

OTHER TRANSACTIONS FOR PROTOTYPE PROJECTS EXECUTION GUIDE

ARMY CONTRACTING COMMAND - ORLANDO



05 November 2019

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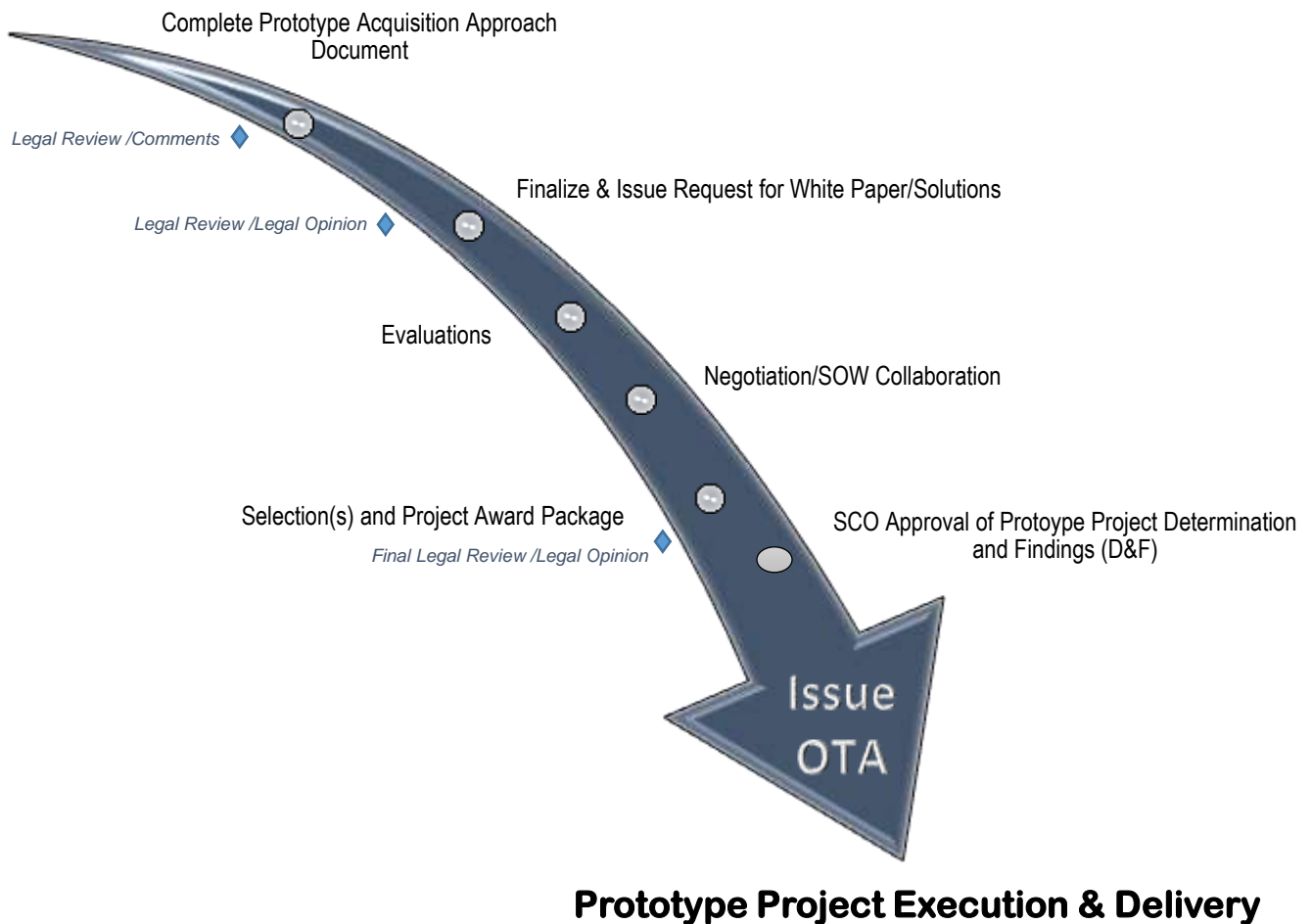
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Purpose

This guide is issued by Army Contracting Command – Orlando to serve as local guidance for the execution of Other Transactions (OTs) under the authority of [10 U.S. Code § 2371b](#). This document does not serve to implement policy for OTs but rather serve as an assistance tool to the local execution of certain prototype projects in accordance with the above statute as well as the [Office of the Under Secretary of Defense for Acquisition and Sustainment Other Transactions Guide](#) dated November 2018.

Other Transaction Agreement (OTA) Competitive Process Overview

The overarching process flow for a typical competitive OTA at ACC-Orlando is depicted below.



Prototype Acquisition Approach (PAA)

Welcome to the first and most critical step of the OTA process.

The intent of the Prototype Acquisition Approach, or PAA, is to capture and discuss all necessary elements to document the Government's research and rationale related to pursuing the prototype project.

This document is the only mandatory pre-award document to be completed for OTA projects and addresses critical aspects such as validating that the project is a prototype, desired outcomes of the effort, and known follow-on activities after acceptance. The PAA sets forth the base of all further scope of the subject project and provides the framework for how the prototype project will be executed.

The PAA is completed by the requiring activity with the assistance of the Agreements Specialist (AS) and/or Agreements Officer (AO) and ultimately signed by the requiring activity and AO. It may also require attachments such as a Technical Supplement, Statement of Need, or Market Research Report, as appropriate, that stand to support the background of the project to be executed. The full PAA template, currently Version 5.0, is included as Appendix A to this Guide and is located on the ACC-Orlando SharePoint.

It is important to note that the PAA is provided to legal counsel for review and comment, as their initial touch point of the prototype project. It is critical to the success of any prototype project that legal counsel involvement is established at an early stage in order to gain a shared understanding of the project.

Competitive Process Overview and Options

First, an important reminder – not every project will, or should, follow the same competitive process. Customers, in concert with the AO, have very wide latitude when determining the competitive process to be used for their specific prototype project. It is the vision of ACC-Orlando to be known for their creativity and ability to tailor processes necessary to conduct competition that maximizes participation from nontraditional defense contractors while ensuring streamlined awards.

In order to assist in the development of the competitive strategy, a Competitive Process Options Template is included as Appendix B, located on the ACC-Orlando SharePoint. This one page, interactive PDF outlines potential options for requesting solutions from vendors, as well as for options for assessing responses and further refining those responses and solutions. This template is merely a guide and is not an exhaustive choice set or a prescriptive process.

Design the process with common business sense in mind.

Be innovative and think outside of the traditional and rigid box.

Special Terms

Are there specific terms or unique restrictions that may affect a potential solution? If so, it is in the Government's best interest to explain those terms when requesting solutions from interested parties. For example, if the prototype project will directly impact a subsequent effort (a contract or other transaction), the Government may require more access or rights to the technical data produced under the project. These terms should be carefully considered and communicated to our industry partners to encourage creative solutions and responses.

Prototype Project "Coming Soon" Notification

At the point a prototype project is reasonably expected to be executed and funds have been determined to be available, the AO will authorize an abbreviated prototype project announcement in the form of a "Coming Soon" notice. This notice is typically posted to the Training and Readiness Accelerator (TReX) Coming Soon webpage, though could be utilized in different posting mediums, as applicable to the specific project. The intent of the Coming Soon posting is to provide industry with a "heads up" of a coming action, as early in the process as possible. This notice should provide as much information as responsibly available at that time and should serve as a living update as new information is learned (e.g. change in expected execution timeline, change in expected funding, Draft Request for Solutions, Question and Answer periods/responses). An open communication with our industry partners is a key tenet of the ACC-Orlando OTA execution vision.

Request Method

At this point in the process, the AO has approved the PAA and is ready to announce the complete new prototype project opportunity to all interested parties.

It is recommended that varying advertising nomenclature be used that will best reflect the thoroughness of the "requirement" or end goal. Furthermore, use of a particular term will provide insight to respondents related to the maturity level of the prototype project.

- "Request for White Paper" is the proper advertising term when the Government only has a desired end state, there are plentiful unknowns, and/or substantial research still needs to be completed. The request will likely include a problem statement and a generic request for respondent's input regarding how to approach the issue. Under this approach, it is assumed that follow-on dialogue with respondents will be plentiful as the need and potential solutions

are further refined. If desired, AO's can still issue an agreement as a result of a White Paper received as long as appropriate notice is included within the announcement.

- "Request for Solution" is recommended for use when the Government understands the need or end goal well enough to define desired objectives, milestones, and discriminators. In this scenario, the Government has described the project thoroughly enough to establish parameters for the responses. After Request for Solutions (RFS) release, follow-on dialogue is still encouraged, but based on the maturity of the need's definition, respondents should be able to submit a full solution in response to the RFS.

The advertisement should provide the scope of the prototype, any applicable background, technical requirements, security requirements, anticipated follow-on activities, selection criteria, page limitation and a response due date. At a minimum, ensure the following areas are requested of respondents when issuing a RFS: a full technical response, data rights assertions, price and schedule, Foreign Owned, Controlled or Influenced (FOCI) status, Organizational Conflicts of Interest and Mitigation Plan, and nontraditional business status.

A complete legal review and opinion of the prototype project opportunity must be received prior to issuance of the public request for responses.

In order to reach the most appropriate audience, the AO should strive to post and advertise on as many related websites, portals, or points-of-entry as possible. Non-traditional businesses are likely not familiar with the Government's typical processes, therefore posting only to the governmentwide point of entry (GPE) is simply not adequate. For all TReX competitive actions all official posting documentation should be communicated directly through the TReX website, www.trainingaccelerator.org. However, to ensure maximum exposure, a notice should also be published through the GPE, directing interested parties to the opportunity on the TReX website and informing them that all future communications related to that project will be published only through TReX.

It is also encouraged to consider the following options for reaching a wider audience:

- Posting to Defense Innovation Board and/or LinkedIn
- An advertisement on a related conference website (i.e., gaming conventions, Cyber Hack-a-Thons, Comic-Con, etc.)
- Local entrepreneurial websites & email blasts to various associations

After posting the request, you will likely seek questions and comments from interested parties. Consider if the answers to those questions should result in changes to your documentation or approach. If so, amend the announcement! Although revising your request may extend your response deadline, the clarification will facilitate better solutions for the Government's selection.

Evaluations

The proposal evaluations are not directly conducted in accordance with the FAR or any DoD Source Selection processes. However, the evaluation of any set of solutions must be fair and traceable to the RFS requirements, and should be conducted in accordance with industry norms for the technology being solicited. The team's structure, location (co-located or virtual), resultant assessment documentation (short technical evaluation, pass or fail checklist, etc.), shall be designed to optimize the outcome and ensure efficiencies. A short procurement integrity ethics briefing shall be provided to the evaluation team prior to beginning assessment of the responses. Each member of the team should sign a certification, confirming they have received an ethics briefing, have been informed of the names of the respondents, and that they have no personal conflicts of interest with any respondent. The certifications shall be inserted into the official agreement file. (This can be satisfied by signing an NDA capturing the above information)

Depending on your structure, you may have a lead technical reviewer that provides a recommendation to the AO, who then finalizes a selection. The AO must maintain awareness of potential issues and facilitate the team's customization appropriately. Ask yourself, "Who holds the expertise that we need to evaluate? Who is this project ultimately impacting?"

The Selection Authority responsible for selecting the best proposed approach must be identified and captured in the PAA. The Selection Authority is almost exclusively the AO over that project. However, the Senior Contracting Official (SCO) has authority to appoint a non-Army Acquisition Corps (AAC) member as the Selection Authority for an OTA up to \$50M. The Head of the Contracting Activity (HCA) may appoint a non-acquisition Selection Authority for OTAs greater than \$50M.

When appointing the Evaluation Board, ensure that the program office and user community sponsoring the prototype project is well represented. Subject matter expertise is invaluable; involve those who fully understand the scope of your effort. This will save time while underscoring your organization's dedication to customer service. Government support contractors (SETA) may serve as advisors to the evaluation team, though the name of the contractor's company must be disclosed to all bidders prior to receiving information.

The evaluation team, in concert with the AO, has very wide latitude when determining how the potential solutions will be evaluated. Teams are highly encouraged to keep criteria concise and uncomplicated. Providing focus areas for vendors is a valuable tool to help providing discriminating areas for industry, as well as the Government evaluators.

An example of simplified review criteria: "Individual responses will be evaluated with consideration given to the technical merit of the response, feasibility of implementation, and total project risk. The proposed project price, delivery schedule, and data rights assertions will be considered as aspects of the entire response when weighing risk and reward. Further, the

Government will evaluate the degree to which the proposed concept provides an innovative, unique approach to meeting the technical objectives.”

Evaluations shall not be conducted in accordance with Federal Acquisition Regulations and must employ methods to streamline the review process. Documentation created by the team, and requested from interested parties, should be reduced wherever possible, though should never lose sight of ensuring the story of the selection process is clearly explained.

Remember—AO’s are encouraged to streamline and reduce documentation while ensuring that the evaluation results are documented, supportable, and easily explained.

Selection Activities & Documentation

The rationale used to select the solution(s) must be documented and maintained in the agreement’s file. Documentation showing fair, transparent, reasonable evaluation and selection is paramount for the AO and prototype team.

A concise Selection Decision Memorandum signed by the Selection Authority will be included in the file that reflects the following information, at a minimum:

- Method used for evaluations
- Benefits of the proposed solution
- Any high risk areas and the respective mitigations
- Assessment of submitted and negotiated data rights assertions
- Fair and Reasonable assessment of price/cost
- Validation that the selected company is responsible and can support the effort
- Confirmation the selected company is a legal entity and meets the criteria of 10 USC 2371b(d) to be awarded an OT
- If a nontraditional defense contractor is utilized to meet the criteria of 10 USC 2371b(d), validate that the contribution is to a significant extent

Feedback

Providing feedback to the companies not selected is not required by regulation, however, it is ACC-Orlando policy to provide a level of feedback appropriate to each submitting vendor that will assist with the company’s growth and future submissions – as soon as it is reasonably feasible to provide. If a company is not selected for a second phase, they should be notified immediately, not forced to wait for an award to be made (specific feedback may wait until after award).

This feedback loop is critical to the engagement of our industry base with our opportunities as well as to attracting and growing the nontraditional defense contractor base. While the feedback provided to each company will vary based on the specific evaluation process taken, ACC-Orlando will provide the non-selectees evaluation results at a minimum. For actions under TRex, the feedback information will be provided to the Consortium Management Firm for distribution to the non-selectee vendors, via email. At the discretion of the AO, a face to face feedback session may be granted to the non-selectee vendors.

Senior Contracting Official (SCO) (or higher) Approval of Prototype Project

ACC-Orlando has an active delegation to carry out OT prototype projects per Assistant Secretary of the Army (Acquisition, Logistics and Technology) memorandum dated 21 May 2019. The authority to execute an OTA for a prototype project may not be delegated further, meaning all projects must be approved by the SCO prior to award – for all prototype projects equal to or less than \$50,000,000. The ACC-Orlando process requires that the SCO Approval of Prototype Project be signed off via a written D&F prior to the issuance of any OT award.

The OTA D&F templates are available on the Procurement.Army.Mil (PAM) website for over \$100M; the D&F template for less than \$100M is currently housed on the HQ ACC OTA Community of Practice SharePoint site within the Learning Resource Center Folder (Sample DF).

The SCO Approval of Prototype Project memorandum should contain a high level summary of the project to be executed as well as the outline for how at least one of the four conditions of award a Prototype OT have been met. This document, and all supporting documentation, should be routed through Paperless Contract File (PCF) for approval.

The following table depicts the current dollar thresholds associated with OTA approval levels. This Authority to Carry Out Certain Prototype Projects table is current as of the 10 U.S.C 2371b; Policy Notice 19-99, effective 15 October 2019. As the authority and policy are updated, it is important the most current dollar thresholds are referenced.

OTHER TRANSACTION AUTHORITY (OTA) Authority to Carry Out Certain Prototype Projects	≤ \$50M	SCO
	> \$50M - ≤\$100M	HCA
	> \$100M - ≤\$500M	SPE
	> \$500M	USD (A&S)
* If a Prototype Project is awarded using competitive procedures and provides for the award of a follow-on production contract or transaction, the authority levels for approval of the follow-on production contract or transaction are:	≤ \$100M	SCO
	> \$100M - ≤\$500M	HCA (with written concurrence from DASA(P))
	> \$500M	SPE

The OTA Document

Flexibility with Terms & Conditions:

From delivery dates to payment milestones, every aspect of the agreement is negotiable. This is an especially important consideration as it relates to data rights and intellectual property. Further information related to intellectual property can be found in the Office of the Under Secretary of Defense for Acquisition and Sustainment Other Transactions Guide – Appendix F - Intellectual Property Considerations" issued November 2018. A full explanation of the different data rights terms can be found at:

<https://disa.mil/about/legal-and-regulatory/datarights-ip/datarights>. As data rights and intellectual property are complicated topics, consultation with your Attorney Advisor early in the process is essential.

Points to consider:

- It may be less expensive if the Government does not request additional rights to data.
- Do you need data to be delivered under the OTA? While you may have paid for development of data relating to the prototype, if you have not required the data to be delivered, how will it be of use to the government in the future?
- Does the Government truly require unlimited rights or will government purpose or limited/restricted rights suffice?
- Is this a commercial item being modified to assess military utility? A commercial firm is highly unlikely to give unlimited rights to the Government.
- If commercial software is being utilized in the proposed prototype, did you require submission of the commercial software licenses with the response? (Most of these contain clauses which are against federal procurement law and must be negotiated out prior to award).
- Will receiving only limited/restricted rights harm a potential follow-on effort?

Inserting substantial language to protect the Government from every “what-if” scenario will increase barriers to entry, cause confusion, and be easily confused with a FAR-based effort. AO’s are encouraged to use simple, clear language and only include necessary terms and conditions. Ensuring the Agreement protects the Government’s best interest in current and future efforts is of utmost importance. With that being said, AO’s are also responsible for protecting and mentoring nontraditional firms who may not be familiar with the Government’s processes and other “gray areas.”

The FAR may be used as a reference point for agreement wording dealing with complex topics, but the document should not include numbered clauses.

Involve your legal counsel when negotiating terms and conditions (especially for data rights and intellectual property) within your Agreement.

Agreements Officer Representative:

While a formal nomination and appointment process is not required under prototype OT efforts, as part of the ACC-Orlando commitment to oversight, an appropriately competent Agreements Officer Representative (AOR) should be selected and appointed for each OT. The AOR must be appointed prior to award and included in the agreement file. An AOR template is provided as Appendix C, located on the ACC-Orlando SharePoint. If an AOR is not appointed, the reason for choosing not to do so should be documented within the agreement file.

Project Award Package:

While each project award package will be unique, they typically include a Statement of Work (SOW), Milestone Payment Schedule, Certificate of Completion (CoC), DD 254 Security Classification (if applicable), AOR Appointment Letter, and any other necessary documents that would need to be incorporated directly into the award.

Statement of Work – much like a typical SOW, this lays out what is required for the performer. Unlike a typical SOW, under an OT agreement this document is often times created in a collaboration with the selected vendor. The SOW will also detail when deliverables are due as well as a capture of the data rights assertions (if not incorporated separately). Any reporting requirements should also be captured within the SOW as much as possible in lieu of using costly Contract Data Requirement Lists.

Milestone Payment Schedule – details the amount the performer is to be paid for each completed performance milestone under a fixed-price OT.

Certificate of Completion – a CoC must be signed by the AOR and submitted by the performer, for each completed milestone. The fully signed CoC is then uploaded into WAWF for payment of the negotiated amount associated with the completed milestone.

Legal Review of Project Award Package:

Legal review of the completed project award package must be submitted through PCF and LRMS before award.

Pre-Release Verification Memo

The Pre-Release Verification Memo, provided as Appendix D is a final capture prior to award which verifies that all appropriate areas have been completed and the award of an OT is proper in context of 10 USC 2371b as well as fiscal authority, to be signed by the AO.

Administration and Execution Guidance:

Although not mandatory, Procurement Desktop – Defense (PD²) is recommended for use when creating an agreement. This will help facilitate payments for the vendors and will help maintain local metrics of OT execution.

- For every prototype project **agreement** and **order**, the ninth position of the award number must be a “9”. (W900KK-20-9-F001) The tenth position is reserved for the character “F”. (W900KK-20-9-F001) The three final characters will rotate 0001 through 999. (W900KK-20-9-F001) The final three digits of the OT agreement number are controlled numbers and it is required that the AS coordinate with Mr. Thomas Bunch at: thomas.j.bunch.civ@mail.mil, in order to obtain the final three digits of the agreement as early as possible. The complete OT agreement number example is: **W900KK-20-9-F001**.
- Use a Standard Form 26 for new stand-alone OTA awards.
- Use a Department of Defense Form 1155 if issuing an order off the TReX W900KK-18-9-0005 award.
- Funding may be incorporated at the CLIN or SLIN – the benefits and limitations are the same as with traditional procurement contracts.
- DFAS is still the payment body and WAWF/iRAPT is the primary method for submitting payment. As a reminder, nontraditionals may require assistance when requesting Government payment.
- Every finalized agreement issued as an order under the TReX OTA W900KK-18-9-0005, must be submitted to the Federal Procurement Data System – Next Generation (FPDS-NG) at www.fpds.gov. The website has step-by-step guidance regarding how to create the record.
- Every finalized agreement issued as a stand-alone OTA outside the TReX OTA, will require the utilization of the OT Award CAR_FPDS-NG template, provided as Appendix E, located on the ACC-Orlando SharePoint. Once completed with the necessary information, route to Mr. Thomas Bunch at: thomas.j.bunch.civ@mail.mil, so he is able to create the CAR for the applicable action. Once created, Mr. Bunch will provide a copy of the finalized CAR, via PD2, for the archiving in the PCF cabinet.

Public Announcement

All awards made, through either a consortium such as TReX or a stand-alone OTA, should be posted via the governmentwide point of entry. While this is not a regulatory requirement, it stands to further promote the transparency of our processes and facilitates information flow among our industry partners.

For example, “Prototype Project X was awarded on Month, Day, Year to Company A in the amount of \$XXXX and Company B in the amount of \$XXXX. The Request for Solutions for Prototype Project X resulted in 15 total submissions during Phase 1. During Phase 2 of the competition, 8 vendors were selected to provide Solutions Presentations to the Government. Company A and Company B were selected as they provided the best value in meeting the selection criteria set forth in the Request for Solutions.”

The example provided above is a simplified version and each competition will stand on its own. AS’s and AO’s are encouraged to provide as much detail as possible to explain the selection process within the award announcement. Any overarching themes seen throughout the competition should also be captured and shared in the award announcement to continue to aid the vendor base.

Congressional Notification for awards exceeding \$7M is not required for OT projects.

OTA File Documentation Requirements

ACC-Orlando will utilize the PCF to store documentation related to Other Transactions. At a minimum, your file must address and have completed the following listed items.

- PAA
- Purchase Request and funding information
- Request for White Paper/Solutions documentation
- Proposal submissions
- Proposal evaluations
- Selection Decision Memorandum
- System for Award Management (SAM) verification
- AOR documentation
- FPDS-NG Contract Action Report
- All legal reviews performed, including of the PAA, RFS and Award Package
- Contract Summary Action Sheet
- SCO (or higher) Approval of Prototype Project D&F
- Pre-Release Verification Memo
- SCO Award Announcement
- Agreement and Project Award Package
- All acquisition milestones must be addressed and accompanied by comments
- FBO Award Notification Posting
- Distro List and Email
- Contract File Index

Program Execution

Congratulations—you have awarded your agreement! Now the fun begins...

The AO or AS, must encourage and maintain a collaborative environment with active Government participation. The obvious mutual benefits and flexibility an OTA offers should be taken advantage of. The selected vendor can assist the Government to further refine their technical goals, while the Government can assist in further cultivation of the solution.

In the spirit of reducing documentation (combined with ensuring financial resources are spent on developing the solution rather than writing unneeded reports), deliverables should be limited to only what is truly needed. Traditional procurement contracts often contain requirements for numerous deliverables that are not mandatory for OTAs. Both parties focus should be on the acceptance of a successful prototype and its impact on mission effectiveness. At award, if you are uncertain as to whether you will need technical data or software developed under the agreement to be delivered, consider adding a “deferred ordering” clause, which allows the government to unilaterally require delivery of data produced under the agreement for a certain amount of time after agreement completion. Another choice would be priced options for delivery of the data, to be exercised if needed.

The Government’s prototype project team must stay actively engaged to validate progress, help with administration issues, and be a partner in the effort’s success.

Appendices

- Appendix A, PAA Template, Version 5.0
- Appendix B, Competitive Process Options Template
- Appendix C, AOR Template
- Appendix D, Pre-Release Verification Memo
- Appendix E, OT Award CAR_FPDS-NG Template