

REQUEST FOR PROPOSALS

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SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS

PRICING ARRANGEMENT

- 1.0 The Federal Communications Commission (FCC or Commission) contemplates awarding an Indefinite-Delivery Indefinite-Quantity (IDIQ) contract pursuant to FAR Part 12.207(c). The FCC intends to issue two (2) Task Orders resulting from this solicitation: Task Order 1 will be issued on a Firm-Fixed-Price basis at the time of contract award. The FCC anticipates issuing Task Order 2 on a Labor-Hour basis either during the period of performance of Task Order 1 or within 75 days after the completion of Task Order 1. Task Order 2 will include two (2) twelve-month option periods.
- 2.0 Task Order 1 will be fully funded at time of award. Task Order 2 will be incrementally funded pursuant to the Limitation of Government's Obligation clause as stated in Section I.
- 3.0 During the performance of this contract, infrequent contractor travel may be required and will be reimbursed in accordance with the Federal Travel Regulations to the extent permitted by the Reimbursement of Travel Costs clause (Section H). The contractor shall maintain records to support all reimbursable travel costs, which shall be made available to the Government for inspections, acceptance and approval.
- 4.0 Offerors shall utilize the appropriate Contract Line Item Number (CLIN) for each task order as listed in the attached price sheet (see Attachment J.11).

(End of Section B)

SECTION C – DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

1.0 INTRODUCTION

The Federal Communications Commission (FCC) is an independent United States government agency. The FCC was established by the Communications Act of 1934 and is charged with regulating interstate and international communications by radio, television, wire, satellite and cable. The FCC's jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions.

The National Office of the National Treasury Employees Union (NTEU or Union) has filed a Chapter Grievance with the FCC alleging violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (FLSA), covering approximately 400 exempted bargaining unit employee positions across various job series, titles, and grades. In responding to the grievance, the FCC must review and assess the validity of the FLSA exemption status of the grieved positions.

2.0 BACKGROUND/OVERVIEW

The FCC is responding to a grievance filed by the National Treasury Employees Union (NTEU or Union) in which the Union has raised concerns about whether certain FCC employee positions are properly classified as exempt under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (FLSA) The grievance covers approximately 425 bargaining unit positions across various job series, titles, and grades. Specifically, the grievance encompasses incumbents in 13 different job series, approximately 75 different job titles, and 7 different grade levels.

The Union has requested the exemption basis for each one of the above-noted positions. These positions are not all under different, distinct position descriptions (PDs). Some of the positions are under standard position descriptions or are very similar positions. Therefore, there are not 425 distinctly different jobs. In order to allow offerors to provide a realistic proposal and price, Attachment 1 identifies the number of positions within each job title/series/grade that are on distinctly different PDs. The approximate number of different PDs is 230.

The Agency must ensure that the grieved positions are correctly classified under the FLSA, and seeks outside expertise to assist with this task and in reaching a reasonable resolution of the grievance. The contractor shall review the positions that are the subject of the grievance and verify whether that they are appropriately classified as exempt under the FLSA. The contractor shall make recommendations and provide narrative justification to support the FLSA determinations for the grieved positions.

The FCC is soliciting the expertise of an outside expert(s) and therefore is interested in offerors providing their proposed strategic approaches and draft project plans as part of their submissions. The purpose of the approach and project plan is for the offeror to use its expertise in recommending an approach to best address the Agency's goal of ensuring whether its FLSA determinations are accurate and resolving the Union grievance. Although the FCC has identified deliverables, it does not want to unduly restrict the expertise and creativity of the contractor and

it is encouraging contractors to develop their approaches and proposed project plans with the FCC’s ultimate goal in mind. Each offeror’s proposed approach/project plan should include the rationale for the approach and the methodology for accessing the positions as well as the specific tasks.

Additionally, the FCC requires a report of the findings, risk assessment, and options as further defined in the SOW.

3.0 TASK ORDERS

3.1 TASK ORDER 1: FLSA GRIEVANCE REVIEW AND REPORT (CLIN 0001)

Task Order 1 will be awarded on a firm-fixed-price basis.

- 3.1.1 The Contractor shall submit a final project plan which details the strategy, including the rationale for the proposed approach; the specific steps to be taken to accomplish the items under Task Order 1 described in the Statement of Work (SOW); and the estimated hours for each step; the completion date and hours for each step; and the contractor(s) name that will be performing each step. The final project plan shall be submitted to the Contracting Officer’s Technical Representative (COTR) for final review and approval within 14 calendar days of contract award.
- 3.1.2 The Contractor shall gain a thorough understanding of the grieved positions by reviewing a sampling as set forth in the project plan of the PDs for the grieved positions and holding discussions with the FCC’s Office of Human Resource Management (HRM) Staff and, if necessary, FCC Managers.
- 3.1.3 The Contractor shall review the duties performed by the grieved positions and make exemption recommendation(s) in compliance with the exemption criteria in the FLSA, Code of Federal Regulations (CFR), supplemental guidance and regulations issued by the U.S. Office of Personnel Management (OPM) and U.S. Department of Labor (DOL), case law, and arbitration decisions.
- 3.1.4 The Contractor shall correctly apply FLSA and OPM exemption criteria for Federal positions based on a review of the grieved position descriptions and, if necessary, discussions with HRM Staff and FCC Managers.
- 3.1.5 The Contractor shall document its FLSA recommendations, including its justification(s) and rationale based on the exemption criteria in the FLSA, CFR, supplemental guidance issued by OPM and DOL, case law, and arbitration decisions. Any discrepancies or inaccuracies in PDs that impact the FLSA determination must be documented and the source(s) identified. The Contractor shall provide written documents such as draft reports, work papers, etc.
- 3.1.6 The Contractor shall submit a final report to the COTR within 120 calendar days. The final report will serve as an internal management decision making tool in determining whether there are FLSA exemption concerns and the appropriate next steps to address the

grievance. The report shall include the contractor’s recommended FLSA exemption status determinations, analysis conducted, and the justification for the determinations; the report shall provide an assessment of the potential financial risk and provide options for the agency to consider relating to the NTEU grievance. The risks and options shall be based on the recommended FLSA exemption determinations made and knowledge of how like grievances have been decided before arbitrators and the courts. The Contractor shall prepare a final written report within 120 calendar days of contract award that incorporates all the items listed for the draft report and which addresses the FCC’s concerns regarding, and corrections and revisions to, the draft report. The final report shall be delivered to the COTR within 14 calendar days of (a) the receipt of the FCC’s written management response to the draft report; or (b) in the absence of a timely FCC response, the date the COTR directs the Contractor to submit the final report.

- 3.1.7 The Contractor shall submit a bi-weekly written status report that includes the current status of the Contractor’s performance of Task Order 1, a comparison of actual accomplishments with planned tasks and any deviation from schedule. The report shall briefly identify potential findings and include any factors that might, or are, adversely affecting the timeliness or quality of work. The Contractor shall utilize a format for the bi-weekly status report that is approved by the COTR. The beginning and subsequent dates for the bi-weekly report will be outlined in the final project plan.
- 3.1.8 The Contractor shall complete position reviews and the recommended FLSA determinations in two batches. The first “batch” of position reviews and FLSA recommendations shall be submitted within 30 calendar days after approval of final project plan. The remaining batch of PD reviews and recommendations shall be completed within 60 calendar days after approval of final project plan. The specific positions and number or position reviews will be agreed upon in the final project plan.
- 3.1.9 The Contractor shall meet with the FCC HRM Staff as requested by the COTR.
- 3.1.10 The Contractor shall prepare a draft written report of the findings, risk assessment and options. The draft report shall include:
 - an executive summary;
 - detailed information on specific findings including identification of the PDs/occupations reviewed, results of reviews, interviews and the written assessment of the validity of the FLSA exemption status for the individual positions or classes of like positions;
 - a ranked assessment of the FCC’s options for addressing the grievance, with risks, in view of FLSA exemption determinations made and knowledge of how like grievances have been decided before arbitrators and the courts;
 - potential financial risk; and
 - supporting work papers
- 3.1.11 The Contractor shall submit the draft report and supporting work papers to the COTR. The COTR and FCC HRM representative(s) will review them and determine whether or not

they are acceptable. The draft report is due within 100 calendar days of contract award. This due date may be changed based on approval of the final project plan.

- 3.1.12 The Contractor shall submit work papers that document all work performed to the COTR with the draft and final reports. The Contractor is responsible for preparing, reviewing, and indexing work papers. The work papers shall reflect the collection of sufficient, relevant, competent evidence for conclusions reached and opinions developed.
- 3.1.13 The Contractor shall provide the COTR with access to work papers at any time during contract performance for interim reviews and quality checks.
- 3.1.14 The Contractor shall provide deliverables to the designated COTR in the format prescribed in section F.3.0 of this SOW. The COTR will review each deliverable and provide comments to the Contractor within the timeframes outlined in this Statement of Work unless otherwise negotiated. The Contractor shall incorporate these comments and return to the COTR within the timeframes outlined in this Statement of Work unless otherwise negotiated.

**3.2 TASK ORDER 2: FLSA EXPERT WITNESS SUPPORT SERVICES
(CLIN 0002A through CLIN 0005C)**

It is anticipated that Task Order 2 will be awarded on a Labor-Hour basis with two (2) twelve month option periods.

Task Order 2 will depend on management decisions based on the results of Task Order 1.

- 3.2.1 The Contractor shall provide subject matter expertise and support services pertaining to the NTEU Grievance.
- 3.2.2 The Contractor shall provide support services that will include but not be limited to: attending meetings with FCC and NTEU to explain and defend FLSA determinations.
- 3.2.3 The Contractor shall participate in third-party arbitration or litigation proceedings, if any.
- 3.2.4 The Contractor shall provide expert testimony as to the FLSA determinations at any third-party arbitration or litigation proceedings.

3.3 MINIMUM QUALIFICATIONS:

Persons assigned to this contract (Contract Personnel) shall possess expert qualifications and experience as follows:

- 3.3.1 Contract personnel shall have expert knowledge of the FLSA, 29 U.S.C. §§ 201 *et seq.*, as it applies to U.S. Government employment;
- 3.3.2 Contract personnel shall have expert knowledge of the OPM's FLSA regulations published in part 551 of title 5 of the CFR; OPM supplemental guidance and DOL guidance and regulations;
- 3.3.3 Contract personnel shall have current knowledge of arbitration and court decisions in Federal sector FLSA litigation;
- 3.3.4 Contract personnel shall have experience reviewing the duties performed by Federal employees and making exemption determinations for Federal positions in compliance with the exemption criteria in the FLSA, CFR, supplemental guidance issued by OPM and DOL, case law, and arbitration decisions;
- 3.3.5 Contract personnel shall have experience representing organizations in accordance with FLSA litigation, arbitration, appeal decisions and/or settlement discussions regarding Federal Government positions;
- 3.3.6 Contract personnel shall have expertise necessary to serve in the capacity of FCC expert either in meetings with NTEU or before a third party defending FLSA determinations for Federal positions; and
- 3.3.7 Contract personnel shall have expertise necessary to prepare a written management report determining agency risk and developing options based on an assessment of grieved positions which may involve possible inappropriate FLSA determinations incorporating how like grievances have been decided before arbitrators and the courts.

(End of Section C)

SECTION D – PACKAGING AND MARKING

NOTE: All applicable packaging and marking clauses, if applicable, are contained in the commercials clauses listed in Section I of this solicitation.

(End of Section D)

SECTION E – INSPECTION AND ACCEPTANCE

NOTE: All applicable inspection and acceptance clauses are contained in the commercials clauses listed in Section I of this solicitation.

(End of Section E)

SECTION F – DELIVERIES OR PERFORMANCE

1.0 PLACE OF PERFORMANCE

The contractor shall primarily perform the work under this SOW at its facilities, with occasional meetings at FCC Headquarters.

2.0 TASK ORDER PERIOD OF PERFORMANCE

2.1 TASK ORDER 1: FLSA GRIEVANCE REVIEW AND REPORT

From the date of contract award to 120 calendar days after the date of contract award.

2.2 TASK ORDER 2: FLSA EXPERT WITNESS SUPPORT SERVICES

Task Order 2 is to be ordered by the Government, if needed, based on the approved fixed-price labor-hour rate(s) stated in CLIN 0002 - 0004. The FCC anticipates that Task Order 2 will have a 12-month base period with two (2) 12-month option periods. Work to be performed under Task Order 2 may be intermittent in nature rather than continuous. Further details will be provided prior to Task Order 2 award.

3.0 TENTATIVE DELIVERABLES SCHEDULE FOR TASK ORDER 1

Below is the tentative deliverable schedule for Task Order 1. All milestone dates and activities are for reference only and the FCC seeks the best solution that offerors can propose. All deliverables, activities, etc. will be finalized based upon the approval and acceptance of the final project plan.

DELIVERABLE ITEM	DELIVERABLE DUE DATE	DELIVERABLE FORMAT	GOVERNMENT REVIEW PERIOD	RECIPIENT
Attend Post Award Conference	Within 7 calendar days of contract award	N/A	N/A	N/A
Submit Final Project Plan	Within 14 calendar days of contract award	Document submitted via E-mail in Word or Excel	7 calendar days after confirmed receipt	COTR
Complete FLSA reviews for 50% of the positions to be reviewed as agreed upon in the project plan	Within 30 calendar days after approval of final project plan	Document submitted via E-mail in Word	14 calendar days after confirmed receipt	COTR
Complete remaining batch of PDs representing 50% of the overall PDs to be reviewed	Within 60 calendar days of final project plan	Document submitted via E-mail in Word	14 calendar days after confirmed receipt	COTR
Submit Draft Written Report	Within 100 days of contract award	Document submitted via E-mail in Word or Excel	7 calendar days after confirmed receipt	COTR
Submit Final Written Report	Within 120 calendar days of contract award	Document submitted electronically and hard copy	7 calendar days after confirmed receipt	COTR
Bi-Weekly Status Report	Bi-weekly (Dates to Be Determined)	Report submitted via E-mail in Word or Excel	N/A	COTR

(End of Section F)

SECTION G – CONTRACT ADMINISTRATION

SUBMISSION OF INVOICES

The FCC will allow partial payment for work that has been inspected and accepted.

- (a) Invoices* shall be submitted in an original and two copies to : **FCC Travel/ Operations Group, Room #1A761, 445 12th Street, S.W., Washington, DC 20554**

The invoice will contain a statement signed by a responsible official of the concern substantially similar if not identical to the following:

I certify that the items above have been delivered in accordance with the contract, and that all charges are true, correct, and have not been previously billed.

Contractor's Signature

The Commission will return all improper invoices without action.

- (b) Interest on Overdue Payment

Determination of interest due will be made in accordance with the provisions of the Prompt Payment Act and 5 C.F.R. Part 1315.

- (c) Payment due date:

(1) Unless otherwise specified in the contract (refer to SOW deliverables section F), payments under this contract will be made on the 30th calendar day after the later of

(i) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(ii) The date tasks are formally accepted by the Government.

(2) If the services covered by a submitted invoice are rejected for failure to conform to the technical requirements of this contract, the provisions stated above will (i and ii) apply to the properly resubmitted document.

NOTE: *Invoices may be submitted via email to: FO-Einvoices@fcc.gov. In addition, copies of the emailed invoices shall also be sent to the CO and COTR.

Invoices shall be submitted in an original and two copies to the Government office designated in this contract. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

- (1) Name of the business concern, invoice number and invoice date;
- (2) Contract number, or authorization for delivery of property or performance of services;

- (3) Description, price, and quantity of property and services actually delivered or rendered;
- (4) Shipping and payment terms;
- (5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent;
- (6) Other substantiating documentation or information as required by the contract; and
- (7) Receipts to support all out-of-pocket expenses incurred by the Contractor.

(End of clause)

(End of Section G)

SECTION H – SPECIAL CONTRACT REQUIREMENTS

FCC CLAUSES

A. REIMBURSEMENT OF TRAVEL COSTS

1. The Government shall reimburse the Contractor for travel costs in support of this Order upon the Contractor's submission of an invoice in accordance with the contract's "Submission of Invoices" Clause.
2. Reimbursement of travel costs shall be limited to reasonable coach airfare rates and Federal Travel Directory per diem and car rentals, as applicable, in effect at the time of the travel.
3. No handling charges, indirect costs, profit, or fee shall be reimbursed for the travel costs.
4. The contractor shall notify the Contracting Officer in the event that travel costs are expected to exceed the NTE price set aside for this order. The Contracting Officer must approve any change in the NTE travel price.
5. Travel expenses (with supporting documentation) shall be accumulated and submitted with the request for payments.
6. Any/all travel costs must be approved in writing by the COTR prior to execution of any travel costs.

(End of clause)

B. CONFLICT OF INTEREST

1. The Contractor is required to provide high quality service to the Commission that is free from bias, and personal and organizational conflicts of interest, including the appearance of impropriety. *See generally* FAR 3.101-1 and FAR Subpart 9.5. At all times, the Contractor must exercise organizational independence to ensure its ability to objectively support the FCC's programs and activities. For purposes of this clause, "Contractor" includes any employees, subcontractors, subcontractor employees, consultants, agents, or other representatives of the Contractor. The term "organizational conflict of interest" means that a relationship exists whereby a contractor (including its executives, directors, proposed subcontractors and consultants) has interests which may: (1) diminish its capacity to give impartial or objective assistance and/or advice to the Government or impair the contractor's ability to perform the contract work objectively; or (2) result in an unfair competitive advantage. *See* FAR 9.505. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of

the employee, subcontractor employee, or consultant in performing the contract work.

2. The Contractor is required to take all reasonable measures to monitor the existence of actual or potential conflicts of interest, or the appearance of such conflicts, throughout the contract term, which includes all exercised option periods and any other extensions of the contract. If the Contractor discovers an actual or potential conflict of interest, or facts that give rise to the appearance of a conflict, at any time during the contract term, it shall (1) make an immediate and full disclosure in writing to the Contracting Officer of the nature of the conflict in sufficient detail so that the FCC can determine the existence and extent of the conflict; and (2) describe the actions that the Contractor has taken or proposes to take to avoid, neutralize, or mitigate the conflict.
3. The Contracting Officer shall determine whether the actions taken or proposed by the Contractor are sufficient to avoid, neutralize, or mitigate the conflict, and whether any additional actions are necessary. The Contracting Officer shall provide the contractor with written instructions concerning the actions that must be taken by the Contractor to avoid, neutralize, or mitigate the conflict. The FCC may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
4. In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, the FCC may terminate this contract for default.
5. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential conflicts of interest at the time of or after award, the FCC may terminate the contract for default, disqualify the contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.
6. The Contractor agrees to insert in each subcontract related to this contract a clause that conforms substantially to the language of this clause, including this paragraph, unless otherwise authorized by the Contracting Officer.

C. LIMITATION OF GOVERNMENT'S OBLIGATION

1. This contract is incrementally funded. Of the total price for this contract, only the amount stated in the contract award document or subsequent modifications is presently available for payment and obligated under this contract. It is anticipated that from time to time, additional funds will be obligated under this contract by subsequent contract modifications until the contract is fully funded. The contemplated funding schedule is set forth in paragraph (j) of this clause.
2. The Contractor agrees to perform the contract up to the point at which the total amount paid and payable by the Government, including any amounts payable by the Government in the event of termination for convenience, approximates but does not exceed the total

amount obligated pursuant to this clause. The Contractor is not authorized to continue work beyond that point. The Government's legal liability under this contract, inclusive of any amounts payable pursuant to the "Termination for the Government's convenience" clause (FAR 52.212-4(l)), is limited to the amount obligated pursuant to this clause. Any costs expended or incurred beyond the Government's limitation of obligation are solely at the Contractor's risk.

3. The Contractor shall notify the Contracting Officer by e-mail at least thirty days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount paid and payable by the Government, including any amounts payable by the Government in the event of termination for convenience, will approximate 80 percent of the total amount then obligated to the contract pursuant to this clause. The Contractor's notification shall state: (1) the estimated date when that point will be reached; and (2) an estimate of additional funding, if any, needed to continue performance of the contract up to the next scheduled date for obligation of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date.
4. When additional funds are obligated for continued performance of the contract, the contract will be modified to state the revised total of funds obligated to the contract and to indicate the period of contract performance which will be covered by the obligated funds. The provisions of paragraph (b) through (d) of this clause shall apply to the revised total of obligated funds and any agreed substitute date.
5. If, solely by reason of failure of the Government to obligate additional funds in amounts sufficient for the timely performance of the contract, the Contractor incurs additional costs or is delayed in the performance of work under this contract, and if additional funds are obligated to the contract, an equitable adjustment may be made to the price, time of delivery, or both.
6. Once a contract period (base period or option period) is fully funded, this clause shall become inoperative for the remainder of that contract period, except with regard to rights or obligations concerning equitable adjustments negotiated under paragraph (e) of this clause. This paragraph shall not preclude operation of the clause in any subsequent option period that is incrementally funded.
7. Nothing in this clause shall affect the Government's right to terminate the contract for convenience or cause, pursuant to "Termination for the Government's convenience" or "Termination for cause" clauses (FAR 52.212-4(l) and (m), respectively).
8. Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. § 1342.
 - a. The terms of this clause shall apply to each option period of the contract that is exercised and incrementally funded.

D. KEY PERSONNEL

The personnel specified below are considered to be essential to the work being performed under

this contract. Prior to making any change to the key personnel, the Contractor shall submit a request for the change to the Contracting Officer reasonably in advance and shall submit justification (including the name, resume, and explanation of the qualifications of the proposed substitution) in sufficient detail to permit the Contracting Officer to review and evaluate the request. No changes to key personnel may be made by the Contractor without the written consent of the Contracting Officer. Upon the mutual agreement of both parties, the schedule below may be amended during the course of the contract to either add or delete key personnel, as appropriate.

Note: All proposed contract personnel are designated as key personnel.

The following individuals are designated as key personnel under this contract:

Name	Position/Title

E. CONFIDENTIALITY

1. The Contractor and any of its personnel assigned to this contract, including any consultants, subcontractors or other representatives (collectively "the Contractor"), are restricted as to their use of non-public information concerning any matter relating to the contract work. Any such information that is made known to the Contractor by virtue of its work under this contract is deemed confidential/proprietary, and is subject to the attorney-client privilege, the attorney work product doctrine, the deliberative process privilege, and any other relevant claims of privilege from disclosure under the Freedom of Information Act. (Confidential information and/or proprietary data include non-public information to which the Contractor is given access by virtue of its work under the contract and which embody the types of information that are not or have not been generally known or available from other sources, or third parties, without obligation concerning their confidentiality.) It is the responsibility of the Contractor to preserve all such information in confidence. Any confidential/proprietary information relating to any aspect of this contract may not be discussed or shared, or otherwise exchanged within or outside of the Contractor's organization, except as to those individuals: (a) assigned to or performing the contract work; or (b) as otherwise agreed to by the Contracting Officer. Immediately upon contract award (if not already provided as part of the proposal process), the Contractor shall submit a list of assigned Contractor employees, subcontractors, consultants, representatives and, if any, other individuals it has identified as having a "need to know," and obtain the Contracting Officer's written consent to exchange confidential/proprietary information with them. The Non-Disclosure Agreement attached hereto as Attachment J.2 must be executed by all affected individuals before the dissemination of any such information. It is understood that the FCC is procuring its requirements from the Contractor under the explicit condition that it ensure that its employees, subcontractors, consultants, representatives or any other individuals who have been approved in writing by the Contracting Officer to receive confidential/proprietary information,

not engage in any discussions or otherwise exchange any information with anyone who has not executed a Non-Disclosure Agreement. The approval process described above applies to any individuals who may become associated with the contract effort following award.

2. All reports, information, discussions, procedures, and any other data that is collected, generated or results from the performance of this contract is considered confidential/proprietary information, and may not be disclosed or used by the Contractor at any time in any manner outside the performance of this contract without the prior written approval of the FCC. Requests to make such disclosure must be addressed in writing to Contracting Officer. In the event the Contractor is issued a subpoena, court order, or similar request seeking information related to this contract, the Contractor will notify the Contracting Officer in writing within one calendar day of knowledge or receipt of such request, whichever is sooner.
3. The Contractor may not discuss the contract work in progress with any outside party, including responding to media and press inquiries, without the prior written permission of the FCC. In addition, the Contractor may not issue news releases or similar items regarding contract award, any subsequent contract modifications, or any other contract-related matter without the prior written approval of the FCC. Requests to make such disclosure should be addressed in writing to the Contracting Officer.
4. All documents, photocopies, computer data and any other information of any kind collected or received by the Contractor in connection with the contract work shall be provided to the FCC upon request at the termination of the contract; i.e., the date on which final payment by the United States is made on the contract, or at such other time as may be requested by the Contracting Officer or as otherwise agreed by the Contracting Officer and the Contractor.
5. The prohibition on disclosure of the information described above is an ongoing obligation and does not terminate with completion of the contract work.

F. SUITABILITY AND SECURITY PROCESSING

1.1 General

(a) All contract personnel are subjected to background investigations for the purpose of suitability determinations. Based on their proposed duties, some contract personnel may also be required to have security clearance determinations. No contract personnel may be assigned to work on the contract without a favorable initial review of the OF 306, *Declaration for Federal Employment* (http://www.opm.gov/forms/pdf_fill/of0306.pdf) or a written waiver from the FCC Security Operations Center (SOC).

(b) Suitability, waiver, and security clearance determination investigations are currently conducted through the FCC Security Operations Center (202- 418-7884). The individual contract employee will be provided with a review process before a final adverse determination is made. The FCC requires that any contract personnel found not suitable, or who has a waiver cancelled, or is denied a security clearance, **be removed by the contractor during the same business day that the determination is made.**

(c) If the contract personnel is re-assigned and the new position is determined to require a higher level of risk suitability than the contract personnel currently holds, the individual may be assigned to such position while the determination is reached by the SOC. A new A-600 shall be necessary for the new position.

(d) Contract personnel working as temporary hires (for ninety (90) days or less) must complete and receive a favorable initial review of the OF 306 and complete the contract personnel section of the FCC Form A-600, "FCC Contractor Record Form." If during the term of their employment they will have access to any FCC network application, they must also complete and sign the FCC Form A-200, "FCC Computer System Application Access Form."

1.2 At Time of Contract Award

(a) The FCC Security Operations Center must receive the completed, signed OF 306 for all proposed contractor employees at the time of contract award. Resumes for all personnel proposed for assignment on the contract should be provided to the Security Office prior to the time of in-take processing (see below, 2.3.2). **The FCC Security Operations Center requires up to five (5) working days (from the date they are received) to process the OF 306 before any employee is allowed to begin work on the contract. A written waiver from the SOC may be obtained in special circumstances.**

All contract personnel, regardless of task description, must complete this form. Without an approved, completed OF 306 on file at the SOC, no contractor employee may begin work. An approved OF 306 is one that has passed initial review by the SOC. During the course of the SOC review of the OF 306, the contract personnel may be interviewed by SOC staff regarding information on their OF 306.

(b) In addition, the Contractor is responsible for submission of completed, signed computer security forms for each employee prior to that person beginning work on the contract (See Appendix No. 3, FCC Instruction 1479.1, FCC Computer Security Program Directive and sample forms.) These forms should be submitted to the FCC Computer Security Office.

(c) The COTR shall begin processing their section of the FCC Contract Personnel Record (FCC Form A-600) at this time. This form, with the COTR and CO portions completed, will be distributed at the time of contract award and must be submitted to the SOC within ten (10) working days.

(d) The Office of Personnel Management (OPM) will issue a Certificate of Investigation (CIN) following the appropriate background investigation. The SOC notifies the CO and COTR and contract personnel who have received a favorable adjudication so they may receive their permanent access credential.

1.3 IDENTITY PROOFING, REGISTRATION AND CHECKOUT REQUIREMENTS.

1.3.1 Locator and Information Services Tracking (LIST) Registration

The Security Operations Center maintains a Locator and Information Services Tracking (LIST) database, containing contact information for all Commission and contract employee personnel, regardless of work location.

The contract employee’s FCC Form A-600, “FCC Contractor Record Form” captures the information for data entry into the LIST system.

1.3.2 Intake Processing

(a) Following the processing of the OF 306 and an initial favorable suitability determination, (unless otherwise waived) the contract personnel shall report to the FCC for identity verification and access badge issuance on their first scheduled workday.

(b) All new contract personnel must be escorted to the SOC by either the CO or COTR responsible for the contract. At this time the contractor personnel must present two forms of identification; one of which must be a picture ID issued by a state, or the Federal, government. The other piece of identification should be the original of one of the following:

- U.S. Passport (unexpired or expired)
- Certificate of U.S. Citizenship (Form N-560 or N-561)
- Certificate of Naturalization (Form N-550 or N-570)
- School ID
- Voter’s registration card
- U.S. Military card
- Military dependent’s ID card
- U.S. Coast Guard Merchant Mariner card
- Native American Tribal document
- U.S. Social Security card
- Certification of Birth Abroad, (Form FS-545 or Form DS-1350)
- Original or certified copy of a birth certificate, bearing an official seal

(c) After identity verification, the individual shall complete the Fingerprint Card form, FD 258, the Fair Credit Report Act form, and be photographed and issued the appropriate access badge.

(d) At this time the contract employee will be given one of the following forms, based on the security risk designation for the proposed support classification/position, to complete and return to the SOC within seven (7) business days) **Low Risk Positions** - SF 85, Questionnaire for Non-Sensitive Positions

(ii) **Moderate Risk Positions** - SF 85-P, Questionnaire for Public Trust Positions

(iii) **High Risk Positions/Secret or Top Secret Security Clearances** – Standard Form

(SF) 86, Questionnaire for Sensitive Positions

(e) For any contract employee whose name is provided to the Commission for security investigation at (ii) or (iii) level, who subsequently leaves the subject contract, due to Contractor or contract employee decision, within the first year, the Contractor shall reimburse the Commission for the cost of the investigation. If the contract or task order is scheduled for completion in under one year and the contract employee for whom a security investigation has been done leaves prior to the work being done, the Contractor and SOC shall agree on a pro-rated amount for reimbursement. The cost may range from approximately \$400.00 (moderate risk) to \$3,000.00 (high risk). The Contractor will be provided a copy of the investigation invoice with the reimbursement request.

1.3.3 Monthly Contractor Personnel Reports

The monthly report verifying contract personnel working at the FCC is a crucial element in the agency’s compliance with Homeland Security Presidential Directive (HSPD) 12. Accurate and timely reporting are required as part of the ongoing access control efforts as mandated by HSPD-12 and implementing directives.

(a) The Contractor’s Program Manager shall submit a contract personnel list to the SOC on the first working day of each month. This report shall be identified by the contract name and FCC number, and shall list all the contract employees working at the FCC in the immediately previous month.

(b) The report shall highlight or list in some way those individuals who are no longer employed by the Contractor or who are no longer working on the subject contract. As well, any additional contract personnel who have been successfully processed for work on the contract since the previous report shall also be noted.

(c) The report may be delivered electronically in MS Excel format. The covering email should contain a statement of certification of accuracy and should originate with the Contract Program Manager or other Contractor executive personnel. The author of the email shall be considered the signatory.

(d) No later than the 15th of each month, the SOC will notify the Contract Program Manager, the author of the email covering the Monthly report (if different), the COTR and the Contracting Officer if the report is a) received after the first working day of the month, or b) contains errors in the listing. The notification will identify the reason for deficit in the report.

(e) The first instance of either a) or b) above shall result in a Five Hundred Dollar (\$500.00) penalty against the Contractor. The assessed penalty shall increase in Five Hundred Dollar (\$500.00) increments for each subsequent Monthly report received either late or containing errors.

1.3.4. Checkout Processing:

(a) All contract employees no longer employed on the subject contract, or at the termination of the contract, are required to report to the SOC and complete the sign-out portion of the FCC A-600, Contract Personnel Record.

(b) This process verifies the access badge has been returned to the SOC by the contract personnel.

(c) If the checkout processing is not completed by the contract employee, the Contractor shall take action to ensure its accomplishment no later than thirty (30) calendar days after the employee's departure from the FCC.

(d) The Contractor shall be liable to the FCC for an administrative processing charge of \$150.00 (One Hundred Fifty Dollars), for each of their employees who leaves their duty assignment at the Commission and fails to complete the checkout processing within thirty (30) calendar days of departure. Mellon Bank, N.A., handles collection and processing of all Commission administrative charges and should payment become necessary, the Contractor will be provided the appropriate directions for an EFT.

(e) The Contractor shall be liable for any actual damages arising from a failure to ensure that the checkout processing occurs within the thirty (30) calendar days of the contract employee's departure from the FCC.

(End of Section H)

SECTION I – CONTRACT CLAUSES
(Unless otherwise stated, all clauses are applicable to all task orders)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Full text of a clause may be accessed electronically at: <http://www.arnet.gov/far/index.html>. All clauses will be completed and incorporated into the contract document upon contract award.

52.212-4 Contract Terms and Conditions—Commercial Items (MAR 2009) (applies to Task Order 1 only)

(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 Government wide 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.

(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.

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

(i) *Payment.*—

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

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

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

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

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

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

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

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

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

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

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 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 (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of

termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 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; Section 1553 of the American

Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act; 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 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.

52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (MAR 2009)—Alternate I (OCT 2008) (Task Order 2 only)

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

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

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

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

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

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

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

(B) Terminate this contract for cause.

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

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

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

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

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

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

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

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

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

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

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

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

(iii) *Materials* means—

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

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

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

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

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

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

(i) *Payments.* (1) *Services accepted.* Payment shall be made for services accepted by the Government that have been delivered to the delivery destination(s) set forth in this contract. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.*

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

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

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

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

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

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

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

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

(ii) *Materials.*

(A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall be the contractor's established catalog or market price, adjusted to reflect the—

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

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

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

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

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

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

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

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

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

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

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

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

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

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

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

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

(B) The Contractor's timekeeping procedures;

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

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

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

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

(B) Any documents supporting payment of those invoices.

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

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

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

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

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

(D) Contractor point of contact.

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

(6)(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

(viii) Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30

days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

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

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

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

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

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

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

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

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

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (MAR 2009)

(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) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(3) 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:

X (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) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
- (3) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).
- (4) 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).
- (5) [Reserved]
- (6)(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.
- (7)(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.
- (8) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
- (9)(i) 52.219-9, Small Business Subcontracting Plan (Apr 2008) (15 U.S.C. 637(d)(4)).
- (ii) Alternate I (Oct 2001) of 52.219-9.
- (iii) Alternate II (Oct 2001) of 52.219-9.
- (10) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
- (11) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- (12)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- (ii) Alternate I (June 2003) of 52.219-23.
- (13) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Apr 2008) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (14) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (15) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004) (15 U.S.C. 657 f).
- (16) 52.219-28, Post Award Small Business Program Rerepresentation (June 2007) (15 U.S.C. 632(a)(2)).
- (17) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- (18) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126).
- (19) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- (20) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(21) 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).

(22) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(23) 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).

(24) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(25) 52.222-54, Employment Eligibility Verification (JAN 2009). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

(26)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

(27) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b).

(28)(i) 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

(ii) Alternate I (DEC 2007) of 52.223-16.

(29) 52.225-1, Buy American Act—Supplies (Feb 2009) (41 U.S.C. 10a-10d).

(30)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (Feb 2009) (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.

(31) 52.225-5, Trade Agreements (MAR 2009) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

(32) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(33) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

(34) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

(35) 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)).

X (36) 52.232-30, Installment Payments for Commercial Items (Oct 1995)
(41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

X (37) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor
Registration (Oct 2003) (31 U.S.C. 3332).

 (38) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor
Registration (May 1999) (31 U.S.C. 3332).

 (39) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

 (40) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

 (41)(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:

 X (1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).

 X (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.*).

 X (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) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for
Maintenance, Calibration, or Repair of Certain Equipment—Requirements (Nov 2007) (41 U.S.C. 351,
et seq.).

 (6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for
Certain Services—Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).

 (7) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009)
(Pub. L. 110-247).

 (8) 52.237-11, Accepting and Dispensing of \$1 Coin (Sept 2008) (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.

(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 this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 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.

(iii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(iv) 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).

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

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

(vii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, *et seq.*).

(viii) 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104(g)).

___ Alternate I (Aug 2007) of 52.222-50 (22 U.S.C. 7104(g)).

(ix) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, *et seq.*).

(x) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) (41 U.S.C. 351, *et seq.*).

(xi) 52.222-54, Employment Eligibility Verification (JAN 2009).

(xii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xiii) 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.

(End of clause)

52.216-22 INDEFINITE QUANTITY (OCT 1995) – (TASK ORDER 2 ONLY)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. 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 Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, 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; *provided*, that the Contractor shall not be required to make any deliveries under this contract after TBD.

(End of clause)

52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the secretary of labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the contractor within 30

days of expiration of the contract.

(End of clause)

**52.217-9 OPTION TO EXTEND THE TERM OF THE TASK ORDER (MAR 2000)
(TASK ORDER 2 ONLY)**

- (a) The Government may extend the term of this task order by written notice to the Contractor within 30 days prior to expiration of the task order; provided, that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the task order expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended task order shall be considered to include this option clause.
- (c) The total duration of this task order, including the exercise of any options under this clause, shall not exceed 3 Years.

(End of clause)

52.227-17 RIGHTS IN DATA—SPECIAL WORKS (DEC 2007)

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

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Unlimited rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) Copyright—

(1) Data first produced in the performance of this contract.

(i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to

the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

(End of Section I)

SECTION J – LIST OF ATTACHMENTS

Attachment	Description	Date	Pages
J.1	Final Award Documents:		
J.1.A	Successful Proposal	TBP	TBP
J.1.B	Successful Pricing Proposal	TBP	TBP
J.2	*Non-Disclosure Agreement		TBP
J.3	*FCC FORMS:		
J.3.A	FCC A-200, FCC Computer System Application Access Assignment Form	Jul. 2002	TBP
J.3.B	FCC A-600, Contract Personnel Record	Apr. 2003	TBP
J.4	*FCC Instruction #1479.3, Computer Security Program Directive	Jul. 2012	TBP
J. 5	*Contracting Officer's Technical Representatives (COTR &TPOC) Delegations		TBP
J.6	*FCC Policy Statement on the Prevention of Workplace Violence		TBP
J.7	*FCC Instruction #1139 "Management of Non-Public Information		TBP
J.8	Past Performance Questionnaire		
J.9	Accessibility Standards, Section 508 of The Rehabilitation Act (by reference only)		TBP
J.10a	Distinctly Different Positions By Series, Title, Grade as Of 12/20/08		3
J.10b	Requested Positions as of 9/1/04 and 9/13/07 – NOT Included in 12/20/08 Snapshot		1
J.11	Price Sheets	N/A	2
J.12	Technical and Price Proposal Coversheets	N/A	2

***To be provided to the successful offeror at time of contract award**

(End of Section J)

SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

K.1 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (FEB 2009)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (c) through (m) of this provision.

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

“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person conducting the business can demonstrate—

(1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(3) Consist of providing goods or services to marginalized populations of Sudan;

(4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“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 size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(1) Whose management and daily business operations are controlled by one or more women.

(b)

(1) *Annual Representations and Certifications.* Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs _____.

[Offeror to identify the applicable paragraphs at (c) through (m) of this provision that the offeror has completed for the purposes of this solicitation only, if any.

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.]

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it is, is not a small business concern.

(2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is a women-owned business concern.

(7) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: _____

(8) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.* [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the designated industry groups (DIGs).] The offeror represents as part of its offer that it is, is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of Employees Average Annual Gross Revenues

___ 50 or fewer

___ \$1 million or less

___ 51-100

___ \$1,000,001-\$2 million

___ 101-250

___ \$2,000,001-\$3.5 million

___ 251-500

___ \$3,500,001-\$5 million

___ 501-750

___ \$5,000,001-\$10 million

751-1,000 \$10,000,001-\$17 million
 Over 1,000 Over \$17 million

(9) [Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]

(i) General. The offeror represents that either—

(A) It is, is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It has, has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.]

(10) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246—

(1) Previous contracts and compliance. The offeror represents that—

(i) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It has, has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that—

(i) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 cfr parts 60-1 and 60-2), or

(ii) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Act Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product." The terms "commercially available off-the-shelf (COTS) item" "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

(2) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate*. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "Bahrainian or Moroccan end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act."

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian or Moroccan end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian or Moroccan End Products) or Israeli End Products:

Line Item No. Country of Origin

_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product."

Other Foreign End Products:

Line Item No. Country of Origin

_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Canadian End Products:

Line Item No.

[List as necessary]

(3) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act—Free Trade Agreements—Israeli Trade Act":

Canadian or Israeli End Products:

Line Item No. Country of Origin

_____	_____
_____	_____
_____	_____

[List as necessary]

(4) *Trade Agreements Certificate*. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line Item No. Country of Origin

Line Item No.	Country of Origin

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689)*. (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1) Are, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) Have, have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3) Are, are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4) Have, have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined*. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment*. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.*

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).* [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) *Listed end products.*

Listed End Product	Listed Countries of Origin
--------------------	----------------------------

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Act.* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1).
The offeror does does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1). The offeror does does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN)*.

- TIN: _____.
- TIN has been applied for.
- TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____.

(5) *Common parent.*

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:
Name _____.
TIN _____.

(m) *Restricted business operations in Sudan.* By submission of its offer, the offeror certifies that it does not conduct any restricted business operations in Sudan.

(End of provision)

Alternate I (Apr 2002). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(9) of this provision.)

{The offeror shall check the category in which its ownership falls}:

___ Black American.

___ Hispanic American.

___ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

___ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

___ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

___ Individual/concern, other than one of the preceding.

Alternate II (Oct 2000). As prescribed in 12.301(b)(2), add the following paragraph (c)(9)(iii) to the basic provision:

(iii) *Address.* The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement

mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. "Address," as used in this provision, means the address of the offeror as listed on the Small Business Administration's register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR Part 124, subpart B. For joint ventures, "address" refers to the address of the small disadvantaged business concern that is participating in the joint venture.

K.2 ORGANIZATIONAL CONFLICT OF INTEREST REPRESENTATION

1. The Offeror represents, to the best of its knowledge and belief, that it is [] is not [] aware of any information bearing on the existence of an actual or potential organizational conflict of interest relating to its selection for award under this FCC procurement. The term "Offeror" includes any subcontractors or consultants included in the Offeror's proposal. The term "organizational conflict of interest" has the meaning prescribed in the Conflict of Interest clause.
2. If the Offeror is aware of any information bearing on the existence of an actual or potential organizational conflict of interest, it shall provide a disclosure statement describing all relevant information concerning any past, present, or planned interests bearing on whether it (including any proposed consultant or subcontractors) may have an actual or potential organizational conflict of interest. The disclosure must be in sufficient detail so that the Contracting Officer can determine the existence and extent of the conflict. In addition to identifying actual or potential organizational conflicts of interest, the disclosure statement shall describe how any such conflict may be avoided, neutralized, or mitigated.
3. The Contracting Officer will determine an Offeror's eligibility for award based on the information provided in the disclosure statement. Failure to avoid, neutralize, or mitigate a conflict of interest or the appearance of one to the satisfaction of the Government may render an Offeror ineligible for award of the contract.
4. Nondisclosure or misrepresentation of an actual or potential organizational conflict of interest at the time of the offer may result in the termination of the contract at no expense to the Government.

(End of Section K)

SECTION L – INSTRUCTION, CONDITIONS, AND NOTICES TO OFFERORS

The FCC is issuing this solicitation for the purpose of entering into a contract. The FCC will conduct this acquisition under Parts 12 and 13 of the Federal Acquisition Regulation (FAR). The Government intends to make award without conducting discussions with offerors. Offerors whose proposals receive a high technical rating may be requested by the Contracting Officer to participate in oral presentations. Oral presentations, if conducted, will be used to augment the written proposals of the highest technical rated offerors. The Contracting Officer will maintain a record of oral presentations to document what the FCC relied upon in evaluating these presentations. If you are interested in this acquisition, you may participate by submitting your response in accordance with the following instructions. **All proposals shall be submitted to: eProposals@fcc.gov. Be sure to place the following information in the subject line of your e-mail submission: "SOL09000007 FCC FLSA Support Services".**

Note: It is the responsibility of each interested vendor to monitor the fedbizopps website at: www.fbo.gov for any updates and amendments to this solicitation. This solicitation will also be posted on the FCC website at: www.fcc.gov/omd/contracts/pre-award for information purposes only.

All offerors shall follow the instructions hereby set forth and submit their proposals with the completed proposal cover sheets (Attachments J.12). Your proposal shall indicate an **acceptance period of no-less-than 60 days** from the due date for submission.

The **proposal shall not exceed 15 pages**, excluding resumes and document example(s) as stated under item 3 below.

A page is defined as one side of an 8½" x 11" sheet of white, un-textured paper, single-spaced, with at least one inch margins on all sides, using not smaller than 12 characters per linear inch or be smaller than twelve (12) points, and shall not exceed six (6) lines per vertical inch. The type for all documents submitted (including charts and graphs) shall be black. The proposal shall be provided electronically via email as stated earlier. The technical and price proposal must be submitted separately for evaluation purposes.

SUBMISSION REQUIREMENTS

Your proposal **MUST** cite your tax identification number (TIN) and Dun & Bradstreet Number (DUNS), North American Industrial Classification System (NAICS), Standard Product Code (SPC) and other pertinent information found in Attachments J.12, Proposal Coversheets. Please ensure that your firm is CCR Certified (<http://www.ccr.gov>). **Be sure to submit complete coversheet information and place the coversheets as the first page of each portion of your technical proposal.**

The submission must include each of the following:

1. Copies of the resumes of each of the proposed contract personnel who will be conducting the

FLSA assessment and risk assessment report. Each resume must include, but is not limited to: employment history relevant to the SOW (including dates of employment, name of employer, duties and accomplishments); education; and certifications.

2. Three professional references per resume that can attest to the proposed contract personnel's FLSA expertise and knowledge and the past performance of the proposed contract personnel on contracts with similar duties/tasks to the SOW.
3. Narrative statement for each of the proposed contract personnel which addresses and supports his/her expertise and knowledge gained through work experience and/or education in each of the minimum qualification areas listed in Section 3.3 of the SOW.
4. Description of the strategy that the offeror proposes that supports and addresses the FCC's goal and SOW. Offerors are encouraged to develop their approaches with the ultimate goal of the FCC in mind. The document shall include the rationale for recommending the offeror's particular approach, as well as, the methodology for assessing the positions and preparing the risk assessment report. Offerors should refer to Sections C and F for additional information.
5. Draft Project Plan: A draft project plan that details (at a minimum) the specific steps and sub-steps; the method for completing those steps; the necessary staff resources (hours) that are projected for completion of each step; the date/time line for completion; and the contractor(s) designated to perform each step. Offerors should refer to Sections C and F for additional information.
6. Three to Five examples of past FLSA determination documents prepared by the proposed contract personnel. Examples should represent the administrative and professional FLSA exemption criteria. (Client information may be redacted.)
7. Example of a previously completed risk assessment or report of findings, prepared by the proposed contract personnel, preferably related to FLSA.
8. All offerors are to complete and submit price information on the price sheets provided (Attachment J.11). Price shall be evaluated separately. Task Order 1 shall be priced as a firm-fixed price task order. Task Order 2 shall be priced as a labor-hour task order for intermittent support. For Task Order 2 a staffing mix, including labor category and # of hours for each labor category, shall be proposed totaling 500 hrs per year. (**NOTE:** The 500 hour total per year is provided for purposes of evaluating the price reasonableness of the fully loaded hourly rates and the proposed labor mix for Task 2 support.)
Proposed price shall include fully loaded hourly rates of all applicable labor categories for Task Order 1 and Task Order 2.
9. The Government may conduct oral presentations with a selected number of offerors after the submission of written proposals. The Government will select the offerors to participate in oral presentations by evaluating the written proposals using the evaluation criteria listed in Section M. The purpose of the oral presentations is for the Government to obtain a better understanding of the capabilities of an offeror's proposed key personnel and the offeror's proposed project plan

so that the Government can make a more informed contract award decision. Each selected offeror must participate in the oral presentation in order for the offeror to remain eligible for contract award. Offerors not selected to participate in the oral presentations will be notified in writing that they have been eliminated from the competition.

The contracting officer will contact each selected offeror to establish a date and time for its oral presentation. Requests from Offerors to reschedule their oral presentations may not be entertained by the Government. The Government reserves the right to reschedule oral presentations at the sole discretion of the contracting officer. Oral presentations will be held at the FCC headquarters at 445 12th Street SW in Washington, DC for offerors located within the metropolitan area. Video conferencing will be made available to offerors outside of the DC metropolitan area. Each offeror's oral presentation team shall include, at a minimum, the proposed key personnel and an individual authorized to commit the offeror.

The proposal submission date (closing date) is <u>2:00 PM Eastern, May 18, 2009</u> .	Deleted: ..
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NOTE: As synopsised in www.FBO.gov, the North American Industry Classification System (NAICS) code for this acquisition is 541618 – Other Management Consulting. The small business size standard is \$TBD.

FAR 52.212-1 Instructions to Offerors—Commercial Items(June 2008)

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

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

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) “Remit to” address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) ASSIST (<http://assist.daps.dla.mil>).
- (ii) Quick Search (<http://assist.daps.dla.mil/quicksearch>).
- (iii) ASSISTdocs.com (<http://assistdocs.com>).

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

- (i) Using the ASSIST Shopping Wizard (<http://assist.daps.dla.mil/wizard>);
- (ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or
- (iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

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

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding \$3,000, and offers of \$3,000 or less if the solicitation requires the Contractor to be registered in the 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 concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://fedgov.dnb.com/webform>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number. The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

(k) *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.
- (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.

(End of provision)

(End of Section L)

SECTION M – EVALUATION FACTORS FOR AWARD

EVALUATION & BASIS FOR AWARD

The Government will evaluate each offeror’s proposal using the evaluation criteria listed in this Section M. Based on this initial evaluation, the Government may conduct a down selection and invite selected offerors to provide oral presentations. For each of the offerors that provides an oral presentation, the Government will re-evaluate Factors 1 and 2 based on the offeror’s oral presentation. Award will be made to the offeror whose proposal represents the best value to the Government, price and other factors considered. If offerors’ technical proposals are determined to be relatively equal with respect to all non-price evaluation factors, price will become the determining factor in the award decision. Offerors are encouraged to offer the Government a sound technical proposal supported by competitive pricing.

Note: Factors are listed in descending order of importance.

Factor 1 – Knowledge, Expertise and Past Performance of Contract Personnel

65 points

Degree to which the proposed contract personnel possess the expert qualifications and experience as outlined in Section C and likelihood of successful performance.

Factor 2 - Feasibility, Practicality and Defensibility of the Strategic Approach & Project Plan

35 points

The degree that the approach and plan demonstrates the offeror's expertise in recommending an approach to best address the FCC's goal for this SOW.

Factor 3 – Price

- Competition will be used to determine price/price reasonableness.
- For evaluation purposes, the evaluated price for an offeror will be the total of its proposed firm-fixed-price for Task Order 1 and the estimated reasonableness of the proposed price for Task Order 2, including option periods, based on 500 total labor hours per year (as stipulated in Section L and the Price Sheet).

(End of Section M)

Distinctly Different Positions
by Series, Title, Grade
as of 12/20/08

Series	Title	Grade	Number of Distinctly Different PDs	Total Incumbents
301	AGENDA AND PUBLICATIONS ANALYST	GS-13	1	1
301	AUCTION MARKETING SPECIALIST	GS-13	1	4
301	AUCTIONS AUTOMATION SPECIALIST	GS-13	1	1
301	BROADCAST TELECOMMUNICATIONS ANALYST	GS-11	1	2
301	COMPLIANCE SPECIALIST	GS-13	2	19
301	COMPLIANCE SPECIALIST	GS-14	2	4
301	CONGRESSIONAL LIAISON SPEC	GS-13	2	2
301	CONSUMER & GOVT AFFAIRS SPEC	GS-12	1	3
301	CONSUMER & GOVT AFFAIRS SPEC	GS-13	1	1
301	CONSUMER & TELECOMMUNICATIONS SPEC	GS-15	1	1
301	CONSUMER ADVOCACY & MEDIATION SPEC	GS-7	1	1
301	CONSUMER ADVOCACY & MEDIATION SPEC	GS-9	1	2
301	CONSUMER ADVOCACY & MEDIATION SPEC	GS-12	1	50
301	CONSUMER AFFAIRS & OUTREACH SPECIALIST	GS-14	1	2
301	CONSUMER EDUCATION & OUTREACH SPEC	GS-11	1	1
301	CONSUMER EDUCATION & OUTREACH SPEC	GS-12	1	1
301	CONSUMER EDUCATION & OUTREACH SPEC	GS-13	1	3
301	CONSUMER INFO MARKETING POLICY ADVISOR	GS-15	1	1
301	CONSUMER INFORMATION ANALYST	GS-13	2	2
301	CONSUMER INFORMATION ANALYST	GS-14	2	2
301	CONSUMER INFORMATION LIAISON SPEC	GS-12	1	1
301	CONSUMER INFORMATION SPECIALIST	GS-11	1	2
301	CONSUMER INFORMATION SPECIALIST	GS-12	1	1
301	CULTURAL RESOURCES SPECIALIST	GS-14	1	1
301	CUSTOMER SERVICE REPRESENTATIVE	GS-11	1	1
301	CUSTOMER SVCS SUPPORT SPEC	GS-13	1	3
301	ENFORCEMENT ANALYST	GS-11	2	4
301	ENFORCEMENT ANALYST	GS-12	2	2
301	ENFORCEMENT ANALYST	GS-13	1	1
301	FINANCIAL SYSTEMS SPEC	GS-13	1	1
301	INFORMATION MGMT SPEC	GS-12	1	1
301	INFORMATION SPECIALIST	GS-11	1	3
301	INFORMATION SPECIALIST	GS-12	1	3
301	INFORMATION SYSTEMS SPECIALIST	GS-13	2	2
301	INFORMATION SYSTEMS SUPPORT SPEC	GS-11	2	3
301	INTERGOVERNMENTAL AFFAIRS OUTREACH SPE	GS-12	1	1
301	INTERGOVT AFFAIRS OUTREACH LIAISON	GS-13	1	3
301	INTERNATIONAL PROGRAMS SPECIALIST	GS-13	1	1
301	LEGAL ADMINISTRATIVE SPECIALIST	GS-12	1	1
301	LEGISLATIVE ANALYST	GS-15	1	1
301	MANAGEMENT & INFORMATION ANALYST	GS-13	1	1
301	MANAGEMENT ANALYST	GS-13	1	1
301	MANAGEMENT INFORMATION SPECIALIST	GS-13	1	1
301	MEDIA RELATIONS SPECIALIST	GS-11	1	1
301	OUTREACH SPECIALIST	GS-11	1	1
301	OUTREACH SPECIALIST	GS-12	1	1
301	OUTREACH SPECIALIST	GS-13	1	1
301	OUTREACH SPECIALIST	GS-14	1	1

Distinctly Different Positions
by Series, Title, Grade
as of 12/20/08

Series	Title	Grade	Number of Distinctly Different PDs	Total Incumbents
301	PROCUREMENT SYSTEMS ANALYST	GS-13	1	1
301	PROGRAM SUPPORT SPEC	GS-11	1	1
301	SATELLITE TELECOMMUNICATIONS SPEC	GS-13	1	1
301	SECTION 504 COMPLIANCE OFFICER	GS-15	1	1
301	SPECIAL ASSISTANT	GS-11	1	1
301	SPECIAL ASSISTANT	GS-13	1	1
301	SPECTRUM ALLOCATIONS ANALYST	GS-13	1	2
301	TECHNOLOGY SPECIALIST	GS-14	1	1
301	TELECOMMUNICATIONS ACCESSIBILITY SPEC	GS-13	2	3
301	TELECOMMUNICATIONS ACCESSIBILITY SPEC	GS-14	2	3
301	TELECOMMUNICATIONS ANALYST	GS-12	1	1
301	TELECOMMUNICATIONS ANALYST	GS-13	1	1
301	TELECOMMUNICATIONS ANALYST	GS-14	1	1
301	TELECOMMUNICATIONS COMPLIANCE & MEDIATION SPEC	GS-12	1	8
301	TELECOMMUNICATIONS CONSUMER SPECIALIST	GS-15	1	1
301	TELECOMMUNICATIONS ENFORCEMENT ANALYST	GS-12	1	6
301	TELECOMMUNICATIONS ENFORCEMENT ANALYST	GS-13	1	5
301	TELECOMMUNICATIONS LIAISON SPECIALIST	GS-11	1	2
301	TELECOMMUNICATIONS POLICY ANALYST	GS-13	1	2
301	TELECOMMUNICATIONS POLICY ANALYST	GS-14	1	1
301	TELECOMMUNICATIONS POLICY ANALYST	GS-15	6	6
301	TELECOMMUNICATIONS SPECIALIST	GS-11	1	1
301	TELECOMMUNICATIONS SPECIALIST	GS-12	2	4
301	TELECOMMUNICATIONS SPECIALIST	GS-13	2	3
301	TELECOMMUNICATIONS SPECIALIST	GS-14	1	1
301	TELECOMMUNICATIONS SUPPORT SPECIALIST	GS-12	1	1
301	TELECOMMUNICATIONS SYSTEMS SPECIALIST	GS-15	6	8
301	WIRELESS TELECOM POLICY ADVISOR	GS-15	1	1
301	WIRELESS TELECOMMUNICATIONS ANALYST	GS-14	3	3
301	WIRELINE LIAISON SPECIALIST	GS-15	1	1
343	MANAGEMENT & PROGRAM ANALYST	GS-13	2	2
343	MANAGEMENT ANALYST	GS-9	1	1
343	MANAGEMENT ANALYST	GS-12	2	2
343	MANAGEMENT ANALYST	GS-13	7	7
343	MANAGEMENT ANALYST	GS-14	5	5
343	PROGRAM ANALYST	GS-11	2	2
343	PROGRAM ANALYST	GS-12	4	5
343	PROGRAM ANALYST	GS-13	19	27
501	FINANCIAL MANAGEMENT SPECIALIST	GS-11	2	2
501	FINANCIAL MANAGEMENT SPECIALIST	GS-12	0	0
501	FINANCIAL MANAGEMENT SPECIALIST	GS-13	1	1
855	ELECTRONICS ENGINEER	GS-9	1	11
855	ELECTRONICS ENGINEER	GS-11	3	11
855	ELECTRONICS ENGINEER	GS-12	3	7
856	ELECTRONICS TECHNICIAN	GS-12	5	5
950	PARALEGAL SPECIALIST	GS-9	0	0
950	PARALEGAL SPECIALIST	GS-11	2	2
950	PARALEGAL SPECIALIST	GS-12	10	15

Distinctly Different Positions
by Series, Title, Grade
as of 12/20/08

Series	Title	Grade	Number of Distinctly Different PDs	Total Incumbents
1082	WRITER EDITOR	GS-9	0	0
1082	WRITER EDITOR	GS-11	0	0
1082	WRITER EDITOR	GS-12	0	0
1082	WRITER EDITOR	GS-13	0	0
1084	VISUAL INFORMATION SPECIALIST	GS-13	1	1
1101	INDUSTRY ANALYST	GS-11	8	32
1101	INDUSTRY ANALYST	GS-12	12	25
1101	INDUSTRY ANALYST	GS-13	1	1
1101	INDUSTRY ANALYST	GS-14	1	1
1130	PUBLIC UTILITIES SPECIALIST	GS-14	0	0
1412	TECHNICAL INFORMATION SPECIALIST	GS-9	1	3
1412	TECHNICAL INFORMATION SPECIALIST	GS-12	1	1
1810	INVESTIGATOR	GS-12	1	2
2210	IT SPECIALIST	GS-9	3	3
2210	IT SPECIALIST	GS-11	1	1
2210	IT SPECIALIST	GS-12	2	2
Total			204	396

Requested Positions as of 9/1/04 and 9/13/07
 NOT included in 12/20/08 Snapshot

Series	Title	Grade	Incumbents
301	ADMINISTRATIVE OPERATIONS ADVISOR	14	1
301	AUCTIONS AUTOMATION SPECIALIST	14	1
301	AUCTIONS MARKETING MANAGER	15	1
301	CONSUMER & GOV'T AFFAIRS SPEC	14	1
301	CONSUMER AFFAIRS SPEC(TELECOM ACCESS)	14	1
301	CONSUMER INFORMATION ANALYST	15	1
301	CONSUMER INFORMATION SPECIALIST	13	1
301	ENFORCEMENT ANALYST	7	1
301	EQUIPMENT DESIGN SPECIALIST	13	1
301	INFORMATION SPECIALIST	13	1
301	INTERGOV AFFAIRS OUTREACH LIAISON	12	1
301	INTERNATIONAL PROGRAMS SPECIALIST	12	1
301	LITIGATION SUPPORT SPECIALIST	13	1
301	TELECOMMUNICATIONS POLICY SPECIALIST	14	1
301	TELECOMMUNICATIONS SPECIALIST	15	1
301	TELEVISION ALLOCATIONS SPECIALIST	13	1
343	MANAGEMENT ANALYST	11	3
950	PARALEGAL SPECIALIST	9	1
1082	WRITER EDITOR	11	1
1082	WRITER EDITOR	12	1
1082	WRITER EDITOR	13	1
1101	INDUSTRY ANALYST	9	2
1412	TECHNICAL INFORMATION SPECIALIST	11	1
Total			26

Price Sheet

Task Order 1 – CLIN 0001

Total Firm-Fixed Price (CLIN 0001) \$ _____

Note: Offerors shall complete the following table to provide support for the firm-fixed price offered above.

Direct Labor (Specify each proposed labor category)	No. of Proposed Hours	Fixed Hourly Rate	Firm Fixed Price (FFP)
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
Total FFP		N/A	\$

Task Order 2 – CLIN 0002 (Basic 12-month Period)

Note: The proposed labor hours and total estimated price for this CLIN are for evaluation purposes only. However, the offeror will be legally bound to provide the proposed labor categories at the fixed hourly rates proposed below if Task Order 2 is awarded. Task Order 2 will have a ceiling price.

Direct Labor (Specify each proposed labor category)	No. of Proposed Hours	Fixed Hourly Rate	Estimated Price
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
Total Estimated Price	500	N/A	\$

"FCC FLSA Support Services"

Solicitation #SOL09000007

Attachment J.11

Task Order 2 – CLIN 0003 (Option 1, 12-month Period)

Note: The proposed labor hours and total estimated price for this CLIN are for evaluation purposes only. However, the offeror will be legally bound to provide the proposed labor categories at the fixed hourly rates proposed below if Task Order 2 is awarded and this option period is exercised. Task Order 2 will have a ceiling price.

Direct Labor (Specify each proposed labor category)	No. of Proposed Hours	Fixed Hourly Rate	Estimated Price
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
Total Estimated Price	500	N/A	\$

Task Order 2 – CLIN 0004 (Option 2, 12-month Period)

Note: The proposed labor hours and total estimated price for this CLIN are for evaluation purposes only. However, the offeror will be legally bound to provide the proposed labor categories at the fixed hourly rates proposed below if Task Order 2 is awarded and this option period is exercised. Task Order 2 will have a ceiling price.

Direct Labor (Specify each proposed labor category)	No. of Proposed Hours	Fixed Hourly Rate	Estimated Price
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
Total Estimated Price	500	N/A	\$

Total Task Order #2 Base and Option Periods: \$ _____

Part 1: Technical Quote Cover Page

(To be placed on the top page of the technical portion of your offer)

Company Name:

Company Representative for GSA Orders:

Contact Phone:

Contact E-mail:

Payment Terms:

GSA Schedule Number and expiration date:

Please check business size: () Large () Small () Minority () Women-owned

TIN or SSN:

DUNS #:

NAICs Code:

Complete Mailing Address:

Other Pertinent Information:

Offer Acceptance Period (no less than 90 days from due date of quote):

Name and Title of Person Authorized to Sign Offer:

Signature:

Date:

Part 2: Price Quote Cover Page
(To be placed on the top page of the price portion of your offer)

Company Name:

Company Representative for GSA Orders:

Contact Phone:

Contact E-mail:

Payment Terms:

GSA Schedule Number and expiration date:

Please check business size: () Large () Small () Minority () Women-owned

TIN or SSN:

DUNS #:

NAICs Code:

Complete Mailing Address:

Other Pertinent Information:

Offer Acceptance Period (no less than 90 days from due date of quote):

Name and Title of Person Authorized to Sign Offer:

Signature:

Date: