



# FEBRUARY 2024 GENERAL MEMBERSHIP MEETING



# NAMC | Antitrust Statement



**The National Advanced Mobility Consortium, Inc. (“NAMC”) takes antitrust violations very seriously and we strive to ensure that all NAMC Member’s comply with all aspects of the antitrust laws.**

NAMC meetings or workshops by their very nature bring competitors together. However, it is expected that all member representatives involved in NAMC activities, as well as NAMC consultants and other participants, will be sensitive to the legal issues and act in compliance with applicable antitrust and competition laws.

Accordingly, it is necessary to avoid discussions of sensitive topics that can create antitrust concerns. For example, you agree that you will not discuss certain topics while participating in any NAMC meetings, events or activities, including, without limitation, any discussions relating to prices, fees, rates, profit margins, or other terms or conditions of sale (including allowances, discounts, credit terms, and warranties); allocation of markets or customers or division of territories; or refusals to deal with or boycotts of suppliers, customers or other third parties, or topics that may lead participants not to deal with a particular supplier, customer or third party; or any other topics, the discussion of which could result in an unreasonable restraint of trade. Such topics are illegal under the antitrust laws and are prohibited at any NAMC meetings or events. Please report any suspected violations of this policy to NAMC immediately.

An antitrust violation does not necessarily require proof of a formal agreement. As a result, those attending a NAMC meeting should remember the importance of avoiding not only unlawful activities, but even the appearance of unlawful activity.

# NAMC I February General Membership Meeting Agenda



**1:00 PM: Welcome**

**1:05 PM: NAMC Member Overview**

**1:10 PM: "How to Participate"**

*ft. Alissa Roath, CEO at NAMC*

**1:15 PM: Government Speaker**

*"Army Modernization, DEVCOM Priorities, Engagement Opportunities with Industry, and Role of Small Business"*

*ft. Brigadier General John Cushing, Commanding General U.S. Army DEVCOM*

**1:45 PM: Q&A**

**2:00 PM: DAI Training**

*"Intellectual Property Rights: Patent Reporting and Data Rights Designations" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**2:30 PM: Break**

**2:40 PM: DAI Training**

*"Antitrust" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**2:50 PM: DAI Training**

*"False Claims Act" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**3:00 PM: DAI Training**

*"Disputes" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**3:15 PM: DAI Training**

*"Confidentiality: FOIA & NDAs" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**3:30 PM: Solicitation & Contracting Changes**

*"From GVS to DAI" ft. Deena McIntosh, Contract Administrator at NAMC and Katie Miler, OTA Execution Lead at GVSC AMO*

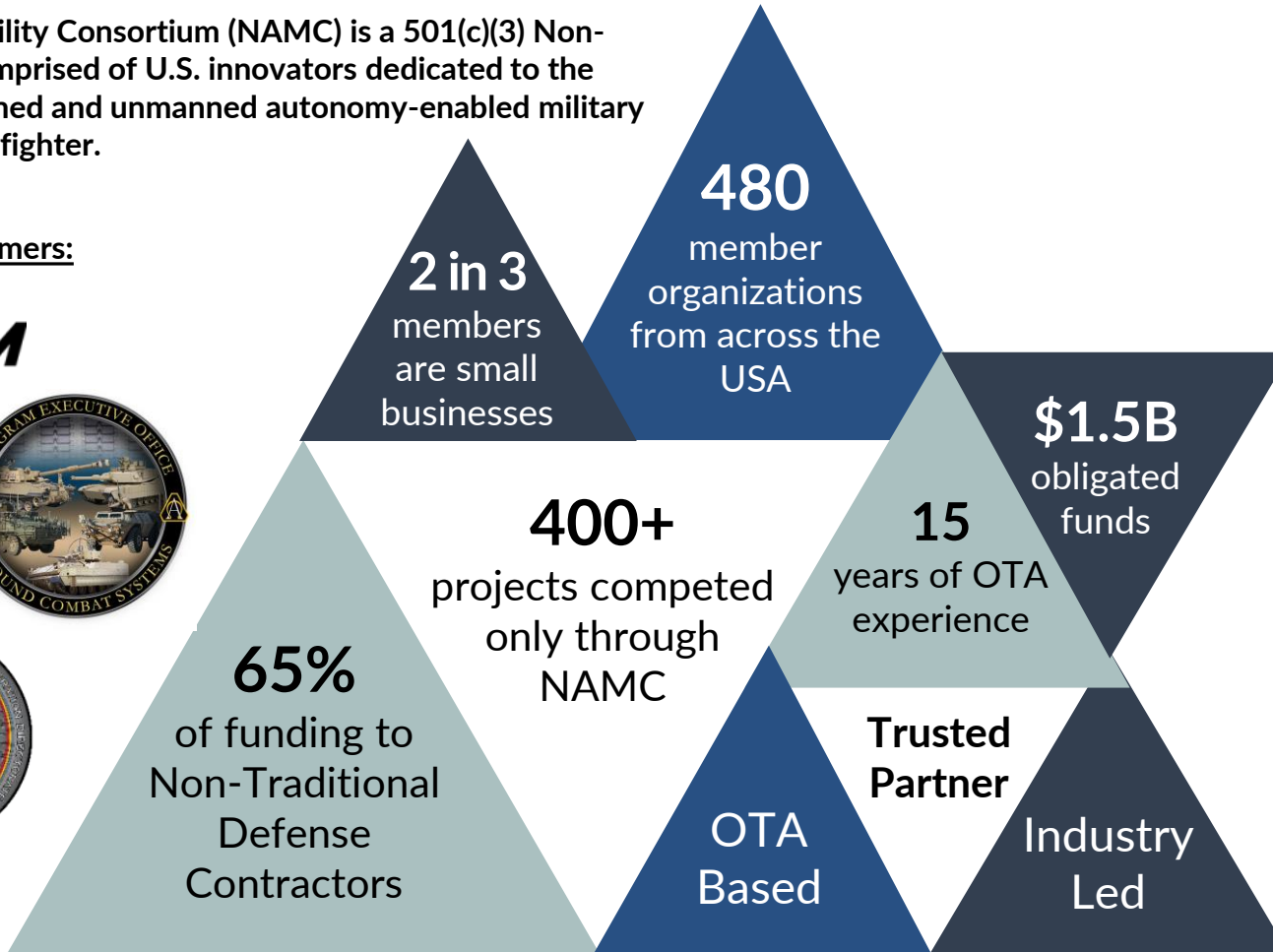
**4:00-6:00 PM: Networking Reception**

# NAMC | Who We Are



The National Advanced Mobility Consortium (NAMC) is a 501(c)(3) Non-Profit Corporation that is comprised of U.S. innovators dedicated to the development of ground manned and unmanned autonomy-enabled military technologies for the U.S. warfighter.

## Primary Customers:



## INNOVATION

Creative problem solving thru mission-focused, experienced, multi-functional staff



## COLLABORATION

Lead collaboration efforts to embrace an ecosystem of experienced members



## EDUCATION

Develop the industrial base to deliver best-fit capabilities meeting critical demands.

**Mission** | NAMC exists to foster member-driven innovations that ensure efficiency, effectiveness, and victory for the US Military.

**Vision** | NAMC is the preferred, proven source of ground vehicle, automotive, and intelligent systems technology for the US Military.

**Purpose** | Advancing military platforms and enabling technologies, towards fielding modern capabilities to U.S. warfighters.

**Niche** | Premier Organization, Creating and Maintaining the Ecosystem for Mobility Technologies.

**Class A**  
(Expires Fall 2024)

- **Patrick Weldon**, Polaris Inc.
- **Louay Chamra**, Oakland University
- **David Miller**, BAE Systems (Chairman)
- **Dan Deguire**, QinetiQ, NA
- **Matt Dooley**, Robotic Research

**Class B**  
(Expires Fall 2025)

- **Kurt Bruck**, Neya Systems
- **Bill Ross**, Nevada Automotive Test Center (NATC)
- **David Dunn**, University of Dayton Research Institute (Vice Chairman)
- **Mike Bolon**, General Dynamics Land Systems, Retired

**Class C**  
(Expires Fall 2026)

- **Sean Baity**, Textron Systems
- **Patricia Sellers**, GM Defense
- **Traci Webb**, GS Engineering

# NAMC | FY24 Advisors



LTG (Ret.) Joseph Anderson , RSGS

Dr. Jennifer Hitchcock, SES (Ret.)

Michael Robbins, AUVSI

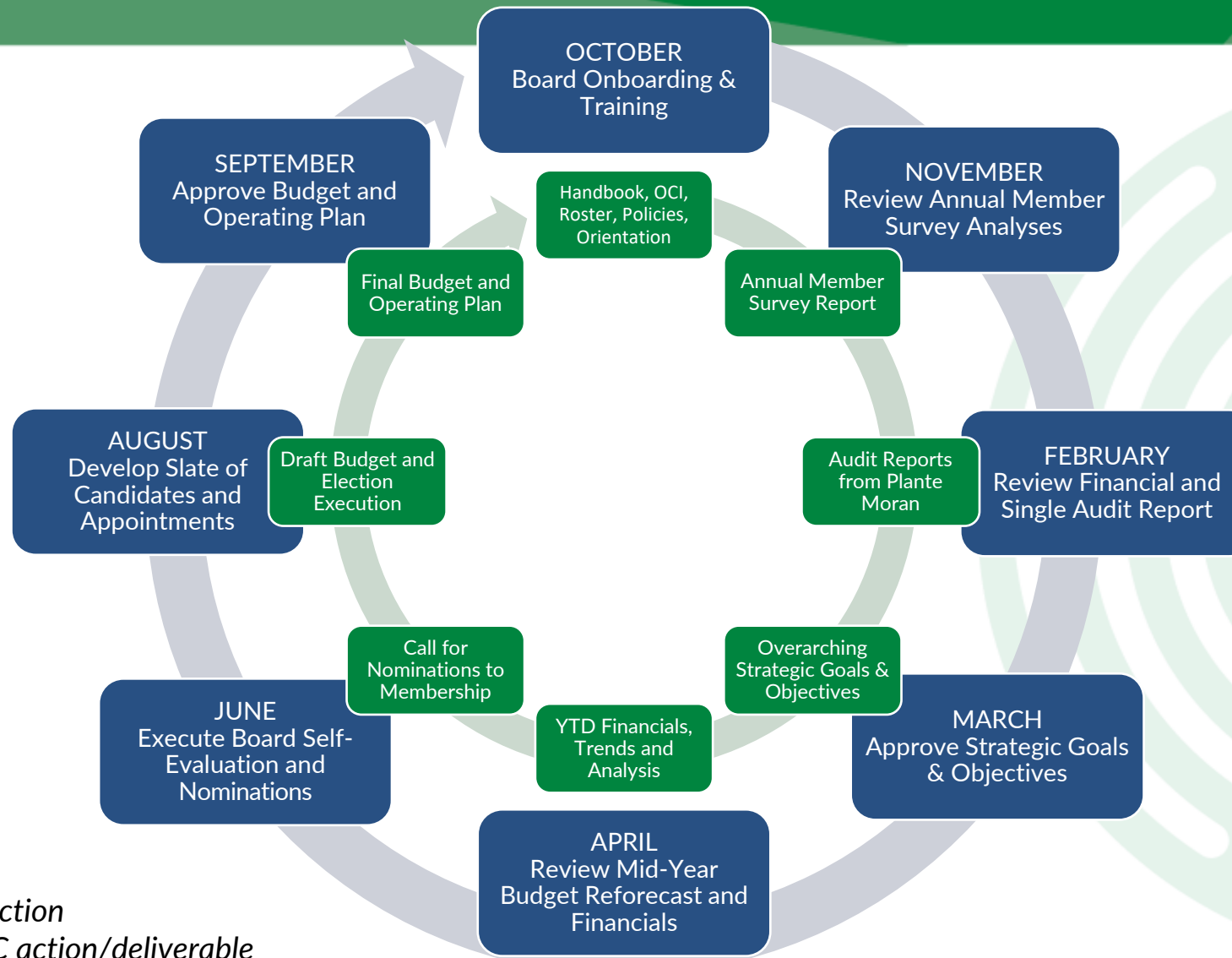
Jason Toepfer, Caterpillar Defense

Arlissa Vaughn, Aegis Power Systems

Jeffrey Washington, Persistent Systems

Rich Wronski, Charles River Analytics

# NAMC I Full Business Cycle



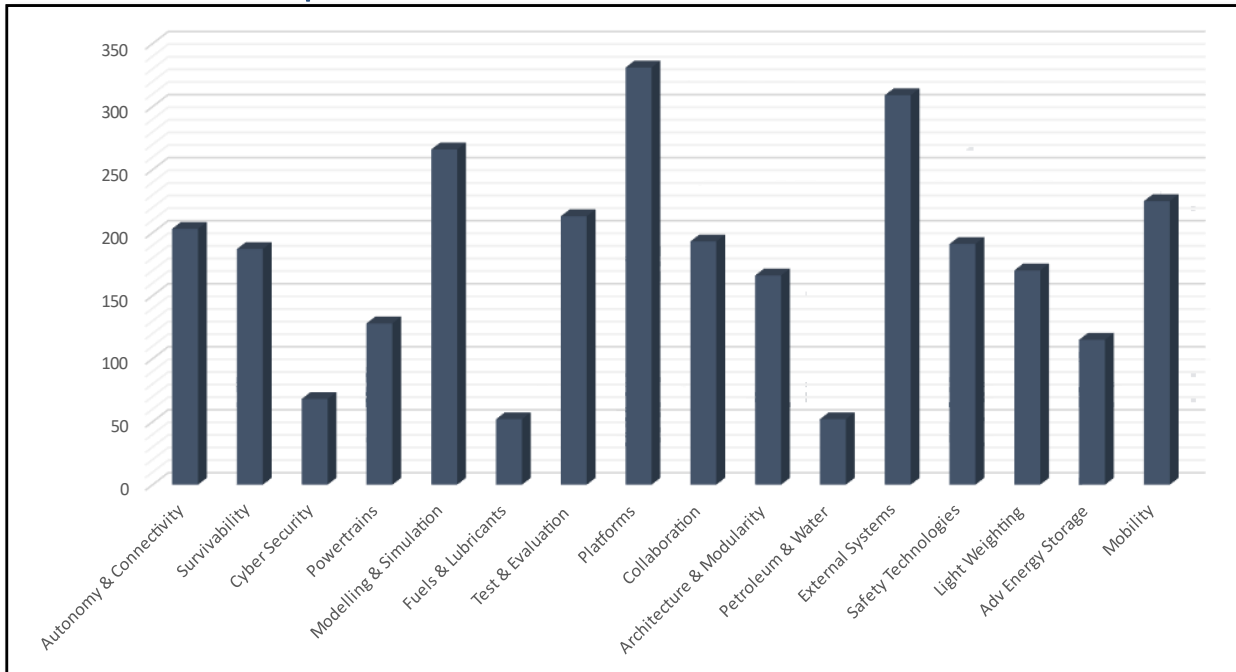
Note: Blue Box equals Board Action  
Green box equals NAMC action/deliverable



# NAMC I Members

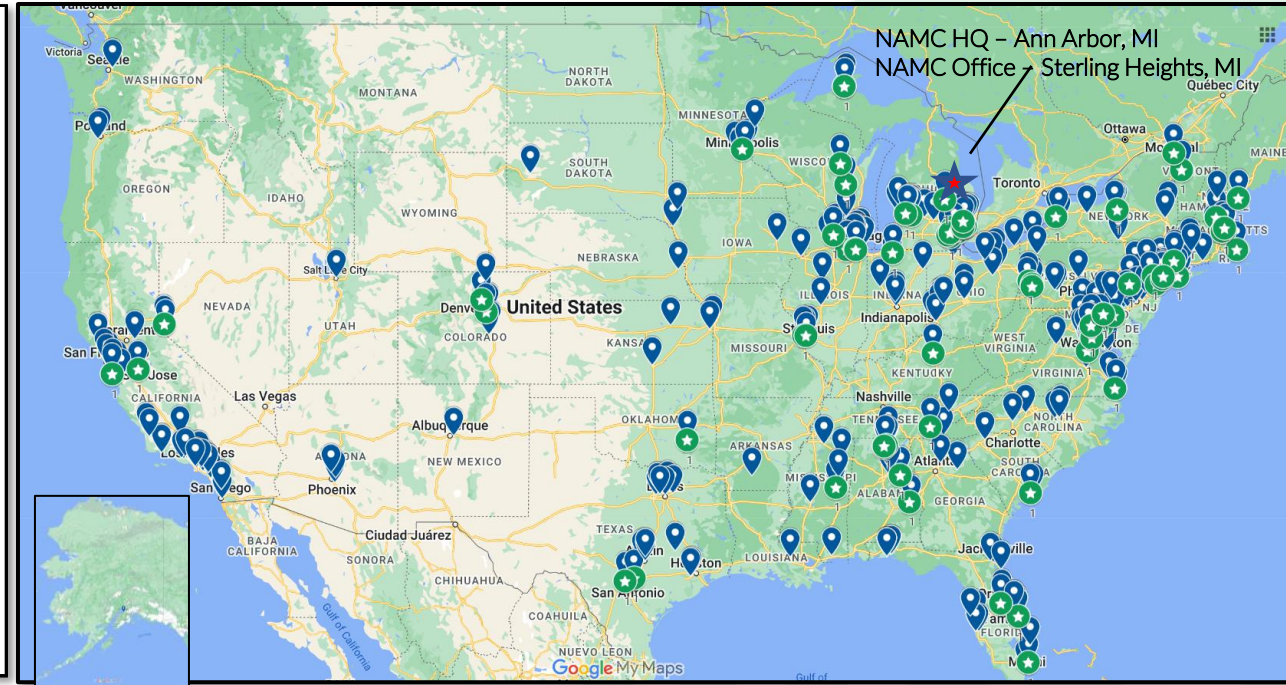


## Member Expertise to OTA Tech Focus Areas



- NAMC Members Uniquely Aligned to the DAI OTA Technology Areas (Ground Mobility, Robotics & Autonomy)
- Cross-cutting, advanced expertise to address the toughest problems with innovative solutions

## Member & Award Locations



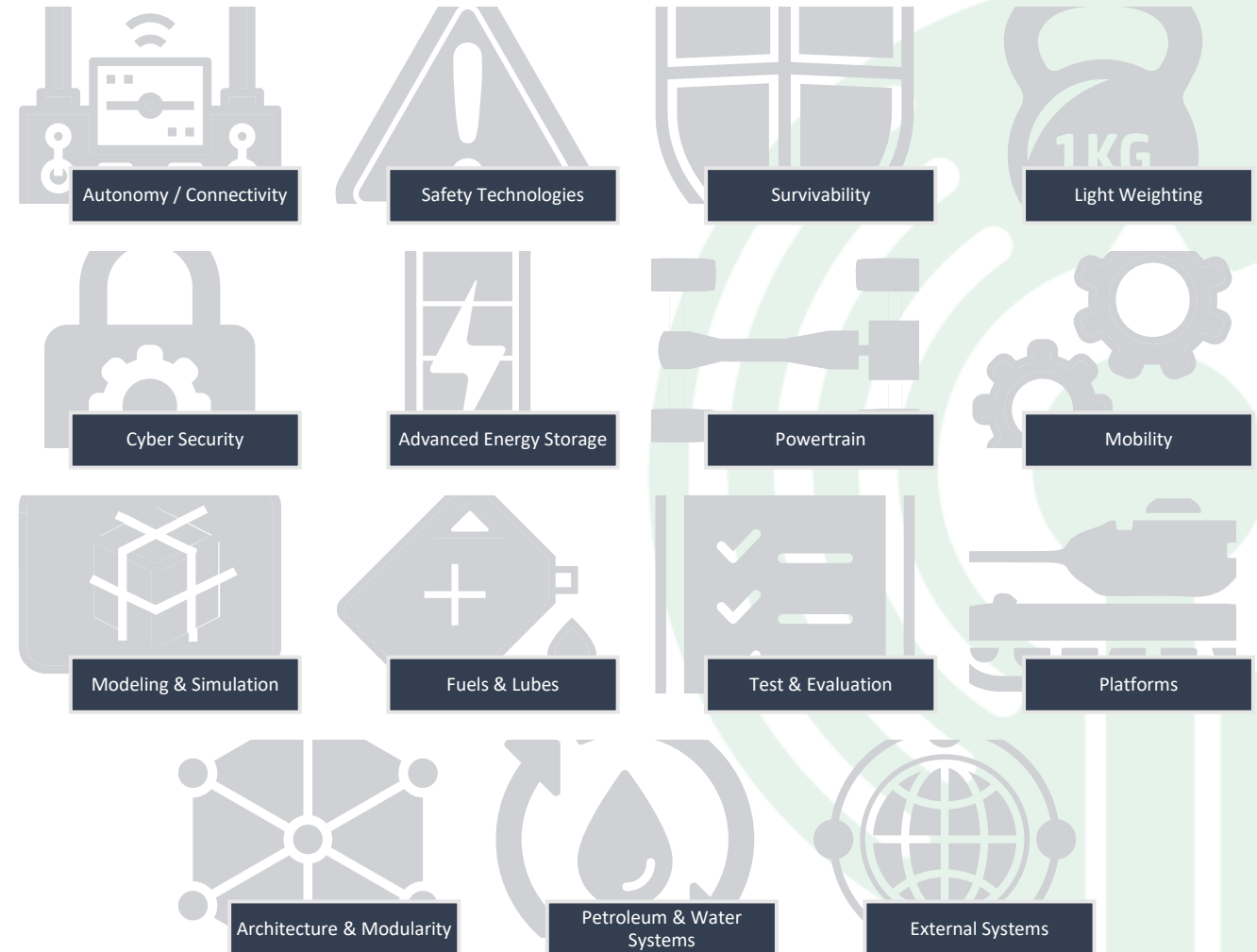
- NAMC Members across the US with significant presence around key innovation hubs and US Army facilities.
- Unique opportunities for teaming and collaboration providing best competitive solutions.

# NAMC | Detroit Arsenal Innovation (DAI) Other Transaction Authority (OTA)



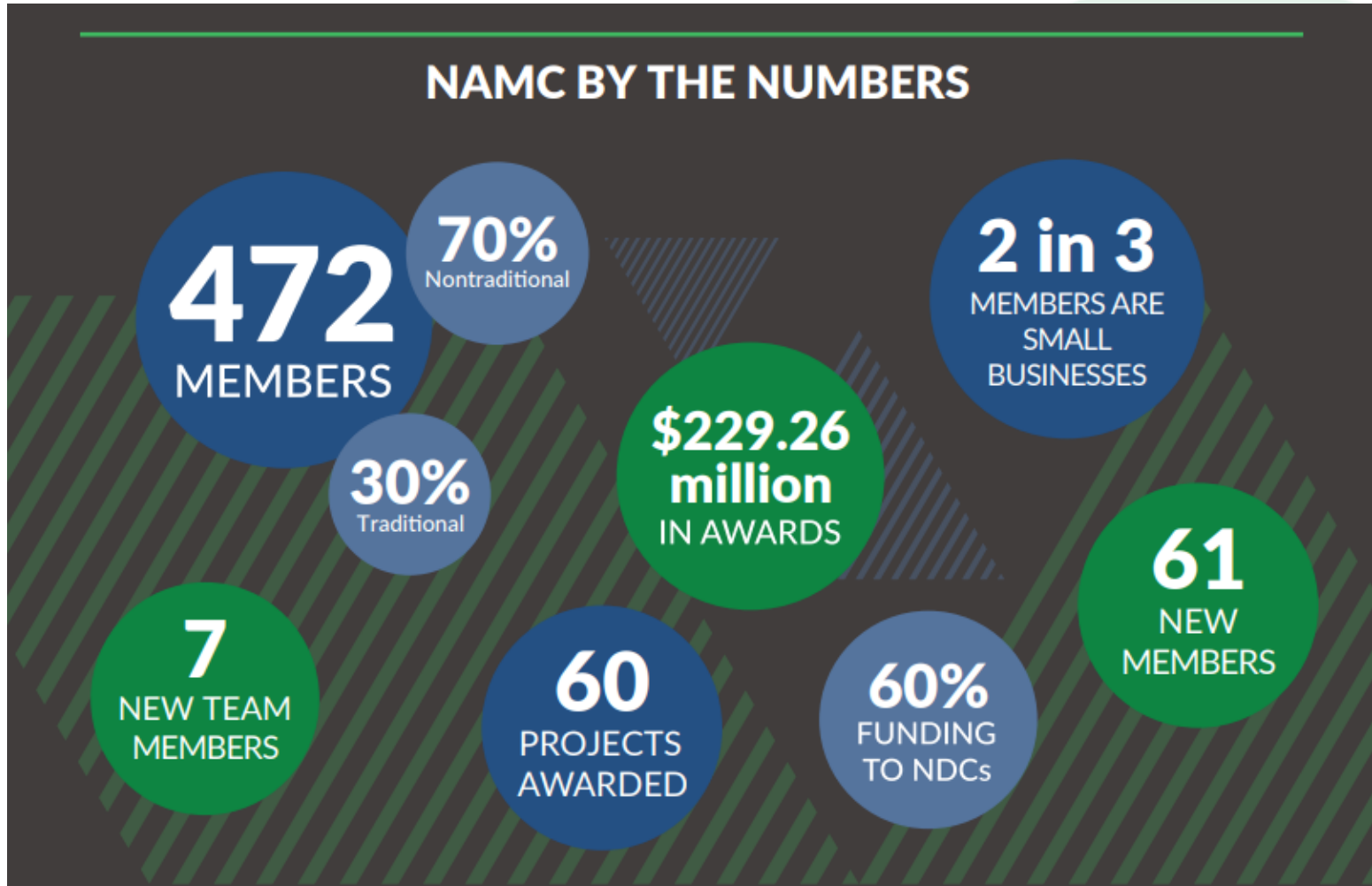
## Awarded September 1<sup>st</sup>, 2023

- 5 Year Base Period of Performance
- 5 Option Years
- \$2.5 B Ceiling (\$250M Annual)
- **Broad Scope and potential Customers**
- **New “Collaboration” options for Government Customers (Demos, Defense Innovation Workshops, Industry Days, Tech Scouting, etc.)**
- **Revised processes and thresholds to improve efficiency.**
- **Increased ability to develop efforts with Government OTA Users.**
- **3 New Technical Areas (Safety Tech, Lightweighting, Advanced Energy Storage)**



## Key Projects and Efforts

- Robotic Combat Vehicle (RCV) Full Systems Prototype
- Common Tactical Truck (CTT)
- RTK Development Forum
- VPS Community of Interest Symposium
- MOSA/GCIA Community of Interest Industry Event
- Robotic and AI Platoon (10X)
- 'Donuts and Defense' Networking Events
- Support & Partnership to AUSA, NDIA, WID, AUVSI, Fisher House
- Annual Plan - 11 Projects (FY24), 18 Projects submitted (FY25)
- Thought Leadership



# NAMC | Open Projects & Efforts



Project Identifier	Project Title	Customer	Release Date*	Estimated Value	Notes
RPP-24-A01	FY 24 Annual Plan	Various	20 NOV 2023	Various	28 responses against 10 topics At least 3 likely funded pulls in FY24
RPP-24-D02	Electric Light Reconnaissance Vehicle (eLRV)	GVSC	Q2 FY 24	TBD	DRAFT RPP released 1 NOV 2023 Collaboration Event 14 FEB 2024
RPP-24-D05	FMTV Exportable Power Kits (EPK)	PdM MPVS	Q2 FY 24	~\$6M	RPP in development
RPP-24-D06	Small Multipurpose Equipment Transport (S-MET) Increment II	PM RAS	20 DEC 2023	\$11.6M per award	RPP response due 20 Feb 2024
RPP-24-D07	Self-Support Portable Distributed Refueling System (SPDRS)	NSWC	26 DEC 2023	\$200K Per award	4 proposals received on 8 Feb 2024
TR18	Prototyping of an Adaptive and Collaborative Approach to Vehicle Protection Systems (VPS)	PEO GCS, PM VPS	Continuous	N/A	RWP Open for Membership in the volunteer-based Community of Interest (COI).

# NAMC | Project Pipeline\*\*



Project Title	Gov Customer	Notes
FY 25 Annual Plan	Various - 18 Topics Submitted	Architecture & Modularity - 1 Autonomy/Connectivity - 8 External Systems - 2 Modeling and Simulation - 2 Platforms - 1 Survivability - 4 <b>Possible Industry Day 7 March</b>
Vehicle Protective Systems (VPS) (PM)	PdM VPS. PEO GCS	Soft Kill
Battery & Energy Technologies (EEHV)	GVPM, GVSC	Likely Ad-Hoc RPP in FY24
H-MIF Payloads	RCCTO	In discussions
ARCS (RTK) Industry - Government Partnership	GVR, GVSC	FY25
SBIR Phase III	PEO GCS	Direct Single Award

\*\* Pre-decisional Potential projects to NAMC/DAI OTA in FY24. Coordination for project specifics, acquisition strategy, timeline and funding ongoing.



<b>EVENT</b>	<b>LOCATION</b>	<b>DATE</b>
NAMC-Hosted Reception	Sterling Heights, MI	13 February (Tomorrow!)
GVSC Industry Days	Warren, MI	13-14 February (Tomorrow & Weds)
eLRV Industry Collaboration Event	Sterling Heights, MI	14 February (Wednesday)
AUVSI Defense	Arlington, VA	21-22 February
NDIA Tactical Wheeled Vehicles Conference	Charlotte, NC	26-28 February
MCOE AEWE and AUSA Industry Day	Columbus, GA	28 February
Donuts & Defense	Sterling Heights, MI	7 March
FY25 DAI OTA Annual Plan Industry Day	Sterling Heights, MI	7 March
AUSA Global Force Symposium	Huntsville, AL	26-28 March
NDIA-Michigan MDEX	Warren, MI	23-25 April



## **Brig. Gen. John M. Cushing, Commanding General**

Brig. Gen. John M. Cushing hails from Rochester, Michigan, and was commissioned as an armor officer upon graduation from the United States Military Academy at West Point.

During his 30 years of service, he has held command and staff assignments with the 3rd Infantry Division at Fort Stewart, Georgia; 1st Cavalry Division at Fort Cavazos, Texas; 194th Armor Brigade at Fort Moore, Georgia; 1st Armored Division at Fort Bliss, Texas; 1st Recruiting Brigade at Fort Meade, Maryland; and the Human Resources Command and United States Recruiting Command, both at Fort Knox, Kentucky.

His awards include the Defense Superior Service Medal, the Legion of Merit (with 2 Bronze Oak Leaf Clusters) and Bronze Star (with 2 Bronze Oak Leaf Clusters). He is authorized to wear the Combat Action Badge, Airborne Badge, Air Assault Badge, Recruiter Badge, and Ranger Tab.





# Q&A





# NAMC Annual Meeting – Training on the DAI OTA



Susan Warshaw Ebner

# Agenda

- DAI Intellectual Property Rights: Patent Reporting and Data Rights Designations
- Antitrust
- False Claims Act
- DAI Disputes
- DAI Confidentiality

# DAI Intellectual Property Rights:

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Patent Reporting and Data Rights  
Designations

# DAI IP Rights

- DAI OTA
  - Imposes certain notice and reporting requirements
  - Sets out certain default positions on IP rights
  - You have the right to negotiate
  - You must assert rights in IP in the PPA (proposal/award/during performance) to preserve your rights
  - Failure to comply with requirements, however, can result in loss or reduction of IP rights under the PPA for PAHs and their subs

# DAI IP Rights – Patent Reporting

- **Required Reporting of Subject Inventions**

- In the event an **invention** is **first conceived or reduced to practice** in performance of the PPA, PAH must comply with PPA patent reporting provisions
- **Requirement to submit DD Form 882, Subject Invention Report(s) – Interim Report** must be submitted within 2 months of inventor first disclosing in writing to person responsible for patent matters, or within 6 months of NAMC, PAH, subcontractor/supplier first becomes award subject invention made, whichever is earlier; **Final Report** (affirmative or negative) must be submitted at close of PPA
- **Title to subject invention in PAH**, USG “shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practices for or on behalf of the United States, the subject invention throughout the world”
- **Title in USG**, PAH (corresponding sub/supplier) “shall retain a nonexclusive royalty-free license throughout the world to subject inventions in which the Government obtains title, unless the NAMC or the PAH ... fails to timely and accurately disclose the subject invention during the Subject Invention Reporting Period. This license ... is transferable outside [the PAH’s] corporate structure only with the written approval of the Government.”
- **Need engage in expeditious practical application** or risk USG will take steps to try to revoke or modify license [Right to dispute under Disputes clause]

# DAI IP Rights DD Form 882

REPORT OF INVENTIONS AND SUBCONTRACTS <i>(Pursuant to "Patent Rights" Contract Clause) (See Instructions on back)</i>						Form Approved OMB No. 9000-0095 Expires Oct 31, 2004		
<p>The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (9000-0095), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p> <p><b>PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THIS ADDRESS. RETURN COMPLETED FORM TO THE CONTRACTING OFFICER.</b></p>								
1.a. NAME OF CONTRACTOR/SUBCONTRACTOR		c. CONTRACT NUMBER		2.a. NAME OF GOVERNMENT PRIME CONTRACTOR		c. CONTRACT NUMBER		
b. ADDRESS (Include ZIP Code)		d. AWARD DATE (YYYYMMDD)		b. ADDRESS (Include ZIP Code)		d. AWARD DATE (YYYYMMDD)		
				3. TYPE OF REPORT (X one)		4. REPORTING PERIOD (YYYYMMDD)		
				a. INTERIM		b. FINAL		
				a. FROM		b. TO		
SECTION I - SUBJECT INVENTIONS								
5. "SUBJECT INVENTIONS" REQUIRED TO BE REPORTED BY CONTRACTOR/SUBCONTRACTOR (If "None," so state)								
a. NAME(S) OF INVENTOR(S) <i>(Last, First, Middle Initial)</i>	b. TITLE OF INVENTION(S)	c. DISCLOSURE NUMBER, PATENT APPLICATION SERIAL NUMBER OR PATENT NUMBER	d. ELECTION TO FILE PATENT APPLICATIONS (X)				e. CONFIRMATORY INSTRUMENT OR ASSIGNMENT FORWARDED TO CONTRACTING OFFICER (X)	
			(1) UNITED STATES		(2) FOREIGN		(a) YES	(b) NO
			(a) YES	(b) NO	(a) YES	(b) NO	(a) YES	(b) NO
f. EMPLOYER OF INVENTOR(S) NOT EMPLOYED BY CONTRACTOR/SUBCONTRACTOR				g. ELECTED FOREIGN COUNTRIES IN WHICH A PATENT APPLICATION WILL BE FILED				
(1) (a) NAME OF INVENTOR (Last, First, Middle Initial)		(2) (a) NAME OF INVENTOR (Last, First, Middle Initial)		(1) TITLE OF INVENTION		(2) FOREIGN COUNTRIES OF PATENT APPLICATION		
(b) NAME OF EMPLOYER		(b) NAME OF EMPLOYER						
(c) ADDRESS OF EMPLOYER (Include ZIP Code)		(c) ADDRESS OF EMPLOYER (Include ZIP Code)						
SECTION II - SUBCONTRACTS (Containing a "Patent Rights" clause)								
6. SUBCONTRACTS AWARDED BY CONTRACTOR/SUBCONTRACTOR (If "None," so state)								
a. NAME OF SUBCONTRACTOR(S)	b. ADDRESS (Include ZIP Code)	c. SUBCONTRACT NUMBER(S)	d. FAR "PATENT RIGHTS"		e. DESCRIPTION OF WORK TO BE PERFORMED UNDER SUBCONTRACT(S)	f. SUBCONTRACT DATES (YYYYMMDD)		
			(1) CLAUSE NUMBER	(2) DATE (YYYYMM)		(1) AWARD	(2) ESTIMATED COMPLETION	
SECTION III - CERTIFICATION								
7. CERTIFICATION OF REPORT BY CONTRACTOR/SUBCONTRACTOR (Not required if: (X as appropriate))				SMALL BUSINESS or		NONPROFIT ORGANIZATION		
I certify that the reporting party has procedures for prompt identification and timely disclosure of "Subject Inventions," that such procedures have been followed and that all "Subject Inventions" have been reported.								
a. NAME OF AUTHORIZED CONTRACTOR/SUBCONTRACTOR OFFICIAL (Last, First, Middle Initial)	b. TITLE			c. SIGNATURE		d. DATE SIGNED		

# DAI IP Rights – Patent Reporting

- **First to File Issue**
  - First Inventor to File (FITF) under America Invents Act, transition from first-to-invent to first-to-file
  - 35 U.S.C. § 102, effective March 2013
- **Publication Notice Requirement**
  - Applies to PAH, any sub or supplier making a subject invention
  - Notice in writing to AO **at least 30 days in advance** of any publication or sale (or offer to sell), or public use of subject invention
  - If publication includes manuscript, that too must be provided at least 30 days in advance for review/approval
- **Must file a provisional or nonprovisional USG patent application on elected subject invention within 1 year of election and, within 10 months of this, must file in additional countries/international patent offices, or must file within 6 months from date Commissioner of Patents grants permission to file foreign patent applications where filing has been prohibited under Secrecy Order**
- **Failure to timely report will be considered a material breach**
- **All Subject Invention Disclosures must be submitted to the AO before PAH can submit its FINAL INVOICE**

# DAI IP Rights – Patent Reporting

- Patent certificate for subject invention must state **“This invention was made with Government support under OTA [insert] awarded by the United States Army Contracting Command – Detroit Arsenal (ACC-DTA). The Government has certain rights in the invention.”**
- PAH must execute all instruments necessary to establish or confirm “Government of the United States, as represented by the Secretary of the Army” as licensee and the license rights it gets throughout the world in any subject invention in which PAH (or sub/supplier) elects to retain ownership
- PAH must have written agreements with employees to disclose each subject invention promptly in writing to PAH designated personnel so PAH can comply with all these requirements
- Government may grant extensions to time for election/patent application “unless there is a reason to believe the extension would prejudice the Government’s interests”



# DAI IP Rights -- Designations

- You must designate and properly mark IP to ensure you are preserving your rights
- In the event you have any pre-existing patents or other IP, and your work under the PPA would follow/build on pre-existing background IP, you must identify the background IP
- The USG gets no **new** license rights in background IP unless you identify and deliver/provide such rights

# DAI IP Rights – Publication

- In addition to the Patent Publication provision, you are required to seek advance review and approval before publication of any technical information
  - PAH must seek review/approval through NAMC (who will submit to AO and AMO) at least 30 calendar days in advance of scheduled release date. Include in notice to NAMC an identification of all other parties, including the Government, as may have an interest in the information/data so NAMC can provide notice. **[NAMC is administrative; PAH needs to make sure it provides notice to others]**
  - Provide 2 copies of proposed publication and Clearance of Technical Information for Public Release Form to NAMC with notice
  - Include **acknowledgement** in publication:

This effort was sponsored by the U.S. Government under Other Transaction number W56HZV-23-9-D001 with The National Advanced Mobility Consortium, Inc. The U.S. Government is authorized to reproduce and distribute reprints for Governmental purposes notwithstanding any copyright notation herein.
  - Include **disclaimer** in publication:

The views and conclusions contained herein are those of the authors and should not be interpreted as necessarily representing the official policies or endorsements, either expressed or implied, of the U.S. Government, the National Advanced Mobility Consortium, Inc., or any of its members.
  - Government must notify NAMC of any objection to disclosure within 30 calendar day period.

# DAI IP Rights – Data Rights

- **DAI OTA App A, Project Articles, Art. IX Data Rights and Copyrights**
- “Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.”
- DAI OTA provides for **Default Rights**
  - Unlimited Rights
  - Government Purpose License Rights (GPLR/GPR)
  - Small Business Innovation Research (SBIR) rights or Small Business Technology Transfer Rights (STTR).
- **DAI OTA provides for opportunity for you to specifically negotiate alternate rights (SNLR)**

# DAI IP Rights – Default Data Rights

- **Unless otherwise mutually agreed upon in PPA in writing via Table 1. Assertions of Restriction**
  - The Government shall have Unlimited Rights in any technical data or computer software delivered under the PPA.
  - The Government anticipates receiving an Unlimited Rights license to technical data and computer software developed and delivered without any data rights markings, **unless corrected in writing within thirty (30) days after delivery** in accordance with the level of rights stated in the PPA or PAH's or subcontractor's Assertions of Restriction.
- **Unlimited Rights in Technical Data.** Unless otherwise negotiated and marked with a restrictive legend, the Government shall receive Unlimited Rights in technical data that are—
  - (i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
  - (ii) Studies, analyses, test data, or similar data produced for a PPA, when the study, analysis, test, or similar work was specified as an element of performance;
  - (iii) Created exclusively with Government funds in the performance of a contract or agreement that does not require the development, manufacture, construction, or production of items, components, or processes;
  - (iv) Form, Fit, and Function data;
  - (v) OMIT data;
  - (vi) Corrections or changes to technical data furnished by the Government to the PAH or its subcontractor;
  - (vii) Otherwise publicly available or have been released or disclosed by the PAH or its subcontractor without restrictions on further use, release or disclosure, ...;
  - (viii) Data in which the Government has obtained Unlimited Rights under another Government contract or agreement or as a result of negotiations;
  - (ix) Data furnished to the Government, under a PPA or any other Government contract or agreement or subcontract thereunder, with—(A) GPLR, SBIR, STTR, or Specifically Negotiated license rights and the restrictive condition(s) has/have expired; or (B) GPLR and the exclusive right to use for commercial purposes has expired

# DAI IP Rights – Default Data Rights

- **Unlimited Rights in Computer Software.** Unless otherwise negotiated and marked with a restrictive legend, the Government shall receive Unlimited Rights in—
  - (i) Computer software developed exclusively with Government funds;
  - (ii) Corrections or changes to computer software furnished by the Government to the PAH or its subcontractor;
  - (iii) Computer software that is otherwise publicly available or has been released or disclosed by the PAH or its subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;
  - (iv) Computer software obtained with Unlimited Rights under another Government contract or OTA or as a result of negotiations; or
  - (v) Computer software furnished to the Government, under this or any other Government contract or OTA or under any corresponding subcontract (to such contract or OTA), wherein the computer software was delivered with—(A) Government purpose license rights, small business innovation research (SBIR) or small business technology transfer (STTR) license rights, or specifically negotiated license rights and the restrictive conditions have expired; or (B) Government purpose rights and the PAH's exclusive right to use such computer software for commercial purposes has expired.

# DAI IP Rights – Default Data Rights

- “Unlimited Rights” means the right to use, modify, reproduce, perform, display, release, or disclose technical data or computer software or computer software documentation in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.
- Government Purpose License Rights (GPLR/GPR)
  - **For Technical Data** - “Government Purpose Rights” (GPR) ... refers to a right or license to— (i) use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and to (ii) release or disclose 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 Government purposes. This is a middle path unique to defense contracts or agreements that allows the PAH or its subcontractor—unless otherwise agreed—to convey to the Government technical data with GPR while the PAH still retains the exclusive right to use the technical data in the commercial market. Unless otherwise agreed, the data protection period for technical data delivered to the Government with GPR shall be in accordance with Article IX.B(2)
  - **For Computer Software** - “Government Purpose Rights” (GPR) ... means the right to—(i) use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and (ii) release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States Government purposes. This is a middle path unique to defense contracts or agreements that allows the PAH or its subcontractor—unless otherwise agreed—to convey to the Government computer software with GPR while the PAH still retains the exclusive right to use the computer software in the commercial market. Unless otherwise agreed, the data protection period for computer software delivered with GPR shall be in accordance with Article IX.B(2).
  - **“Government Purpose”** (or “governmental purpose”) means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data, computer software, or computer software documentation for commercial purposes or authorize others to do so.
  - The data protection period for deliverables with GPR shall continue **five years** from execution of the PPA. **Following the data protection period, the Government shall have Unlimited Rights in the deliverables.**

# DAI IP Rights – Potential Data Rights

- **If You Would Seek Other Types of Rights You Must Assert, Negotiate, and Memorialize Government Approval In Writing**

- **Limited Rights**

With respect to technical data, “Limited Rights” means the right to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party. However, the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if it is necessary for emergency repair and overhaul, or it is a release or disclosure to a covered Government support contractor in performance of its covered Government support contract (management and administrative support). The recipient of the technical data shall be subject to prohibition on the further reproduction, release, disclosure, or use of the technical data, and the PAH or its subcontractor asserting the restriction shall be notified of such reproduction, release, disclosure, or use. The PAH (or the party asserting restrictions as identified in the limited rights legend) may require each such covered Government support contractor to enter into a non-disclosure agreement directly with the PAH (or the party asserting restrictions) regarding the covered Government support contractor’s use of such data, or alternatively, that the PAH (or party asserting restrictions) may waive in writing the requirement for a non-disclosure agreement.

- **Restricted Rights**

With respect to only noncommercial computer software, “Restricted Rights” is defined at paragraph (a)(15) of DFARS 252.227-7014 (MAR 2023).

- **Specifically Negotiated License Rights (SNLR)**

SNLR definitions are set forth in the current versions of DFARS 252.227-7013, 252.227-7014, and 252.227-7018. Any rights so negotiated shall be identified in a license agreement written into or made part of the PPA.

Where the data to be developed under the PPA will not be segregable from pre-existing data that was not developed under the PPA, then the PAH or its subcontractor may negotiate any level of rights with the Government.

# DAI IP Rights – Potential Data Rights

- **“Small Business Innovation Research (SBIR)”** has the definition set forth in 10 U.S.C. § 638. “SBIR data rights” refer to data rights acquired under a FAR-based SBIR contract; SBIR data rights are applicable to both technical data and computer software. The PAH or its subcontractor, as applicable, is entitled to the SBIR data protection for all technical data and computer software it developed during performance of the SBIR contract, regardless of the funding source. SBIR Data Rights are generally equivalent to Limited Rights for technical data and Restricted Rights for computer software (and no less than Limited Rights or Restricted Rights). SBIR Data Rights shall have a SBIR data protection period of twenty (20) years for any SBIR contract awarded on or after 21 July 2023, however, a later SBIR Data Rights contract award (e.g., a Phase II or Phase III award) for the same subject matter of said SBIR contract shall not tack on an additional term to the SBIR data protection period. Following the conclusion of the applicable SBIR data protection period, the Government shall have Unlimited Rights in the SBIR Data.
- **“Small Business Technology Transfer Rights (STTR)”** refer to rights acquired in accordance with the Small Business Technology Transfer Program as defined in 10 U.S.C. § 638. For PPAs under the DAI OTA, like SBIR data rights, STTR rights are also generally equivalent to Limited and Restricted Rights, and both the data protection period and the manner of calculation based on the effective date shall be the same as is identified above with respect to SBIR data rights.
- **Commercial License Rights.** Where PAH or its subcontractor intends to deliver technical data or computer software with a commercial license, such commercial license shall be asserted and the commercial license provided for review. Commercial licenses offered to the Government post-award may be unilaterally rejected by the AO. (a) When commercial licenses are approved by the AO, the Government rights shall be: (i) for commercial technical data –the equivalent of at least Limited Rights in all technical data delivered with commercial rights under the PPA other than FFF data and OMIT data; and the equivalent of Unlimited Rights in form, fit, and function data and OMIT data; unless otherwise negotiated. (ii) for commercial computer software – the same rights customarily offered to the public, unless otherwise negotiated. ...
- **Prior government rights.** Technical data and Computer Software that will be delivered, furnished, or otherwise provided to the Government under the PPA, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—(a) The parties have agreed otherwise; or (b) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply



# DAI IP Rights – Data Rights Assertions

<b>Technical Data or Computer Software to be Furnished with Restrictions</b>	<b>Basis for Assertion</b>	<b>Asserted Rights Category</b>	<b>Name of Organization Asserting Restrictions</b>
<i>&lt;Party asserting restrictions to fill-in &gt;</i>	<i>&lt; Party asserting restrictions to fill-in &gt;</i>	<i>&lt; Party asserting restrictions to fill-in &gt;</i>	<i>&lt; Party asserting restrictions to fill-in &gt;</i>
<i>&lt;Insert as many rows as necessary &gt;</i>			

Table I. Assertions of Restriction

# DAI IP Rights - Data Rights Assertions

Table II. Commercial Products or Commercial Services

<b>Source of the Commercial License (Owner and/or Licensor)</b>	<b>Commercial License Information</b>	<b>The Gov must obtain a copy of this code in order to execute, compile, build, link, etc. a deliverable under this PPA (Yes / No)</b>	<b>Name of Organization Asserting/Using the Commercial License</b>
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# DAI IP Rights – Data Rights Assertions

<b>Relevant Background Patent Numbers, Relevant Patent Licenses, Identification of Other Relevant Background IP</b>	<b>Confirmatory Instruments, Licenses, Description of Other Relevant Background IP</b>
<p><i>&lt; The PAH or its subcontractor whose patent ownership, patent license rights, or other relevant background IP rights affect the Government's rights in a deliverable under this PPA. &gt;</i></p>	<p><i>&lt; As applicable, the PAH or its subcontractor should identify:</i></p> <p style="padding-left: 40px;"><i>For background patents - the name of the assignee,</i></p> <p style="padding-left: 40px;"><i>For patent licenses – the name of the licensee and assignee and identifier of the license,</i></p> <p style="padding-left: 40px;"><i>For confirmatory instruments – a patent # and associated contract identifier, and</i></p>
	<p style="padding-left: 40px;"><i>For other relevant background IP – a short statement identifying the scope of the 'other relevant background IP' (e.g., an IRAD project #) &gt;</i></p>

Table III. Background Patents, Licenses, and Other Relevant Background IP

# DAI IP Rights – Copyrights

- PAH or subcontractor may reserve the right to copyright original works developed under the PPA
- PAH/sub must grant the Government “a royalty-free, world-wide, nonexclusive, irrevocable, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Governmental purposes, ... and to authorize others to do so, IAW the license rights granted to the Government under the PPA [and in Sec. IX. Patent and Data Rights]”

# DAI IP Rights – Markings

- You must not only designate, but also mark all IP you will provide with restrictions on use, release, disclosure, e.g.

<p><b>LIMITED RIGHTS</b>          Agreement No.: <u>W56HZV-23-9-D001</u>          Prototype Project Agreement No. (if applicable): _____          Name of Party Asserting Restrictions _____          Address of Party _____</p>	<p><b>RESTRICTED RIGHTS</b>          Agreement No.: <u>W56HZV-23-9-D001</u>          Prototype Project Agreement No. (if applicable): _____          Name of Party Asserting Restrictions _____          Address of Party _____</p> <p>The Government's rights to use, modify, reproduce, release, perform, display, or disclose this computer software are restricted by Appendix A, Article IX of Agreement No. W56HZV-23-9-D001 and the above identified Prototype Project Agreement No. (if applicable). Any reproduction of computer software or portions thereof marked with this legend must also reproduce these data rights markings. Any person, other than the Government, who has been provided access to such software must promptly notify the Government of any such copying, reproduction, or disclosure.</p>	<p><b>COMMERCIAL RIGHTS IN COMPUTER SOFTWARE</b>          Agreement No.: <u>W56HZV-23-9-D001</u>          Project Agreement No. (if applicable): _____          Name of Party Asserting Restrictions _____          Address of Party _____</p>
<p>The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data are restricted by Appendix A, Article IX of Agreement No. W56HZV-23-9-D001 and the above identified Prototype Project Agreement No. (if applicable). Any reproduction of technical data or portions thereof marked with this legend must also reproduce these data rights markings. Any person, other than the Government, who has been provided access to such data must promptly notify the Government of any such copying, reproduction, or disclosure.</p>	<p><b>SPECIAL LICENSE RIGHTS IN TECHNICAL DATA</b>          Agreement No.: <u>W56HZV-23-9-D001</u>          Prototype Project Agreement No. (if applicable): _____</p> <p>The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Appendix A, Article IX of Agreement No. W56HZV-23-9-D001 and the above identified Prototype Project Agreement No. (if applicable). Any reproduction of technical data or portions thereof marked with this legend must also reproduce the data rights markings.</p>	<p><b>Commercial License Holder</b> _____  <b>Expiration Date of Commercial License</b> _____</p> <p><b>If Open Source Software (OSS), also include:</b>          Downloaded from URL: _____          Downloaded on (date): _____          The OSS (HAS BEEN or HAS NOT BEEN) modified since being downloaded: _____</p> <p>A copy of the Commercial License is attached with this delivery of technical data or computer software.</p> <p>The Government's rights to use, modify, reproduce, release, perform, display, or disclose this [technical data or computer software] is subject to the terms and conditions of the above-cited license under Agreement No. W56HZV-23-9-D001 and the above identified Prototype Project Agreement No. (if applicable). Any reproduction of the technical data, computer software, or portions thereof marked with this legend must also reproduce these data rights markings.</p>

# Break

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Start again in 10 minutes

# NAMC I February General Membership Meeting Agenda



**1:00 PM: Welcome**

**1:05 PM: NAMC Member Overview**

**1:10 PM: "How to Participate"**

*ft. Alissa Roath, CEO at NAMC*

**1:15 PM: Government Speaker**

*"Army Modernization, DEVCOM Priorities, Engagement Opportunities with Industry, and Role of Small Business"*  
*ft. Brigadier General John Cushing, Commanding General U.S. Army DEVCOM*

**1:45 PM: Q&A**

**2:00 PM: DAI Training**

*"Intellectual Property Rights: Patent Reporting and Data Rights Designations" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**2:30 PM: Break**

**2:40 PM: DAI Training**

*"Antitrust" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**2:50 PM: DAI Training**

*"False Claims Act" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**3:00 PM: DAI Training**

*"Disputes" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**3:15 PM: DAI Training**

*"Confidentiality: FOIA & NDAs" ft. Susan Warshaw Ebner, Partner at Stinson LLP*

**3:30 PM: Solicitation & Contracting Changes**

*"From GVS to DAI" ft. Deena McIntosh, Contract Administrator at NAMC and Katie Miler, OTA Execution Lead at GVSC AMO*

**4:00-6:00 PM: Networking Reception**

# Antitrust

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# Antitrust

- FAR 9.602
  - “(a) Contract team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to- ... (1) Complement each other’s unique capabilities; and (2) Offer the Government the best combination of performance, cost, and delivery for the system or product being acquired. (b) Contractor team arrangements may be particularly appropriate in complex research and development acquisitions, but may be used in appropriate acquisitions, including production.”
- FAR 9.604
  - “Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes ...”

# Antitrust

- Antitrust laws prohibit business practices that harm competition
- Sherman Act, Section 1 provides that the following practices are unlawful under Antitrust laws:
  - Cartels –These are criminal agreements among competitors to fix prices, restrict output, allocate markets, or rig bids.
    - Written or oral, express or implied
    - Violation is criminal and risks exposing NAMC/company violator to fines up to \$100 million or twice the gain or loss from the violation if more
    - Individual participating in cartel faces fines up to \$1 million and up to 10 years in prison
    - Risk of class action, legal costs, disruption of business, harm to reputation

# Antitrust

- Anticompetitive Agreements – Agreements between two or more competitors to reduce or eliminate, or harm competition. May include express or implicit agreements on
  - Prices or output
  - Employee Wages or Benefits
  - No-poach or non-solicitation of employees
  - Dividing geographic or product markets
  - Bids, including decisions on bid prices, bid allocation (whether or not to bid)
  - Boycotting of supplier, customer, or competitor

# Antitrust

- **Sharing Competitively Sensitive Information.**
  - Sharing such information between competitors or facilitating agreements among competitors may violate the antitrust laws.
  - Exchange or sharing of such information between competitors can imply an agreement, whether directly or through a third party, raising the risk of an antitrust violation.
  - NAMC will in no way function as an intermediary or conduit for customers to communicate or share competitively sensitive information with competitors.

# Antitrust

- NAMC is committed to compliance with Antitrust laws
- NAMC, previously known as The Robotics Technology Consortium, is registered with the DOJ and FTC under the National Collaboration and Research Act (NCRA)
  - NAMC reports annually on new, continuing, and departing members of the Consortium
  - Implemented a policy to ensure compliance with Antitrust laws

# NAMC Antitrust Policy

- At NAMC Meetings involving competitors to adhere to the following rules:
  - Written agenda circulated before meeting
  - Record the names and affiliations of all attendees
  - Ensure meeting minutes kept and are available to participants as applicable for NAMC events
  - Discussion to conform to agenda
  - No side meetings or conversations among competitors
  - Competitors are not to discuss competitively sensitive topics beyond scope of the particular collaboration pursued in support of the NAMC's legitimate mission
  - If discussion of sensitive topic not on agenda, end the discussion immediately. If the discussion does not end, engage in a noisy withdrawal with minutes reflecting your departure
  - Review minutes of meeting for accuracy and completeness
  - If NAMC proposes a course of action involving collaboration of competitors, review the proposed action with legal before participating or expressing approval
  - Avoid careless language that might suggest even the appearance of an illegal agreement
- **Report any violation of law or questionable conduct that might indicate a violation to NAMC, via \_\_\_\_\_**
- **NAMC does not permit any retaliation of any kind for any report made in good faith of an actual or potential instance of illegal or unethical conduct**

# False Claims Act

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# Polling Question

How much money was collected by the Federal Government in 2022 for FCA cases?

- A. \$2.2 Billion
- B. \$1 Million
- C. \$50 Billion
- D. \$377,453,150



# False Claims Act

- False Claims Act (FCA): the “Lincoln Law”
  - 31 U.S.C. § § 3729 - 3733
  - USG’s primary statute for combatting fraud
  - Potential Theories
    - Factual Falsity
    - Legal Falsity
    - Fraudulent Inducement

# False Claims Act

- Was the Falsity made with Knowledge/Scienter?

(1) the terms “**knowing**” and “**knowingly**”—

(A) means that a person, with respect to information—

(i) has **actual knowledge** of the information;

(ii) acts in **deliberate ignorance** of the truth or falsity of the information; or

(iii) acts in **reckless disregard** of the truth or falsity of the information; and

(B) requires *no proof of specific intent to defraud*

# False Claims Act

- Was there Knowledge/Scienter?
  - Fraud requires pleading with specificity; intent does not.
  - Does it require “objective falsity”? Is it enough if the Defendant believes it to be false?
    - *Safeco Insurance Co. of America v. Burr* (S. Ct. 2007)
    - *U.S. ex rel. Schutte v. Supervalu Inc.* (S. Ct 2023)

# False Claims Act

- Was the Falsity material?
  - The term “material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
  - “A misrepresentation about compliance with a statutory, regulatory, or contractual requirement must be material to the Government’s payment decision in order to be actionable under the False Claims Act.” *Universal Health Servs., Inc. v. United States* (“Escobar”), 136 S. Ct. 1989 (2016)
  - Certifications
    - Certifications
    - Implied Certifications
    - Half-Truths

# The False Claims Act

- Potential FCA Liability and Damages
  - As of 2023: Civil penalties can range from \$13,508 to \$27,018 per claim
  - Treble damages
  - Interest can be properly recovered as “damage”
  - Statutory attorney’s fees and costs
- Risk of Debarment/Suspension, Proposed Debarment/Suspension
- Risk of Lengthy Investigations and Litigation
- Risk of Follow-on Costs (e.g., Corporate Integrity Agreement, Monitor, etc.)

# False Claims Act

- Department of Justice
- Qui Tam Action (Whistleblower Suit)
  - Relator (Individual or Company) may bring as “private attorney general”
  - DOJ may decline/intervene/prosecute/settle/move to dismiss
  - Right to recover between 15% to 30%
- Also Criminal Version of FCA

# False Claims Act

- DOJ Procurement Integrity Task Force (Contracting)
- DOJ Cyber Fraud Initiative
- DOJ Procurement Collusion Strike Force (Antitrust)
- FCA Investigations
- Settlements
- Cases

# Disputes

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# Disputes

- DAI OTA Disputes Clause
- Source Selection
- Extra OTA Disputes (subcontracting)
- Protests - Myths vs. Actuality

# DAI OTA Disputes Clause

- Art. V ; Prototype Project Agreement Disputes
  - Exclusive procedure for dispute resolution in connection with disagreement, claim, or dispute concerning questions of fact or law arising from or in connection with PPA
  - Requires notice of issue in dispute (NID) within 30 calendar days of actual/implied/imputed disagreement, claim or dispute
    - Include relevant facts, applicable PPA requirements/Articles, remedy sought, legal basis and rationale for remedy sought
  - Government and PAH seek resolve dispute informally within 30 calendar days
  - If no mutual resolution, within 40 calendar days of NID, PAH and Government to prepare summary of dispute and submit to ACC-DTA Director, who has 30 calendar days to decide in writing
  - Final decision of ACC-DTA Director unless PAH or Government appeal by Notice of Request for Further Review to ACC-DTA Executive Director and Executive Director of NAMC days for a decision within 60 calendar days
  - In the event of decision, or in absence of decision, PAH right to pursue right or remedy provided by law, including PL 85-804 extraordinary relief, OR Parties can agree to binding ADR

# Source Selection/Protest

- Possible basis to protest non selection?
  - Has there been a waiver of sovereign immunity?
  - Could it fall within scope of Article V. PPA Disputes?
  - OTA Guide encourages resolution of disputes at lowest possible level and provides that there could be an agency process as well
  - At the RPP solicitation level parties are not bound by terms and conditions in PPA yet
    - Has Agency set up a process and is the process identified in the solicitation?
- Can you bring protest to GAO or US Court of Federal Claims or District Court?

# Subcontracting Disputes

- Disputes between Prime and Subcontractor
  - Jurisdiction to hear “commercial” disputes among parties
    - Check the Subcontract
    - Do you meet Diversity [of States for Parties] Jurisdiction requirements for Federal Court
  - Jurisdiction to hear “claims” ultimately against USG arising under the OTA PPA
    - Can you go through Prime, or Stand in Shoes of Prime?
    - Check the OTA provisions
    - Has there been a waiver of sovereign immunity?
    - Is there an independent statutory basis?

**Confidentiality**

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**Freedom of  
Information Act and  
NonDisclosure  
Agreements**

# Confidentiality

- **Confidential Information** means “trade secret or nonpublic information, whether or not the information has independent economic value, actual or potential”; it does not include:
  - Information provided without restrictions
  - Information not identified with a suitable notice of legend
  - Information at the time of the disclosure is already in the lawful possession of the Receiving Party absent such restrictive terms as demonstrated by prior written records
  - Information is or later becomes part of the public domain through no fault of the Receiving Party
  - Information is received from a third party that has obtained the information without any obligation of confidentiality to the Disclosing Party
  - Information developed independently by Receiving Party without use of the Confidential information as evidenced by written records
  - Information required by law, regulation, or a court of competent jurisdiction to be disclosed in camera only, provided Receiving Party has given Disclosing Party prompt written notice so that Disclosing Party can seek protective order or otherwise prevent further disclosure
- You must properly designate and protect information you seek to treat as Confidential Information
- Disclosure of information without proper protections and designation, can result in the USG taking unlimited rights in such information
- Confidential information, properly designated under the PPA, shall remain the property of the Disclosing Party and the Receiving Party shall not have the right to disclose, divulge, or otherwise communicate such Confidential Information to unauthorized third parties

DAI OTA, Appendix A: Project Articles, Article VI

# Confidentiality

- To protect Confidential Information you must designate it with an approved protective legend, e.g.

## **TRADE SECRET**

**CONTROLLED BY:** [insert Government Entity or Contractor entity], [insert date]

**WARNING:** *If you are not the intended recipient of this trade secret information, any disclosure, copying, or distribution is strictly prohibited. Please promptly contact the controlling entity listed above; instructions will be provided regarding returning, destroying, or otherwise dispositioning this information.*

## **CONFIDENTIAL INFORMATION**

**CONTROLLED BY:** [insert Government Entity or Contractor entity], [insert date]

**WARNING:** *If you are not the intended recipient of this Confidential Information, any disclosure, copying, or distribution is strictly prohibited. Please promptly contact the controlling entity listed above; instructions will be provided regarding returning, destroying, or otherwise dispositioning this Information.*

- Each page containing information to be protected must contain a proper designation label.
- In the event a Disclosing Party makes an oral, visual, or unintentional disclosure of Confidential Information to Receiving Party, Disclosing Party has 30 calendar days to cure this by delivering notice in writing to Receiving Party that the information disclosed is Confidential Information and subject to protection
- Any disclosure made by Receiving Party before Disclosing Party makes such designation will not be considered a breach of the PPA



# Confidentiality

- Where properly designated and marked Confidential Information is exchanged between the USG and NAMC/PAH as CFI or GFI, it is subject to protection from unauthorized use, release or disclosure
  - Where not “embodied as part of a deliverable itself”, you may seek return or destruction of your information
  - Receiving Party’s obligation to protect this information under this provision is for 5 years after expiration/termination of the period of performance, **unless another period is negotiated in the PPA**
  - **Classified and export controlled information is still subject to USG laws, rules and regulations governing their handling**
- You must flow down provisions on protection and handling of Confidential Information to your personnel, entities, agents, subs at all levels

# Freedom of Information Act (FOIA)

- 5 U.S.C. § 552 provides a formal process by which a member of the public may seek the release of Government records
- Protection from release if Government record is covered by an Exemption:
  - (b)(1) Classified national defense or foreign policy information
  - (b)(2) Internal agency personnel rules and practices
  - (b)(3) Statutory exemption
  - **(b)(4) “Trade secrets and commercial or financial information obtained from a person and privileged or confidential”**
  - (b)(5) Inter-agency or intra-agency memoranda or letters subject to the deliberative process privilege
  - (b)(6) Personnel or medical files and similar files, disclosure of which would be an unwarranted invasion of personal privacy
  - (b)(7) Law enforcement records or release would interfere with law enforcement proceedings, right to a fair trial or impartial adjudication, constitute an unwarranted invasion of personal privacy, or risk disclose the identity of a confidential informant, reveal law enforcement techniques or reasonably be expected to endanger the life or safety of any individual
  - (b)(8) Agency reports or information related to financial institution examination, operation or condition, or regulation of such institutions
  - (b)(9) Geological and geophysical information and data, including maps, concerning wells

# FOIA

- DAI OTA provides that “**Upon negotiation for award of a PPA**, the PAH may submit a FOIA objection that will be incorporated into the PPA as an attachment” to seek to protect its Confidential Information
  - **PAH should prepare and provide NAMC** with a signed, PDF letter on its letterhead before closing date of the solicitation
  - Letter should contain include your organization’s name and address, and contact information
  - Letter should identify the information’s Confidential status and the basis for seeking an exemption from release
- NAMC has a sample template available
- Where FOIA request comes in
  - USG will review a FOIA request to determine whether to release the records requested or if an exemption applies
  - Process to review prior to release, includes notice to party whose information it is and that party’s right to object based on applicable exemption
  - In the event of a disagreement as to disposition/release, decision can be appealed in accordance with 5 U.S.C. § 552 and DoD FOIA regulations

# Nondisclosure Agreements (NDAs)

- NDAs between two or more parties are a contract that provides the terms for protection and sharing of sensitive information
- Essential terms
  - Define Information to be protected
  - Establish term of protection and conditions for use of protected Information
  - Identify applicable law, jurisdiction, any presumptions of harm applicable to disputes between parties regarding violation of NDA

**Questions?**

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Susan Warshaw Ebner

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**DISCLAIMER:** This presentation is designed to give general information only. It is not intended to be a comprehensive summary of the law or to treat exhaustively the subjects covered. This information does not constitute legal advice or opinion. Legal advice or opinions are provided by Stinson LLP only upon engagement with respect to specific factual situations.

# DAI OTA vs. GVS OTA: Solicitation Process and Contracting Changes

**Katie Miler**  
**GVSC AMO**  
**OTA Execution Lead**

**Deena McIntosh**  
**NAMC**  
**Contracts Administrator**



# DAI OTA vs. GVS OTA – Standard Submission Requirements



Document*	GVS OTA	DAI OTA
Technical Volume	X	X
Cost Volume	X	X
Statement of Work (SOW)	X	
Prototype Project Agreement (PPA)		X
Organizational Conflict of Interest (OCI) Form	X	
Warranties and Representations Form	X	
Section 889 Certification Form	X	
Representations and Certifications Form		X
Quad Chart	X	X

\*Reflects standard RPP submission requirements.

## **Additional documents that may be required:**

- Technical Substantiation
- Non-technical Volume
- Risk Matrix Form
- Data Sheets
- Others as required...

Always review the Proposal Content, Preparation, and Submission Requirements Table in the RPP as requirements may vary.



- Technical Volume required for almost all RPP solicitations
- Offerors should be clear and concise in showing how the proposal objectives will be met
- Each RPP has different page and section requirements that need to be followed



## Cost Volume is comprised of the following:

- Milestone Pricing Template
  - Proposed price associated with each milestone
  - If more than 25 milestones are proposed, multiple Milestone Pricing Templates should be used
    - A Milestone Pricing Summary file will also be utilized in this circumstance
- Cost Narrative
  - Must include all supporting documentation, justification, and supplemental information for all proposed costs. This includes travel and material quotes, salary/payroll support, fringe and OHD rate determination support, etc.

**Any subcontractor over \$75k must provide their own Milestone Pricing Template and Cost Narrative**, which can be submitted directly to NAMC. The prime contractor must include a statement that they determined the subcontractor(s) costs to be fair and reasonable.

# Prototype Project Agreement (PPA)



One of the major differences from the DAI OTA vs. the GVS OTA solicitation process is **the change from a Statement of Work to a Prototype Project Agreement (PPA).**

## A few of the main sections of the PPA are:

- Project Requirements
- Milestone Pricing Schedule
- IP/Data Rights Assertions
- Statement of Work
- Deliverables

Offerors must submit a tracked changes copy of the PPA with edits redlined.

Any suggested changes will be negotiated if selected for award.

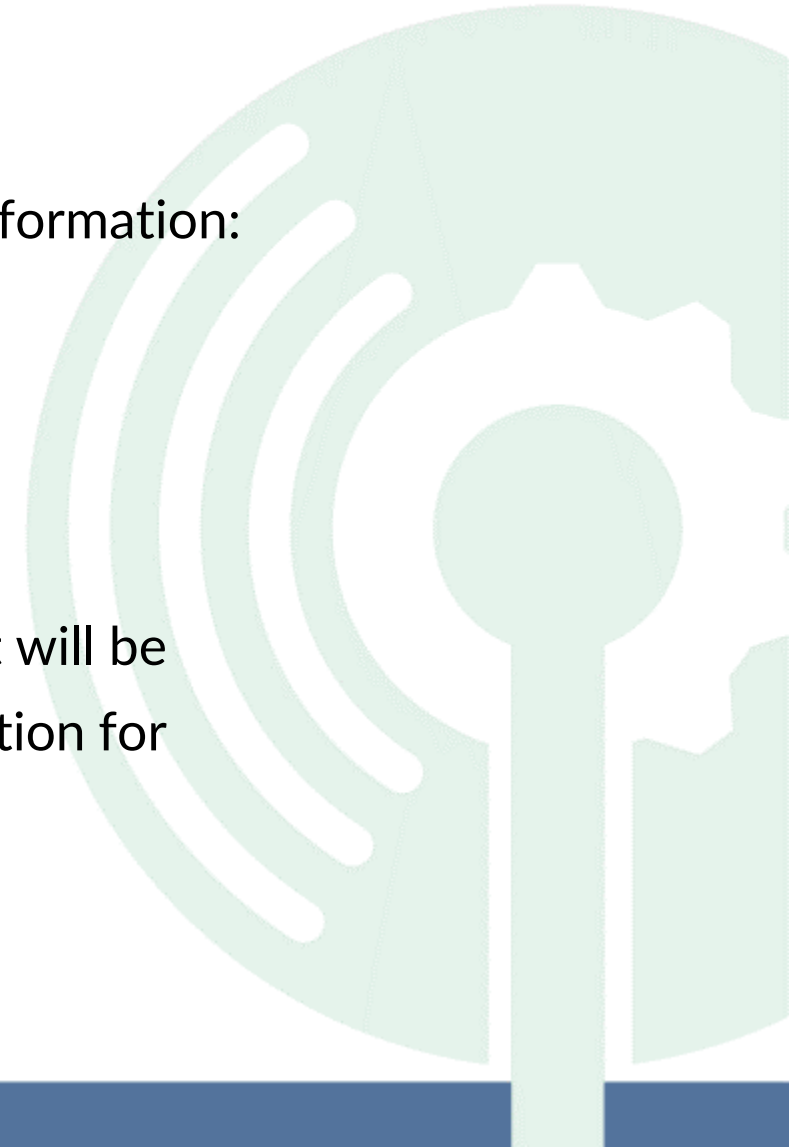
# Representations and Certifications



Document	GVS OTA	DAI OTA
Organizational Conflict of Interest (OCI) Form	X	
Warranties and Representations Form	X	
Section 889 Certification Form	X	
Representations and Certifications Form		X

The DAI OTA has issued a new Representations and Certifications Form that combines the three forms that were submitted separately on the GVS OTA.

- Quad charts are required for the majority of NAMC submissions.
- Template will be provided if required, and contains the following information:
  - Abstract
  - Deliverables
  - Project Milestone/Schedule
  - Pricing
- If the government places the proposal in the basket, the quad chart will be made available along with the submission for review and consideration for future funding.



# New DAI BIDS Submission Site



- NAMC has rolled out a new BAA Information Delivery System (BIDS) website for DAI OTA solicitation submissions
- This new site looks and functions just like the prior BIDS site
- Main difference is that unlike the prior BIDS site, access will be limited to one unique login for each member organization requesting access.
  - A unique login, which is a **shared company account**, will need to be created to ensure you have a single point for submission and archiving. Accounts from the previous BIDS site **do not** transfer to the new site, so a new shared company account will need to be created on the DAI BIDS site. Please make sure to do this in advance of solicitation deadlines
- If a submission is due via BIDS, it will be clearly stated in the solicitation. Always start your submissions early as no late submissions will be accepted.



The most significant difference from the DAI OTA vs. the GVS OTA contract process is **the introduction of the Prototype Project Agreement (PPA)**

- There will no longer be “Task Assignments” with attachments
  - The PPA will have a cover page for signatures that resembles the TA
- There is no longer a “blanket” Project Agreement

1. Have there been changes in the file size requirements accepted for solicitation submissions?
2. How do I submit solicitation documents over 6MB?
3. How do we know the exact dates when questions are due?
4. Can my organization submit more than one solicitation response?
5. What if I need to send something to NAMC that is marked CUI?



# Other Questions?



NAMC will soon be releasing the DAI OTA guide, so keep an eye out! This guide provides reference information about the DAI OTA team, NAMC membership, OT background, Annual Plan, Solicitations, Source Selection, the Electronic Basket, and Project Reporting and Invoicing.

## Contact Us:

- Lindsay Bayles – [lindsayb@namconsortium.org](mailto:lindsayb@namconsortium.org)
- Deena McIntosh – [deenam@namconsortium.org](mailto:deenam@namconsortium.org)
- Questions - [questions@namconsortium.org](mailto:questions@namconsortium.org)



# Conclusion



Questions or comments?

Thank you for attending!

Networking Reception 4-6

