence over the documents listed below.

4. The Request for Whitepaper (RWP): The Government's RWP shall be used to provide overarching context for the project's intent and structure.

5. The Performer's Final Accepted Whitepaper: The Performer's final whitepaper response, as accepted by the Government, is incorporated by reference. Its primary purpose is to document the Performer's accepted Business Process Prototype, including the 5-year pricing and manufacturing/quality processes. It shall be used for clarification but shall not override any of the documents listed above.