

**Armament Retooling & Manufacturing Support (ARMS)  
Performance Work Statement (PWS)  
Hawthorne Army Depot 12 May 2010**

**1. Introduction:**

1.1 Purpose: The Armament Retooling and Manufacturing Support (ARMS Program is a Congressionally-mandated defense conversion/commercial reuse program established in 1993 (10 USC 4551-4555, "ARMS Initiative") to reduce Government-ownership costs at the Government-Owned, Contractor-Operated (GOCO) Army Ammunition Plants/Depot while maintaining a readiness capability and to reduce the impact of defense downsizing on local communities. Through allowing the use of facilities for ARMS efforts, the Army reduces overhead, product and maintenance contractor (herein also referred to as "Contractor") to increase profit.

1.2 Applicable Documents: The ARMS Document Summary (DSL), submitted as a separate document, shows reference material, which the Contractor may find helpful in planning for and performing commercial reuse efforts for/at the facility.

1.3 Contractor Requirements: The Contractor shall be authorized to use the facility for tenant use under the authorization and in compliance with FAR Part 45 and the ARMS Initiative. In no instance shall the approval for use of facilities within the guidelines of the Performance Work Statement (PWS) be considered an extension of the basic operation and maintenance contract. To participate in the ARMS Program, the Contractor shall:

- a. Encourage and execute the commercial reuse of the facility.
- b. Actively market the capabilities of the facilities and equipment at the facility.
- c. Increase the opportunities for small businesses (including socially and economically disadvantaged small business concerns and new small businesses) to sue eligible facilities for those purposes.
- d. Encourage, promote and execute the creation of commercial jobs, which retain critical skills needed for the readiness mission of the facility.
- e. Foster the relocation of offshore production ventures to the facility.
- f. Work to create sustainable economic opportunities.
- g. Optimize the value of the Government's assets.

h. Identify and utilize facilities and equipment to support commercial reuse efforts.

i. Track, maintain, and report, as required, records of costs, revenues (to include product cost reductions, cost offsets and overhead reductions), critical skills, jobs created, and benefits to the Army resulting from tenant use efforts at the facility.

j. Join available federal, state, and local Government resources with those of the private sector to achieve the goals and objectives of the ARMS Initiative.

k. Facilitate diversification of DoD contractor businesses to new markets and/or products.

l. Support, encourage, and execute the generation of new sustainable start up businesses and the creation of substantial jobs.

m. Develop and execute land uses supporting the purposes of the ARMS Initiative and surrounding communities.

#### 1.4 Definitions:

1.4.1 "Consideration" is the cause, motive, price or impelling influence inducing a party (Government, Contractor, tenant, etc) into a contract. It can be either monetary or non-monetary. Non-monetary consideration includes work-in-kind performed by the Contractor or tenants(s) at the Army GOCO plants/depot in exchange for the use of Government property under the ARMS Program. Any and all use of Government property must include a rental factor in accordance with FAR 45 and computed in accordance with FAR Part 52.245-9, and be determined to be acceptable by the Government Contracting Officer.

1.4.3 "Government Property" means property (real or personal) owned or leased by the Government.

1.4.4 "Usage period" is the time period during which Government property is approved for use. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition code prior to use (less normal wear and tear), where applicable.

1.4.5 "Fair Market Value" is determined using FAR 45.301 and computed in accordance with FAR Part 52.245.9.

1.4.6 "ARMS agreements" refers to both the agreement between Contractor and the tenant (tenant use agreement) as well as the relevant terms of the contractual agreement between the

Government and the Contractor (Government Contracting Officer approval memorandum, etc).

## **2. ARMS Tenant Use Agreement Authorization:**

2.1 The Government may authorize the Contractor to use facilities in support of tenant use agreements under this facility contract during the term hereof, for time periods not to exceed twenty-five (25) years, notwithstanding the fact that said time periods may exceed the term of this contract. A tenant use agreement shall have an initial time period of five (5) years or less and may include options for additional periods of five (5) years or less, each; the Government will consider exceptions on a case-by-case basis. Prior written approval from the Government Contracting Officer is required for the initial time period and prior to the exercise of each option.

2.2 The Contractor shall make a request to the Government for approval of use by each tenant. Approval for such use shall not be construed as an extension of the facility contract. The approval for each use shall stand as a separate agreement entered into under the authority of the facility contract, allowing use of those facilities specifically identified in the agreement for the specified period.

2.3 Execution of each use and/or extension/option is dependent upon receipt of written authorization from the Government Contracting Officer. The Contractor shall submit a proposal to exercise a tenant use agreement option, or any other tenant use agreement proposal, at least one hundred twenty (120) days prior to expiration of the tenant use agreement. In the case where the current approved lease period is a year or less in duration, then the Contractor shall submit a proposal to exercise a tenant use agreement option, or any other tenant use agreement proposal, at least sixty (60) days prior to expiration of the tenant use agreement. If the Contractor fails to provide in time, the following applies:

2.3.1 The tenant use agreement shall expire in accordance with the Government approved usage period unless the Government Contracting Officer provides written authorization for its conversion to a month-to-month lease.

2.3.2 The month-to-month consideration shall be subjected to a 20% increase (annualized) over the previous considerations, unless the Government Contracting Officer determines otherwise, until such time the Government approves or

disapproves the proposal. No increase in consideration shall be applied during the Government's review period, should the timing of such review exceed the expiration of the exiting tenant use agreement.

2.3.3 The Contractor proposal or portions therein (options, extensions, expansions, etc.) are subject to summary denial.

2.3.4 Should the Government decide not to approve renewal of a tenant use agreement, or decides not to approve the tenant use agreement proposal, the Contractor and associated tenant shall hold the Government harmless.

2.4 The Contractor shall inform the Government Contracting Officer at least one hundred twenty (120) days prior to expiration of the tenant use agreement if the tenant use agreement will not be renewed. In the case where the current approved lease period is a year or less in duration, then the Contractor shall inform the Government Contracting Officer at least sixty (60) days prior to expiration of the tenant use agreement if the tenant use agreement will not be renewed.

### **3. ARMS Termination and Expiration:**

3.1 In the event of Contractor default, the Government may terminate this contract or any portion thereof.

3.2 The Government Contracting Officer may issue the Contractor a one hundred eighty (180) day notice for termination of any tenant use agreement when the PCO determines it to be in the best interest of the Government. When this occurs, the following applies:

3.2.1 A timetable will be negotiated with the Contractor (representing its own and any tenant interests) for the cessation of commercial production/operations and the return of the facility of the Army.

3.2.2 FAR Part 49 shall be used to set forth the terms for establishing appropriate termination settlement costs.

3.2.3 Settlement consideration cost shall be limited to the same usage period approved by the Government Contracting Officer for Contractor submitted ARMS tenant proposals.

3.3 Upon expiration or termination of all or part of this contract, the Government may establish a successor ARMS-eligible facility or property management contract. If so, the successor will be required to accept the terms and conditions of the tenant use agreements in place to the maximum extent possible so long as such terms and conditions do not violate applicable laws and regulations. This will be accomplished through the inclusion of the terms and conditions of established tenant use agreements in the solicitations issued to obtain a successor.

3.4 In the event the Contractor ceases to be the operation and maintenance contractor for this site while authorized tenant use agreements remain in effect, the Government shall release and hold harmless the Contractor, with respect to said agreements, from all responsibilities and from those liabilities arising from acts/omissions occurring after the date the Contractor ceases to be the operation and maintenance contractor for the site.

3.5 Upon expiration or termination of all or part of this contract, the Contractor shall, prior to vacating the facility and at the Army's discretion as specified by the Government Contracting Officer, return any Government property to its condition when received, given fair wear and tear.

3.6 In the unforeseen event a decision is made to convey or sell the installation (BRAC, privatization, etc.), the Contractor or the tenant shall not hold the Government responsible or liable should the terms and conditions of a tenant use agreement not be transferred to the new property owner. Any further agreement is the responsibility of the tenant and the new owner, and not the Government.

#### **4. ARMS Tenant Use Proposals and Agreements:**

4.1 All ARMS proposals for tenant facility use and/or ARMS funding shall be submitted to the Government Contracting Officer for Government approval and a copy furnished to the JMC ARMS Office. The request must be in accordance with the ARMS Proposal Mandatory Checklist, the ARMS Proposal Mandatory Safety Checklist, and all appropriate environmental documentation.

4.2 The Contractor shall not use Government property until specific written approval is obtained from the Government Contracting Officer. Use of such property shall be on a non-interference basis.

4.3 If ARMS funding is requested, all supporting details of project cost, schedule and a complete description/SOW for the project must be included for review and approval by the Government. Evaluation of the proposals will be based upon the information provided, the ultimate impact of the proposed use to the Army, and the soundness of the overall business decision.

4.3.1 The Contractor may submit a conceptual tenant use proposal prior to submitting a technical proposal to obtain preliminary review and tentative approval by the Government. However, a full technical proposal is required for final Government approval.

4.3.2 ARMS funds may be requested from the Government for unique proposal requirements like environmental baseline studies, environmental assessment, Government property facility/infrastructure preparation, upgrades and repairs, etc. However, general ARMS installation management and marketing expenses are to be borne by the Contractor as described in paragraph 5, "ARMS Installation Management and Marketing Requirements."

4.3.3 Property procured by the Contractor or other tenants using ARMS funding (incentive, investment, etc.) shall belong to the Government, unless the Government specifically declines ownership, and the Contractor shall comply in accordance with FAR Part 45.

4.3.4 The Government shall not be held responsible for Contractor's breach of contract with the tenant use agreements. Contractor's negligence, or the Contractor's decision to no longer be the operating contractor.

4.3.5 The Government is not a party to tenant use agreements and does not deal directly with tenants.

4.3.6 The Contractor shall advise all tenants, in writing, of all applicable Government regulations (including but not limited to, all federal, state, environmental, security, property, and maintenance regulations) and contract terms and conditions prior to such tenants occupying and/or beginning operations on Government property. The Contractor must have procedures in place to verify that all tenants abide by all such requirements at all times while on Government property.

4.3.7 The Contractor shall provide copies of all tenant use agreements and modifications to the Government Contracting

Officer within 30 days of issuance. The Government shall possess full rights to publish or post the agreements for the purposes of future competition, conveyance, etc. The Contractor shall require the same agreement from all tenants as well as include this same paragraph (ARMS PWS paragraph 4.3.7) in each of its contracts entered into with tenants to ensue tenants understand and agree to such terms.

#### 4.4 Consideration:

4.4.1 The Contractor shall propose to the Army, with each facility use submission, the fair market value consideration, per FAR Part 52.245, and rationale used for establishing that consideration in exchange for the use of Army facilities. Methods used for determining fair market value and the total amounts of consideration required include, but are not limited to, property appraisals, historical records of similar operations within the local areas, and proposed ARMS investments.

4.4.2 Consideration (per ARS PWS paragraph 6, "Contractor Incentive: ARMS Tenant Consideration Distribution Table") is due at the time and place negotiated between the Government Contracting Officer and the Contractor. The GOCO Contracting Officer shall furnish direction regarding consideration distribution procedures.

4.4.3 When the Government Contracting Officer has reason to believe the proposed consideration is not reasonable, he or she shall notify the Contractor with rationale. If the consideration is deemed unreasonable or impractical, the Contractor may request the consideration to be based upon alternate methods (e.g., cost of maintaining facilities/property, job creation, critical skill retention, costs of long term development, etc.). Supporting rationale shall be provided to the Government Contracting Officer. The parties may agree on an alternate means of determining reasonable consideration.

4.4.4 For non-monetary consideration, the value of the work-in-kind shall be commensurate to the fair market value or alternate consideration value associated with the use of the Government property for the designated time period. The Contractor shall determine the consideration value and furnish records or other supporting data in sufficient detail to permit the Government Contracting Officer to verify the accuracy of the proposed consideration value.

4.4.5 The Government's acceptance of consideration under these conditions, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this contract according to its terms.

4.4.6 The Contractor shall be responsible for collecting all consideration from the tenant. If at any time, the tenant is delinquent, it is the responsibility of the Contractor to inform the Government Contracting Officer of the delinquency within 30 days and the corrective actions taken.

4.4.7 The Contractor may not be held responsible for a defaulted consideration/rent payment(s) for a tenant provided the Contractor has performed the appropriate due diligence in verifying the credit worthiness of the prospective tenant in accordance with commercial best practices and has taken the appropriate actions to recover the delinquent consideration/payment(s). The following are examples of credit worthiness sources that may be used to evaluate credit worthiness of the prospective tenant:

- 4.4.7.1 Dunn and Bradstreet
- 4.4.7.2 One commercial trade reference
- 4.4.7.3 One bank reference

Contractor shall provide the Government the results of the credit check along with the supporting documents.

## **5. ARMS Installation Management and Marketing Requirements:**

5.1 The Contractor shall detail their plans to make ARMS successful, as part of its initial proposal for the operation and maintenance of the facility (see Sections L & M).

5.1.1 Annual ARMS Marketing Plan - The Contractor shall provide the Government Contracting Officer with an annual marketing plan IAW CDRL # A061. The annual marketing plan will, at minimum, cover the following areas:

- 5.1.1.1 Survey of local commercial real estate market
- 5.1.1.2 Expected marketing efforts and programs
- 5.1.1.3 Target market (type of tenant)
- 5.1.1.4 Expected rental consideration and number of tenants for the next three years



#### 5.1.1.5 Any areas of concern

5.1.2 ARMS Quarterly Activity Report - The Contractor shall provide the Government Contracting Officer with a quarterly activity report IAW CDRL # A062 that will cover, at a minimum, all areas of activity associated with current and future marketing plans, current tenants, and current issues.

5.2 Monthly Conference Call - Contractor shall participate in monthly marketing call with Government ARMS Team and/or other marketers to discuss current issues and best practices.

5.3 Annual ARMS Program Review and Conference - Should the Government hold an annual program review off-site to the Contractor, the Contractor shall be required to attend. Annual conference may be up to 3-days plus travel time. Any travel expenses for conference attendance will be borne by the Contractor.

5.4 Annual ARMS Validation - The Contractor shall support the annual ARMS validation effort to include providing all necessary supporting documentations.

## **6. Contractor Incentive**

6.1 The annual value of tenant consideration available for use by the Government and/or retained by the Contractor shall be calculated in accordance with the ARMS Tenant Consideration Distribution Table below.

<b>ARMS Tenant Consideration Distribution Table</b>			
Annual ARMS Consideration (sum of monetary + fair market value of non- monetary consideration)	Contractor Incentive Portion	Army Portion (nominal values) <sup>3</sup>	
		ARMS Project Allotment	Facility Project Allotment
Baseline 1 + (30% loss to 2.999% growth) <sup>2</sup>	20% of Total Consideration Value	40%	40%
Baseline + (3% to 15.999% growth)	25% of Total Consideration Value	37.50%	37.50%
Baseline + 16% (or more) of annual growth	30% of Total Consideration Value	35%	35%
<p>1 "Baseline" for the current year shall be calculated as the GREATER of either a) the total consideration for the prior contract year, or b) the total forecasted value of all consideration for the current year, as documented in tenant use agreements and those under review by the Government, as of the end of the prior year.</p> <p>2 If the Baseline amount decreases by more than 30% from the prior year, the Contractor Incentive portion shall decrease to 15% of the new Baseline. The Government Contracting Officer may negotiate to reduce or eliminate any decreased amounts of incentive should there be mitigating circumstances.</p> <p>3 ARMS Project Allotment and Facility Project Allotment are forecasted percentages only. Government reserves the right to redistribute these percentages at its own discretion, within the cumulative percentage of these two amounts.</p>			

As an illustration of the use of the table above (example only), assume that the ARMS Program generated a total consideration value of \$1.0M during the prior year. If during the current year that value was increased to \$1.1M (an increase of 10%), the total contractor incentive would be calculated as (25% x \$1.1M) or \$250,000. Again, this is an example for illustration purposes only.

6.2 Compensation to the Contractor for completing the requirements in paragraph 1.3, "Contractor Requirements," and paragraph 5, "ARMS Installation Management and Marketing Requirements," shall be funded by the amount under the "Contractor Incentive Portion" column in the table above. To compensate the Contractor for initial ARMS Program related start

up costs, the Government will provide a fixed payment to the Contractor with the following levels of compensation: Year 1 (\$200,000), Year 2 (\$150,000) and Year 3 (\$100,000) for ARMS marketing support. This start up compensation will end starting in Year 4. This compensation is in addition to the Contractor Incentive Portion in the ARMS Tenant Rent Revenue Distribution Table and in addition to funding that may be provided by the Government for tenant use proposals. Please note that beyond Year 4, the Government does not intend to provide additional funding for these requirements other than what is described in paragraph 4, "ARMS Tenant Use Proposals and Agreements." Also, these funds are not available for use by the Government.

6.3 The amount under the "Army Portion" column shall be determined for use by the Government for repair, upgrade, etc., of current and potential ARMS tenant needs (ARMS Project Allotment) and for installation facility/infrastructure needs (Facility Project Allotment).

6.4 The Baseline for Annual ARMS Consideration shall be recomputed annually on the last day of the Contractor or Government fiscal year or on a mutually agreed-to date consistent every year.

6.5 Property procured by the Contractor or other tenants using ARMS consideration shall belong to the Government, unless the Government specifically declines ownership, and the Contractor shall comply in accordance with FAR Part 45.

7.0 Offerors are advised that if selected as the Operating contractor for Hawthorne, they will be expected to bring Individual Tenant Agreements in line with the terms and conditions stated in the ARMS PWS. Specifically, but not all inclusive, this includes the termination terms and the Exercise of Option terms. The intent is to ensure continuity and uniformity in these areas of the tenant use agreements for all tenants along with meeting the Government's needs and those of the operating contractor.