

NOTICE CONCERNING SOLICITATION

ISSUING OFFICE:

**DEPARTMENT OF VETERANS AFFAIRS
NATIONAL ACQUISITION CENTER (049A2-2)
PO BOX 76, BUILDING 37
HINES, IL 60141**

CP-FSS-1-C (MAY 2000)

**Standing Solicitation Number RFP 797-FSS-00-0115-R3
(Refreshed 10/2007)**

Due Date/Time: (Open & Continuous)

This Acquisition is Unrestricted

Small Business Size Standard: \$12.5 Million

**WORLDWIDE FEDERAL SUPPLY SCHEDULE CONTRACT FOR
NATIONAL AMERICAN INDUSTRY CLASSIFICATION SUBSECTOR (NAICS) 561320**

SCHEDULE NUMBER/SERVICE:

621 I PROFESSIONAL AND ALLIED HEALTHCARE STAFFING SERVICES

NEW SOLICITATION FORMAT

SERVICE CODE: Q

**ANY INFORMATION THAT MAY BE DESIRED ON THIS PARTICULAR SOLICITATION CAN
BE OBTAINED FROM THE ISSUING OFFICE ADDRESS SHOWN HEREIN**

**CONTRACT PERIOD: Contract periods commence on the date of award (DOA) and expire in
five years excluding the option provision described in Clause AS1508, Option to Extend the
Term of the Contract.**

SCHEDULE PERIOD: Open continuously. Offers may be submitted at any time.

PLEASE NOTE THE FOLLOWING NEW SOLICITATION FORMAT

***OFFERORS ARE TO PAY PARTICULAR ATTENTION TO THE NEW SOLICITATION
FORMAT!!***

**IN AN EFFORT TO STREAMLINE THE PROPOSAL PROCESS THIS SOLICITATION
PACKAGE IS ISSUED IN NEW FORMAT. OFFERORS ARE HEREBY ADVISED TO READ
THE ENTIRE SOLICITATION DOCUMENT WITH ALL OF ITS' PROVISIONS AND CLAUSES
BECAUSE THEY WILL BE HELD ACCOUNTABLE AND RESPONSIBLE FOR THEIR
ENFORCEMENT. ALTHOUGH THE OFFEROR DOES NOT HAVE TO RETURN AN ENTIRE
COPY OF THE BASIC SOLICITATION DOCUMENT WITH ALL OF ITS' CLAUSES AND
PROVISIONS, THEY WILL BE INCORPORATED BY REFERENCE INTO THE CONTRACT
AWARD AND WILL BE ADMINISTERED IN FULL FORCE AND EFFECT.**

This is a solicitation for Professional and Allied Healthcare Staffing Services. The purpose of this solicitation is to provide a vehicle for all Federal Government agencies and other authorized users to obtain quality staffing solutions from qualified/experienced contractor(s) under a Multiple Award Federal Supply Schedule in an efficient, streamlined, and cost effective manner in accordance with applicable statutes and regulations.

This schedule is for Professional and Allied Healthcare Staffing Solutions, including labor categories that are subject to the requirements of the Service Contract Act (SCA). Contractors shall comply with all requirements of the SCA, unless specified otherwise. If applicable, the Government will award the contract based on the SCA. Its provisions are hereby incorporated into the basic Federal Supply Schedule (FSS) contract and all resulting Task Orders placed for specific requirements. The applicable US Department of Labor wage determinations are also hereby specifically identified and incorporated into the basic FSS Contract and resulting Task Orders placed after January 1, 2007. Further, price adjustments subject to 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi Year and Option Contracts) shall apply to the basic FSS contract annually effective October 1st of each subsequent year and become effective for all new task orders and option periods exercised by the authorized U.S. Government Ordering Office Contracting Officer on or after the effective date of the FSS contract modification for price adjustment.

Service Contract Wage Determination (WD) general information for can be downloaded at: WWW.WDOL.GOV The Service Contract Act Wage Determinations applicable to this FSS schedule are incorporate by WD number and revision date in this solicitation.

Questions pertaining to the application of contract labor standards shall be referred to the FSS contracting officer or to the local area US Department of Labor advisors. Questions pertaining to the above-mentioned website may be referred to the WDOL.gov Webmaster. The WDOL.gov Program and the User's Guide does not relieve the contractor, contracting officer or other program user of the requirement to carefully review the contract or solicitation, federal acquisition regulations, and/or DOL regulations related to these actions.

Offers may offer any single or combination of Special Item Numbers (SIN) listed in the Schedule of Services. Offerors may also limit the geographic service area to a minimum of one entire state in which they are capable of performance for each SIN. Therefore, pricing may be proposed for nationwide and/or limited geographic service coverage (a minimum of one entire state). It is within the Government's discretion to determine the contractor's capability and to limit special item numbers or geographic coverage.

Ordering activities will issue task-orders in accordance with Federal Acquisition Regulation (FAR) 8.4. FAR 8.4 can be found on the following website: www.arnet.gov . A task-order is a written order issued in accordance with the terms of the contract that details an ordering activity's specific requirements. A task-order may contain any service or combination of services described herein. The Contractor may be required to perform more than one task at a time. However, there is no guarantee as to the volume of work that may be required by task-orders, if any, or that contractors will receive a task-order.

552.219-71 NOTICE TO OFFERORS OF SUBCONTRACTING PLAN REQUIREMENTS (JUN 2005)(VARIATION)

The Department of Veterans Affairs (VA) is committed to assuring that maximum practicable opportunity is provided to small, HUBZone small, small disadvantaged, veteran-owned, service disabled veteran-owned and women-owned small business concerns to participate in the performance of this contract consistent with its efficient performance. VA expects any subcontracting plan submitted pursuant to FAR 52.219-9, Small Business Subcontracting Plan, to reflect this commitment. Consequently, an offeror, other than a small business concern, before being awarded a contract exceeding \$550,000 (\$1,000,000 for construction), must demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, veteran-owned, service disabled veteran-owned and women-owned small business concerns as subcontractors in the performance of this contract. (see Exhibit 5)

CP-FSS-2 SIGNIFICANT CHANGES (OCT 1988)

The attention of offeror is invited to the following changes made since the issuance of the last solicitation for the supplies/services covered herein:

REMOVAL OF SPECIAL ITEM NUMBER

The following Special Item Number (SIN) was removed from this solicitation:

621-062 Nephrology Technicians/Technologists

NEW SPECIAL ITEM NUMBER DESCRIPTIONS/ADDITIONAL LABOR CATEGORIES

621-032 Emergency Response Professions (includes
EMT/Paramedic, Scheduler (Drug & Alcohol Testing)
Blood & Alcohol Technician
Ambulance Driver

621-039 Medical Assistants/Medical Administrative (includes
Medical Assistant, Medical Records Clerk
Medical Record Technician and Medical Transcriptionist

621-040 Nurse Assistant (Includes Nursing Aide, Orderly and Attendant)

NEW SERVICE CONTRACT ACT WAGE DETERMINATIONS FOR THE ENTIRE NATION -

See Exhibit 7

PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD

This solicitation now requires Contractor to accept the Government-wide commercial purchase card for payment equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract. Please see – Clause 552.232-77 for more details.

CENTRAL CONTRACTORS REGISTRATION (CCR)

Effective October 1, 2003, registration in the Central Contractor Registration (CCR) is mandatory. The Central Contractor Registration (CCR) System is a centrally located, searchable database, accessible via the Internet to develop, maintain, and provide sources for future procurements. As a single validated source of data on contractors doing business with the Government, the CCR database enables prospective contractors to update their information in one place via a website (<http://www.CCR.GOV>). The CCR will not create a total electronic commerce environment, but will help provide a basic framework or foundation that will allow migration to a total electronic comer environment.

CP-FSS-3 NOTICE: REQUESTS FOR EXPLANATION OR INFORMATION (MAR 1996)

Oral or written requests for explanation or information regarding this solicitation should be directed to:

Department of Veterans Affairs
National Acquisition Center 049A2-2
Federal Supply Schedule Service
PO Box 76, Building 37
Hines, IL 60141

or

FSS 621 I Help Desk
Phone 708-786-7722
E-Mail: helpdesk.fss621i@va.gov

CP-FSS-30 (APR 1993)

Please remove these cover pages before submitting offer to VA.

New offers may be submitted for consideration at any time, however, to assist us in managing the workflow, it is suggested that you complete this package within a reasonable amount of time following receipt of this solicitation package.

IT IS REQUESTED THAT A SINGLE ORIGINAL SIGNED AND DATED OFFER CONTAINING ALL OF THE ELEMENTS OUTLINED IN THE ATTACHED CHECK LIST BE SUBMITTED IN A THREE (3) INCH, THREE (3) RING BINDER

**SOLICITATION CHECKLIST
SOLICITATION RFP-797-FSS-00-0115-R3**

IN ORDER TO SUBMIT A COMPLETE SOLICITATION PACKAGE PLEASE BE SURE TO COMPLETE THE FOLLOWING

Offerors are reminded to maintain a copy of all documents submitted to VA

SECTION	<i>DID YOU REMEMBER TO?</i>	COMPLETE
SOLICITATION SECTIONS A - D	READ THE ENTIRE SOLICITATION DOCUMENT AND RETAIN A COPY	
EXHIBIT 1	SPECIAL INSTRUCTIONS FOR PRICING ALL SERVICES – CONTRACT DATA INSTRUCTIONS Read and maintain a copy.	
EXHIBIT 1	COVER PAGE TO CONTRACT DATA Submit this as the first page of your proposal.	
EXHIBIT 1	COMPLIANCE CONFIRMATION Submit a copy of, or evidence of, the requested registrations and certificate of insurance.	
EXHIBIT 1	Standard Form 1449 Submit a completed document per the instructions contained in the contract data instructions, including a current date and original signature.	
EXHIBIT 1	EXHIBIT 1 – PAGES 1 – 12 Complete and submit these pages in their entirety.	
EXHIBIT 2	TECHNICAL PROPOSAL INSTRUCTIONS Read and maintain a copy.	
EXHIBIT 2	TECHNICAL PROPOSAL Submit a comprehensive technical proposal including a response to sub-factors A, B, C and D per the technical proposal instructions. Submit sub-factor C for 3 different references.	
EXHIBIT 3	GENERAL INFORMATION FOR SUBMISSION OF PRICING Read and maintain a copy.	
EXHIBIT 3	COMMERCIAL SALES PRACTICE DISCLOSURES (CSP) Complete and submit a copy of this entire document including the following:	
Paragraph 2	a) Labor category descriptions	
	b) Geographic coverage offered	
	c) Rates, terms and conditions offered under the proposal	
Paragraph 3	• Price Proposal Attachment 1a – Total Actual Sales Worksheet	
Paragraph 4	• Price Proposal Attachment 1a – Projected Annual Sales Worksheet including explanation/methodology of estimates	
Paragraph 5	• Read and answer question – provide justification if applicable	
Paragraph 6	• Complete CSP Disclosures on Attachment 1b and 1c	
Paragraph 7	• Provide supporting documentation	
Paragraph 8	• Complete Attachment 1d (or similar) for each SIN and net price offered	
Paragraph 9	• Read and answer question – provide explanation if applicable	
EXHIBIT 4	RECOVERY PURCHASING PARTICIPATION	
EXHIBIT 5	SMALL BUSINESS SUBCONTRACTING PLAN	
EXHIBIT 6	SAMPLE FSS PRICELIST	
EXHIBIT 7	NEW WAGE DETERMINATIONS FOR THE ENTIRE NATION	
PUT IN BINDER	PUT COMPLETED DOCUMENT IN A 3” - 3 RING BINDER AND SEND TO VA – MAIL TO ADDRESS ON COVER PAGE OF SOLICITATION	

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SECTION A - STANDARD FORM 1449

Note: SF 1449 is hereby incorporated by reference and contained in solicitation Exhibit 1.

**SECTION B - CONTINUATION OF STANDARD FORM 1449
STATEMENT OF WORK/SCHEDULE OF SERVICES**

B.1 STATEMENT OF WORK / GENERAL INFORMATION FOR CONTRACTORS SECTION

B.1.1 BACKGROUND/OBJECTIVE

(a) This is a solicitation for Professional and Allied Healthcare Staffing Services. The purpose of this solicitation is to provide a vehicle for all Federal Government agencies and other authorized users to obtain quality-staffing solutions from qualified/experienced contractor(s) under a Multiple Award Federal Supply Schedule in an efficient, streamlined and cost effective manner in accordance with applicable statutes and regulations.

This schedule is for Professional and Allied Healthcare Staffing Solutions, including labor categories that are subject to the requirements of the Service Contract Act (SCA). Contractors shall comply with all requirements of the SCA, unless specified otherwise. If applicable, the Government will award the contract based on the SCA. Its provisions are hereby incorporated into the basic Federal Supply Schedule (FSS) contract and all resulting Task Orders placed for specific requirements. The applicable US Department of Labor wage determinations are also hereby specifically identified and incorporated into the basic FSS Contract and resulting Task Orders placed after January 1, 2007. Further, price adjustments subject to 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi Year and Option Contracts) shall apply to the basic FSS contract annually effective October 1st of each subsequent year and become effective for all new task orders and option periods exercised by the authorized U.S. Government Ordering Office Contracting Officer on or after the effective date of the FSS contract modification for price adjustment.

Service Contract Wage Determination (WD) general information for can be downloaded at: WWW.WDOL.GOV The Service Contract Act Wage Determinations applicable to this FSS schedule are incorporate by WD number and revision date in this solicitation.

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Offers may offer any single or combination of Special Item Numbers (SIN) listed in the Schedule of Services. Offerors may also limit the geographic service area to a minimum of one entire state in which they are capable of performance for each SIN. Therefore, pricing may be proposed for nationwide and/or limited geographic service coverage (a minimum of one entire state). It is within the Government's discretion to determine the contractor's capability and to limit special item numbers or geographic coverage. (Also see clause 552.212-73 evaluation, section D of the solicitation.)

(b) This is a non-mandatory schedule. If a potential customer (ordering activity) determines that its needs can be met more effectively through the use of another contracting method, they may order outside of the schedule. Therefore, it is strongly encouraged that offerors provide pricing that is highly competitive.

B.1.1 BACKGROUND/OBJECTIVE (CONTINUED)

(c) In accordance with the task-order procedures outlined in Federal Acquisition Regulation (FAR) 8.405-2, in order to obtain services required, ordering activities will transmit a task-order request (Request for Quotation/RFQ) to one or more contractors on this schedule who have been determined to potentially be able to meet government requirements. Contractors may respond with a quotation. This interaction may take place electronically at the option of the ordering activity. If the Contractor's RFQ is accepted by the government, a task-order confirming the acceptance of the RFQ, will then be issued to a contractor for performance of the services. A task-order may contain any service or combination of services described herein. The contractor may be required to perform more than one task at a time. However, there is no guarantee as to the volume of work that may be required by task-orders, if any, or that contractors will receive a task-order.

B.1.2 DEFINITIONS

(a) Contracting Officer (CO) – Individual at the VA National Acquisition Center (NAC) authorized and warranted to issue contracts and to make subsequent modification(s). The CO has the authority to make determinations on all matters of dispute regarding this contract.

(b) Contracting Officer's Technical Representative (COTR) – A Federal employee who assists the ordering/issuing agency contracting officer in the administration of task orders issued under this contract. The COTR is primarily responsible for the day-to-day program management of the ordering activity's task or delivery orders. Ordering agencies may have different designators for this category (e.g. GTR- Government Technical Representative, COR – Contracting Officer's Representative, etc.). The COTR's responsibilities are limited to those delegated in writing by the ordering/issuing agency contracting officer.

(c) FSS/MAS – The Federal Supply Schedule (FSS), Multiple Award Schedule (MAS) is a streamlined contracting vehicle that is made available to all agencies. It consists of a listing of contractors offering similar services at varying prices that are awarded contracts on the basis of their offer submitted in response to a formal solicitation.

(d) Ordering Activity – An authorized user of this Federal Supply Schedule (FSS) that may issue a task or delivery order to obtain required services under this contract.

(e) Ordering Activity Contracting Officer – An employee of a Federal agency or organization authorized and warranted to issue task orders and to make subsequent task order modification(s) under this contract. The Ordering Activity CO has the authority to make initial determinations on all matters of dispute regarding task orders.

(f) Past Performance Information: Relevant Information regarding a contractor's actions under previously awarded contracts. It includes the contractor's record of conforming to specifications and to standards of good workmanship; the contractor's record of containing and forecasting costs on any previously performed cost reimbursable contracts; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer.

(g) Nonpersonal Services Contract: A contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees, as defined in FAR 37.

(h) Personal Services Contract: A contract that, by its express terms or as administered makes the contractor personnel appear, in effect, Government employees, as defined in FAR 37.

B.1.2 DEFINITIONS (CONTINUED)

- (i) Task or Delivery Order – An order issued in accordance with the terms of the contract that details an ordering activity’s specific requirements. An ordering activity’s written order to obtain products or services at or below the FSS awarded price. The order, at a minimum will include the following where applicable: Special item number, description of services or products required, skill categories, hours, price, period of performance, contract number and the ordering activities task or delivery order number.
- (j) Task Order Proposal – The contractor’s bona-fide proposal describing how it intends to accomplish the ordering activity’s requirement as stated in the task order request, and at what price. Note: Task order pricing offered shall not exceed the awarded FSS contract price.
- (k) Task Order Request – (Used interchangeably under this schedule with “Request for Quote”) – An ordering activity request to have the products or services described in the contract provided to them. The task order request will ask for a written or oral proposal, however, no additional bid or proposal costs may be charged. Oral proposals will be confirmed in writing at the agency’s request. The task order request is not an actual task order to be acted upon by a contractor until it is agreed to and issued as a task order.

B.1.3 SCOPE OF WORK

(a) GENERAL REQUIREMENTS

The Contractor shall be responsible for providing a wide range of medical, dental, surgical and ancillary personnel to assist the Government in providing services on a regional, nationwide and/or international basis. Services performed under this contract will be performed at government locations (Medical Treatment Facilities (MTF), VA Medical Centers (VAMC), clinics and/or other government healthcare access points). Services shall be performed within the ordering activity’s clinical and administrative policies and procedures. The ordering activity may evaluate the quality of professional and administrative services offered, and the service provider may also be required to participate in administrative functions (i.e. orientation, quality improvement programs, clinical/administrative data collection, attendance in meetings, training, etc.). Such participation will, unless otherwise identified with the government’s task order, be considered part of the service hours authorized within the agency task order. Specific services, tasks to be performed and performance standards will be specified by the ordering activity.

Contractors are required to have at least one year corporate experience in providing services relative to this solicitation in order to qualify for an award.

Contractors are required to be capable of providing services in at least of one entire state.

(b) GENERAL QUALIFICATIONS

Any person providing services pursuant to a task order issued by VA and DoD against this contract shall possess a full and unrestricted professional license in a State, Territory, or Commonwealth of the United States or District of Columbia. Any person providing services pursuant to a task order by any other agency or entity authorized to use this FSS schedule must have the qualifications, including licenses, prescribed by such agency or entity or, if no such requirement are prescribed, shall comply with the licensing requirement applicable in the location where such services are to be performed. Agencies authorized to use this FSS schedule may also require individuals performing under specific task orders to be certified by the cognizant board **or** possess lesser qualifications as indicated in the individual task-orders (i.e. board eligible etc.). The contractor will be required to provide proof of the required level of training, education and experience. Contractor may also be required to provide a criminal background check for the personnel performing services under this contract. The Government reserves the right to perform an independent criminal background check. Specific requirements will be specified by and submitted to the ordering activity at the task order level.

B.1.3 SCOPE OF WORK (CONTINUED)

The following minimum general requirements apply to all individuals performing services under the terms of this contract:

Shall hold current certification in Basic Life Support (BLS) and/or Advanced Cardiac Life Support (ACLS)

Shall speak, understand, read and write the English language fluently.

Shall possess the required qualification/elements to be privileged and/or credentialed in accordance with the ordering activity's guidelines and procedures. Contractor's credentials/qualifications are subject to review and approval by the Head or designee of the ordering activity. These qualifications at a minimum will be based on Joint Commission on Accreditation of Healthcare Organization (JCAHO) quality standards for training, education, and competency.

Shall be eligible for U.S. employment and able to provide proof of employment eligibility.

Shall obtain prior to beginning of performance, at own expense a statement from a physician or a report of a physical examination indicating that the individual is free from mental or physical impairments, which would restrict the individual from performing the services, required. Expenses for all required tests and/or procedures shall be borne by the contractor at no additional expense to the Government.

Shall agree to undergo personal health examinations and such other medical and dental examinations at any time during the term of performance, as the Ordering Activity may deem necessary for preventive medicine, quality assurance or privileging purposes. The Government may provide these examinations. If the contractor chooses, these examinations may be provided by a private physician or dentist at no expense to the Government. Additionally, the ordering activity may require that the individual/contractor be immunized annually with the influenza vaccine. The Government may provide this vaccine. Although the Government may provide this vaccine, it may be obtained at other facilities with the cost being borne by the contractor. Unless vaccinated by the Government, the contractor shall be required to show proof of the vaccination. If the contractor worker declines the immunization, they must provide documentation of the waiver, which declines the influenza vaccine (declination on the basis of religious convictions or medical contraindications only).

Individuals who have patient contact must show immunity to Measles, Mumps and Rubella (MMR) through: Serological testing which shows seropositivity to MMR or proof of vaccination (persons born prior to 1957 must have received one dose of MMR vaccine: persons born in 1957 or later must have received two doses of MMR vaccine). The contractor shall provide evidence of varicella immune status or a statement of history of chicken pox. Additionally, on an annual basis and at own expense, contractor shall provide a current Purified Protein Derivative (PPD) reading or evaluation if known PPD reactor.

Any sub-contractor(s) utilized by the contractor(s) for the provision of services under this contract shall meet the same qualification specified by the ordering activity for the contractor(s). Prior approval from the ordering activity Contracting Officer may be required.

B.1.3 SCOPE OF WORK (CONTINUED)

(c) CONFLICT OF INTEREST

It is the policy of the Federal government to avoid situations which place a Contractor in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, that the Contractor may have which relates to the work being performed under a task order pursuant to this solicitation or where the Contractor's performance of such work may provide it with an unfair competitive advantage. See FAR 9.5, Organizational and Consultant Conflicts of Interest (<http://www.arnet.gov>).

All Contractor personnel providing services under a task order pursuant to this solicitation must conduct themselves so that their dealings and actions in performance of the task order are above reproach in every respect. Accordingly, Contractor personnel must not allow themselves to be put in a situation where a conflict of interest may arise or justifiably might be suspected by reason of accepting entertainment, gifts, or favors of any kind or by any other action that would result in financial profit to themselves or which could influence or be interpreted as influencing the strict impartiality that must prevail in all business relationships where the public interest is involved. Further, Contractor personnel shall be cautious of acceptance of outside employment or other outside activity if that employment would give rise to a real or apparent conflict of interest situation.

The Contractor shall notify the Contracting Officer of the Ordering Agency immediately whenever the work under a task order conflicts with or appears to be in conflict with the Contractor's obligation to another company or organization. In this notification, the Contractor shall furnish sufficient details to permit the evaluation of the situation, and the Contractor may be required to submit a plan outlining procedures to mitigate the conflict of interest. The Contractor shall not proceed with the performance of the work in question until notified to do so by the Contracting Officer of the Ordering Agency. The Contracting Officer of the Ordering Agency shall have the right to make the final determination regarding appropriate action to take to address a conflict of interest if a resolution of the conflict cannot be achieved.

Failure to report a possible or actual conflict of interest situation to the Contracting Officer of the Ordering Agency may be a cause for the termination of a task order, cancellation of schedule contract, and possible debarment from doing business with the Federal Government.

To avoid an organizational conflict of interest and to avoid prejudicing the best interest of the Government, ordering offices may place restrictions on the Contractors, its affiliates, chief, executives, directors subsidiaries and subcontractors at any tier when placing ordering against this schedule contract. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to performance of services under each task-order.

(d) CONTRACTOR RESPONSIBILITIES

Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes.

B.1.3 SCOPE OF WORK (CONTINUED)

Contractor personnel (service providers) who furnish services for a nonpersonal services order under this contract shall not be considered employees of the Government for any purposes. Contractor shall be responsible for ensuring that the contractor and/or the individual service provider complies with all laws and regulations applicable to labor and employment including but not limited to the following:

- workers compensation
- professional liability insurance
- health examinations
- income tax withholding, and
- social security withholding

Contractors may also be required to maintain automobile liability insurance written on the comprehensive form of policy. The policy may be required to provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performance of the contract. Policies covering automobile operated in the United States may be required to comply with applicable State minimum requirements or be in amount of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage, whichever is greater. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

Agencies may incorporate provisions in their task order that are essential to their requirements (e.g., security clearances, criminal background check, etc.). These provisions, when required, will be included in individual task orders. Any cost necessary for the contractor to comply with the provision(s) will be included in the task order proposal, unless otherwise prohibited by law.

Contractors are responsible for maintaining the integrity of this contract in relationships with subcontractors and professional liability insurance. Subcontracting and/or teaming arrangements are permitted under this contract. However, subcontractor's qualifications and responsibility are of heightened sensitivity because providing quality care to veterans and other federal healthcare recipients is of paramount importance. In order to provide services under this contract through a subcontractor all parties must be in compliance with clause 852.237-7 Indemnification and Medical Liability Insurance. Therefore, it is necessary for contractors to disclose any subcontract relationship to the FSS Contracting Officer, provide a copy of the subcontractor agreement demonstrating that it complies with paragraph (e) of clause 852.237-7, and provide a Certificate of Liability Insurance demonstrating the coverage complies with 852.237-7 and all relevant terms of the FSS contract. The FSS Contracting Office will keep a copy of all applicable Certificate(s) of Liability Insurance on file. The requirement for professional liability insurance is a material part of this contract; failure to be in full compliance could result termination for cause or cancellation of the FSS contract.

(e) CRIME CONTROL ACT OF 1990

Section 21 of the Crime Control Act of 1990, 42 U.S.C. 13041, as amended by section 1094 of Public Law 1-02-190, requires every facility operated by the Federal Government (or operated under contract with the Federal Government) that hires (or contracts to hire) individuals involved in the provision of child care services to assure that all existing and newly hired employees undergo a criminal background check. The term "child care services" is defined to include health and mental healthcare.

B.1.3 SCOPE OF WORK (CONTINUED)

The Government will conduct criminal background checks on all healthcare worker's providing child care services under this contract based on fingerprints of contractor employees obtained by a Government law enforcement officer and inquiries conducted through the Federal Bureau of Investigation (FBI) and State criminal history repositories.

Within 30 days after contract award, the contractor and all contractor employees shall provide all reasonable and necessary assistance to the Government, including compliance with the employment application requirements set forth in 42 U.S.C. 13041(d). Upon receipt of the results of a background check, the contractor further agrees to undertake a personnel action in accordance with 42 U.S.C. 13041(c), when appropriate.

With written recommendation from the ordering activity Contracting Officer, and the approval one level above the Contracting officer, a contractor employee may be permitted to perform work under this contract prior to the completion of the background check, provided the employee is within sight and continuous supervision of an individual with a successful background check.

Contractor employees shall have the right to obtain a copy of the background check pertaining to them and to challenge the accuracy and completeness of the information contained in the report.

(f) NONDISCLOSURE OF INFORMATION

The Contractor shall ensure the confidentiality of all patient medical records. Information contained in these records may not be disclosed to any person or agency, except pursuant to a written request and with the prior written consent of the individual to whom the records pertain. However, this obligation shall not prevent the disclosure of patient medical records to officials and employees of departments and agencies of the United States Government acting in the performance of their official duties; to officials and employees of local and State Governments; and agencies in the performance of their official duties pursuant to laws and regulations governing the local control of communicable diseases, preventive medicine, and safety programs, child/spouse/elder abuse or neglect programs, or other public health and welfare programs; to official representatives of authorized surveying bodies during the conduct of certification and accreditation reviews; or to third party payors to whom the patient has authorized release of information.

Complete administrative control of patients remains with the Government. All records produced in the performance of this contract and all evaluations of patients are the property of, and subject to the exclusive control of, the Government. All records shall be maintained in accordance with medical treatment facility guidelines.

Contractors agree to hold all information, received in performance of a task order in strict confidence, and not disclose it either to any person outside the Ordering Agency with whom it has a task order, not to any Contractor employee not involved in the performance of a task order. Furthermore, the Contractor agrees not to use any such confidential or nonpublic information for any other purpose than the performance of a task order.

B.1.3 SCOPE OF WORK (CONTINUED)

All financial, statistical, personnel, and technical data which is furnished, produced or otherwise available to the contractor during the performance of this contract are considered confidential business information and shall not be used for purposes other than performance of work under this contract. Such data or information shall not be released nor legal rights claimed by the contractor without prior written consent of the ordering activity's Contracting Officer. Any presentation of any statistical or analytical materials, or any reports based on information obtained from studies covered by this contract will be subject to review and approval by the Contracting Officer before publication or dissemination.

Note: Ordering offices may place additional restrictions on contractors applicable to the protection of information including but not limited to FAR 52.227-11, 52.227-12, OR 52.227-13, when placing orders against schedule contracts.

B.1.4 SCOPE OF WORK NON-PERSONAL SERVICES ONLY

(a) NON-PERSONAL SERVICES

A nonpersonal services contract is defined in FAR 37 as a contract under which the personnel rendering services are not subject; either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

The contractor will perform independently and not as an agent of the Government. The ordering activity may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered.

(b) INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE

Clause 852.237-7 Indemnification and Medical Liability Insurance found elsewhere in this solicitation applies to Nonpersonal Services.

B.1.5 SCOPE OF WORK PERSONAL SERVICES ONLY

(a) PERSONAL SERVICES

A personal services contract is defined in FAR 37 as a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, to be Government employees.

The contractor will perform as an agent of the Government in an employer-employee type of a relationship. The contractor personnel may be subject to the relatively continuous supervision and control of a Government officer or employee.

(b) PERSONAL SERVICES AUTHORITY

Department of Defense (DoD) ordering activities are authorized to award personal services contracts under section 1091 of Title 10, United States Code. Other Government Agencies may award personal services contracts only if specifically authorized by statute.

B.1.5 SCOPE OF WORK PERSONAL SERVICES ONLY (CONTINUED)

(c) ADDITIONAL PROVISIONS APPLICABLE TO DOD TASK-ORDERS FOR PERSONAL SERVICES ONLY

1. SUITS ARISING OUT OF MEDICAL MALPRACTICE

In the event that the Contractor is awarded a task order by a DoD ordering activity to provide services under a personal services contract entered into under the authority of section 1091 of Title 10, United States Code, section 1089 of Title 10, United States Code shall apply to personal injury lawsuits filed against the healthcare worker(s) based on negligent or wrongful acts or omissions incident to performance within the scope of this contract. Therefore, the contractor is not required to maintain medical malpractice liability insurance.

2. SUPERVISION

Health care workers providing services under a Personal Services task-order shall be subject to day-to-day supervision and control by Government personnel. Supervision and control is the process by which the individual health care worker receives technical guidance, direction, and approval with regard to a task(s) within the requirements of this contract.

3. PERSONAL SERVICES CONTRACTING PROCEDURES AND PAY CAP

Section 102 of Title 3 United States Code, as referenced in section 1091 of Title 10, United States Code, shall apply to the maximum compensation paid to an individual, in any year in task-orders awarded by a DoD ordering activity for personal services contract.

4. SPECIAL TERMINATION AND PAYMENT PROCEDURES

Clauses 52.249-12 Termination (Personal Services) and 52.232-3 Payments under Personal Services Contracts are incorporated herein by reference. Ordering activities may add other clauses applicable to personal services in their task orders.

B.1.6 SCHEDULE OF SERVICES

B-FSS-96 ESTIMATED SALES (NOV 1997)

The "Estimated Sales" column of the Schedule of Items shows (1) a twelve-month reading of purchases in dollars or purchases in units as reported by the previous Contractor(s), or (2) estimates of the anticipated dollar volume where the item is new. The absence of a figure indicates that neither reports of previous purchases nor estimates of sales are available.

<u>SIN</u>	<u>DESCRIPTION</u>	<u>ESTIMATED ANNUAL REQUIREMENTS</u>
621-001	Physician – General and Family (Includes: Occupational Medicine; Urgent Care; Adolescent Medicine and Geriatric Medicine)	\$19,532,319.00

B.1.6 SCHEDULE OF SERVICES (CONTINUED)

<u>SIN</u>	<u>DESCRIPTION</u>	<u>ESTIMATED ANNUAL REQUIREMENTS</u>
621-002	Physician – Emergency Medicine (Includes: Trauma I, II, III, IV & V)	\$15,883,802.00
621-003	Physician – Internal Medicine (Not classified elsewhere) (Includes: Cardiovascular Diseases; Gastroenterology; Pulmonary Diseases; Oncology; Nephrology; Hospitalist; Invasive Internal Medicine; Critical Care; Rheumatology; Endocrinologist; Infectious Disease; Allergist; Other)	\$24,258,019.00
621-004	Physician – Pediatrician (Includes: Neonatologist; Perinatologist; Critical Care Pediatrics)	\$5,185,160.00
621-005	Physician – OB/Gynecologist	\$3,347,443.00
621-006	Physician – Anesthesiologist	\$11,286,926.00
621-007	Physician – Cardiology (Includes: General and Pediatric; Invasive and Non-invasive; Surgery and No Surgery)	\$2,961,113.00
621-008	Physician – Dermatologist	\$1,099,153.00
621-009	Physician – Hematologist	\$561,713.00
621-010	Physician – Neurologist	\$1,412,993.00
621-011	Physician – Ophthalmologist	\$681,830.00
621-012	Physician – Optometrist	\$1,232,389.00
621-013	Physician – Orthopaedic (General and Surgery)	\$2,461,804.00
621-014	Physician – Physical Medicine and Rehabilitation Svcs. (PM&R) (Includes Physiatry)	\$207,327.00
621-015	Physician – Otolaryngologist (Ear/Nose/Throat – ENT)	\$1,432,147.00
621-016	Physician – Pathology (Includes: Cytopathologist; Dermatopathologist; Hematologist; Neuropathologist; Pediatric Pathologist)	\$430,093.00
621-017	Physician – Psychiatrist (Includes: General; Child/Adolescent; Adult and Geriatric)	\$8,253,224.00
621-018	Physician – Psychologist	\$1,855,893.00

B.1.6 SCHEDULE OF SERVICES (CONTINUED)

<u>SIN</u>	<u>DESCRIPTION</u>	<u>ESTIMATED ANNUAL REQUIREMENTS</u>
621-019	Physician – Podiatrist	\$494,439.00
621-020	Physician – Radiology (Includes: Diagnostic; MRI/Mammogram; Interventional and Oncology)	\$27,731,719.00
621-021	Physician – Surgery (Not elsewhere classified) (Includes: General; Colon and Rectal; Plastic; Thoracic/Vascular; Neurosurgery; CardioThoracic)	\$2,671,489.00
621-022	Physician – Urology (Includes General and Surgery)	\$2,659,446.00
621-023	Physician – Nuclear Medicine	\$55,985.00
621-024	Physician – Gerontologist	No Data Available
621-025	Registered Nurses (Includes General and Specialized)	\$107,487,548.00
621-026	Dentist (Includes: General; Orthodontist and Endodontist)	\$1,110,431.00
621-027	Pharmacist (Includes PharmD)	\$18,779,759.00
621-030	Physician Assistants	\$10,398,768.00
621-031	Audiologist/Speech and Language Pathologist	\$340,809.00
621-032	Emergency Response Professions (Includes Emergency Medical Technician, Paramedic, Schedule (Drug & Alcohol Testing), Blood & Alcohol Technician and Ambulance Driver)	\$240,468.00
621-033	Dental Related Services (Includes: Dental Hygienist; Dental Assistant; Dental Laboratory Technician; Other)	\$1,722,761.00
621-034	Respiratory Therapy (Includes: Registered Respiratory Therapist (RRT); Certified Respiratory Therapist (CRT); Certified Respiratory Therapy Technician/Technologist (CRTT); Respiratory Therapy Assistant)	\$4,750,724.00
621-035	Physical Therapy/Recreational Therapy (Includes: Physical Therapist; Physical Therapy Assistant; Therapeutic Recreation Specialist and Athletic Trainer)	\$3,641,632.00
621-036	Perfusionist/Perfusion Technologist	\$347,793.00
621-037	Occupational Therapy (Includes: Occupational Therapist and Occupational Therapy Assistant)	\$568,282.00
621-038	Licensed Practical/Vocational Nurse (Includes: specialty Oriented; Clinical; Med/Surg)	\$20,501,493.00

B.1.6 SCHEDULE OF SERVICES (CONTINUED)

<u>SIN</u>	<u>DESCRIPTION</u>	<u>ESTIMATED ANNUAL REQUIREMENTS</u>
621-039	Medical Assistant/Medical Administrative (Includes Medical Assistant, Medical Records Clerk, Medical Record Technician and Medical Transcriptionist)	\$9,130,439.00
621-040	Nurse Assistant (Includes Nursing Aide, Orderly and Attendant)	\$14,055,927.00
621-041	Cytotechnologist	\$421,435.00
621-042	Kinesiotherapist	No Data Available
621-043	Orthotist/Prosthetist	No Data Available
621-044	Ophthalmic Services (Includes: Ophthalmic Dispensing Optician; Ophthalmic Laboratory Technician; Ophthalmic Medical Technician/Technologist; Orthoptist; Ophthalmic Assistant)	\$1,151,284.00
621-045	Genetic Counselor	No Data Available
621-046	Clinical Laboratory Science / Medical Technology (Includes: Clinical Laboratory Scientist; Medical Technologist; Laboratory Technician; Medical Laboratory Technician; Histologic Technician; Histotechnologist; Pathologists' Assistant; and Phlebotomy Technician)	\$7,666,122.00
621-047	Counseling Related Services (Includes: Community Counselor; Marriage/Family Counselor/Therapist; Mental Health Counselor; Rehabilitation Counselor; Social Worker (BS); Social Worker (MS); Music Therapist; Art Therapist and Dance Therapist (Registered DTR).	\$2,494,285.00
621-048	Dietitian/Nutritionist (Including Dietetic Technician)	\$75,264.00
621-049	Surgical Technologist	\$2,678,816.00
621-050	Radiologic Technology (Includes: Cardiovascular Technologists (General, Interventional, ECHO and Cath Lab); Computer Tomography (CT) Technologist; Magnetic Resonance Imaging Technologist (MRI); Mammographer; Nuclear Medicine Technologist; PET Technologist; Radiation Therapy; Radiation Therapist; Radiological Therapeutic Technologist (RRT); Imaging (Diagnostic, Radiographer, X-Ray); Sonography/Ultrasound – Including Abdomen, OB/GYN, Vascular and Cardiac)	\$17,931,603.00
621-051	Pharmacy Technician	\$13,589,642.00

B.1.6 SCHEDULE OF SERVICES (CONTINUED)

<u>SIN</u>	<u>DESCRIPTION</u>	<u>ESTIMATED ANNUAL REQUIREMENTS</u>
621-053	Certified Registered Nurse Anesthetist (CRNA)	\$12,376,636.00
621-054	Nurse Practitioner	\$5,180,753.00
621-055	Dosimetrist	No Data Available
621-056	General Clinical Technologists/Technicians	\$10,699.00
621-057	Chiropractor	No Data Available
621-058	Certified/Licensed Midwife	\$418,574.00
621-059	Blindness and Visual Impairment Professions (Includes: Low Vision Therapist; Orientation and Mobility Specialist; Rehabilitation Teacher)	No Data Available
621-060	Electroneurodiagnostic Technologist (END) (Includes: Electroencephalogram Technologist (EEG))	\$88,880.00
621-061	Physicists (Includes medical physicists including: Therapeutic Radiological Physics; Diagnostic Radiological Physics; Medical Nuclear Physics; Medical Health Physics)	\$127,598.00
621-099	Introduction of New Products/Services (INS) (Includes Categories and Subcategories)	No Data Available

L-FSS-400 INTRODUCTION OF NEW SERVICES/PRODUCTS (INSP) (NOV 2000)(VARIATION 2004)

(a) Definition. *Introduction of New Services/Products Special Item Number (INSP/SIN)* means a new or improved service or product— within the scope of the Federal Supply Schedule, but not currently available under any Federal Supply Service contract— that provides a new service, function, task, or attribute that may provide a more economical or efficient means for Federal agencies to accomplish their mission. It may significantly improve an existing service or product. It may be a service or product existing in the commercial market, but not yet introduced to the Federal Government.

(b) Offerors are encouraged to introduce new services or products via the Introduction of New Services/Products Special Item Number (INSP/SIN). A new or improved service or product can be offered at anytime. Offerors are requested to clearly identify the INSP/SIN item in the offer.

B.1.6 SCHEDULE OF SERVICES (CONTINUED)

L-FSS-400 INTRODUCTION OF NEW SERVICES/PRODUCTS (INSP) (NOV 2000)(VARIATION 2004)(CONTINUED)

(c) The Contracting Officer will evaluate and process the INSP/SIN offer. A technical review may be performed. Offerors may be required to demonstrate that the service or product can provide a more economical or efficient means for Federal agencies to accomplish their mission. The Contracting Officer has the sole discretion to determine whether a product or service will be accepted as an INSP/SIN item. The INSP/SIN provides temporary placement until the new service or product can be formally categorized.

(d) If the Contractor has an existing Multiple Award Schedule contract, the Government may, at the sole discretion of the Contracting Officer, modify the existing contract to include the INSP/SIN item in accordance with the Modifications clause of this contract (Multiple Award Schedule).

SECTION C 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (FEB 2007)

52.212-4 CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (FEB 2007)

(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 the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). 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.

SECTION C 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (FEB 2007)(CONTINUED)

(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—Central Contractor Registration, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), 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.

SECTION C 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (FEB 2007)(CONTINUED)

(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 immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(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.

SECTION C 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (FEB 2007)(CONTINUED)

(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. 3701](#), *et seq.*, Contract Work Hours and Safety Standards Act; [41 U.S.C. 51-58](#), Anti-Kickback Act of 1986; [41 U.S.C. 265](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. 423](#) 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, and Compliance with Laws Unique to Government Contracts 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) Central Contractor Registration (CCR).

(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 CCR database, and for any liability resulting from the Government's reliance on

SECTION C 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (FEB 2007)(CONTINUED)

inaccurate or incomplete data. To remain registered in the CCR 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 CCR database to ensure it is current, accurate and complete. Updating information in the CCR 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 CCR 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 CCR 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 CCR 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 CCR database. Information provided to the Contractor’s CCR 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 the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

C.1 ADDENDUM TO 52.212-4 – CONTRACT TERMS AND CONDITIONS

C.1.1 DELIVERIES

I-FSS-103 SCOPE OF CONTRACT--WORLDWIDE (JUL 2002)(VARIATION 2004)

(a) This solicitation is issued to establish contracts which may be used as sources of supplies or services described herein for domestic and/or overseas delivery.

(b) Definitions- *Domestic delivery* is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories.

C.1.1 DELIVERIES (CONTINUED)

I-FSS-103 SCOPE OF CONTRACT--WORLDWIDE (JUL 2002)(VARIATION 2004)(CONTINUED)

(c) **Refer to Exhibit #3 – Price Proposal, Commercial Sales Practice Disclosures, paragraph 2(b).**

(d) Resultant contracts may be used on a nonmandatory basis by the following activities: Executive agencies; other Federal agencies, mixed-ownership Government corporations, and the District of Columbia; Government contractors authorized in writing by a Federal agency pursuant to 48 CFR 51.1; and other activities and organizations authorized by statute or regulation to use GSA as a source of supply. This will include approved State Veterans Homes with sharing agreements. U.S. territories are domestic delivery points for purposes of this contract. (Questions regarding activities authorized to use this schedule should be directed to the Contracting Officer.) The following organization is hereby designated as the authorized ordering activity for the Department of Navy:

Navy Medical Logistics Command
Code 02, 1921 Nelson Street
Fort Detrick, MD 21702-9203

(e) (1) The Contractor is obligated to accept orders received from activities within the Executive Branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive Branch of the Federal Government; however, the Contractor is encouraged to accept orders from such Federal activities. If the Contractor elects to accept such an order, all provisions of the contract shall apply, including clause 552.232-77, Payment by Governmentwide Commercial Purchase Card (Alternate I). If the Contractor is unwilling to accept such an order, and the proposed method of payment is not through the Purchase Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such an order, and the proposed method of payment is through the Purchase Card, the Contractor must so advise the ordering agency within 24 hours of receipt of order. (Reference clause 552.232-77, Payment by Governmentwide Commercial Purchase Card (Alternate I)). Failure to return an order or advise the ordering agency within the time frames above shall constitute acceptance whereupon all provisions of the contract shall apply.

(f) The Government is obligated to purchase under each resultant contract a guaranteed minimum as specified in the clause I-FSS-106, Guaranteed Minimum, contained elsewhere in this contract.

52.216-22 INDEFINITE QUANTITY (OCT 1995) (VARIATION – OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the contract. The Government shall order at least the quantity of supplies or services designated in the Schedule as the “minimum.”

C.1.1 DELIVERIES (CONTINUED)

52.216-22 INDEFINITE QUANTITY (OCT 1995) (VARIATION – OCT 1995)(CONTINUED)

(c) Except for any limitations on quantities in the Guaranteed Minimum or Order Limitations clause, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period or option periods.

G-FSS-910 DELIVERIES BEYOND THE CONTRACTUAL PERIOD--PLACING OF ORDERS (OCT 1988)

In accordance with the Scope of Contract clause, this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply by permitting ordering activities to place orders as requirements arise in the normal course of supply operations. Accordingly, any order mailed (or received, if forwarded by other means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

C.1.2 ORDERING

52.216-18 ORDERING (OCT 1995) (DEVIATION – FEB 2007)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from Date of Award through Contract expiration date.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c) If mailed, a delivery order or task order is considered "issued" when the ordering activity deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

552.216-72 PLACEMENT OF ORDERS (SEP 1999) (ALTERNATE II SEP 1999)(VARIATION)

- (a) The organizations listed below may place orders under this contract. Questions regarding organizations authorized to use this schedule should be directed to the Contracting Officer.
 - (1) Executive agencies.
 - (2) Other Federal Agencies.
 - (3) Mixed-ownership Government corporations.
 - (4) The District of Columbia.
 - (5) Government Contractors authorized in writing by a Federal agency pursuant to 48 CFR 51.1.
 - (6) Other activities and organizations authorized by statute or regulation to use GSA as a source of supply.

C.1.2 ORDERING (CONTINUED)

**552.216-72 PLACEMENT OF ORDERS (SEP 1999) (ALTERNATE II SEP 1999)(VARIATION)
(CONTINUED)**

- (b) Orders may be placed through Electronic Data Interchange (EDI) or mailed in paper form. EDI orders shall be placed using the American National Standards Institute (ANSI) X12 Standard for Electronic Data Interchange (EDI) format.
- (c) If the Contractor agrees, GSA's Federal Supply Service (FSS) will place all orders by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FSS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other agencies may place orders by EDI.
- (d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each Federal agency placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Federal agencies may obtain a sample format to customize as needed from the office specified in (g) below.
- (e) The Contractor shall be responsible for providing its own hardware and software necessary to transmit and receive data electronically. Additionally, each party to the TPA shall be responsible for the costs associated with its use of third party provider services.
- (f) Nothing in the TPA will invalidate any part of this contract between the Contractor and the General Services Administration. All terms and conditions of this contract that otherwise would be applicable to a mailed order shall apply to the electronic order.
- (g) The basic content and format of the TPA will be provided by:

Department of Veterans Affairs
Office of Acquisition and Material Management
Information Systems Operations (049IA)
1615 Woodward Street, Austin, TX 78772
Telephone: (512) 326-6931
Fax: (512) 326-7445

AS3016 ORDER LIMITATIONS (DEC 2004)

1. When the Government requires services covered by this contract in an amount less than the negotiated minimum assignment period negotiated as part of the contractor's price proposal (See Exhibit 3, attachment 1d), the Contractor is not obligated to furnish those services under the contract. However, offerors may, and are encouraged to accept, smaller orders on a task-order basis. Such orders shall be deemed to be accepted by the Contractor, unless returned to the ordering office within 5 workdays after receipt by the Contractor.
2. Maximum order. (a) The Contractor is not obligated to honor any order for a combination of items in excess of:

ITEM NUMBER/SIN

MAXIMUM ORDER

621-001 – 621-099

\$1,000,000 per order

C.1.2 ORDERING (CONTINUED)

AS3016 ORDER LIMITATIONS (DEC 2004)(CONTINUED)

(b) The Contractor shall honor any order exceeding the maximum orders in paragraph (1), unless that order (or orders) is returned to the ordering office within 5 workdays after receipt, with written notice stating the Contractor's intent not to accept the order and the reasons. Upon receiving this notice, the Government may acquire the services from another source.

(c) The Contractor shall honor any purchase card orders exceeding the maximum orders in paragraph (1), unless that order (or orders) is returned to the ordering office within 24 hours after receipt, with written notice stating the Contractor's intent not to accept the order and the reasons. Upon receiving this notice, the Government may acquire the services from another source.

G-FSS-907 ORDER ACKNOWLEDGEMENT (APR 1984)

Contractors shall acknowledge only those orders which state "Order Acknowledgement Required." These orders shall be acknowledged within 10 days after receipt. Such acknowledgement shall be sent to the activity placing the order and contain information pertinent to the order, including the anticipated delivery date.

I-FSS-140-B URGENT REQUIREMENTS (JAN 1994)

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering agency, agencies are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering agency, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

I-FSS-646 BLANKET PURCHASE AGREEMENTS (MAY 2000)

Blanket Purchase Agreements (BPA's) can reduce costs and save time because individual orders and invoices are not required for each procurement but can instead be documented on a consolidated basis. The Contractor agrees to enter into BPA's with ordering activities provided that:

- (a) The period of time covered by such agreements shall not exceed the period of the contract including option year period(s);
- (b) Orders placed under such agreements shall be issued in accordance with all applicable regulations and the terms and conditions of the contract; and
- (c) BPAs may be established to obtain the maximum discount (lowest net price) available in those schedule contracts containing volume or quantity discount arrangements.

C.1.3 BILLING

552.232-83 CONTRACTOR'S BILLING RESPONSIBILITIES (MAY 2003)

The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to

C.1.3 BILLING (CONTINUED)

552.232-83 CONTRACTOR'S BILLING RESPONSIBILITIES (MAY 2003)(CONTINUED)

- (1) Comply with the same terms and conditions regarding prices as the Contractor for sales made under the contract;
- (2) Maintain a system of reporting sales under the contract to the manufacturer, which includes
 - (i) The date of sale;
 - (ii) The ordering activity to which the sale was made;
 - (iii) The service or product/model sold;
 - (iv) The quantity of each service or product/model sold;
 - (v) The price at which it was sold, including discounts; and
 - (vi) All other significant sales data.
- (3) Be subject to audit by the Government, with respect to sales made under the contract; and
- (4) Place orders and accept payments in the name of the Contractor in care of the dealer.

An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

C.1.4 PAYMENT

552.232-8 DISCOUNTS FOR PROMPT PAYMENT (APR 1989) (DEVIATION FAR 52.232-8)

- (a) Discounts for early payment (hereinafter referred to as "discounts" or "the discount") will be considered in evaluating the relationship of the offeror's concessions to the Government vis-à-vis the offeror's concessions to its commercial customers, but only to the extent indicated in this clause.
- (b) Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the "value of funds" rate established by the Department of the Treasury and published quarterly in the Federal Register. The "value of funds" rate applied will be the rate in effect on the date specified for the receipt of offers.
- (c) Agencies required to use the resultant schedule will not apply the discount in determining the lowest delivered price pursuant to the FPMR, 41 CFR 101-26.408, if the agency determines that payment will probably not be made within the discount period offered. The same is true if the discount is considered uneconomical at the time of placement of the order.
- (d) Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the Government if payment is made within the discount period specified.
- (e) Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

C.1.4 PAYMENT (CONTINUED)

552.232-8 DISCOUNTS FOR PROMPT PAYMENT (APR 1989) (DEVIATION FAR 52.232-8) (CONTINUED)

In connection with any discount offered for prompt 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 date on which an electronic funds transfer was made.

52.232-17 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) 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 Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

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

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

52.232-37 MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

552.232-77 PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD (MAR 2000) (ALTERNATE I – MAR 2000)

(a) Definitions.

"Governmentwide commercial purchase card" means a uniquely numbered credit card issued by a contractor under GSA's Governmentwide Contract for Fleet, Travel, and purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

"Oral order" means an order placed orally either in person or by telephone.

C.1.4 PAYMENT (CONTINUED)

**552.232-77 PAYMENT BY GOVERNMENTWIDE COMMERCIAL PURCHASE CARD
(MAR 2000) (ALTERNATE I – MAR 2000)(CONTINUEUD)**

(b) The Contractor must accept the Governmentwide commercial purchase card for payments equal to or less than the micro-purchase threshold (see Federal Acquisition Regulation 2.101) for oral or written orders under this contract.

(c) The Contractor and the ordering agency may agree to use the Governmentwide commercial purchase card for dollar amounts over the micro-purchase threshold, and the Government encourages the Contractor to accept payment by the purchase card. The dollar value of a purchase card action must not exceed the ordering agency's established limit. If the Contractor will not accept payment by the purchase card for an order exceeding the micro-purchase threshold, the Contractor must so advise the ordering agency within 24 hours of receipt of the order.

(d) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

(e) Payments made using the Governmentwide commercial purchase card are not eligible for any negotiated prompt payment discount. Payment made using a Government debit card will receive the applicable prompt payment discount.

**52.232-35 DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS
TRANSFER INFORMATION (MAY 1999)** *Note: This clause is applies to the VA only.*

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer-Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office Name:

Department of Veterans Affairs
Finance Service Center (FSC)
Finance Operations Division (0473C2)
P.O. Box 149971
Austin, TX 78714-8971

C.1.4 PAYMENT (CONTINUED)

552.232-23 ASSIGNMENT OF CLAIMS (SEP 1999)

In order to prevent confusion and delay in making payment, the Contractor shall not assign any claim(s) for amounts due or to become due under this contract. However, the Contractor is

permitted to assign separately to a bank, trust company, or other financial institution, including any Federal lending agency, under the provisions of the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as "the Act"), all amounts due or to become due under any order amounting to \$1,000 or more issued by any Government agency under this contract. Any such assignment takes effect only if and when the assignee files written notice of the assignment together with a true copy of the instrument of assignment with the contracting officer issuing the order and the finance office designated in the order to make payment. Unless otherwise stated in the order, payments to an assignee of any amounts due or to become due under any order assigned may, to the extent specified in the Act, be subject to reduction or set-off.

52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007) (DEVIATION FEB 2007) (ALTERNATE I -- FEB 2007)

The ordering activity will pay the Contractor as follows upon the submission of vouchers approved by the Contracting Officer or the authorized representative:

(a) Hourly rate.

- (1) 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--
 - (i) Performed by the Contractor;
 - (ii) Performed by the subcontractors; or
 - (iii) Transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control.
- (2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed.
- (3) The hourly 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 employees that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.
- (4) The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.
- (5) Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or authorized representative. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by--
 - (i) Individual daily job timekeeping records;

C.1.4 PAYMENT (CONTINUED)

52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007) (DEVIATION FEB 2007) (ALTERNATE I -- FEB 2007)

- (ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or
 - (iii) Other substantiation approved by the Contracting Officer.
 - (6) Promptly after receipt of each substantiated voucher, the ordering activity shall, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this clause, pay the voucher as approved by the Contracting Officer or authorized representative.
 - (7) Unless otherwise prescribed in the Schedule, the Contracting Officer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the ordering activity's interests. The Contracting Officer may require a withhold of 5 percent of the amounts due under paragraph (a) of this clause, but the total amount withheld for the contract shall not exceed \$50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (f) of this clause.
 - (8) 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. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. 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.
- (b) Materials.
- (1) For the purposes of 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) 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.); and
 - (D) Applicable indirect costs.

C.1.4 PAYMENT (CONTINUED)

52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007) (DEVIATION FEB 2007) (ALTERNATE I -- FEB 2007)(Continued)

- (2) If the Contractor furnishes its own 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--
 - (i) Quantities being acquired; and
 - (ii) Actual cost of any modifications necessary because of contract requirements.
- (3) Except as provided for in paragraph (b)(2) of this clause, the ordering activity will reimburse the Contractor for allowable cost of materials provided the Contractor--
 - (i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
 - (ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to the ordering activity and such payment is in accordance with the terms and conditions of the agreement or invoice.
- (4) Payment for materials is subject to the Allowable Cost and Payment clause of this contract. The Contracting Officer will determine allowable costs of materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.
- (5) The Contractor may include allocable indirect costs and other direct costs to the extent they are--
 - (i) Comprised only of costs that are clearly excluded from the hourly rate;
 - (ii) Allocated in accordance with the Contractor's written or established accounting practices; and
 - (iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.
- (6) If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this paragraph (b), shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the ordering activity, provided that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.
- (7) Except as provided for in 31.205-26(e) and (f), the ordering activity will not pay profit or fee to the prime Contractor on materials.

C.1.4 PAYMENT (CONTINUED)

52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007) (DEVIATION FEB 2007) (ALTERNATE I -- FEB 2007)(Continued)

- (c) If the Contractor enters into any subcontract that requires consent under the clause at 52.244-2, Subcontracts, without obtaining such consent, the ordering activity is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the ordering activity.
- (d) Total cost. It is estimated that the total cost to the ordering activity 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 ordering activity for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the ordering activity 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 performing this contract, the ordering activity 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.
- (e) Ceiling price. The ordering activity 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.
- (f) Audit. At any time before final payment under this contract, the Contracting Officer may request audit of the vouchers and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding vouchers, that are found by the Contracting Officer or authorized representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by the Contractor as the "completion voucher" and supporting documentation, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraphs (f) and (g) of this clause), the ordering activity shall promptly pay any balance due the Contractor.

The completion voucher, 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.

C.1.4 PAYMENT (CONTINUED)

52.232-7 PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007) (DEVIATION FEB 2007) (ALTERNATE I -- FEB 2007)(Continued)

- (g) Assignment and 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 ordering activity, 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:
- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
 - (2) 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 ordering activity is prepared to make final payment, whichever is earlier.
 - (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the ordering activity against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.
- (h) Interim payments on contracts for other than services.
- (1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.
 - (2) The designated payment office will make interim payments for contract financing on the * _____ * day after the designated billing office receives a proper payment request. In the event that the ordering activity requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. (i) Interim payments on contracts for services. For interim payments made prior to the final payment under this contract, the ordering activity will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.
- (i) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES

I-FSS-639 CONTRACT SALES CRITERIA (MAR 2002)

- (a) A contract will not be awarded unless anticipated sales are expected to exceed \$25,000 within the first 24 months following contract award, and are expected to exceed \$25,000 in sales each 12-month period thereafter.
- (b) The Government may cancel the contract in accordance with clause 552.238-73, Cancellation (included in this section), unless reported sales are at the levels specified in paragraph (a) above.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

I-FSS-680 DISSEMINATION OF INFORMATION BY CONTRACTOR (APR 1984)

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

I-FSS-600 CONTRACT PRICE LISTS (JUL 2004)(LOCAL VARIATION)(A) ELECTRONIC CONTRACT DATA

(1) At the time of award, the Contractor will be provided instructions for submitting electronic contract data in a prescribed electronic format as required by clause 552.238-71, Submission and Distribution of Authorized FSS Schedule Price Lists (included in this section).

(2) The Contractor will have a choice to transmit its file submissions electronically through Electronic Data Interchange (EDI) in accordance with the Federal Implementation Convention (IC) or use the application made available at the time of award. The Contractor's electronic files must be complete; correct; readable; virus-free; and contain only those supplies and services, prices, and terms and conditions that were accepted by the Government. They will be added to GSA's electronic ordering system known as *GSA Advantage!*, a menu-driven database system that provides on-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic order. The Contractor's electronic files must be received no later than 6 months after award. Contractors should refer to clause I-FSS-597, *GSA Advantage!* for further information.

(3) Further details on EDI, ICs, and *GSA Advantage!* can be found in clause I-FSS-599, Electronic Commerce.

(4) The Contractor is encouraged to place the GSA identifier (logo) on their web site for those supplies or services covered by this contract. The logo can link to the contractor's Federal Supply Schedule price list. The identifier URL is located at fss.gsa.gov/partnership/. All resultant "web price lists" shown on the contractor's web site must be in accordance with section (b)(3)(ii) of this clause and nothing other than what was accepted /awarded by the Government may be included. If the contractor elects to use contract identifiers on its website (either logos or contact number) the website must clearly distinguish between those items awarded on the contract and any other items offered by the contractor on an open market basis.

(5) The contractor is responsible for keeping all electronic catalog data up to date; e.g., prices, product deletions and replacements, etc.

(b) Federal Supply Schedule Price Lists.

(1) The Contractor must also prepare, print, and distribute a paper Federal Supply Schedule Price List as required by clause 552.238-71, Submission and Distribution of Authorized FSS Schedule Price Lists. This must be done as set forth in this paragraph (b).

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

I-FSS-600 CONTRACT PRICE LISTS (JUL 2004)(LOCAL VARIATION)(A) ELECTRONIC CONTRACT DATA (CONTINUED)

(2) The Contractor must prepare a Federal Supply Schedule Price List by either:

(i) Using the commercial catalog, price list, schedule, or other document as accepted by the Government, showing accepted discounts, and obliterating all items, terms, and conditions not accepted by the Government by lining out those items or by a stamp across the face of the item stating "NOT UNDER CONTRACT" or "EXCLUDED"; or

(ii) Composing a price list in which only those items, terms, and conditions accepted by the Government are included, and which contain only net prices, based upon the commercial price list less discounts accepted by the Government. In this instance, the Contractor must show on the cover page the notation "Prices Shown Herein are Net (discount deducted)".

(3) The cover page of the Federal Supply Schedule Price List must include the following information prepared in the format set forth in this subparagraph (b)(3):

(i) Department of Veterans Affairs

Federal Supply Service

Authorized Federal Supply Schedule Price List

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through *GSA Advantage!*, a menu-driven database system. The INTERNET address *GSA Advantage!* is:

<http://www.GSAAdvantage.gov>

Federal Supply Schedule 621 I Professional and Allied Healthcare Staffing Services

FSC Group, Part, and Section or Standard Industrial Group (as applicable)

FSC Class(es)/Product code(s) and/or Service Codes (as applicable)

Contract number

For more information on ordering from Federal Supply Schedules click on the FSS Schedules button at <http://www.fss.gsa.gov>

Contract period.

Contractor's name, address, and phone number (include toll-free WATS number and FAX number, if applicable)

Contractor's internet address/web site where schedule information can be found (as applicable).

Contract administration source (if different from preceding entry).

Business size (include Veteran Owned; Woman-owned and Hubzone)

Contractor's Data Universal Number System (DUNS) number

Notification regarding registration in Contractor's Central Registration (CCR) database.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

I-FSS-600 CONTRACT PRICE LISTS (JUL 2004)(LOCAL VARIATION)(A) ELECTRONIC CONTRACT DATA (CONTINUED)

(ii) CUSTOMER INFORMATION: The following information should be placed under this heading in consecutively numbered paragraphs in the sequence set forth below. If this information is placed in another part of the Federal Supply Schedule Price List, a table of contents must be shown on the cover page that refers to the exact location of the information.

1. Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s).
2. Maximum order.
3. Minimum order.
4. Geographic coverage (service area).
5. Prompt payment terms.
6. Notification that Government purchase cards are accepted at or below the micro-purchase threshold.

Notification whether Government purchase cards are accepted or not accepted above the micro-purchase threshold and any terms and conditions of Government purchase card acceptance.

7. Ordering Address.
8. Payment Address.
9. Statement of net price and quantity discounts, if applicable.
10. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate "Not applicable" for this item.
11. Professional Liability Insurance Policy Limits.
12. Ordering procedures: For services, the ordering procedures, information on Blanket Purchase Agreements (BPA's), are found in Federal Acquisition Regulation (FAR) 8.405-3.

(4) Amendments to Federal Supply Schedule Price Lists must include on the cover page the same information as the basic document plus the title "Supplement No. (sequentially numbered)" and the effective date(s) of such supplements.

(5) The Contractor must provide two of the Federal Supply Schedule Price Lists (including covering letters), to the Contracting Officer 30 days after the date of award. Accuracy of information and computation of prices is the responsibility of the Contractor. NOTE: The obliteration discussed in subdivision (b)(2)(i) of this clause must be accomplished prior to the printing and distribution of the Federal Supply Schedule Price Lists.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

I-FSS-600 CONTRACT PRICE LISTS (JUL 2004)(LOCAL VARIATION)(A) ELECTRONIC CONTRACT DATA (CONTINUED)

(6) Inclusion of incorrect information (electronically or in paper) will cause the Contractor to reprint/resubmit/correct and redistribute the Federal Supply Schedule Price List, and may constitute sufficient cause for Cancellation, applying the provisions of 52.212-4 , Contract Terms and Conditions (paragraph (m), Termination for Cause), and application of any other remedies as provided by law—including monetary recovery.

(8) In addition, one copy of the Federal Supply Schedule Price List must be submitted to the **National Customer Service Center, Bldg. No. 4, 1500 E. Bannister Road, Kansas City, MO 64131.**

552.238-71 SUBMISSION AND DISTRIBUTION OF AUTHORIZED FSS SCHEDULE PRICELISTS (SEP 1999)(DEVIATION JUL 2004)

(a) The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.

(b) The Contractor shall provide to the VA Contracting Officer:

(i) Two paper copies of Authorized FSS Schedule Pricelist; and

(ii) The Authorized FSS Schedule Pricelist on a common-use electronic medium.

The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(c) During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request.

I-FSS-599 ELECTRONIC COMMERCE--FACNET (SEP 2006)

(a) General Background.

The Federal Acquisition Streamlining Act (FASA) of 1994 establishes the Federal Acquisition Computer Network (FACNET) requiring the Government to evolve its acquisition process from one driven by paperwork into an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI means more than merely automating manual processes and eliminating paper transactions. It can and will help to move business processes (e.g., procurement, finance, logistics, etc.) into a fully electronic environment and fundamentally change the way organizations operate.

(b) Trading Partners and Value Added Networks (VAN's)

Within the FACNET architecture, electronic documents (e.g., orders, invoices, etc.) are carried between the Federal Government's procuring office and contractors (now known as "trading partners"). These transactions are carried by commercial telecommunications companies called Value Added Networks (VAN's). EDI can be done using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision contractors must make. There are many different VAN's which provide a variety of electronic services and different pricing strategies. If your VAN only provides communications services, you may also need a software translation package.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

I-FSS-599 ELECTRONIC COMMERCE--FACNET (SEP 2006)(CONTINUED)

(c) Registration Instructions.

DOD will require Contractors to register as trading partners to do business with the Government. This policy can be reviewed via the INTERNET at http://www.defenselink.mil/releases/1999/b03011999_bt07999.html.

To do EDI with the Government, Contractors must register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners, **called the Central Contractor Registration(CCR)** <http://www.ccr.gov/>, has been developed. All Government procuring offices and other interested parties will have access to this central repository. The database is structured to identify the types of data elements which are public information and those which are confidential and not releasable.

To register, contractors must provide their Dun and Bradstreet (DUNS) number. The DUNS number is available by calling 1(800)3330505. It is provided and maintained free of charge and only takes a few minutes to obtain. Contractors will need to provide their Tax Identification Number (TIN). The TIN is assigned by the Internal Revenue Service by calling 1(800)8291040. Contractors will also be required to provide information about company bank or financial institution for electronic funds transfer (EFT).

Contractors may register through online at <http://www.ccr.gov/> or through their Value Added Network (VAN) using an American National Standards Institute (ANSI) ASC X12 838 transaction set, called a "Trading Partner Profile." A transaction set is a standard format for moving electronic data. VAN's will be able to assist contractors with registration.

(d) Implementation Conventions.

All ED transactions must comply with the Federal Implementation Conventions(IC's). Many VAN's and software providers have already built the IC requirements into their products. If you need to see the IC's, they are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at <http://www.itl.nist.gov/lab/cslpubs.htm>. IC's are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e) Additional Information.

GSA has additional information available for vendors who are interested in starting to use EC/EDI. Contact the Contracting Officer for a copy of the latest handbook. Several resources are available to vendors to assist in implementing EC/EDI; specific addresses are available in the handbook or from the Contracting Officer:

(1) Electronic Commerce Resource Centers(ECRC's) are a network of U.S. Government sponsored centers that provide EC/EDI training and support to the contractor community. They are found in over a dozen locations around the country.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

I-FSS-599 ELECTRONIC COMMERCE--FACNET (SEP 2006)(CONTINUED)

(2) Procurement Technical Assistance Centers (PTAC's) and Small Business Development Centers (SBDC's) provide management assistance to small business owners. Each state has several locations.

(3) Most major US cities have an EDI user group of companies who meet periodically to share information on EDI related subjects.

(f) **GSA Advantage!**TM.

(1) **GSA Advantage!**TM will use this FACNET system to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. **GSA Advantage!**TM enables customers to:

(i) Perform data base searches across all contracts by manufacturer; manufacturer's model/part number; vendor; and generic product categories.

(ii) Generate their own EDI delivery orders to contractors, generate EDI delivery orders from the Federal Supply Service to contractors, or download files to create their own delivery orders.

(iii) Use the Federal IMPAC VISA.

(2) **GSA Advantage!**TM may be accessed via the GSA Home Page. The INTERNET address is: <http://www.gsa.gov>, or <http://www.fss.gsa.gov>.

I-FSS-597 GSA ADVANTAGE!TM **(SEP 2000)**

(a) The Contractor must participate in the **GSA Advantage!**TM online shopping service. Information and instructions regarding contractor participation are contained in clause I-FSS-599, Electronic Commerce.

(b) The Contractor also should refer to contract clauses 552.238-71, Submission and Distribution of Authorized GSA Schedule Pricelists (which provides for submission of pricelists on a common-use electronic medium), I-FSS-600, Contract Pricelists (which provides information on electronic contract data), and Modifications (which addresses electronic file updates).

552.238-74 INDUSTRIAL FUNDING FEE AND SALES REPORTING (JUL 2003) (VARIATION)

Please Note: A report is required even when no sales occur during the reporting period.

(a) Reporting of Federal Supply Schedule Sales. The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1- March 31, April 1-June 30, July 1-September 30, and October 1-December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor's established commercial accounting practice.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

552.238-74 INDUSTRIAL FUNDING FEE AND SALES REPORTING (JUL 2003) (VARIATION)

(CONTINUED)

The acceptable points at which sales may be reported include--

- (i) Receipt of order;
- (ii) Shipment or delivery, as applicable;
- (iii) Issuance of an invoice; or
- (iv) Payment.

(2) Contract sales shall be reported to FSS within 60 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including "zero" sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall forward the report and IFF to the following address:

Regular Mail

Department of Veterans
Affairs
C/o Agent Cashier – IFF
PO Box 7005
Hines, IL 60141

Overnight Address

Department of Veterans Affairs
C/o Agent Cashier – IFF
1st Ave. One block North of 22nd St., Bldg.
37
Hines, IL 60141

If paying by electronic funds transfer (EFT) the following is required EFT Information:

ABA Routing Number – 051036706
Account Number – 220020
Department of Treasury, Richmond, VA
(301) 887-6600.

Note: When paying by EFT please ensure that the contract number is included in the transaction.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

552.238-74 INDUSTRIAL FUNDING FEE AND SALES REPORTING (JUL 2003) (VARIATION)

(CONTINUED)

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the "Treasury Reporting Rates of Exchange" issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch:

Department of the Treasury
Financial Management Service
International Funds Branch
3700 East-West Highway
PGCII, Room 5A19
Hyattsville, MD 20782
Telephone: (202) 874-7994
Internet: <http://www.fms.treas.gov/intn.html>

(b) The Contractor shall remit the IFF at the rate set by VA's FSS.

(1) The Contractor shall remit the IFF to FSS in U.S. dollars within 60 calendar days after the end of the reporting quarter; final payment shall be remitted within 60 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF equals 1% (one percent) of the total quarterly sales reported. This percentage is set at the discretion of VA's FSS. VA's FSS has the unilateral right to change the percentage at any time, but not more than once per year. FSS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FSS for the costs of operating the Federal Supply Schedules Program and recoups its operating costs from ordering activities. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities.

(c) Within 60 days of award an FSS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FSS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor.

(d) Failure to remit the full amount of the IFF within 60 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.232-17, Interest). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

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 at this/these address(es):

For contract clauses which are contained in the Federal Acquisition Regulation (FAR) the address is: www.arnet.gov/far/

THE FOLLOWING CLAUSES ARE APPLICABLE TO COMMERCIAL CATALOG PRICING ONLY AND ARE HEREBY INCORPORATED BY REFERENCE:

552.216-70 ECONOMIC PRICE ADJUSTMENT - FSS MULTIPLE AWARD SCHEDULE CONTRACTS (SEP 1999) ALTERNATE I (SEP 1999)

552.243-72 MODIFICATIONS (MULTIPLE AWARD SCHEDULE) (JUL 2000)

552.238-75 PRICE REDUCTIONS (MAY 2004)

I-FSS-969 ECONOMIC PRICE ADJUSTMENT--FSS MULTIPLE AWARD SCHEDULE (JAN2002) (DEVIATION DEC 2004)

Price adjustments include price increases and price decreases. Adjustments will be considered as follows:

(a) Contractors shall submit price decreases anytime during the contract period in which they occur. Price decreases will be handled in accordance with the provisions of the Modifications Clause.

(b) Economic price adjustments under the Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists will be handled as described below. Price adjustments may be effective on or after the first 12 months of the contract period and every consecutive 12 month period thereafter on the following basis:

(1) Adjustments will be based upon a market indicator. The market indicator, as used in this clause, means the originally released public index, public survey or other public, based market indicator. The market indicator shall be the originally released Consumer Price Index – All Urban Consumers (CPI-U), not seasonally adjusted, U.S. City average, published by the Bureau of Labor Statistics, U.S. Department of Labor for Series ID CUUS0000SEMC, Medical Care Services, Professional Services, published by the US Bureau of Labor Statistics, and made available at www.bls.gov . Any price adjustment shall be based on the percentage change in the designated (i.e. indicator identification and date) market indicator from the initial award to the latest available as of the anniversary date of the contract effective date, subject to paragraph (e), below. If the market indicator is discontinued or deemed no longer available or reliable by the Government, the Government and the Contractor will mutually agree to a substitute. The contract modification reflecting the price adjustment will be effective upon approval by the Contracting Officer, subject to paragraph (g), below. The adjusted prices shall apply to orders issued to the Contractor on or after the effective date of the contract modification.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

I-FSS-969 ECONOMIC PRICE ADJUSTMENT--FSS MULTIPLE AWARD SCHEDULE (JAN2002)
(DEVIATION DEC 2004)(CONTINUED)

(c) Notwithstanding the economic price adjustments discussed above, the Government recognizes the potential impact of unforeseeable major changes in market conditions. For those cases where such changes do occur, the contracting officer will review requests to make adjustments, subject to the Government's examination of industry-wide market conditions and the conditions in paragraph (d) and (e), below. If adjustments are accepted, the contract will be modified accordingly. The determination of whether or not extraordinary circumstances exist rests with the contracting officer. The determination of an appropriate mechanism of adjustment will be subject to negotiations.

(d) Conditions of Price change requests under paragraphs (b)(1) and (c) above.

(1) No more than one increase will be considered during each succeeding 12 month period of the contract subject to the conditions of paragraph (b) above. No more than a total of three increases will be considered subject to paragraph (c) above or combination of (b) and (c) above. (For succeeding contract periods of less than 12 months, up to three increases will be considered subject to the other conditions of subparagraphs (b) and (c).

(2) Increases are requested before the last 60 days of the contract period, including options.

(3) At least 30 days elapse between requested increases.

(4) In any contract period during which price increases will be considered, the aggregate of the increases during any 12 month period shall not exceed five percent (5%) of the contract unit price in effect at the end of the preceding 12 month period. The Government reserves the right to raise the ceiling when market conditions during the contract period support such a change.

(e) The following material shall be submitted with request for a price increase under paragraphs b (1) and c above:

(1) A copy of the index, survey or pricing indicator showing the price increase and the effective date.

(2) Commercial Sales Practice format, per contract clause 52.215-21 Alternate IV, demonstrating the relationship of the Contractor's commercial pricing practice to the adjusted pricing proposed or a certification that no change has occurred in the data since completion of the initial negotiation or a subsequent submission.

(3) Any other documentation requested by the Contracting Officer to support the reasonableness of the price increase.

(f) The Government reserves the right to exercise one of the following options:

(1) Accept the Contractor's price increases as requested when all conditions of (b), (c), (d), and (e) of this clause are satisfied;

(2) Negotiate more favorable prices when the total increase requested is not supported; or,

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

**I-FSS-969 ECONOMIC PRICE ADJUSTMENT--FSS MULTIPLE AWARD SCHEDULE (JAN2002)
(DEVIATION DEC 2004)(CONTINUED)**

(3) Decline the price increase when the request is not supported. The Contractor may remove the item(s) from contract involved pursuant to the Cancellation Clause of this contract.

(g) Effective Date of Increases: No price increase shall be effective until the Government receives the electronic file updates pursuant to the Modifications clause of this contract.

(h) All MAS contract pricing remain subject to increases in commercial sales practice disclosures and market conditions and 552.215-72, "Price Adjustment Failure to Provide Accurate Information."

**552-243-72 MODIFICATIONS (MULTIPLE AWARD SCHEDULE) COMMERCIAL MARKET
PRICES (JUL 2000) (DEVIATION DEC 2004)**

(a) General. The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s). Modifications under the Multiple Award Schedules (MAS) program for contracts not based on commercial catalogs or price lists will be handled as described below.

(b) Types of Modifications.

(1) Additional line items/additional SIN's. When requesting additions, the following information must be submitted:

- (i) Firm must be able to demonstrate corporate experience and/or technical capabilities to provide the services being offered.
- (ii) Information requested in the Commercial Sales Practice Format.
- (iii) Discount information for the new line items(s) or new SIN(s). Specifically, submit the information requested in the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.
- (iv) Information about the new line item(s) or the item(s) under the new SIN(s) as described in General Information for Submission of Pricing is required.

(2) Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same line item or a substantially equal line item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted line item.

(3) Price Reduction. The Contractor shall indicate the rational for the price reduction.

(c) Effective dates. The effective date of any modification is the date specified in the modification.

(d) Electronic File Updates. The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Modifications clause.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

552-243-72 MODIFICATIONS (MULTIPLE AWARD SCHEDULE) COMMERCIAL MARKET PRICES (JUL 2000) (DEVIATION DEC 2004)(CONTINUED)

(e) Amendments to Paper Federal Supply Schedule Price Lists.

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February-April, and every 3 month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

AS1508 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2005)

The Government may require continued performance of this contract within the limits and at the prices specified herein. The option clause may be exercised more than once to add 1 or more option year periods, but the total extension of performance hereunder shall not exceed 5 years.

(a) The Contracting Officer may exercise the option by providing a written notice to the contractor no later than 60 days before expiration of the contract or option.

(b) When the Government exercises its option to extend the term of this contract, prices in effect at the time the option is exercised will remain in effect during the option period, unless an adjustment is made in accordance with another contract clause (e.g. Economic Price Adjustment Clause or Price Reduction Clause or pursuant to Public Law 102-585).

I-FSS-95 RE-REPRESENTATION OF SIZE STATUS FOR OPTION PERIODS (JUN 2003)

For certain requirements, the Government enters into contracts with multiple contractors for the same or similar services or products. Such contracts frequently contain options that allow the contract to be extended when it is determined to be in the best interest of the Government. Contract extensions may have an impact on the program established by the Government to assist small businesses when there is a change in the status of the Contractor during the contract term.

Prior to the time the Contracting Officer exercises an option, the Contractor will be required to re-represent business size status and 8(a) program eligibility to the Contracting Officer by completing the applicable portion of 52.2123, Offeror Representations and Certification Commercial Items, or 52.2191, Small Business Program Representations, as applicable to this contract.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

**I-FSS-95 RE-REPRESENTATION OF SIZE STATUS FOR OPTION PERIODS (JUN 2003)
(CONTINUED)**

(a) When the contract did not result from a small business set-a-side:

If a previously awarded small business concern re-represents itself as other than small, an acceptable subcontracting plan must be negotiated with the Contracting Officer if the value of the remainder of the contract option periods exceeds the threshold for a subcontracting plan.

(b) When the contract resulted from a small business set-a-side:

If a previously awarded small business concern re-represents itself as other than small, the Contracting Officer shall be precluded from exercising the option.

(c) When the contract resulted from an 8(a) set-a-side:

If a previously awarded 8(a) small business concern re-represents itself as other than 8(a), the Contracting Officer shall be precluded from exercising the option.

52.219-28 POST AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUNE 2007)

(a) *Definitions.* As used in this clause—

Long-term contract means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at [52.217-8](#), Option to Extend Services, or other appropriate authority.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES - (CONTINUED)

52.219-28 POST AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUNE 2007)(CONTINUED)

this NAICS code can be found at:

<http://www.sba.gov/services/contractingopportunities/sizestandardsttopics/>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it is, is not a small business concern under NAICS Code _____ assigned to contract number _____.

[Contractor to sign and date and insert authorized signer's name and title].

I-FSS-50 PERFORMANCE REPORTING REQUIREMENTS (FEB 1995)

(a) This clause applies to all contracts estimated to exceed \$100,000.

(b) Unless notified otherwise in writing by the Contracting Officer, the Contractor may assume contract performance is satisfactory.

(c) If negative performance information is submitted by customer agencies, the Contracting Officer will notify the Contractor in writing and provide copies of any complaints received. The Contractor will have 30 calendar days from receipt of this notification to submit a rebuttal and/or a report of corrective actions taken.

C.1.5 CONTRACT ADMINISTRATION DATA/DELIVERABLES (CONTINUED)

I-FSS-60 PERFORMANCE INCENTIVES (APRIL 2000)

- a) When using a performance based statement of work, performance incentives may be agreed upon between the Contractor and the ordering office on individual fixed price orders or Blanket Purchase Agreements, for fixed price tasks, under this contract in accordance with this clause.
- b) The ordering office must establish a maximum performance incentive final price for these services/ and/or total solutions on individual orders or Blanket Purchase Agreements.
- c) Performance incentives may be agreed upon between the contractor and the ordering activity on individual orders or Blanket Purchase Agreements placed under this contract in accordance with this clause.
- d) To the maximum extent practicable, ordering offices shall consider establishing incentives where performance is critical to the agency's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks when performance is critical.
- e) The above procedures do not apply to Time and Material or labor hour orders.

552.238-73 CANCELLATION (SEP 1999)

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

C.1.6 INSPECTION AND ACCEPTANCE

52.246-4 INSPECTION OF SERVICES—FIXED PRICE (AUG 1996)

NOTE: This clause further implements 52.212-4 (a) Inspection/Acceptance for fixed-price task orders.

- (a) *Definition:* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

C.1.6 INSPECTION AND ACCEPTANCE (CONTINUED)

52.246-4 INSPECTION OF SERVICES—FIXED PRICE (AUG 1996) (CONTINUED)

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may--

- (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
- (2) Reduce the contract price to reflect the reduced value of the services performed.

52.246-6 INSPECTION—TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001)

Note: This clause further implements 52.212-4 (a) Inspection/Acceptance for time-and-material or labor hour tasks:

(a) *Definitions.* As used in this clause-

"Contractor's managerial personnel" means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operation at any one plant or separate location where the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

"Materials" includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) 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 shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test 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.

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

(f) 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

C.1.6 INSPECTION AND ACCEPTANCE (CONTINUED)

52.246-6 INSPECTION—TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001) (CONTINUED)

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 (h) of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts 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. 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.

(g)(1) 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-

(i) 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

(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) of this clause, 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-

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

(2) 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.

(i) 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.

(j) 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.

(k) 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.

C.1.7 SPECIAL CONTRACT REQUIREMENTS

852.237-70 CONTRACTOR RESPONSIBILITIES (APR 1984)

Note: For purposes of this contract the term "employees" in this clause means any contractor personnel providing services under a task order pursuant to this solicitation.

The contractor shall obtain all necessary licenses and/or permits required to perform this work. He/she shall take all reasonable precautions necessary to protect persons and property from injury or damage during the performance of this contract. He/she shall be responsible for any injury to himself/herself, his/her employees, as well as for any damage to personal or public property that occurs during the performance of this contract that is caused by his/her employees fault or negligence, and shall maintain personal liability and property damage insurance having coverage for a limit as required by the laws of the controlling State. Further, it is agreed that any negligence of the Government, its officers, agents, servants and employees, shall not be the responsibility of the contractor hereunder with the regard to any claims, loss, damage, injury, and liability resulting therefrom.

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

852.237-7 INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (OCT 1996)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its healthcare providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its healthcare providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its healthcare providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all healthcare providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: **\$1 million per occurrence / \$ 3 million aggregate**. However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all healthcare providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each healthcare provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the healthcare providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or healthcare providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for healthcare services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.228-70 WORKERS' COMPENSATION LAWS (SEP 1999)

The Act of June 25, 1936, 49 Stat. 1938 (40 U.S.C. 290) authorizes the constituted authority of the several States to apply their workers' compensation laws to all lands and premises owned or held by the United States.

52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

52.224-2 PRIVACY ACT (APR 1984)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.224-2 PRIVACY ACT (APR 1984 (CONTINUED))

(c)(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

C-FSS-370 CONTRACTOR TASKS / SPECIAL REQUIREMENTS (NOV 2003) (DEVIATION DEC 2004)

- (a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. When possible, all costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule. If it is not feasible at the time of FSS contract award to project subject costs, it shall be so stated in the basic contract and shall be negotiated at the task-order level.
- (b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- (c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.
- (d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.
- (e) Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.
- (f) Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

C-FSS-370 CONTRACTOR TASKS / SPECIAL REQUIREMENTS (NOV 2003) **(DEVIATION DEC 2004) (CONTINUED)**

- (g) Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.
- (h) Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.
- (i) Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- (j) Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.
- (k) Overtime: For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed at time and a half of the labor rate).

52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

The following Federal Acquisition Regulation definitions are provided in full text as a courtesy

22.1001, SERVICE CONTRACT ACT OF 1965, AS AMENDED - DEFINITIONS

"Act" or "Service Contract Act" means the Service Contract Act of 1965.

"Agency labor advisor" means an individual responsible for advising contracting agency officials on Federal contract labor matters.

"Contractor" includes a subcontractor at any tier whose subcontract is subject to the provisions of the Act.

"Multiple year contracts" means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multiyear contracts (see 17.103).

"Service contract" means any Government contract, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted under section 7 of the Act (41 U.S.C. 356; see 22.1003-3 and 22.1003-4), or any subcontract at any tier thereunder. See 22.1003-5 and 29 CFR 4.130 for a partial list of services covered by the Act.

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

22.1001, SERVICE CONTRACT ACT OF 1965, AS AMENDED – DEFINITIONS (CONTINUED)

“Service employee” means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR Part 541. The term “service employee” includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession in a foreign country (29 CFR 4.112).

“Wage and Hour Division” means the unit in the Employment Standards Administration of the Department of Labor to which is assigned functions of the Secretary of Labor under the Act.

“Wage determination” means a determination of minimum wages or fringe benefits made under sections 2(a) or 4(c) of the Act (41 U.S.C. 351(a) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JULY 2005) (41 U.S.C. 351, ET SEQ)

a) *Definitions.* “Act,” as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

“Contractor,” as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

“Service employee,” as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2) i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JULY 2005) (41 U.S.C. 351, ET SEQ)(CONTINUED)

listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JULY 2005) (41 U.S.C. 351, ET SEQ)(CONTINUED)

the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JULY 2005) (41 U.S.C. 351, ET SEQ) (CONTINUED)

or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JULY 2005) (41 U.S.C. 351, ET SEQ) (CONTINUED)

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JULY 2005) (41 U.S.C. 351, ET SEQ) (CONTINUED)

earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Contractor's certification.

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JULY 2005) (41 U.S.C. 351, ET SEQ) (CONTINUED)

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (JULY 2005) (41 U.S.C. 351, ET SEQ) (CONTINUED)

as the appropriate percentage of the journeyman’s rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives. \

52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989) (29 U.S.C. 206 AND 41 U.S.C. 351, ET SEQ.)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:
It is not a Wage Determination*

Employee Class	Monetary Wage—Fringe Benefits
_____	_____
_____	_____

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-43 FAIR LABOR STANDARD ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (NOV 2006) (29 U.S.C. 206 AND 41 U.S.C. 351, ET SEQ.)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, *et seq.*), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

C.1.7 SPECIAL CONTRACT REQUIREMENTS (CONTINUED)

52.222-43 FAIR LABOR STANDARD ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (NOV 2006) (29 U.S.C. 206 AND 41 U.S.C. 351, ET SEQ.)

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

52.229-71 FEDERAL EXCISE TAX—DC GOVERNMENT (SEP 1999)

If the District of Columbia cites an Internal Revenue Tax Exempt Certificate Number on orders placed under this contract, the Contractor shall bill shipments to the District of Columbia at prices exclusive of Federal excise tax and show the amount of such tax on the invoice.

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 at this/these address(es):

www.arnet.gov/far/

THE FOLLOWING CLAUSES ARE APPLICABLE TO INDIVIDUAL TASK ORDERS PLACED AGAINST THIS CONTRACT AND ARE HEREBY INCORPORATED BY REFERENCE. ALL COSTS ASSOCIATED WITH THEIR COMPLIANCE SHALL BE NEGOTIATED AT THE TASK ORDER LEVEL PROVIDED THEY ARE CONSISTENT WITH THE BASIC FSS CONTRACT:

52.237-3 CONTINUITY OF SERVICES. (JAN 1991)

52.217-8 OPTION TO EXTEND SERVICES. (NOV 1999)

C.1.8 CONTRACT CLAUSES

52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative -

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled -

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

C.1.8 CONTRACT CLAUSES (CONTINUED)

52.203-3 GRATUITIES (APR 1984)(CONTINUED)

(a) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

552.203-71 RESTRICTION ON ADVERTISING (SEP 1999)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the White House, the Executive Office of the President, or any other element of the Federal Government, or is considered by these entities to be superior to other products or services. Any advertisement by the Contractor, including price-off coupons, that refers to a military resale activity shall contain the following statement: "This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

I-FSS-109 ENGLISH LANGUAGE AND U.S. DOLLAR REQUIREMENTS (MAR 1998)

(a) All documents produced by the Contractor to fulfill requirements of this contract including, but not limited to, Federal Supply Schedule catalogs and pricelists, must reflect all terms and conditions in the English language.

(b) U.S. dollar equivalency, if applicable, will be based on the rates published in the "Treasury Reporting Rates of Exchange" in effect as of the date of the agency's purchase order or in effect during the time period specified elsewhere in this contract.

52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the

C.1.8 CONTRACT CLAUSES (CONTINUED)

52.242-13 BANKRUPTCY (JUL 1995) (CONTINUED)

date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) (ALTERNATE IV—OCT 1997) (VARIATION I—SEP 1999)

- (a) Submission of cost or pricing data is not required.
- (b) Provide information described below:
 - (1) An offer prepared and submitted in accordance with the clause at 552.212-70, Preparation of Offer (Multiple Award Schedule);
 - (2) Commercial sales practices. The Offeror shall submit information in the format provided in this solicitation in accordance with the instructions at Figure 515.4-2 of the GSA Acquisition Regulation (48 CFR 515-2); or submit information in the Offeror's own format.
 - (3) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.
 - (4) By submission of an offer in response to this solicitation, the Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before initial award, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to offeror's cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997) (ALTERNATE IV—OCT 1997) (VARIATION I—AUG 1997)

- (a) Submission of cost or pricing data is not required.
- (b) Provide information described below.
 - (1) Information required by the clause at 552.243-72, Modifications (Multiple Award Schedule);
 - (2) Any additional supporting information requested by the Contracting Officer. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether the price(s) offered is fair and reasonable.
 - (3) By submitting a request for modification, the Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before agreeing to a modification, books, records, documents, papers, and other directly pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s). Access does not extend to Contractor's cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

AS13 EXAMINATION OF RECORDS BY VA (MULTIPLE AWARD SCHEDULE)(FEB 1998)

- (a) The Contractor agrees that the Secretary of the Department of Veterans Affairs or any duly authorized representative shall have access to, and the right to examine, any books, documents, papers, computer tapes, and any other directly pertinent records of the Contractor to verify that the pre-award pricing, sales, marketing and other data, related to the supplies or

C.1.8 CONTRACT CLAUSES (CONTINUED)

**AS13 EXAMINATION OF RECORDS BY VA (MULTIPLE AWARD SCHEDULE)(FEB 1998)
(CONTINUED)**

services offered under the contract which formed the basis for award, were accurate, complete and current. This right to initiate an audit exists for two (2) years after each of the following events:

(1) contract award, or

(2) the date of modification adding this clause to the contract, or

(3) the date of modification to the contract, which requires new Commercial Sales Practices information, with the right, in this instance only, being limited to information contained in the modification.

(b) The Contractor agrees that the Secretary of the Department of Veterans Affairs or any duly authorized representative shall have access to, and the right to examine, any books, documents, papers, computer tapes, and any other directly pertinent records of the Contractor related to this contract for over-billings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee clause of this contract. The authority to initiate post-award audits shall expire 3 years after final payment. The basic contract and each option shall be treated as separate contracts for purposes of the review for over-billings, billing errors and price reductions. Further information is contained in clause 552.215-72 PRICE ADJUSTMENT - FAILURE TO PROVIDE ACCURATE INFORMATION (AUG 1997)

552.215-72 PRICE ADJUSTMENT--FAILURE TO PROVIDE ACCURATE INFORMATION (AUG 1997)

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

(1) provide information required by this solicitation/contract or otherwise requested by the Government; or

(2) submit information that was current, accurate, and complete; or

(3) disclose changes in the Contractor's commercial price list(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 60 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States--

(1) The amount of the overpayment; and

C.1.8 CONTRACT CLAUSES (CONTINUED)

552.215-72 PRICE ADJUSTMENT--FAILURE TO PROVIDE ACCURATE INFORMATION (AUG 1997) (CONTINUED)

(2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

I-FSS-106 GUARANTEED MINIMUM (JUL 2003)

The minimum that the Government agrees to order during the period of this contract is \$2,500. If the Contractor receives total orders for less than \$2,500 during the term of the contract, the Government will pay the difference between the amount ordered and \$2,500.

- (a) Payment of any amount due under this clause shall be contingent upon the Contractor's timely submission of GSA Form 72A reports (see GSAR 552.238-74 "Industrial Funding Fee and Sales Reporting") during the period of the contract and receipt of the close-out sales report pursuant to GSAR 552.238-74.
- (b) The guaranteed minimum applies only if the contract expires or contract cancellation is initiated by the Government. The guaranteed minimum does not apply if the contract is terminated for cause or if the contract is canceled at the request of the Contractor.

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEPT 2007)

(a) This clause does not apply to small business concerns.

(b) *Definitions.* As used in this clause—

"Alaska Native Corporation (ANC)" means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

"Commercial item" means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

"Indian tribe" means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance

C.1.8 CONTRACT CLAUSES (CONTINUED)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEPT 2007)(CONTINUED)

with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

(1) In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

C.1.8 CONTRACT CLAUSES (CONTINUED)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEPT 2007)(CONTINUED)

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

C.1.8 CONTRACT CLAUSES (CONTINUED)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEPT 2007)(CONTINUED)

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit [Standard Form \(SF\) 294](#), Subcontracting Report for Individual Contracts, and/or [SF 295](#), Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
- (iv) Ensure that its subcontractors agree to submit [SF 294](#) and [SF 295](#).

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

C.1.8 CONTRACT CLAUSES (CONTINUED)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEPT 2007)(CONTINUED)

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating—

- (A) Whether small business concerns were solicited and, if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUBZone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (F) Whether women-owned small business concerns were solicited and, if not, why not;

and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

C.1.8 CONTRACT CLAUSES (CONTINUED)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEPT 2007)(CONTINUED)

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) [Standard Form 294](#), *Subcontracting Report for Individual Contracts*. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) [Standard Form 295](#), *Summary Subcontract Report*. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each

C.1.8 CONTRACT CLAUSES (CONTINUED)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (SEPT 2007)(CONTINUED)

of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

I-FSS-965 INTERPRETATION OF CONTRACT REQUIREMENTS (APR 1984)

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

SECTION C.2 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEPT 2007)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(2) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

(2) [52.219-3](#), Notice of Total HUBZone Set-Aside (Jan 1999) ([15 U.S.C. 657a](#)).

(3) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

(4) [Reserved]

(5)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (Oct 1995) of [52.219-6](#).

(iii) Alternate II (Mar 2004) of [52.219-6](#).

(6)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).

(ii) Alternate I (Oct 1995) of [52.219-7](#).

(iii) Alternate II (Mar 2004) of [52.219-7](#).

(7) [52.219-8](#), Utilization of Small Business Concerns (May 2004) ([15 U.S.C. 637\(d\)\(2\)](#)) and (3)).

(8)(i) [52.219-9](#), Small Business Subcontracting Plan (Sept 2007) ([15 U.S.C. 637\(d\)\(4\)](#)).

(Note: Incorporated in full text)

(ii) Alternate I (Oct 2001) of [52.219-9](#).

(iii) Alternate II (Oct 2001) of [52.219-9](#).

(9) [52.219-14](#), Limitations on Subcontracting (Dec 1996) ([15 U.S.C. 637\(a\)\(14\)](#)).

(10) [52.219-16](#), Liquidated Damages—Subcontracting Plan (Jan 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

(11)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEPT 2005) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

SECTION C.2 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEPT 2007) (CONTINUED)

- (ii) Alternate I (June 2003) of [52.219-23](#).
- (12) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- (13) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).
- (14) [52.219-27](#), Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).
- (15) [52.219-28](#), Post Award Small Business Program Rerepresentation (June 2007) (15 U.S.C. 632(a)(2)). **(Note: Incorporated in full text)**
- (16) [52.222-3](#), Convict Labor (June 2003) (E.O. 11755).
- (17) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (Aug 2007) (E.O. 13126).
- (18) [52.222-21](#), Prohibition of Segregated Facilities (Feb 1999).
- (19) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).
- (20) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).
- (21) [52.222-36](#), Affirmative Action for Workers with Disabilities (Jun 1998) ([29 U.S.C. 793](#)).
- (22) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).
- (23) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- (24)(i) [52.222-50](#), Combating Trafficking in Persons (Aug 2007) (Applies to all contracts).
- (ii) Alternate I (Aug 2007) of [52.222-50](#).
- (25)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)).
- (ii) Alternate I (Aug 2000) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)).
- (26) [52.225-1](#), Buy American Act—Supplies (June 2003) ([41 U.S.C. 10a-10d](#)).
- (27)(i) [52.225-3](#), Buy American Act—Free Trade Agreements—Israeli Trade Act (Aug 2007) ([41 U.S.C. 10a-10d](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).
- (ii) Alternate I (Jan 2004) of [52.225-3](#).
- (iii) Alternate II (Jan 2004) of [52.225-3](#).
- (28) [52.225-5](#), Trade Agreements (Aug 2007) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).
- (29) [52.225-13](#), Restrictions on Certain Foreign Purchases (Feb 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- (30) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Aug 2006) ([42 U.S.C. 5150](#)).
- (31) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Aug 2006) ([42 U.S.C. 5150](#)).

SECTION C.2 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEPT 2007) (CONTINUED)

(32) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

(33) [52.232-30](#), Installment Payments for Commercial Items (Oct 1995) ([41 U.S.C. 255\(f\)](#), [10 U.S.C. 2307\(f\)](#)).

(34) [52.232-33](#), Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) ([31 U.S.C. 3332](#)).

(35) [52.232-34](#), Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) ([31 U.S.C. 3332](#)).

(36) [52.232-36](#), Payment by Third Party (May 1999) ([31 U.S.C. 3332](#)).

(37) [52.239-1](#), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](#)).

(38)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

(ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(Note: the following clauses are incorporated in full text)

(1) [52.222-41](#), Service Contract Act of 1965, as Amended (July 2005) ([41 U.S.C. 351](#), *et seq.*).

(2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (May 1989) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

(3) [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

(4) [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) ([29 U.S.C. 206](#) and [41 U.S.C. 351](#), *et seq.*).

(5) [52.237-11](#), Accepting and Dispensing of \$1 Coin (Aug 2007) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

SECTION C.2 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEPT 2007) (CONTINUED)

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.219-8](#), Utilization of Small Business Concerns (May 2004) ([15 U.S.C. 637\(d\)\(2\)](#)) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(ii) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(iii) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) ([38 U.S.C. 4212](#)).

(iv) [52.222-36](#), Affirmative Action for Workers with Disabilities (June 1998) ([29 U.S.C. 793](#)).

(v) [52.222-39](#), Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vi) [52.222-41](#), Service Contract Act of 1965, as Amended (July 2005), flow down required for all subcontracts subject to the Service Contract Act of 1965 ([41 U.S.C. 351](#), *et seq.*).

(vii) [52.222-50](#), Combating Trafficking in Persons (Aug 2007) (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause [52.222-50](#).

(viii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

SECTION D 52.212-1 INSTRUCTIONS TO OFFERORS-COMMERCIAL ITEMS (JAN 2005)

(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;

**SECTION D 52.212-1 INSTRUCTIONS TO OFFERORS-COMMERCIAL ITEMS (JAN 2005)
(CONTINUED)**

- (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(j) 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.

**SECTION D 52.212-1 INSTRUCTIONS TO OFFERORS-COMMERCIAL ITEMS (JAN 2005)
(CONTINUED)**

(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.**

**SECTION D 52.212-1 INSTRUCTIONS TO OFFERORS-COMMERCIAL ITEMS (JAN 2005)
(CONTINUED)**

(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) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the-

**Department of Defense Single Stock Point (DoDSSP)
Building 4, Section D
700 Robbins Avenue
Philadelphia, PA 19111-5094
Telephone (215) 697-2667/2179
Facsimile (215) 697-1462.**

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained-

(A) By telephone at (215) 697-2667/2179; or

(B) Through the DoDSSP Internet site at <http://dodssp.daps.mil>.

(3) 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 \$25,000, and offers of \$25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) 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 CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same parent 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://www.dnb.com>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number.

(k) *Central Contractor Registration.* 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 CCR 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 CCR 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 internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(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.

**SECTION D 52.212-1 INSTRUCTIONS TO OFFERORS-COMMERCIAL ITEMS (JAN 2005)
(CONTINUED)**

- (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.

D.1 ADDENDA TO 52.212-1

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998).

This solicitation incorporates one or more solicitation provisions 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. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es): www.arnet.gov/far

THE FOLLOWING CLAUSE IS APPLICABLE TO COMMERCIAL CATALOG PRICING AND IS HEREBY INCORPORATED BY REFERENCE:

552.212-70 PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE)(AUG 1997)

52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of firm-fixed price indefinite delivery, indefinite quantity (IDIQ) Multiple Award Schedule contracts with economic price adjustments resulting from this solicitation. At the ordering activity's determination, task orders issued against any resulting contract will provide for firm-fixed priced, labor hours and/or time and materials in accordance with FAR Part 16.601.

**A-FSS-11 CONSIDERATION OF OFFERS UNDER STANDING SOLICITATION (DEC 2000)
(VARIATION)**

- (a) This solicitation is a standing solicitation from which the Government contemplates award of contracts for supplies/services listed in the Schedule of Items. This solicitation will remain in effect unless replaced by an updated solicitation.
- (b) There is no closing date for receipt of offers; therefore, offers may be submitted for consideration at any time.
- (c) An offer may be rejected if an offeror fails to meet timeframes established by the Contracting Officer either to address deficiencies in the offer or to submit a final proposal revision. A resubmission(s) is permitted; however, it may be rejected immediately if it is still deficient in the area(s) that caused its initial rejection.
- (d) Contracts awarded under this solicitation will be in effect for 5 years from the date of award, unless further extended, pursuant to clause AS1508, Option to Extend the Term of the Contract, canceled pursuant to the Cancellation clause, or terminated pursuant to the termination provisions of the contract.
- (e) Current contractors may submit a new offer as early as 9 months prior to the expiration of the existing contract.

D.1 ADDENDA TO 52.212-1 (CONTINUED)

A-FSS-12-C PERIOD FOR ACCEPTANCE OF OFFERS (NOV 1997)

Paragraph (c) of the provision 52.212-1, Instructions to Offerors—Commercial Items, is revised to read as follows: The offeror agrees to hold the prices in its offer firm for **240** calendar days from the date of the offer, within which offer may be accepted.

52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause—

Post consumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post consumer material is a part of the broader category of “recovered material.” For paper and paper products, post consumer material means “post consumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

Printed or copied double-sided means printing or reproducing a document so that information is on both sides of a sheet of paper.

Recovered material, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

- (1) Post consumer fiber; and
- (2) Manufacturing wastes such as—
 - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations;

bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

D.1 ADDENDA TO 52.212-1 (CONTINUED)

52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)
(CONTINUED)

- (ii) Re-pulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

- (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent post consumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent post consumer material. This lesser standard should be used only when paper meeting the 30 percent post consumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (FEB 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

L-FSS-101 FINAL PROPOSAL REVISION (JUN 2002)

- (a) Upon the conclusion of discussions the Contracting Officer will request a final proposal revision. Oral requests will be confirmed in writing.

- (b) The request will include--
 - (1) Notice that discussions are concluded;
 - (2) Notice that this is the opportunity to submit a final proposal revision;
 - (3) The specified cutoff date and time;

D.1 ADDENDA TO 52.212-1 (CONTINUED)

L-FSS-101 FINAL PROPOSAL REVISION (JUN 2002) (CONTINUED)

(4) A statement that any modification proposed as a result of the final proposal revision must be received by the date and time specified and will be subject to the Late Submissions, Modifications, and Withdrawals of Proposals provision of this solicitation.

(c) The Contracting Officer will not reopen discussions after receipt of final proposal revisions unless it is clearly in the interests of the Government to do so. If discussions are reopened, the Contracting Officer will issue an additional request for final proposal revision.

(d) It is the Contracting Officer's desire to conclude negotiations within the acceptance time of the offer.

L-FSS-59 AWARD (APR 1984)

Until a formal notice of award is issued, no communication by the Government, whether written or oral, shall be interpreted as a promise that an award will be made.

552.219-72 PREPARATION, SUBMISSION, AND NEGOTIATION OF SUBCONTRACTING PLANS (JUNE 2005) (VARIATION)

(a) An offeror, other than a small business concern, submitting an offer that exceeds \$500,000 (\$1,000,000 for construction) shall submit a subcontracting plan with its initial offer. The subcontracting plan will be negotiated concurrently with price and any required technical and management proposals, unless the offeror submits a previously approved commercial plan.

(b) Maximum practicable utilization of small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits. The General Services Administration (GSA) expects that an offeror's subcontracting plan will reflect a commitment to assuring that small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns are provided the maximum practicable opportunity, consistent with efficient contract performance, to participate as subcontractors in the performance of the resulting contract. An offeror submitting a commercial plan can reflect this commitment through subcontracting opportunities it provides that relate to the offeror's production generally; i.e., for both its commercial and Government business.

(c) VA believes that this potential contract provides significant opportunities for the use of small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns as subcontractors. Consequently, in addressing the eleven elements described at FAR 52.219-9(d) of the clause in this contract entitled Small Business Subcontracting Plan, the offeror shall:

(1) Demonstrate that its subcontracting plan represents a creative and innovative program for involving small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns in performing the contract.

(2) Include a description of the offeror's subcontracting strategies used in any previous contracts, significant achievements, and how this plan will build upon those earlier achievements.

D.1 ADDENDA TO 52.212-1 (CONTINUED)

552.219-72 PREPARATION, SUBMISSION, AND NEGOTIATION OF SUBCONTRACTING PLANS (JUNE 2005) (VARIATION)(CONTINUED)

(3) Demonstrate through its plan that it understands the small business subcontracting program's objectives and VA's expectations, and it is committed to taking those actions necessary to meet these goals or objectives.

(d) In determining the acceptability of any subcontracting plan, the Contracting Officer will take each of the following actions:

(1) Review the plan to verify that the offeror demonstrates an understanding of the small business subcontracting program's objectives and VA's expectations with respect to the program and has included all the information, goals, and assurances required by FAR 52.219-9.

(2) Consider previous goals and achievements of contractors in the same industry.

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns.

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(e) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

552.217-71 NOTICE REGARDING OPTION(S) (NOV 1992)

The Department of Veterans Affairs (VA) has included an option to extend the term of this contract in order to demonstrate the value it places on quality performance by providing a mechanism for continuing a contractual relationship with a successful Offeror that performs at a level which meets or exceeds VA's quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the contractor's past performance under this contract in accordance with 48 CFR 517.207.

52.233-2 SERVICE OF PROTEST (SEPT 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Contracting Officer 049A2-2
VA National Acquisition Center
PO Box 76, Bldg. 37
Hines, IL 60141

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

D.1 ADDENDA TO 52.212-1 (CONTINUED)

852.233-70 PROTEST CONTENT (JAN 1998)

(a) Any protest filed by an interested party shall:

- (1) Include the name, address, fax number, and telephone number of the protester;
- (2) Identify the solicitation and/or contract number;
- (3) Include an original signed by the protester or the protester's representative, and at least one copy;
- (4) Set forth a detailed statement of the legal and factual grounds of the protest, including a description of resulting prejudice to the protester, and provide copies of relevant documents;
- (5) Specifically request a ruling of the individual upon whom the protest is served;
- (6) State the form of relief requested; and
- (7) Provide all information establishing the timeliness of the protest.

(b) Failure to comply with the above may result in dismissal of the protest without further consideration.

852.233-71 ALTERNATE PROTEST PROCEDURE (JAN 1998)

As an alternative to filing a protest with the contracting officer, an interested party may file a protest with the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, or, for solicitations issued by the Office of Facilities Management, the Chief Facilities Management Officer, Office of Facilities Management, 810 Vermont Avenue, NW, Washington, DC 20420. The protest will not be considered if the interested party has a protest on the same or similar issues pending with the contracting officer.

SEE EXHIBIT 1 FOR ADDITIONAL INFORMATION CONCERNING OFFER SUBMISSION

D.2 552.212-73 EVALUATION – COMMERCIAL ITEMS (MULTIPLE AWARD SCHEDULE) (AUG 1997)

- (a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the definition of a "commercial item" in FAR 52.202-1. Awards may be made to those responsible offerors that offer reasonable pricing, conforming to the solicitation, and will be most advantageous to the Government, taking into consideration price and the Technical Evaluation as described below. Offerors' technical proposal will be reviewed, evaluated and rated acceptable or unacceptable ("Pass / Fail") based on the technical factors A thru D described in the addenda to this clause. Evaluation of technical capability and past performance may be done for each special item number, by common labor category basis and/or geographic areas. Offer will be evaluated in a manner that reflects the best interest of the Government. By providing a selection of comparable supplies or services, ordering activities are afforded the opportunity to fulfill their requirements with the item(s)/service(s) that constitute the best value and that meet their needs at the lowest overall cost.
- (b) Offerors are on notice that proposals that are determined to be unrealistic in terms of technical commitment, lack of technical competence and/or demonstrated experience, or indicative of failure to comprehend the complexities and risks of the solicitation requirements will be rejected in whole or in part. It's within the Government's discretion to

D.2 552.212-73 EVALUATION – COMMERCIAL ITEMS (MULTIPLE AWARD SCHEDULE) (AUG 1997) (CONTINUED)

limit special item numbers or geographic coverage in accordance with this determination.

Offerors' price proposals will be evaluated to determine if the prices offered are fair and reasonable. A determination that the technical submission for any one factor is unacceptable or that an offeror's price(s) are not fair and reasonable will result in that offeror not receiving a contract award for that special item number.

- (c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the 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.
- (d) The Government may evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer shall contain the offeror's best terms from a price and technical standpoint.

TECHNICAL EVALUATION

The following evaluation factors will be used to evaluate the Technical Proposals. Offerors found technically acceptable will undergo a price evaluation.

Factor A - Corporate Experience: In order for the offeror to achieve an "acceptable" rating, the offeror shall have demonstrated at least one (1) year corporate experience and the ability to service at least one (1) entire US State in a market relevant to this solicitation. Corporate experience will be evaluated in the following terms relative to the geographic coverage capabilities

- Number of years of experience
- Average annual receipts
- Historical number of personnel placements for each SIN/common labor category as applicable

Factor B - Management Plan: In order for the offeror to achieve an "acceptable" rating, the offeror shall be able to demonstrate resources and competencies relevant to the following technical areas for each SIN/common labor category as applicable:

- Resources in terms of recruiting potential
- Recruitment and Retention Plan including the requirements of clause 52.222-46, Evaluation of Compensation for Professional Employees
- Credentialing procedures
- Personnel substitution procedures

Factor C – Past Performance: In order for the offeror to achieve an "acceptable" rating, the offeror shall have demonstrated a commitment to customer service (e.g. timeliness and quality of services provided, quality of personnel delivered, resolution of conflicts, and customer satisfaction) in successful completion of placement requests similar to the types outlined in the solicitation. In evaluating past performance the Government may also use information from its own files, from information provided by the offeror, or from any other sources it deems appropriate. Offerors will be given the opportunity to clarify information concerning the relevancy of an offeror's past performance information, and any adverse past performance information to which the offeror has not previously had an opportunity to respond.

D.2 552.212-73 EVALUATION – COMMERCIAL ITEMS (MULTIPLE AWARD SCHEDULE) (AUG 1997) (CONTINUED)

Factor D – Professional Liability Insurance (malpractice): In order for the offeror to achieve an “acceptable” rating, the offeror shall have demonstrated current professional liability insurance (malpractice) coverage in the amounts of no less than \$1 million per occurrence and \$3 million aggregate, covering the legal corporate entity as well as any/all individual service providers. Additionally, an endorsement stating that any cancellation or material change adversely affecting the Government’s interest shall not be effective until 30 days after the insurer or the contractor gives written notice to the Contracting Officer. A copy of the insurance certificate shall be included with the proposal. If subcontractors are proposed to be used during the life of the contract, it is necessary for contractors to disclose any subcontract relationship to the FSS Contracting Officer, provide a copy of the subcontractor agreement demonstrating that it complies with paragraph (e) of clause 852.237-7, and provide a certificate of insurance and endorsements with the same information as described above. Failure to provide evidence of proper insurance will result in an offer being rejected.

D.2.1 ADDENDA TO 552.212-73

52.222-46 EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

D.2.1 ADDENDA TO 552.212-73 (CONTINUED)

52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME (OCT 1997)

(a) *Definitions.* As used in this provision--

"Uncompensated overtime" means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

"Uncompensated overtime rate" is the rate that results from multiplying the hourly rate for a 40-hour workweek by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour workweek basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ($\20.00×40 divided by 45 = \$17.78).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.