

ROICC Camp Lejeune intends to award a Firm-Fixed Price (FFP) type contract for lease of one Roll-off type Container Carrier Truck at Marine Corps Base Camp Lejeune, NC. This is a combined synopsis/solicitation for a commercial lease. The procurement is prepared and conducted in accordance with the format presented in FAR Subpart 12.6 and 13.5, as well as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.

The solicitation number is N40085-15-R-0837 and is issued as a Request for Quotations (RFQ). The incorporated provisions and clauses are those in effect through Federal Acquisition Circular 2005-22. The NAICS code for this requirement is 532490 and the small business size standard is \$32.5M. This RFQ is issued as a small business set-aside.

Proposals are due by 1400 EST on 1 JUNE 2015. Proposals are to be submitted to:

ROICC CAMP LEJEUNE  
ATTN: EMILY WALTON  
1005 MICHAEL ROAD  
CAMP LEJEUNE, NC 28547

Or, [emily.walton@navy.mil](mailto:emily.walton@navy.mil)

Proposals received after the required time will be considered late and handled in accordance with FAR 52.212-1(f).

Proposal Submission: A complete proposal will consist of the followings items completed, signed if applicable, and returned:

- Proposal pricing provided on attached pricing sheet, provided in a per month basis, for the period of 12 months, and four option periods of 12 months
- Completed Offeror Representation and Certifications, in accordance with FAR 52.212-3
- Any amendments, signed
- A statement that the contractor fully meets the requirements of this request for proposal.

Please direct questions or comments to Emily Walton at [emily.walton@navy.mil](mailto:emily.walton@navy.mil)

### **GENERAL INFORMATION**

This is a single award, firm fixed price (FFP) type contract for leasing of one Roll-off type Container Carrier Truck for a period of 12 months with four (4) option periods of 12 months at Marine Corps Base Camp Lejeune, NC.

### **TERM OF CONTRACT**

The contract shall continue in effect for a period of one (1) year after the date of award, with the Government's unilateral right to exercise the option period in accordance with FAR 52.217-9.

### **PLACE OF DELIVERY**

The vehicle shall be delivered to the Landfill at Marine Corps Base Camp Lejeune, Jacksonville, NC.

### **TIME OF DELIVERY**

The Contractor will deliver vehicles to the requested destination not later than 30 days after receipt of award.

### **VEHICLES SPECIFICATION**

The Roll-off type Container Carrier Truck (for Refuse Collections) should have the following minimum requirements.

- Must be capable of carrying 20, 30, and 40 yard industry standard refuse containers.
- Cable Pull style will meet mission requirements. (Dempster is an industry term as well as Brand name. For the purposes of this document it refers to the industry standard term.)
- The vehicle must be a 2012 model or newer.
- Parts & Service Manuals (two sets each) for Chassis and Hoist.
- Delivered to Camp Lejeune

#### **Chassis:**

- Heavy Duty Vocational 6x4 Truck
- GVWR: 60,000 lb w/Tandem axle.
- Brakes: Industry Standard Heavy duty Air Brakes (anti-lock)
- Front Tow Hooks
- Fuel Tank – 50 Gallon min
- Tool Box
- Mud Flaps
- DOT compliant Automatic Folding Rear Bumper
- All Standard/DOT/DOD required Equipment (mirrors, lights reflectors ect.)
- Heated/Remote adjusted exterior Mirrors

#### **Engine:**

- Diesel Engine 300Hp Min
- Fuel type: Diesel /Bio-Diesel with Exhaust After Treatment System (DEF)
- Non-inhibitive (disruptive) Regeneration System
- Fuel Water Separator

#### **Transmission:**

- Automatic Transmission
- Transmission Cooler
- Air shift PTO capable of shifting on the fly
- Locking Differentials

**Hydraulic System:** Industry Standard Heavy duty PTO driven.

**Electrical:** Industry Standard w/ Waterproof Electrical Connections

**Air Compressor and air system:** Industry Standard Heavy duty

#### **Cab:**

- Air Conditioner w/Integral Heater
- Key Type Engine Starter/Shutoff Switch
- Keys – (2) Keyed at Random
- Floor Mats,
- Gauges – Air Pressure, Engine Coolant Temperature, Engine, Oil Pressure, Engine Oil Temperature, Speedometer, Tachometer, Fuel Level
- Horn –Single Trumpet Air Horn
- Low Air Pressure Indicator Light and Buzzer
- Driver Seat –Air Suspension

- Rider Seat –Non-suspension
- Seat Covering – All Vinyl Driver and Passenger Seats
- Seat Belts – Lap and Shoulder w/Cab Mounted Shoulder Belt
- Windshield Washers – Electric w/Reservoir Mounted under Hood
- Windshield Wipers – 2 Speed Electric Motor w/Intermittent
- FM Radio

**Roll-Off Hoist Options (required):**

- 60,000 cable Pull style will meet mission requirements
- Inside AND Outside Rails with Dempster stops
- Automated Waste Tarper/Load Covering System (Interior Controls)
- Air operated rear container lock to comply with Federal DOT Requirements

**EXCESS MILEAGE CHARGES**

There are no excess mileage charges on this contract.

**SAFETY STANDARDS**

Vehicle shall comply with the Federal Motor Vehicle Safety Standards (49 CFR 571) and applicable state safety regulations.

**MARKING OF LEASED VEHICLES**

Activities may place non-permanent markings or decals on motor vehicle leased under this contract. Activities shall normally use U.S. Government license plates on the front and rear of the vehicle to identify vehicles by USN registration number.

**OPERATION AND MAINTENANCE**

The Contractor shall maintain the vehicle in normal operating condition. Maintenance and service will be performed by the Contractor in accordance with the manufacturer's specifications. Basic warranty repair items noted during the warranty period will be referred to an authorized dealer for resolution. The Contractor will furnish all oil and tires according to the manufacturer's specification.

**REPAIRS**

The Contractor is responsible for all repairs to the vehicle beyond the operation and maintenance detailed above. The vehicle may be down for repairs for 7 days. If the vehicle will be out of the Government's possession for more than 7 days, the Contractor shall provide a replacement vehicle for the Government's use at no cost to the Government.

**GOVERNMENT ACCEPTANCE AND/OR REJECTION OF VEHICLES**

The activity, or its agent at port of embarkation, will accept or reject vehicle within two (2) work days after receipt. If the receiving activity determines that the vehicle furnished is not in compliance with the contract, the contractor shall be notified in writing within two (2) work days via the Contracting Officer. If the contractor fails to replace the vehicle or correct the defects, the government may (a) by contract, or otherwise correct the defect, or arrange for the lease of a similar vehicle and shall charge or offset against the contractor any excess costs occasioned thereby, or (b) the Government may terminate the contract under the default clause.

## **WARRANTY**

The warranty provisions are to be the manufacturers' standard warranty for new vehicles as set forth in Federal Standard 122AU and 307AF. The contractor shall provide a suitable replacement for any vehicles having major warranty problems/repairs. Replacement vehicles will be provided upon request at no additional cost to the activity; however, the contractor is not required to provide a replacement vehicle for the first 7 days after notification by the activity that the vehicle is out of service. If a vehicle is required to be replaced in lieu of repaired, then the Contractor shall be responsible for all shipping costs involved for the delivery and return of vehicles to the using activity, including foreign users.

## **RETURN OF VEHICLE**

The contractor shall arrange to meet with the activity within 10 working days of expiration of the lease to complete a joint vehicle inspection/appraisal. The appraisal must be completed five (5) working days prior to expiration of the lease and prior to removal from Government custody. The activity will assume full responsibility for reconditioning the vehicles, at its expense, excluding normal wear and tear as defined below. The Government will not be responsible for damages not listed on the appraisal report. The Contractor is responsible for picking-up the vehicle and all associated costs.

For purposes of the lease, normal wear and tear is defined as those dents, dings, paint chips, scratches, pitted but not cracked windshields, and interior wear such as soiled carpets and seats normally accrued to a motor vehicle over a period of 12 to 60 months use in both rural and metropolitan areas. In any event, the activity's liability for reconditioning vehicles acquired as a result of this schedule shall be limited to replacement of glass and exterior trim, repair to body damage attributable to collision only, and to interior damage such as cut, torn, burnt materials, as well as mechanical repairs.

## **EMISSIONS CONTROLS (DOMESTIC)**

Vehicles and engines shall comply with the regulations of the Environmental Protection Agency governing control of air pollution from new motor vehicles and new motor engines in effect on the date of manufacture.

## **MAINTENANCE MANUALS**

The vehicle shall contain two (2) sets of owner/operator's manuals.

## **ACCIDENTS AND THEFT**

The Government will notify the contractor within three (3) working days of accident/theft and will arrange for repairs of accident damage, including damage sustained to a stolen vehicle during the period prior to recovery. The contractor may be required to provide a replacement vehicle during the period the vehicle is out of service, at the expense of the Government and at the current lease rate. If the vehicle is damaged beyond repair, or not recovered within 30 days after the date of the theft, the Contractor will be reimbursed the residual value of the vehicle based on the average of the wholesale and retail price as listed in the current monthly edition of the NADA used car book at the time of the theft/accident in full satisfaction of any and all liabilities under this contract, less all monies received from the salvage or other disposition of vehicle. Upon reimbursement for the residual value of the vehicle, the Government will be relieved of any further liability under this contract and will terminate the remainder of the lease for the vehicle by modification to the task order. The accrued lease cost for the month in which the accident/theft occurs shall be determined on a pro rata basis for such month.

## **LIABILITY AND INSURANCE**

The government shall be responsible for loss of or damage to: (1) Leased vehicles, except for normal wear and tear or damage caused by the negligence of the Contractor, its agents or employees; and (2) property of third persons, or the injury or death of a third person if the government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act (28 USC 2671.2680).

## **TYPE/MANUFACTURE OF VEHICLES PROVIDED**

All vehicles shall be American made.

## **VEHICLE COLOR/FINISH**

All vehicles shall be the manufacturers' standard exterior paint and colors.

## **INVOICES**

An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice must include, as applicable, the following:

- (1) Invoice date;
- (2) Name of Contractor;
- (3) Contract number (including order number if any), contract line number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total;
- (4) Name (where applicable), title, phone number and mailing address of person to be notified in event of an improper invoice; and

## **INVOICING INSTRUCTIONS**

The Contractor shall submit invoices monthly to the Contracting Officer through Wide Area Workflow (WAWF).

- (a) In accordance with DFARS Clause 252.232-7003 titled "Electronic Submission of Payment Requests", this contract requires use of the DoD Wide Area Workflow (WAWF) system for the submission of invoices. This web-based system, located at <https://wawf.eb.mil>, provides the technology for Government contractors and authorized Department of Defense (DoD) personnel to generate, capture and process receipt and payment-related documentation in a paperless environment. Invoices rendered under this contract shall be submitted electronically through WAWF. Submission of hard copy DD250/invoices will no longer be accepted for payment.
- (b) In accordance with DFARS Clause 252.232-7006 titled "Wide Area Workflow Payment Instructions (JUN 2012)", as prescribed at DFARS 232.2004. The contract must have a designated electronic business point of contact in the System for Award Management ([www.sam.gov](http://www.sam.gov)); and be registered to use WAWF at <https://wawf.eb.mil> following step by step procedures for self registration available at this Web site.
- (c) It is recommended that the person in your company designated as the System for Award Management (SAM) Electronic Business Point of Contact (EBPOC), and anyone responsible for the submission of invoices, use the online training system for WAWF at <http://wawftraining.com>. The Vendor, Group Administrator (GAM), and sections marked with an asterisk in the training system should be reviewed. Vendor Quick Reference Guides also are available at <http://acquisition.navy.mil/navyaos/content/view/full/3521/>. The most useful guides are "Getting Started for Vendors" and "WAWF Vendor Guide".

- (d) Within ten (10) days after award, the designated SAM EBPOC is responsible for activating the company's CAGE code in WAWF by calling 1-866-618-5988. Once the company's CAGE code is activated, the SAM EBPOC must self-register under the company's CAGE code on WAWF and follow the instructions for a group administrator. After the company is set-up on WAWF, any additional persons responsible for submitting invoices must self-register under the company's CAGE code at <https://wawf.eb.mil>.
- (e) The contractor shall use the following document type, DODAAC codes with corresponding extensions, and inspection and acceptance locations when submitting invoices in WAWF:

**Document type. The Contractor shall use the following document type(s).**

Navy Construction/Facilities Management Invoice

**Inspection/Acceptance Location**

N44249 – CAMP LEJEUNE AWARDED TASK ORDERS/CONTRACTS

Document routing. The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

| Field Name in WAWF        | Data to be entered in WAWF |
|---------------------------|----------------------------|
| Pay Official DoDAAC       | N68732                     |
| Issue By DoDAAC           | N40085                     |
| Admin DoDAAC              | N40085                     |
| Inspect By DoDAAC         | N44249                     |
| Ship To Code              | N/A                        |
| Ship From Code            | N/A                        |
| Mark For Code             | N/A                        |
| Service Approver (DoDAAC) | N/A                        |
| Service Acceptor (DoDAAC) | N/A                        |
| Accept by DoDAAC          | N44249                     |
| LPO DoDAAC                | N44249                     |
| DCAA Auditor DoDAAC       | N/A                        |
| Other DoDAAC(s)           | N/A                        |

**PRICING SHEET FOR SOLICITATION NUMBER N40085-15-Q-0837**

| ITEM                         | PRODUCT/SERVICE                      | MONTHLY RATE PER UNIT |                  | TOTAL COST PER YEAR |
|------------------------------|--------------------------------------|-----------------------|------------------|---------------------|
| CLIN 0001<br>(BASE YEAR)     | ROLL OFF<br>CONTAINER TRUCK<br>LEASE | \$                    | x 12<br>MONTHS = | \$                  |
| CLIN 0002<br>(OPTION YEAR 1) | ROLL OFF<br>CONTAINER TRUCK<br>LEASE | \$                    | x 12<br>MONTHS = | \$                  |
| CLIN 0003<br>(OPTION YEAR 2) | ROLL OFF<br>CONTAINER TRUCK<br>LEASE | \$                    | x 12<br>MONTHS = | \$                  |
| CLIN 0004<br>(OPTION YEAR 3) | ROLL OFF<br>CONTAINER TRUCK<br>LEASE | \$                    | x 12<br>MONTHS = | \$                  |
| CLIN 0005<br>(OPTION YEAR 4) | ROLL OFF<br>CONTAINER TRUCK<br>LEASE | \$                    | x 12<br>MONTHS = | \$                  |

**TOTAL CLIN 0001 THROUGH CLIN 0005 = \$ \_\_\_\_\_**

## **CONTACT CLAUSES, TERMS & CONDITIONS**

The following provisions and clauses are applied to this acquisition and incorporated into this notice:

Clauses Incorporated By Reference (IBR) are listed below. To view the provisions and clauses in full text, visit the website at [www.arnet.gov/far](http://www.arnet.gov/far).

|                |  |
|----------------|--|
| 52.202-1       | Definitions  |
| 52.203-3       | Gratuities   |
| 52.203-5       | Covenant Against Contingent Fees   |
| 52.203-6       | Restrictions On Subcontractor Sales To The Government  |
| 52.203-7       | Anti-Kickback Procedures   |
| 52.203-8       | Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity   |
| 52.203-10      | Price Or Fee Adjustment For Illegal Or Improper Activity   |
| 52.203-12      | Limitation On Payments To Influence Certain Federal Transactions   |
| 52.204-4       | Printed or Copied Double-Sided on Recycled Paper   |
| 52.208-4       | Vehicle Lease Payments   |
| 52.208-5       | Condition of Leased Vehicles   |
| 52.208-6       | Marking of Leased Vehicles   |
| 52.208-7       | Tagging of Leased Vehicles   |
| 52.209-6       | Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment |
| 52.212-5       | Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items                      |
| 52.212-3       | Offeror Representations and Certifications—Commercial Items  |
| 52.217-8       | Option To Extend Services  |
| 52.217-9       | Option to Extend the Term of the Contract  |
| 52.222-3       | Convict Labor  |
| 52.222-21      | Prohibition Of Segregated Facilities   |
| 52.222-26      | Equal Opportunity  |
| 52.222-35      | Affirmative Action For Disabled Veterans And Veterans of the Vietnam Era   |
| 52.224-1       | Privacy Act Notification   |
| 52.224-2       | Privacy Act  |
| 52.229-3       | Federal, State And Local Taxes   |
| 52.229-5       | Taxes--Contracts Performed In U S Possessions Or Puerto Rico   |
| 52.232-1       | Payments   |
| 52.232-11      | Extras   |
| 52.232-17      | Interest   |
| 52.232-18      | Availability Of Funds  |
| 52.232-24      | Prohibition of Assignment of Claims  |
| 52.232-25      | Prompt Payment   |
| 52.232-33      | Payment by Electronic Funds Transfer--Central Contractor Registration  |
| 52.233-1       | Disputes   |
| 52.233-3       | Protest After Award  |
| 52.242-13      | Bankruptcy   |
| 52.243-1 Alt I | Changes--Fixed Price (Aug 1987) - Alternate I  |
| 52.244-6       | Subcontracts for Commercial Items  |
| 52.249-2       | Termination For Convenience Of The Government (Fixed-Price)  |
| 52.249-4       | Termination For Convenience Of The Government (Services) (Short Form)  |
| 52.249-8       | Default (Fixed-Price Supply & Service)   |
| 52.253-1       | Computer Generated Forms   |
| 252.203-7001   | Prohibition On Persons Convicted of Fraud or Other Defense-  |

|              |  |
|--------------|--|
|              | Contract-Related Felonies  |
| 252.204-7004 | Required Central Contractor Registration   |
| 252.209-7000 | Acquisition From Subcontractors Subject To On-Site Inspection Under The Intermediate Range Nuclear Forces (INF) Treaty                 |
| 252.209-7001 | Disclosure of Ownership or Control by the Government of a Terrorist Country  |
| 252.209-7004 | Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country  |
| 252.209-7004 | Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country  |
| 252.212-7001 | Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisition of Commercial Items |
| 252.215-7000 | Pricing Adjustments  |
| 252.215-7001 | Availability of Contractor Records   |
| 252.223-7006 | Prohibition On Storage And Disposal Of Toxic And Hazardous Materials   |
| 252.225-7002 | Qualifying Country Sources As Subcontractors   |
| 252.225-7003 | Information For Duty-Free Entry Evaluation   |
| 252.225-7009 | Duty-Free Entry--Qualifying Country Supplies (End Products and Components)   |
| 252.225-7012 | Preference For Certain Domestic Commodities  |
| 252.225-7025 | Restriction on Acquisition of Forgings   |
| 252.225-7026 | Reporting Of Contract Performance Outside The United States  |
| 252.225-7031 | Secondary Arab Boycott Of Israel   |
| 252.227-7000 | Non-estoppel   |
| 252.232-7003 | Electronic Submission of Payment Requests  |
| 252.232-7006 | Wide Area Workflow Payment Instructions  |
| 252.243-7001 | Pricing Of Contract Modifications  |
| 252.243-7002 | Requests for Equitable Adjustment  |
| 252.244-7000 | Subcontracts for Commercial Items and Commercial Components (DoD Contracts)  |

## Clauses Incorporated By Full Text

### **52.212-1 Instructions to Offerors—Commercial Items.**

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet ([SF 1449](#)). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the [SF 1449](#), letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) “Remit to” address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR [52.212-3](#) (see FAR [52.212-3](#)(b) for those representations and certifications that the offeror shall complete electronically);

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the [SF 1449](#), include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender’s request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation.

(1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service Specifications Section  
Suite 8100  
470 East L'Enfant Plaza, SW  
Washington, DC 20407

Telephone (202) 619-8925  
Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (<https://assist.dla.mil/online/start/>).

(ii) Quick Search (<http://quicksearch.dla.mil/>).

(iii) ASSISTdocs.com (<http://assistdocs.com>).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(i) Using the ASSIST Shopping Wizard (<https://assist.dla.mil/wizard/index.cfm>);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding \$3,000, and offers of \$3,000 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR [Subpart 32.11](#)) for the same concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://fedgov.dnb.com/webform>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number. The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

(k) *System for Award Management.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the SAM database accessed through <https://www.acquisition.gov>.

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

- (1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.
- (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

#### **52.212-2 Evaluation—Commercial Items.**

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government in terms of **price and vehicle specifications. In order to determine the most advantageous offer to the Government, trade-offs will be made between the Evaluation Factors; however, in accordance with FAR 12.602 - Streamlined Evaluation of Offers and FAR 13.106-2 Evaluations of Quotations or Offerors, the Contracting Officer is not required to list the relevant importance of the evaluation factors.**

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

#### **52.212-4 Contract Terms and Conditions—Commercial Items.**

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*—

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

- (B) Affected contract number and delivery order number, if applicable;
- (C) Affected contract line item or subline item, if applicable; and
- (D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes*. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [41 U.S.C. 4712](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

(s) *Order of precedence*. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
- (3) The clause at [52.212-5](#).
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.

- (6) Other paragraphs of this clause.
- (7) The [Standard Form 1449](#).
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) System for Award Management (SAM).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see [Subpart 32.8](#), Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.acquisition.gov>.

(u) Unauthorized Obligations

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- (i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

*Alternate I (MAY 2014).* When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

(a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the “hourly rate” attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. *[Insert portion of labor rate attributable to profit.]*

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(e) *Definitions.* (1) The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference. As used in this clause—

(i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: [*Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.*]; and

(E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract, as defined in FAR [Subpart 2.1](#), entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(i) *Payments*. (1) *Work performed*. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate*.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials*.

(A) If the Contractor furnishes materials that meet the definition of a commercial item at [2.101](#), the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the—

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs.* Unless listed below, other direct and indirect costs will not be reimbursed.

(1) *Other Direct Costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: [*Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'.*"]

(2) *Indirect Costs (Material Handling, Subcontract Administration, etc.).* The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: [*Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None'.*"]

(2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue

performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6)(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the

Treasury, as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final Decisions*. The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims*. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR part 1315.

(9) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(10) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

52.228-8 LIABILITY AND INSURANCE--LEASED MOTOR VEHICLES (MAY 1999)

(a) The Government shall be responsible for loss of or damage to--

(1) Leased vehicles, except for (i) normal wear and tear and (ii) loss or damage caused by the negligence of the Contractor, its agents, or employees; and

(2) Property of third persons, or the injury or death of third persons, if the Government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act (28 U.S.C. 2671-2680).

(b) The Contractor shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor shall provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least \$200,000 per person and \$500,000 per occurrence for death or bodily injury and \$20,000 per occurrence for property damage or loss.

(d) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the Government shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after written notice to the Contracting Officer, whichever period is longer. The policies shall exclude any claim by the insurer for subrogation against the Government by reason of any payment under the policies.

(e) The contract price shall not include any costs for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically on the web.

**CONTRACTING OFFICER AUTHORITY**

In no event shall any understanding or agreement between the Contractor and any Government employee other than the Contracting Officer on any contract, modification, change order, letter or verbal direction to the Contractor be effective or binding upon the Government. All such actions must be formalized by a proper contractual document executed by an appointed Contracting Officer. The Contractor is hereby put on notice that in the event a Government employee other than the Contracting Officer directs a change in the work to be performed, it is the Contractor's responsibility to make inquiry of the Contracting Officer before making the deviation. Payments will not be made without being authorized by an appointed Contracting Officer with the legal authority to bind the Government.

**ORGANIZATIONAL CONFLICTS OF INTEREST**

The restrictions described herein shall apply to the Contractor and its affiliates, consultants and subcontracts under this contract. If the Contractor under this contract prepares or assists in preparing a statement of

work, specifications and plans, the Contractor and its affiliates shall be ineligible to bid or participate, in any capacity, in any contractual effort which is based on such statement of work or specifications and plans as a prime contractor, subcontractor, consultant or in any similar capacity. The Contractor shall not incorporate its products or services in such statement of work or specification unless so directed in writing by the Contracting Officer, in which case the restriction shall not apply. This contract shall include this clause in its subcontractor's or consultants' agreements concerning the performance of this contract.

#### COMMERCIAL WARRANTY

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.