

## **AMPV Prime Contract Flowdowns Low Rate Initial Production**

### **1. PROTECTION AND DISCLOSURE OF INFORMATION-PUBLIC RELEASE:**

Except for AMPV Program information previously approved for public release by the Government under the AMPV Program, the contractor shall not release any AMPV Program information regarding the work performed under this contract, without first obtaining approval for Public Release as identified in the DD254 and per this clause, outside of (i) the United States Government, (ii) its own facility, (iii) its subcontractors performing AMPV work at any tier, (iv) its associate contractors at any tier, and (v) any other individual or entity that is contractually bound to protect AMPV Program Information from public release.

The contractor shall send all requests for public release approval to the PCO, in accordance with DFARS Clause 252.204-7000. Requests will reviewed for public release approval and the PCO, or authorized representative, will, after appropriate review, either authorize or reject the request to disseminate AMPV Program information publicly. Authorization may be given contingent on specified changes being made to the material for which public release has been requested. Subcontractors and associate contractors shall submit such public release requests through the prime contractor's Authorized Procurement Representative.

Lower Tier Subcontracts - Subcontractors shall include this Public Release provision, appropriately modified to identify the contractual parties, in all subcontracts for the performance of AMPV work, and shall require such inclusion in all subsequent subcontracts, regardless of tier.

This Public Release provision takes precedence over any other public release provisions incorporated in this Purchase Order/Subcontract.

### **2. ADDITIONAL AMPV EXPORT COMPLIANCE REQUIREMENT:**

Contractors shall comply with all U.S. export control laws and regulations, which are applicable to this RFP, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 774, in the performance of this Contract.

All technical data that is exported under ITAR Sections 125.4(b)(1) or 125.4(b)(3) must be reviewed and approved by the US Army in accordance with approved disclosure guidelines for AMPV.

DFARS 252.225-7048 EXPORT CONTROLLED ITEMS (JUN 2013) IS HEREBY INCORPORATED BY REFERENCE.

Lower Tier Subcontracts/Purchase Orders - The Subcontractor shall include this provision, suitably modified to identify the parties, in all subsequent subcontracts and purchase orders, regardless of tier.

### **3. ORGANIZATIONAL CONFLICTS OF INTEREST:**

The contractor and its subcontractors, consultants, parent companies, subsidiaries, joint ventures, or other business affiliates at any tier may be excluded from performing under this AMPV contract if the PCO determines that an Organizational Conflict of Interest (OCI) exists due to bias or unfair competitive advantage. A similar provision is expected to apply to follow-on AMPV solicitations and contracts.

The contractor shall flow down this provision in any subcontracts or other related instruments (at all tiers). The contractor shall monitor its activities and the activities of its subcontractors and related entities, and promptly disclose any actual or potential OCIs and any actions taken or proposed to negate or mitigate such conflicts.

Remedies - For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate the contract for default, disqualify the contractor for subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

**4. Restrictions on the use of Mandatory Arbitration Agreements:**

DFARS 252.222-7006, Restrictions on the use of Mandatory Arbitration Agreements (DEC 2010), is hereby incorporated by reference in all subcontracts or POs valued in excess of \$1 million.

**5. Defense Priorities and Allocations System:**

This subcontract/PO is subject to the requirements of 15 CFR Part 700 and is rated DO-A4.

**6. Quality Control System:**

a) Seller agrees to provide and maintain a quality control system to an industry recognized Quality Standard and to provide access to Seller's facilities at all reasonable times by Buyer, authorized Customer representatives, and Regulatory Authorities. Seller agrees to include, and to require its subcontractors to include, the substance of this provision, including this sentence, in each of its subcontracts under this Contract. Further, Seller shall be in compliance with any other specific quality requirements identified in this Contract.

b) Records of all quality control inspection work by Seller shall be kept complete and available to Buyer and its Customers.

c) Seller agrees to notify Buyer Procurement Representative of product that does not meet the requirements of this order. Written Approval will be required by Buyer Procurement Representative prior to Seller shipment of nonconforming material to Buyer.

d) Seller agrees to notify Buyer Procurement Representative with changes in product and/or process, changes of suppliers, and changes of manufacturing facility locations.

e) All hardware, data, other documentation, tooling and equipment required by Seller during the performance of this order shall be maintained under configuration control. Buyer' approval of the drawing package shall constitute a baseline release for hardware fabrication. Buyer' approval of other such documentation shall likewise constitute a baseline release for applicable activities. Upon receipt of such approval, the Seller shall not implement any change in design, processes, controls, parts or proprietary data released to Buyer thereafter to internal functions or second-tier suppliers without Buyer' prior written approval.

f) The Seller shall submit Major Engineering Change Orders (ECO's) to Buyer for written approval prior to implementing any such changes. Buyer' approval shall in no way relieve the Seller from complying with the requirements of the order, nor shall approval relieve the Seller's technical responsibility for the design. The Seller shall further submit Minor ECO's for informational purposes. Any Seller classification disagreements shall be referred to Buyer for a final decision.

g) Seller shall maintain a Foreign Object Debris/Damage (FOD) prevention program. When applicable, Seller's FOD prevention program shall include:

- i. The review of design and manufacturing processes to identify and eliminate foreign object entrapment areas and paths through which foreign objects can migrate.
- ii. Seller shall employ appropriate housekeeping practices to ensure timely removal of residue/debris, if any, generated during manufacturing operations or tasks.
- iii. Seller shall determine if sensitive areas that may have a high probability for introduction of foreign objects should have special emphasis controls in place appropriate for the manufacturing environment.
- iv. By delivering items to Buyer, Seller shall be deemed to have certified to Buyer that such items are free from any foreign material that could result in FOD.

## **7. Counterfeit Parts Prevention and Notification:**

Note: If DFARS 252.246-7007 is applicable to this procurement, it shall take precedence for any differing terms and conditions for Electronic Parts within this specific provision with the exception of subsections: a) i., b), d), and f).

a) Definitions for purposes of this Contract:

i. "Counterfeit Part" is one that is (1) an unauthorized copy or substitute that has been identified, marked, and/or altered by a source other than the item's legally authorized source and has been misrepresented to be an authorized item of the legally authorized source and/or (2) previously used parts provided as "new." A part is a "Suspect Counterfeit Electronic Part" if visual inspection, testing, or other information provides reason to believe that the part may be a counterfeit part.

ii. "Counterfeit Electronic Part" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

iii. As used herein, "authentic" shall mean (A) from the legitimate source claimed or implied by the marking and design of the product offered; and (B) manufactured by, or at the behest and to the standards of, the manufacturer that has lawfully applied its name and trademark for that model/version of the material.

iv. "Independent Distributors" are persons and businesses that are not part of an OCM's authorized distribution chain. These also may be referred to as non-franchised distributors, unauthorized distributors or brokers.

v. "Electronic Part" means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly. The term "Electronic Part" includes any embedded software or firmware.

vi. "Original Component Manufacturer" (OCM) is an organization that designs and/or engineers a part and is pursuing or has obtained the intellectual property rights to that part.

vii. “Original Equipment Manufacturer” (OEM) is an organization that designs, manufactures and/or engineers an end product comprised of various parts and is pursuing or has obtained the intellectual property rights to that end product.

viii. “Suspect Counterfeit Electronic Part” means an Electronic Part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Electronic Part is authentic.

b) Seller represents and warrants that only new and authentic materials are used in products required to be delivered to Buyer and that the Work delivered contains no Counterfeit Parts. No other material, part, or component other than a new and authentic part shall be used unless approved in advance in writing by the Buyer Procurement Representative. To further mitigate the possibility of the inadvertent use of Counterfeit Parts, Seller shall only purchase authentic parts/components directly from the OEMs/OCMs or through the OEM’s/OCM’s authorized distribution chain. Seller must make available to Buyer, at Buyer’ request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM. Purchase of parts/components from Independent Distributors is not authorized unless first approved in writing by Buyer Procurement Representative. Seller must present complete and compelling support for its request and include in its request all actions to ensure the parts/components thus procured are legitimate parts. Buyer may additionally need to get its customer’s approval of Seller’s request. Processing of such requests shall not constitute an excusable delay on part of the Seller. Buyer’ approval of Seller request(s) does not relieve Seller’s responsibility to comply with all Contract requirements, including the representations and warranties in this provision.

c) Seller shall maintain a documented system (policy, procedure, or other documented approach) that provides for prior notification to the Buyer Procurement Representative and his/her written approval before parts/components are procured from sources other than OEMs/OCMs or through the OEM’s/OCM’s authorized distribution chain. Seller shall provide copies of such documentation for its system for Buyer’ inspection upon Buyer’ request. Seller’s system shall be consistent with applicable industry standards, AS5553 as minimum, for the detection and avoidance of Counterfeit Electronic Parts and Suspect Counterfeit Electronic Parts, including policies and procedures for training personnel, designing and maintaining systems to mitigate risks associated with parts obsolescence, making sourcing decisions, prioritizing mission critical and sensitive components, ensuring traceability of parts, developing lists of trusted and non-trusted suppliers, flowing down requirements to subcontractors, inspecting and testing parts, reporting and quarantining Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and taking corrective action.

Additionally, if DFARS 252.246-7007 is not applicable:

The Seller’s Counterfeit Parts Prevention and Detection system shall have expanding levels of control based on increasing risk in order to ensure that human safety and mission success are not compromised. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part, the probability that the inspection or test method selected will detect a Counterfeit Electronic Part, and the potential negative consequences of a Counterfeit Electronic Part being used. The system shall include a process for keeping continually informed of current counterfeiting information, trends and GIDEP reports, using such information to continuously update internal procedures and systems as necessary. The system shall consider means to contribute to the abolishment of Counterfeit Electronic Parts proliferation.

Additionally, for either products delivered under this contract containing Electronic Parts or Electronic Parts procured for this contract: If Electronic Parts are determined to be Counterfeit Electronic Parts or Suspect Counterfeit Electronic Parts, notification will also be made not later than 60 days after such determination to the Government-Industry Data Exchange Program (GIDEP).

- d) If the Seller is providing electronic components/devices only, the following certification applies:

**Certification of Origin of Product:**

Acceptance of this Contract constitutes confirmation by the Seller that it is the Original Equipment Manufacturer (OEM)/Original Component Manufacturer (OCM), or a franchised or authorized distributor of the OEM/OCM for the product herein procured. Seller further warrants that OEM/OCM acquisition documentation that authenticates traceability of the components to that applicable OEM/OCM is available upon request. If the Seller is not the OEM/OCM or a franchised or authorized distributor, the Seller confirms by acceptance of this Contract that it has been authorized in writing by Buyer to act on Buyer behalf to procure from the OCM or a franchised or authorized distributor of the OEM/OCM. The Seller further warrants that OEM/OCM acquisition traceability documentation is accurate and available to Buyer upon Buyer' request and is retained as a quality record in accordance with the "Maintenance of Records" provision contained herein.

- e) Seller shall flow the requirements of this provision to its subcontractors and suppliers at any tier for the performance of this Contract.
- f) Notifications: Should Seller become aware of a confirmed or suspect counterfeit part that, by any means, has been delivered to Buyer, or acquired for this Contract whether or not delivered to Buyer, notification will be made as soon as possible but not later than 7 days of discovery to Buyer' Buyer. Seller will verify receipt of this notification by Buyer. This requirement will survive this contract.
- g) Seller shall be liable for cost of counterfeit parts and suspect counterfeit parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.
- h) Seller shall quarantine Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts, and make them available for investigation by appropriate government authorities. Suspect Counterfeit Electronic Parts and Counterfeit Electronic Parts shall not be returned to the supply chain until such time that the parts are determined to be authentic.

**8. Notice of Labor Disputes:**

Whenever Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, Subcontractor shall immediately give notice thereof and all relevant information with respect thereto, to Buyer' Authorized Subcontract Representative and shall notify Buyer' Authorized Subcontract Representative of any material changes in the information required hereunder.

Subcontractor agrees to insert the substance of this clause, including this paragraph, in any lower tier subcontract hereunder wherein a labor dispute may delay the timely performance of this Subcontract.