



## **Purchase Order Terms and Conditions**

1. **Acceptance.** These Purchase Order terms and conditions (collectively, “Terms”) form a part of, and are incorporated into, this agreement (“Agreement”) between Black Diamond Advanced Technology, LLC. (“Buyer”) and the seller, lessor, or licensor (collectively, “Seller”) for the sale, lease, license or provision of Seller’s tangible and intangible products, services, samples, or other items (collectively, “Items”) subject to this Agreement. Such Terms supersede any contrary provisions presented by Seller, unless expressly agreed to in writing by Buyer. Seller’s commencement of performance hereunder shall constitute Seller’s acceptance of all of the Terms of this Agreement. Any specifications, drawings, instructions, designs, data, and schedules furnished to Seller in connection with this Agreement are incorporated herein by reference.
2. Buyer shall not be billed at prices higher than those stated in this Agreement unless authorized by a change order issued and signed by an authorized representative of Buyer. Seller represents that the prices for the Items are the lowest prices charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in this Agreement, and that such prices comply with applicable government regulations in effect at the time of quotation, sale, or delivery. Except as otherwise expressly provided in this Agreement, the prices for the Items include all applicable federal, state, and local taxes then in effect.
3. **Delivery.** Buyer’s production, marketing, and delivery schedules (collectively, “Schedules”) are established in reliance upon the dates for performance specified in this Agreement. Time is therefore of the essence. Early shipments will not be accepted without prior authorization from BDAT. If prior authorization is not received, shipments may be returned at supplier’s expense. Title to, and risk of loss for, the Items shall pass to Buyer upon delivery of the Items to Buyer at the destination point specified by Buyer, and then only upon the acceptance of Buyer. If any Items are found at any time not to conform to Buyer’s specifications, or to any other requirements of this Agreement, Buyer shall have the right to return such Items to Seller at Seller’s expense and, as to any Items not yet shipped or any services not yet rendered, to purchase substitute items elsewhere and charge Seller for any loss incurred. Buyer shall not be responsible for any commitments made by Seller in advance of any commitment required of Seller to meet the Schedules. Delivery schedule financial penalties may be up to 1% of the contract value per business day up to 10% of the total contract value. The shipment of late deliveries will be at the supplier’s expense; depending on delinquency, Next Day Air shipment may be required.
4. **Inspection.** All Items may be inspected and tested by Buyer, its customers, higher tier contractors, and the U.S. Government; at all reasonable times and places. Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests. Payment for Items prior to inspection shall not constitute an acceptance thereof, and if Items are rejected after inspection, any such prepayment will be promptly refunded. All of Seller’s records relating to the Items shall be available to Buyer during the performance of this Agreement, and for such longer periods as may be specified by Buyer from time to time.
5. **Warranties.** In addition to any other express or implied warranties, Seller warrants that all Items (i) are delivered with good title, free of any liens, encumbrances or other obligations; (ii) are free from defects in workmanship, material, and design; (iii) are suitable for the purpose intended; and (iv) are in conformity



with all other requirements of this Agreement. In addition to any other rights Buyer may have, if any Items delivered pursuant to this Agreement are found to be not as warranted, Buyer may return any such Items to Seller, at Seller's expense, for correction, replacement, or credit, as Buyer may direct. Any Items repaired or replaced shall be subject to the warranty provisions herein to the same extent as Items initially furnished.

6. **Payment.** After each shipment made under this Agreement, Seller shall send a separate invoice, in duplicate, which shall include Item numbers and shall be accompanied by a bill of lading or express receipt. Payment of invoice shall not constitute acceptance of Items and shall be subject to appropriate adjustment for failure of Seller to meet the requirements of this Agreement. Buyer may set off any amount owed by Seller to Buyer against any amount owed by Buyer in connection with this Agreement.
7. **Cancellation.** Buyer reserves the right to cancel all or any part of the undelivered Items purchased under this Agreement if Seller does not make deliveries as required to meet the Schedules, or if Seller breaches any of the Terms hereof.
8. **Compliance with Laws.** Seller warrants that all Items produced or furnished under this Agreement will have been produced or furnished in full compliance with all applicable laws and regulations, including, without limitation, the Fair Labor Standard Act, and the laws, rules, and regulations relative to equal employment opportunity, all of which are incorporated herein by this reference. Seller further agrees to indemnify and hold Buyer and its customers harmless from any loss or damage that may be sustained by Buyer for Seller's failure, or alleged failure, to do so.
9. **Infringement Indemnity.** Seller shall pay all royalties and license fees which may be payable on account of or related to the Items or any part thereof. Seller shall indemnify, defend, and hold harmless Buyer and its affiliates and their respective directors, officers, members, employees, contractors, and agents from and against any and all losses, damages, expenses, claims, demands, suits, judgments, penalties, and costs of any kind whatsoever, including attorney's fees and expenses, arising out of any allegation that any Item, or any part thereof or Buyer's use thereof, infringes upon or misappropriates a patent, copyright, trademark, trade secret, or any other proprietary right of any third party.
10. **Other Indemnities.** If any Items involve operations by Seller on the premises of Buyer or one of its customers, Seller shall take all necessary precautions to ensure that the Items are carried out in a safe and proper manner. Seller shall also maintain such public liability, property damage and employee's liability and compensation insurance as will protect Buyer from risk and from any claims under all applicable laws and regulations. Seller shall indemnify, defend, and hold harmless Buyer and its respective directors, officers, members, employees, contractors and agents from and against all losses, damages, expenses, claims, demands, suits, judgments, penalties and costs of any kind whatsoever, including attorney's fees and expenses, for personal injury, death or damage to property arising out of any breach of this Agreement by Seller, or any act or omission of Seller, its employees, representatives, contractors, consultants or agents.
11. **Changes.** Buyer shall have the right at any time by written notice to Seller to make changes to the specifications, the quantity of Items, delivery dates, the Schedules, and any other requirements covering the Items. If any such change causes an increase or decrease in the cost of Items, or the time required for



performance under this Agreement, a corresponding adjustment will be made in the contract price or delivery date. Price increases or extensions of time for delivery shall not be binding on Buyer unless agreed to in writing by an authorized representative of Buyer.

12. Entire Agreement. The headings in this Agreement are inserted for convenience only and shall not be used in the interpretation hereof. This Agreement may only be amended by a written document signed by Buyer. No waiver of any provision of this Agreement, or of a breach hereof, whether express or implied, shall be effective unless in writing and signed by Buyer. No waiver of a breach of this Agreement, whether express or implied, shall constitute a waiver of a subsequent breach. All provisions of this Agreement are severable, and the unenforceability or invalidity of any provision shall not affect the validity or enforceability of the remaining provisions of this Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all previous understandings, agreements, communications and representations, whether written or oral, concerning the Items.
13. Rated Orders RATED: CERTIFIED FOR NATIONAL DEFENSE USE. YOU ARE REQUIRED TO FOLLOW ALL THE PROVISIONS OF THE DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM REGULATION (15 CFR PART 700). RATED ORDERS TAKE PRECEDENCE OVER ALL OTHER NON-RATED DOD ORDERS AND ALL COMMERCIAL ORDERS YOU MAY HAVE (ref: DPAS Flowdown in Appendix)
14. FARs and DFARs flow-downs: The terms and conditions found at <http://www.bdatech.com/terms> are hereby incorporated in this Purchase Order by reference.
15. In the event the goods, deliverables and/or services covered by a Purchase Order are to be used in whole or in part for the performance of Federal Government contracts, governed by specific rules and regulations of the Federal Government, the following clauses are incorporated herein by reference and shall predominate in the event of conflict with any other provision of this Purchase Order unless specifically noted.
  - 15.1. The referenced clauses are set forth or referred to in the FAR and DoD Supplement to the FAR (DFAR). In order to make the context of these clauses applicable to this Purchase Order, the term "Contractor" in all such clauses shall mean "Seller" or "Vendor", the term "Contract" in all such clauses shall mean this "Purchase Order", and the term "Contracting Officer" shall mean "Buyer" unless otherwise specified. The terms "Government" and "Contracting Officer" do not change (1) in the phrases "Government Property," "Government-Owned Property," "Government Equipment," "Government-Furnished Property," and "Government-Owned Equipment;" (2) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer (PCO) or his duly authorized representative; (3) when access to proprietary financial information or other proprietary data is required; (4) when title to property is to be transferred directly to the Government; (5) where specifically modified as noted below; and (6) in FARs 52.227-14, 52.227-19, 252.227-7013, 252.227-7014, 252.227-7015, and 252.227-7016. The full text of Federal Acquisition Regulation (FAR) clauses can be found at <http://acquisition.gov/comp/far/index.html> The full test of Department of Defense FAR Supplement (DFARS) clauses can be found at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.



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15.2. In the event that this Purchase Order is subject to the provisions of DFARS 252.225-7012 or any other similar regulation or requirement, Vendor agrees that ADS personnel may enter upon its facilities to perform an inspection and audit to verify compliance with such provisions. ADS shall provide at least three business days' prior notice of the date ADS intends to perform the inspection and audit.

## 16. FAR Clauses

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (applicable if over \$100,00)

52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (not applicable to small business concerns)

52.222-26 EQUAL OPPORTUNITY

52.222-35 -- Equal Opportunity for Veterans (applicable if over \$150,000)

52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (applicable if over \$25,000)

52.222-36 – Equal Opportunity for Workers With Disabilities (applicable if over \$15,000)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (applicable if over \$10,500)

52.222-37 -- Employment Reports on Veterans (Oct 2015) (applicable if over \$150,000)

52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (applicable if over \$25,000)

52.222-38 -- Compliance with Veterans' Employment Reporting Requirements

52.222-40 – Notification of Employee Rights Under the National Labor Relations Act

52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (applicable if over \$100,000)



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52.222-41 -- Service Contract Labor Standards

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (applicable if over \$2,500 and Act applies)

52.222-50 Combating Trafficking in Persons (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause 52.222-50.

52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (41 U.S.C. 351, et seq.).

52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (41 U.S.C. 351, et seq.).

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION

52.225-1 BUY AMERICAN ACT-SUPPLIES

52.225-15 SANCTIONED EUROPEAN UNION COUNTRY END PRODUCTS

52.226-6 PROMOTING EXCESS FOOD DONATION TO NONPROFIT ORGANIZATIONS (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6

52.227-14 RIGHTS IN DATA—GENERAL

52.227-19 COMMERCIAL COMPUTER SOFTWARE—RESTRICTED RIGHTS

52.228-3 WORKERS' COMPENSATION INSURANCE (DEFENSE BASE ACT)

52.228-5 INSURANCE – WORK ON A GOVERNMENT INSTALLATION

52.233-3 PROTEST AFTER AWARD

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS

52.246-2 INSPECTION OF SUPPLIES – FIXED PRICE

52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form)



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52.249-2 Termination for Convenience of the Government (Fixed-Price)

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## 17. DFAR Clauses

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (applicable if over \$100,000)

252.204-7000 DISCLOSURE OF INFORMATION

252.211-7000 ACQUISITION STREAMLINING (applicable if over \$1,000,000)

252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS

252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM

252.225-7003 REPORT OF INTENDED CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION WITH OFFER (applicable if over \$500,000)

252.225-7004 REPORT OF INTENDED CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION AFTER AWARD (applicable if over \$500,000)

252.225-7006 QUARTERLY REPORTING OF ACTUAL CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES (applicable if over \$500,000)

252.225-7009 DUTY-FREE ENTRY-QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES

252.225-7012 Preference for Certain Domestic Commodities

252.225-7013 DUTY-FREE ENTRY

252.225-7014 Preference for Domestic Specialty Metals, Alternate 1 (Deviation) (10 U.S.C. 2533a)

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (10 U.S.C. 2533a)

252.225-7021 TRADE AGREEMENTS

252.225-7036 BUY AMERICAN ACT—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM



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252.225-7040 CONTRACTOR PERSONNEL SUPPORTING A FORCE DEPLOYED OUTSIDE THE UNITED STATES

252.225-7043 ANTITERRORISM/FORCE PROTECTION POLICY OFR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

252.227-7013 RIGHTS IN TECHNICAL DATA-NONCOMMERCIAL ITEMS (applicable when technical data, but not software, is deliverable)

252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (applicable when software and software documentation is deliverable)

252.227-7015 TECHNICAL DATA-COMMERCIAL ITEMS (applicable when a commercial item is deliverable)

252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (applicable when 252.227-7013 is used)

252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS-COMPUTER SOFTWARE (applicable when 252.227-7014 is used)

252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS (applicable when 252.227-7013 or -7014 is used)

252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE

252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE

252.227-7030 TECHNICAL DATA-WITHHOLDING OF PAYMENT (applicable when 252.227-7013 is used)

252.231-7000 SUPPLEMENTAL COST PRINCIPLES

252.237-7019 TRAINING FOR CONTRACTOR PERSONNEL INTERACTING WITH DETAINEES

252.243-7001 PRICING OF CONTRACT MODIFICATIONS

252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS)

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (applicable if over \$100,000)

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA

252.249-7002 NOTIFICATION OF ANTICIPATED CONTRACT TERMINATION OR REDUCTION (applicable if over \$500,000)



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## 18. Notification of Equal Employment Opportunity/Affirmative Action Obligations

As part of ADS Inc.'s compliance with federal Equal Employment Opportunity and Affirmative action regulations, we hereby notify all vendors that ADS Inc. is an equal opportunity employer that makes employment decisions without regard to race, religion, color, national origin, citizenship, sex, sexual orientation, gender identity, veteran's status, age, or disability status and that ADS Inc. takes affirmative steps to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. ADS Inc. further notifies all vendors that, as an entity supplying goods and/or services to ADS Inc., your organization may be subject to, and required to take action pursuant to, the following laws and accompanying regulations.

- Executive Order 11246 (and its implementing regulations at 41 C.F.R. part 60);
- The Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (and its implementing regulations at 41 C.F.R. 60-300); and,
- Section 503 of the Rehabilitation Act of 1973, as amended (and its implementing regulations at 41 C.F.R. 60-741); and,
- Executive Order 13496 (and its implementing regulations at 29 C.F.R. part 471, Appendix A to Subpart A0).

The equal employment opportunity clauses within each of the above regulations, as applicable, are included by reference in all contracts between ADS Inc. and all our vendors.





## APPENDIX

**DPAS – Defense Priorities & Allocations System for the Contractor attachment**



## **DPAS – Defense Priorities & Allocations System for the Contractor**

### Defense Priority & Allocation System Regulation

- Department of Commerce (DOC) is delegated authority, through Executive Order 13603.
- Implements the priorities and allocations authority contained in Title 1 of the Defense Production Act of 1950 with respect to industrial resources.
  - President’s primary authority to mobilize resources and expedite critical industrial items for national defense.
  - Does not require an emergency declaration
  - Require priority in acceptance
  - Require priority in scheduling

### The purpose of DPAS

- Assures timely availability and delivery of materials and services from private industry to meet current national defense needs and emergency preparedness program requirements.
- Authority to order priority performance (delivery) on defense contracts and allocate materials to meet national security requirements (DO/DX ratings).
- Provide an operating system to support rapid industrial response to Government procurement needs in times of emergency.

### Objectives

- Provides an operating system to support rapid industrial response in a national emergency
- Minimize disruption to normal commercial activities

DPAS provides for the use of contract terms that specify a priority rating and delivery dates for materials and services.

“Rated order” means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of the DPAS regulation (15 CFR part 700).

There are two DPAS priority ratings:

**DX:** ratings assigned at the Secretary Level and have the Highest National Defense urgency. **DX**-rated orders *always* take precedence over **all** orders. If two **DX**-rated orders are to be delivered on the same date and only one can be completed on-time, the date the order was accepted then determines which is completed first.

**DO:** ratings assigned at the Under Secretary Level or delegated official and are critical to National Defense. **DO**-ratings take precedence over all other un-rated, government or commercial orders. If two **DO**-rated orders are to be delivered on the same date and only one can be completed on-time, they are prioritized the same way as the **DX**-rated orders.



Program identification symbols indicate which approved program is involved with the rated order. For example, **A1** identifies defense aircraft programs and **A7** signifies defense electronic programs. **Note:** the program identification symbols, in themselves, do not connote any priority. Program identification symbols do, however, need to be included on the flow down on Purchase Orders throughout the entire Procurement chain – including flow down to sub-tiers. All prime contracts, subcontracts or Purchase Orders in support of an authorized program are given a priority rating.

### Basic Provisions

#### 1. Mandatory Acceptance or Rejection of Rated Orders (Section 700.13)

- A person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders
  - A person must accept or reject a rated order and transmit the acceptance or rejection in writing (hard copy or electronic format) within ten (10) working days after receipt of a DX-rated order and within fifteen (15) working days after receipt of a DO-rated order.
  - If the order is rejected, the person must also provide reasons for the rejection.
- A person shall not discriminate against rated orders
- A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made
  - If a person accepts a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give reasons for the delay and advise of a new shipment or performance date. Written or electronic confirmation must be provided within one working day.

#### 2. Preferential Scheduling (Section 700.14)

- A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

**IMPORTANT:** These ratings are required to be flowed down from prime to sub throughout the Procurement chain.

Preferential Scheduling examples:

If a company receives a **DO**-rated order with a delivery date of June 1<sup>st</sup> and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed.

If a **DX**-rated order is received requiring delivery on June 1<sup>st</sup> and a **DO**-rated order requires delivery on May 20<sup>th</sup>, the **DX**-rated order must be prioritized over the **DO**-rated order.

#### 3. Extension of Priority Ratings (Section 700.15)



- A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in 15 CFR 700 or as directed by the Department of Commerce.
  - For example, if a person is in receipt of a DO-rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO- rated order to obtain the needed semiconductors.
  - The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire Supply Chain.

### Compliance

Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, 15 CFR 700, or an official action of the Department of Commerce, is a criminal act, punishable as provided in the Defense Production Act and as set forth in §700.74 of 15 CFR 700.

The Department of Commerce may take specific official actions (Ratings Authorizations, Directives, Letters of Understanding, Administrative Subpoenas, Demands for Information, and Inspection Authorizations) to implement or enforce the provisions of the DPAS (see 15 CFR 700.60-700.71).

### Elements of a Rated Order

DPAS is a contract requirement in accordance with **FAR 52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS APR/2008**

• **15 CFR 700-** Code of Federal Regulation for implementation of DPAS Requirements

• **DPAS 15 CFR 700.7 (a)** “Compliance with the provisions of this regulation and official actions is required by the Defense Production Act and the Selective Service Act and related statutes. Violators are subject to criminal penalties, (b) **Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.**

• **DPAS 15 CFR 700.3 (c)** “All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date”.

DPAS ratings and prime contract numbers are required compliance items that are subject to CPSR Analysts’ review. Procurement staff must ensure that every procurement issued in support of a U.S. Government prime contract/subcontract that contains a defense priority rating, also include a direct flow down of the same DO or DX rating symbol and a program or identification symbol to indicate the authorized program. In addition, all subcontractors and Purchase Orders that are DO or DX rated are required to contain the proper DPAS clauses.