Department of the Air Force
Request for Solution (RFS)
Other Transaction Authority (OTA)
Consortium Management Organization (CMO)

Attachment 3: Consortium Management Agreement Terms and Conditions

1. Mandatory Terms and Conditions

This list of provisions is not inclusive. For further guidance, please consult legal counsel and applicable guidance, such as the Department of Defense's (DoD) Other Transaction Guide issued in July 2023,[1] and applicable regulations, including relevant Federal Acquisition Regulations (FAR) and its supplements, Defense Federal Acquisition Regulation Supplement (DFARS), and Department of Air Force Federal Acquisition Regulation Supplement (DAFFARS) (See Attachment 1).

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Security Terms and Conditions

- **Cyber security (cloud & supply chain):**
  - **Safeguarding Covered Defense Information and Cyber Incident Reporting**
    Include information contained in DFARS Clause 252.204-7012
  - **NIST SP 800-171 DoD Assessment Requirements**:
    Include information contained in DFARS Clauses 252.204-7019 and 252.204-7020
- **Section 889(a)(1)(B) Compliance: Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment in accordance with the Office of Secretary Defense Memo dated 13 Aug 2020.**[2]
  - Include information contained in FAR Clause 52.204-24 or DFARS Clauses252.204-7016, 252.204-7017, 252.204-7018
  - Include information contained in FAR Clauses 52.204-25 and 52.204-26
- **Use of Products and Services of Kaspersky Lab in accordance with Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91)**
  - Include information contained in FAR Clause 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab Covered Entities

Covered Entities

- **No TikTok on Government Devices/Prohibition on ByteDance Covered Application in accordance with Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328) Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023**
  - Include information contained in FAR Clause 52.204-27

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[1] The guide is available at: www.acq.osd.mil/asda/dpc/cp/policy/docs/guidebook/TAB%20A1%20-%20DoD%20OT%20Guide%20JUL%202023_final.pdf

[2] https://www.acq.osd.mil/dpap/policy/policyvault/USA001717-20-DPC.pdf

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- **Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies in accordance with Section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163), Section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), and Section 1296 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328)**
  - Include information contained in DFARS Clause 252.225-7007

- **Prohibition Regarding Russian Fossil Fuel and Fossil Fuel Business Operations**
  - If a prototype agreement includes procuring fossil fuels, the agreement must include provisions and clauses in accordance with Section 804 of the FY2024 NDAA, and include information contained in an Office of Secretary Defense memo[3] and DFARS Clauses 252.225-7053 and 252.225-7054.

<u>Information Security</u>

- **DoD (DD) Form 254 "Contract Security Classification Specification"**
  - Determine if this is required, and if so, at what level of classification.

- **Classified Information**
  - To the extent that the prototype involves classified information, the Government team shall ensure that the prototype agreement is conducted as required by the National Industrial Security Policy outlined in Part 117 of Title 32, Code of Federal Regulations (formerly DoD 5220.22-M) and DD Form 441.

- **Unclassified Information**
  - If the prototype involves DoD controlled unclassified information, the Government team shall ensure that a prototype agreement is conducted as required by DoDI 5200.48, Controlled Unclassified Information. Additionally, the Government team should ensure compliance with National Institute of Standards and Technology (NIST) SP 800-171, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations, for safeguarding the performer's unclassified internal information system.

- **National Security Systems**
  - If a prototype project will involve national security systems, as that term is defined at 44 U.S.C. § 3252(b) (see 10 U.S.C. § 3252), the Government team shall ensure the work under agreement is conducted, as required, to allow for the ability to exclude suppliers on the National Security System Restricted List in the Supplier Performance Risk System.[4]

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[3] https://www.acq.osd.mil/dpap/policy/policyvault/USA000513-24-DPC.pdf

[4] https://www.sprs.csd.disa.mil/

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2. Terms & Conditions to Consider

Security Terms and Conditions

- **Federal Acquisition Supply Chain Security Act (FASCSA) Orders**
  - Include terms and conditions similar to FAR Clauses 52.204-28, 52.204-29, and 52.204-30

- **Contractor Counterfeit Electronic Part Detection and Avoidance System**
  - Include terms and conditions similar to DFARS 246.870, and DFARS Clauses 252.246-7007 and 252.246-7008

Physical Property Considerations

- Government Furnished Property (all aspects – what it is, condition in, care, etc.)
  - Include clause similar to FAR Clause 52.245-1 and DFARS property clauses or include in your agreement that:
    - Specify the allowed use for the item (and disallow any other use)
    - Set the term of the loan (beginning and ending dates)
    - Specify transportation arrangements and costs
    - Reserve the right for the government to inspect the item at reasonable times
    - Require regular confirmation of the existence of the item (physical inventory)
    - Allow for government to require return of the property at any time, without compensation to the contractor
    - Discuss responsibility for liability associated with the use or loss of property
    - Require reporting of any loss of government property
    - Specify any export restrictions or intellectual property considerations

System for Award Management (SAM) Registration

The CMO and its teaming members shall be registered in the System for Award Management (SAM) at https://www.sam.gov/SAM/. The representations and certifications made by the CMO and its teaming members, including those completed electronically via the SAM shall be incorporated by reference into any resulting agreement that is awarded from this RPP.

Offerors are required to hold a Unique Entity Identifier (UEI) Number. When submitting a solution, the Offeror shall provide its UEI number. The UEI number is 12-character that is assigned to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts. If the Offeror does not have a UIE number, it should contact SAM.gov directly to obtain one. An offeror within the United States may contact SAM.gov by calling 1-866-606-8220. An offeror located outside the United States must call the +1 334-206-7828 for assistance and a UEI number. The company should indicate that it is an offeror for a Government contract when contacting the SAM.gov office.

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<u>Other Terms and Conditions</u>

- **Intellectual Property and Technical Data**
- **Disclosure Considerations (e.g., Freedom of Information Act)**
- **Patents and Inventions**
- **Disputes**
- **Terminations**
- **Modifications**
- **Remedies**
- **Recovery of Funds**
- **Export Restrictions**
- **Indemnity**
- **Limits on Government Obligations**
- **Flow Down Requirements**
- **Changes Clause**
- **Close Out**
- **Disposition of Prototype/Residual Assets at the End of the Effort**

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