

DISCLAIMER: GSA FAS is posting this notification of a planned solicitation refresh or mass modification as a courtesy to our Industry Partners. All comments on the attached DRAFT document must be submitted in the “Comments” section below within ten (10) business days of this posting. Comments provided elsewhere or after 10 business days will not be considered. GSA FAS will consider all relevant comments and make changes to the DRAFT as appropriate, but will not issue a formal response to industry comments or related inquiries. Interested parties should review the final version of the solicitation refresh or mass modification closely for additional changes made to this DRAFT.

Purpose of Planned Action

The General Services Administration (GSA) Federal Acquisition Service (FAS) is planning to refresh the GSA Multiple Award Schedule (MAS) Consolidated Solicitation to 1) update clauses and provisions related to the implementation of 2nd Interim Rule 2018-017 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, 2) update additional clauses/provisions as appropriate, and 3) re-map several legacy SINS to new SINS, as described below. GSA anticipates that the solicitation refresh will occur in January 2020.

Summary of Planned Changes

Below is a high-level description of significant changes to be included in the upcoming MAS solicitation refresh. The full text for any new or updated clauses and provisions not currently available in the FAR or GSAM is provided at the end of this document. Be sure to review the final solicitation refresh for full details.

2nd Interim Rule 2018-017 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment: The first interim rule at 84 FR 40216 published on August 13, 2019 added a provision at FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, which required, in part, that an offeror represent on an offer-by-offer basis if the offeror will or will not provide any covered telecommunications equipment or services to the Government and, if it will, require the offeror to provide additional disclosures.

This **second interim rule** reduces the burden on the public by making updates to the System for Award Management (SAM) to allow offerors to represent annually whether they offer covered telecommunications equipment and services. The burden to the public is reduced by allowing an offeror that represents “does not” in the new annual representation in paragraph (v) of FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, to skip the offer-by-offer representation within the provision at FAR 52.204-24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

To implement the second interim rule, we will **UPDATE** FAR 52.212-3, Offeror Representations and Certifications—Commercial Items to add the annual representation at FAR 52.204-26.

Please refer to the [2nd Interim Rule 2018-017 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment](#) for more information.

[GSA Class Deviation CD-2019-11 is still in effect](#) for GSA-funded acquisitions. The deviation limits representation requirements to the IDIQ contract level instead of at the order-level for low and medium risk indefinite delivery contract vehicles. Schedule Contractors are required to accept the modification to

incorporate FAR clause 52.204-25 and GSAR clause 552.204-70. GSA is monitoring Contractor acceptance and will take appropriate corrective action (which may include contract cancellation) if the modification is not accepted by **COB December 31, 2019**.

Expiration of FAR 51 Deviation: The FAR 51 Deviation has expired and can no longer be utilized. Accordingly, clause CI-FSS-056 FEDERAL ACQUISITION REGULATION (FAR) PART 51 DEVIATION AUTHORITY (FEDERAL SUPPLY SCHEDULES) (JAN 2010) will be **DELETED** from the Consolidated Solicitation.

The following additional clauses will be **UPDATED**:

552.238-77 SUBMISSION AND DISTRIBUTION OF AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LISTS (XXX 2019). This clause was updated to remove references to paper mailing lists and submission of hard copy price lists.

552.238-82 MODIFICATIONS (FEDERAL SUPPLY SCHEDULES) (XXX 2019). This clause was updated to remove references to hard copy modifications and submission of hard copy price lists.

552.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (OCT 2018) (DEVIATION - FEB 2018) (ALTERNATE I - JAN 2017) (DEVIATION - FEB 2007). This clause was updated to clarify the Schedule Contracting Officer's right to terminate the contract, in accordance with the clause.

552.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (OCT 2018) (DEVIATION - FEB 2007) (DEVIATION - FEB 2018). This clause was updated to clarify the Schedule Contracting Officer's right to terminate the contract, in accordance with the clause.

I-FSS-40 CONTRACTOR TEAM ARRANGEMENTS (JUL 2003). This clause was updated to reference the updated clause number for the Industrial Funding Fee and Sales Reporting clause which is now 552.238-80.

I-FSS-600 CONTRACT PRICE LISTS (OCT 2016). This clause was updated to remove references to the submission and distribution of paper price lists.

G-FSS-900-C CONTACT FOR CONTRACT ADMINISTRATION (JUL 2003). This clause was updated to reference the updated clause number for the Industrial Funding Fee and Sales Reporting clause which is now 552.238-80.

I-FSS-106 GUARANTEED MINIMUM (NOV 2018). This clause was updated to reference the updated clause number for the Industrial Funding Fee and Sales Reporting clause which is now 552.238-80.

The following provisions will be **UPDATED**:

SCP-FSS-001 INSTRUCTIONS APPLICABLE TO ALL NEW OFFERORS (XXX 2019). This provision was updated to:

- Identify where the wage determinations are now located
- Revise the TDR advisory for supporting documentation to reflect that supporting documentation is not required to be submitted with the offer however IAW 538.270-2, the government may request other than certified cost or pricing data if unable to determine F&R based on readily available data or market research.
- Reflect that with the retirement of Open Ratings Past Performance Evaluation service, MAS offerors must demonstrate a pattern of past performance by; 1) verifying in eOffer they have three (3) or more CPARS assessment reports that meet the solicitation criteria outlined in paragraph (j)(2)(ii)(A), or 2) submitting a list of customer references as outlined in paragraph (j)(2)(ii)(C) when the offeror does not have CPARS assessments that satisfy the solicitation criteria outlined in paragraph (j)(2)(ii)(A).
- Include the following advisory in paragraph (j)(2)(ii)(B) regarding the acceptance of Open Ratings evaluations ordered by December 06, 2019:

Attention All Offerors: Open Ratings is no longer accepting new orders for Past Performance Evaluations as of Friday, December 06, 2019. Offerors that ordered an Open Ratings Past Performance Evaluation on or before December 06, 2019 may use the evaluation to demonstrate a pattern of Past Performance as long as the Open Ratings Past Performance Evaluation uploaded to the offer is dated within one (1) year of offer submission.

SCP-FSS-007 SPECIAL PROPOSAL INSTRUCTIONS FOR ORDER-LEVEL MATERIALS SPECIAL ITEM NUMBER (XXX 2019). This provision was updated to reference the new clause numbers implemented by GSAR Admin Case 2013-G502. Specifically, the clauses referenced in paragraphs (b) and (i) are updated as follows:

- Special Ordering Procedures for the Acquisition of Order-Level Materials FROM 552.238-82 TO 552.238-115
- Price Reductions FROM 552.237-75 TO 552.238-81
- Submission and Distribution of Authorized FSS Schedule Pricelists FROM 552.238-71 TO 552.238-77

The following additional clauses will be **DELETED** and the base versions of each clause below will be retained in the solicitation:

52.237-3 CONTINUITY OF SERVICES (JAN 1991) (DEVIATION I - MAY 2003)

52.247-32 F.O.B. ORIGIN, FREIGHT PREPAID (FEB 2006) (DEVIATION I - JUL 2008)

52.247-34 F.O.B. DESTINATION (NOV 1991) (DEVIATION I - MAY 2003)

52.247-39 F.O.B. INLAND POINT, COUNTRY OF IMPORTATION (APR 1984) (DEVIATION I - JUL 2008)

52.247-65 F.O.B. ORIGIN, PREPAID FREIGHT--SMALL PACKAGE SHIPMENTS (JAN 1991)
(DEVIATION I - JUL 2008)

The following additional clause will be **DELETED** and the base version will be added in the solicitation:

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

Special Item Number (SIN) Updates:

12 SIN updates as outlined in red in the Available Offerings Attachment.

Correction to scope of SIN ANCRA - Ancillary Repair and Alterations to map to the following 8 subcategories: Facilities Supplies; Facilities Solutions; Facilities Services; Furniture Services; Machinery and Components; Industrial Products; Structures, and Logistical Services.

Full Text of New/Updated Clauses and Provisions

552.238-77 SUBMISSION AND DISTRIBUTION OF AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LISTS (OCT 2019)

(a) The Contractor shall submit its Authorized Federal Supply Schedule Price List on a common-use electronic medium as prescribed by GSA. Some structured data entry in a prescribed format may be required.

(b) Eligible ordering activities will utilize GSA's online shopping and ordering system to review a Contractors' price lists.

552.238-82 MODIFICATIONS (FEDERAL SUPPLY SCHEDULES) (OCT 2019)

(a) *General.* The Contractor may request a contract modification by transmitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) *Types of modifications—*

(1) Additional items/additional SINs. When requesting additions, the following information must be transmitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii) Discount information for the new item(s) or new SIN(s). Specifically, transmit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be transmitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) must be transmitted in accordance with the request for proposal.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be transmitted in accordance with the request for proposal.

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be transmitted if required by FAR 52.215-6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be transmitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications-Commercial Items, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act-Balance of Payments Programs-Supplies.

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

(3) Price reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-81. If the Price reduction falls under item (i), the Contractor shall transmit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall transmit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) Effective dates. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-81.

(d) Electronic file updates. The Contractor shall update electronic file transmissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-81.f

552.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (OCT 2018) (DEVIATION - FEB 2018) (ALTERNATE I - JAN 2017) (DEVIATION - FEB 2007)

(a) Inspection/Acceptance.

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

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

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

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials

and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

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

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

(B) Terminate this contract for cause.

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

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

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

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

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

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

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

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

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

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

(e) *Definitions.*

(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: Each order must list separately subcontracts for services excluded from the FSS Hourly Rates; 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.

(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, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

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

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

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

(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(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) *Payments.*

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

(i) Hourly rate.

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

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

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

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

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

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

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

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

(ii) Materials.

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

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

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

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

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

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

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

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

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

(1) Other Direct Costs. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: Each order must list separately the elements of other direct costs for that order.

(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: Each order must list separately the fixed amount for the indirect costs and payment schedule; if no indirect costs are approved, insert "None."

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

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

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

- (i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;
- (ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment —
 - (A) The original timecards (paper-based or electronic);
 - (B) The Contractor's timekeeping procedures;
 - (C) Contractor records that show the distribution of labor between jobs or contracts;

and

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

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

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

(B) Any documents supporting payment of those invoices.

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

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

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

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

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

(D) Contractor point of contact.

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

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor

for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

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

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

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

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

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

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

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements - Unenforceable Clauses paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements - Unenforceable Clauses provision.
- (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) *[Reserved]*

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in [502.101](#)) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation ([31 U.S.C. 1341](#)), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

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

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

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

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(w) *Commercial supplier agreements—unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in [502.101](#)), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument (*including all contracts, task orders, and delivery orders under FAR Part 12*).

(ii) End user. This agreement shall bind the Government as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) Law and disputes. This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) Continued performance. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the Government to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) Arbitration; equitable or injunctive relief. In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) Updating terms.

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:

(1) Terms that change Government rights or obligations;

(2) Terms that increase Government prices;

(3) Terms that decrease overall level of service; or

(4) Terms that limit any other Government right addressed elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) No automatic renewals. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) Indemnification. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with [28 U.S.C. 516](#).

(ix) Audits. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the Government. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the Government, will be resolved in accordance with subparagraph (d) (Disputes); no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) Taxes or surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) Non-assignment. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

(xii) Confidential information. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency.

552.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (OCT 2018) (DEVIATION - FEB 2007) (DEVIATION - FEB 2018)

(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 credit card), the Contractor may not assign its rights to receive payment under this contract.

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

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

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

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

(g) *Invoice.*

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

(i) Name and address of the Contractor;

- (ii) Invoice date and number;
- (iii) Contract number, 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 a Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

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

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

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

(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services-performed by the Contractor.

(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 line item or subline item, if applicable; and

(D) Contractor point of contact.

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

(6) *Interest.*

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, Unauthorized Obligations, and Commercial Supplier Agreements – Unenforceable Clauses paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements – Unenforceable Clauses provision.

(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) [Reserved]

(u) *Unauthorized Obligations.*

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any commercial supplier agreement (as defined in 502.101) that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such language, provision, or clause is unenforceable against the Government.

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

(iii) Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

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

(v) *Incorporation by reference.* The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(w) *Commercial supplier agreements – unenforceable clauses.* When any supply or service acquired under this contract is subject to a commercial supplier agreement (as defined in 502.101), the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, "this agreement" means the commercial supplier agreement:

(1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:

(i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license (including all contracts, task orders, and delivery orders under FAR Part 12).

(ii) *End user.* This agreement shall bind the Government as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

(iii) *Law and disputes.* This agreement is governed by Federal law.

(A) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(iv) *Continued performance.* The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the Government to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in subparagraph (d) (Disputes).

(v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

(vi) *Updating terms.*

(A) After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:

- (1) Terms that change the Government's rights or obligations;
- (2) Terms that increase Government prices;
- (3) Terms that decrease overall level of service; or
- (4) Terms that limit any other Government right addressed

elsewhere in this contract.

(B) For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.

(C) Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.

(vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

(viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. 516.

(ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:

(A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the Government. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.

(B) This charge, if disputed by the Government, will be resolved in accordance with subparagraph (d) (Disputes); no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.

(C) Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.

(x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

(xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under subparagraph (b) of this clause.

(xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1), the language, provisions, or clause of paragraph (w)(1) shall prevail to the extent of such inconsistency

I-FSS-40 CONTRACTOR TEAM ARRANGEMENTS (JUL 2003)

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with contract clause 552.238-80, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

I-FSS-600 CONTRACT PRICE LISTS (OCT 2019)

(a) Electronic Contract Data.

(1) At the time of award, the Contractor will be provided instructions for submitting electronic contract data in a prescribed electronic format as required by clause 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists.

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

later than 30 days after award. Contractors should refer to clause 552.238-88 GSA Advantage!® for further information.

(3) Further details on EDI, ICs, and GSA Advantage! ® can be found in clause 552.238-103, Electronic Commerce.

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

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

(b) Federal Supply Schedule Price Lists.

(1) The Contractor must also prepare and distribute a Federal Supply Schedule Price List as required by clause 552.238-77, Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists. This must be done as set forth in this paragraph (b).

(2) The Contractor must prepare a Federal Supply Schedule Price List by composing a price list in which only those items, terms, and conditions accepted by the Government are included, and which contain only net prices, based upon the commercial price list or commercial market prices less discounts accepted by the Government. In this instance, the Contractor must show on the cover page the notation "Prices Shown Herein are Net (discount deducted)".

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

(i) GENERAL SERVICES ADMINISTRATION

Federal Supply Service Authorized Federal Supply Schedule Price List
On-line access to contract ordering information, terms and conditions,
up-to-date pricing, and the option to create an electronic delivery order
are available through GSA Advantage!®, a menu-driven database system.
The INTERNET address GSA Advantage!® is: GSAAdvantage.gov.

Schedule Title

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

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

Contract number

For more information on ordering from Federal Supply Schedules click on the FSS Schedules button at fss.gsa.gov.

Contract period.

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

Contractor's internet address/web site where schedule information can be found (as applicable). Contract administration source (if different from preceding entry).

Business size.

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

1a. Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s).

1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply.

1c. If the Contractor is proposing hourly rates, a description of all corresponding commercial job titles, experience, functional responsibility and education for those types of employees or subcontractors who will perform services shall be provided. If hourly rates are not applicable, indicate "Not applicable" for this item.

2. Maximum order.

3. Minimum order.
4. Geographic coverage (delivery area).
5. Point(s) of production (city, county, and State or foreign country).
6. Discount from list prices or statement of net price.
7. Quantity discounts.
8. Prompt payment terms. Note: Prompt payment terms must be followed by the statement "Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions."
- 9a. Notification that Government purchase cards are accepted at or below the micro-purchase threshold.
- 9b. Notification whether Government purchase cards are accepted or not accepted above the micro-purchase threshold.
10. Foreign items (list items by country of origin).
- 11a. Time of delivery. (Contractor insert number of days.)
- 11b. Expedited Delivery. The Contractor will insert the sentence "Items available for expedited delivery are noted in this price list." under this heading. The Contractor may use a symbol of its choosing to highlight items in its price lists that have expedited delivery.
- 11c. Overnight and 2-day delivery. The Contractor will indicate whether overnight and 2-day delivery are available. Also, the Contractor will indicate that the schedule customer may contact the Contractor for rates for overnight and 2-day delivery.
- 11d. Urgent Requirements. The Contractor will note in its price list the "Urgent Requirements" clause of its contract and advise agencies that they can also contact the Contractor's representative to effect a faster delivery.

12. F.O.B. point(s).
- 13a. Ordering address(es).
- 13b. Ordering procedures: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3.
14. Payment address(es).
15. Warranty provision.
16. Export packing charges, if applicable.
17. Terms and conditions of Government purchase card acceptance (any thresholds above the micro-purchase level).
18. Terms and conditions of rental, maintenance, and repair (if applicable).
19. Terms and conditions of installation (if applicable).
20. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable).
- 20a. Terms and conditions for any other services (if applicable).
21. List of service and distribution points (if applicable).
22. List of participating dealers (if applicable).
23. Preventive maintenance (if applicable).
- 24a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants).
- 24b. If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor's website or other location.) The EIT standards can be found at: www.Section508.gov/.

- 25. Data Universal Number System (DUNS) number.
- 26. Notification regarding registration in System for Award Management (SAM) database.

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

(5) Accuracy of information and computation of prices is the responsibility of the Contractor.

(6) Inclusion of incorrect information will cause the Contractor to resubmit/correct the Federal Supply Schedule Price List, and may constitute sufficient cause for Cancellation, applying the provisions of 552.212-4 , Contract Terms and Conditions (paragraph (m), Termination for Cause), and application of any other remedies as provided by law—including monetary recovery.

G-FSS-900-C CONTACT FOR CONTRACT ADMINISTRATION (JUL 2003)

Offerors should complete paragraphs (a) and (b) if providing both domestic and overseas delivery. Complete paragraph (a) if providing domestic delivery only. Complete paragraph (b) if providing overseas delivery only.

The Contractor shall designate a person to serve as the contract administrator for the contract both domestically and overseas. The contract administrator is responsible for overall compliance with contract terms and conditions. The contract administrator is also the responsible official for issues concerning 552.238-80, Industrial Funding Fee and Sales Reporting (JUL 2003), including reviews of contractor records. The Contractor’s designation of representatives to handle certain functions under this contract does not relieve the contract administrator of responsibility for contract compliance. Any changes to the designated individual must be provided to the Contracting Officer in writing, with the proposed effective date of the change.

(a) Domestic:

NAME _____
 TITLE _____
 ADDRESS _____
 ZIP CODE _____
 TELEPHONE NO. (_____) _____ FAX NO. _____
 E-MAIL ADDRESS _____

(b) Overseas: Overseas contact points are mandatory for local assistance with the resolution of any delivery, performance, or quality complaint from customer agencies. (Also, see the

requirement in I-FSS-594, Parts and Service.) At a minimum, a contact point must be furnished for each area in which deliveries are contemplated, e.g., Europe, South America, Far East, etc.

NAME _____
TITLE _____
ADDRESS _____
ZIP CODE _____
TELEPHONE NO. (_____) _____ FAX NO. _____
E-MAIL ADDRESS _____

I-FSS-106 GUARANTEED MINIMUM (NOV 2018)

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

(a) Payment of any amount due under this clause shall be contingent upon the Contractor's timely submission of GSA Form 72A reports via the FAS Sales Reporting Portal (see GSAR 552.238-80 "Industrial Funding Fee and Sales Reporting") during the period of the contract and receipt of the close-out sales report pursuant to GSAR 552.238-80.

(b) The guaranteed minimum applies only if the contract expires or contract cancellation is initiated by the Government. The guaranteed minimum does not apply if the contract is terminated for cause or if the contract is canceled at the request of the Contractor.

SCP-FSS-001 INSTRUCTIONS APPLICABLE TO ALL NEW OFFERORS (XXX 2019)

(a) Read the entire solicitation document prior to preparing your offer. The Government will consider award for a responsible Offeror whose offer conforms to all solicitation requirements, is determined technically acceptable and whose prices are determined fair and reasonable. The Government reserves the right to award or reject without discussions. Therefore, the Offeror's initial proposal should contain the best terms from a price and technical standpoint.

(b) Electronic submission of offers via GSA's [eOffer web-based application](#) is mandatory. Digital certificates are required in order to use eOffer and at least one employee of the company who is also an authorized negotiator must obtain and submit a screenshot of a digital certificate with the offer. Offerors are advised to review the Offer Documents Submission Checklist posted on the [MAS roadmap](#) site prior to submitting an offer.

(c) Offers must be current, accurate, and complete, and demonstrate a thorough understanding of solicitation requirements. By submission of an offer:

- (1) The offeror attests that there have been no exceptions taken to the terms and conditions of this solicitation unless explicitly identified in eOffer (see “Exceptions to Terms and Conditions” under the Standard Response module)
- (2) The offeror attests that it understands and agrees to comply with the requirements of all clauses and provisions. Failure to comply with applicable clauses and provisions will result in rejection of the offer. Offerors are responsible for ensuring that their offers meet ALL solicitation requirements and should not assume that deficient items will be clarified prior to the offer being rejected.
- (3) The offeror attests that it understands and agrees to comply with the requirements of clause 552.238-80 Industrial Funding Fee and Sales Reporting OR clause 552.238-80 Industrial Funding Fee and Sales Reporting (Alternate I) if participating in Transactional Data Reporting (TDR) (see paragraph (g) below for more information on TDR).
- (d) If the offeror was previously awarded a Schedule contract that was cancelled or allowed to expire due to low or no sales, a new offer for the same Schedule will not be considered unless a minimum of 12 months have passed since the effective date of the cancellation or expiration date of the previous contract. Any offer submitted prior to the completion of this 12-month period will be rejected.
- (e) Existing Federal Supply Schedule (FSS) Program Contractors can submit streamlined offers as annotated in this provision provided that the contractor meets ALL of the following criteria:
 - (1) The contractor has an active FSS program contract under this Schedule and is submitting a new offer for the same Special Item Numbers (SINs).
 - (2) Sales under the existing contract have averaged a minimum of \$25,000 per year for the previous five years of reported sales.
 - (3) There is a demonstrated pattern of satisfactory past performance under the existing contract.
- (f) A current FSS contractor can submit an offer for a new contract under this Schedule at any time during the existing contract’s period of performance. Typically, the award of a new contract will result in the cancellation of the existing contract upon award. However, if the contractor has one or more active Blanket Purchase Agreements (BPAs) or orders under its existing contract; or has submitted quotes for either and is awaiting an award decision), it is eligible for the award of a new contract that is allowed to overlap and run alongside the existing one. This is referred to as holding continuous contracts.

Holding continuous contracts enables the FSS contractor to complete work under BPAs and orders awarded via the existing contract, while utilizing the new contract for new business opportunities. A contractor that wishes to hold continuous contracts must:

(1) Indicate with its offer that it wishes to hold continuous contracts, along with a listing of all active submitted quotes, established BPAs, and awarded orders under the existing contract. For each, the contractor must include the ordering activity name and point of contact, RFQ/BPA/order number and period of performance (including options).

(2) Assist the FSS contracting officer in determining the proper cancellation date for the existing contract. The existing contract is to be cancelled the day after the final day of the ordering period for the active BPA or order (including options). In situations where multiple BPAs and/or orders are active, the cancellation date should be based on the last remaining BPA or order, provided that they do not extend beyond the existing contract end date.

(3) Agree not to use the existing contract to compete for new business opportunities after the new contract is awarded.

(g) This solicitation includes Transactional Data Reporting (TDR), which requires contractors that choose to participate in TDR to electronically report the price the federal government paid for an item or services purchased through contracts covered by TDR. TDR participants are not required to provide Commercial Sales Practices (CSP) disclosures or to monitor price reduction violations in accordance with Clause 552.238-81 Price Reductions. Special proposal instructions for TDR participants are detailed in this provision.

(h) In addition to compliance with the requirements of this provision, the offeror must also comply with any additional NAICS or category specific instructions specified in the solicitation, as applicable. Failure to comply with all proposal instructions will result in rejection of the offer.

(i) **Withdrawal of Offer:** The offeror may withdraw its offer from consideration at any time prior to award or rejection by withdrawing it in eOffer. If an offer is withdrawn, a new offer can be resubmitted at a later date. Information saved from the previous withdrawn offer can be copied over to the new offer, excluding uploaded documents.

(j) All offerors must comply with the following (unless annotated otherwise):

(1) Section I – Administrative/Contract Data

i. Applicable to both products and services offers. The offeror must complete and submit the Pathway to Success training*. The Pathway to Success training must be completed by a designated Authorized Negotiator who is also a company officer (e.g., President, CEO, CFO, etc.) and completed/dated within one year of the date of offer submission. This free, web-based self-assessment is available through the [Vendor Education Center](#) (VEC) or through the [Vendor Support Center](#) by selecting the “Education” tab and then “Pathway to Success.” The training session is less than two hours total and covers the major factors vendors should consider prior to submitting an

offer to GSA. eOffer will verify the name of the person that completed the Pathway to Success training and the date of completion.

* The requirement to complete the Pathway to Success training does not apply to contractors that have an active FSS program contract under this Schedule and meet the criteria for submitting a streamlined offer, see (e) 1-3.

ii. Applicable to both products and services offers. The offeror must complete and submit the Readiness Assessment for Prospective Offerors*. The Readiness Assessment must be completed by a company officer (e.g., President, CEO, CFO, etc.) and completed/dated within one year of the date of offer submission. This free, web-based self-assessment is available through the [Vendor Education Center](#) (VEC) or through the [Vendor Support Center](#) by selecting the “Education” tab and then “Vendor Toolbox (Readiness Assessment).” This tool is designed to assist vendors in determining whether they are ready to pursue a Schedule contract and prepares them to navigate the Schedule proposal process.

*The requirement to complete the Readiness Assessment for Prospective Offerors does not apply to contractors that have an active FSS program contract under this Schedule and meet the criteria for submitting a streamlined offer, see (e) 1-3.

iii. Applicable to both products and services offers. The offeror must be registered with the [System for Award Management](#) (SAM). The information provided must be current, accurate, and complete, and reflect the North American Industrial Classification System (NAICS) code(s) for this solicitation and the products/services proposed. The offeror must provide verification that it has an active SAM registration

iv. Applicable to both products and services offers. If an offeror was previously awarded a Schedule contract, and it was subsequently cancelled or allowed to expire due to low sales, provide a detailed description of the steps the offeror plans to take to generate sales through a new contract that includes the following:

(A) A copy of the cancellation letter or notification of determination not to exercise an option.

(B) Current Federal sales (either as a prime or subcontractor) in excess of \$25,000, for products/services that are within scope of this Schedule, as evidenced by copies of contractual documents that identify the Federal entity and the date and value of the product or services provided, OR a written customer agency request for the offeror’s specific products or services to be available on Schedule.

(C) Demonstration that there is a reasonable expectation that any future award will comply with clause I-FSS-639 Contract Sales Criteria.

(D) A narrative describing your marketing strategy and steps you will take to ensure you meet the minimum sales requirement (limit 2 pages).

v. Applicable to both product and service offers. The offeror must provide annual financial statements* for the previous two-years (audited, if available). At a minimum, each financial statement must consist of a balance sheet and income statement. GSA will use this information to determine financial responsibility. Provide an explanation for any negative financial information disclosed, including negative equity or income. Offerors may be required to provide letters of credit or other documentation to demonstrate that adequate financial resources are available. In accordance with Federal Acquisition Regulation (FAR) 9.104-1(a), contracts will only be awarded to responsible prospective contractors. To be determined responsible, an offeror must have adequate financial resources to perform the contract or the ability to obtain them. Note that 1.) submission of a GSA Form 527 Contractor Qualifications and Financial Information does not meet the aforementioned requirements, and 2.) offerors shall NOT submit tax returns.

*The requirement to provide financial statements does not apply to contractors that have an active FSS program contract under this Schedule and meet the criteria for submitting a streamlined offer, see (e) 1-3.

vi. Applicable to both product and service offers. If the Offeror is other than a small business, the offeror must prepare and submit a Small Business Subcontracting Plan, as detailed in clause 52.219-9 Small Business Subcontracting Plan. The Small Business Subcontracting Plan shall be submitted through the Subcontracting Module in eOffer. The Government will review each plan to ensure it is consistent with the provisions of this clause. Subcontracting plans are subject to negotiation, along with the terms and conditions of any contract resulting from this solicitation. The offeror's subcontracting plan must be approved by the contracting officer prior to award. Failure to submit a Small Business Subcontracting Plan when required will result in the rejection of your offer.

The preponderance of work NAICS will determine the business size of the offeror at the contract level.

The following information is provided for reference only:

SBA's definition of a small business concern can be found via the following link: [SBA Size Standards](#).

GSA's subcontracting goals can be found via the following link: [GSA Subcontracting Goals](#).

vii. Applicable to both product and service offers. The offeror shall not submit brochures, newsletters, or other marketing materials.

viii. Applicable to both product and service offers. An Agent Authorization Letter must be completed and submitted as part of the offer if a consultant or third-party agent assisted in the preparation of the offer, will be involved in any part of the negotiation of the offer, or will be involved in any post-award actions. The template for the Agent Authorization Letter can be found as an attachment to the solicitation. The Agent Authorization Letter has both pre- and post-award delegations. For any resultant contract, the contractor is responsible for initiating a modification to ensure all authorized negotiators and delegations are up-to-date (e.g., removing an authorized negotiator that only has pre-award delegations). If an agent will have signatory authority under the contract, the offeror must upload a screenshot of the agent's digital certificate.

ix. Applicable to both product and service offers. Section 508 Standards. Section 508 of the Rehabilitation Act, as amended by the Workforce Investment Act of 1998 (P.L. 105-220) requires that when Federal agencies develop, procure, maintain, or use information and communication technology (ICT), it shall be accessible to people with disabilities. Federal employees and members of the public who have disabilities must have access to, and use of, information and data that is comparable to people without disabilities.

Offerors must identify whether a proposed Information and Communication Technology (ICT) product or service is compliant with the Section 508 accessibility standards at 36 CFR 1194. The offer must also identify where full details of compliance can be found (e.g., vendor's website or other exact location.) For more information on Section 508 standards visit the [Section 508](#) site.

x. Applicable to product and service offers. All proposed products and services must comply with the Trade Agreements Act (TAA). The country of origin for services is the country in which the firm providing services is established. It is the responsibility of the Offeror to identify the product's country of origin. When an item consists of components from various countries and the components are assembled in an additional country, a test to determine country of origin is "substantial transformation" (reference FAR 25.001(c)(2)). The Offeror may request an opinion from a third-party expert or make the determination itself. Offerors can go to The Office of Regulations and Rulings within [U.S. Customs and Border Protection](#) (CBP), which is the Federal agency responsible for making final substantial transformation determinations (reference 19 CFR Part 177 Subpart B).

xi. Applicable to product offers. If the offeror is not the manufacturer of the product(s) being proposed, an acceptable Letter of Commitment/Supply or evidence of an uninterrupted source of supply must be uploaded to eOffer. See clause I-FSS-644 Dealers and Suppliers and the solicitation for required language. If the Government determines that the offeror's evidence of an uninterrupted source of supply is not sufficient, the Government will request submission of a Letter of Commitment/Supply.

Failure to provide an acceptable Letter of Commitment/Supply or evidence of an uninterrupted source of supply may result in rejection of the offer.

xii. Applicable to product offers. AbilityOne Program Products. The AbilityOne Program is a Federal procurement program that generates jobs for individuals who are blind or have another significant disability. In order to distribute AbilityOne products, a vendor must be an authorized AbilityOne Program distributor as designated by the U.S. AbilityOne Commission. Certain commercial products are considered “essentially the same” (ETS) as AbilityOne products. Because AbilityOne products are mandatory purchases for Federal customers, an offeror that is not an authorized AbilityOne distributor is required to remove any ETS items from its FSS proposal. Offerors can search for products on the [procurement list](#). For more information on the AbilityOne Program, ETS products, and becoming an authorized AbilityOne distributor, please visit the [AbilityOne](#) site or contact Mr. Mike Jurkowski at mjurkowski@abilityone.gov/703-603-2117.

xiii. Applicable to product offers. Manufacturer Part Number (MPN) data must be submitted for all products. The offeror must ensure that the MPN for each proposed product reflects the actual number assigned. Universal Product Code Type A (UPC-A) data must also be submitted for all products for which this information is commercially available. If MPN (and UPC-A data, if commercially available) is submitted incorrectly or not submitted, the offer may be rejected and/or the associated product(s) may not be awarded.

xiv. Applicable to product offers. GSA Advantage Purchase Order (PO Portal). The offeror must use EDI, cXML or the GSA Advantage [Purchase Order \(PO\) Portal](#) to provide order acknowledgment information that enables ordering agencies to track the location of an order at any time, from the moment the order is shipped, to the point of delivery and acceptance. The GSA Advantage [Purchase Order \(PO\) Portal](#) gives GSA schedule contractors quick and easy access to purchase orders placed by federal agencies using GSA Advantage or eBay. The PO Portal allows contractors to view, print and/or download orders and to send order acknowledgment/status directly to ordering agencies. For more information on the PO portal review the PO Portal [help guide](#).

xv. Applicable to product offers. Frustrated Freight (applicable only to overseas delivery). The offeror must demonstrate understanding of orders bound for an international end-point delivery by providing a sample electronic version of a label appropriately marked in accordance with the FED-STD-123 and MIL-STD-129 edition in effect as of the date of solicitation issuance. An offer for OCONUS delivery will not be accepted if the offeror does not provide a sample packaging label for international delivery.

(2) Section II – Technical Proposal

The offeror must address the four technical proposal factors below. Note that Factors One, Three and Four must be completed directly through eOffer. The submission of uploaded documents to address Factors One, Three and Four will not be considered.

i. Applicable to both product and service offers. Factor One - Corporate Experience*: The offeror must provide a narrative description of its corporate experience including all information below. Note that the narrative must be completed directly through the eOffer application by responding to the eOffer prompts; separate attachments addressing Corporate Experience will not be considered.

(A) The number of years of corporate experience in providing the products/services described under this Schedule, regardless of the specific products/services being proposed. A minimum of two (2) years of corporate experience is required.

(B) Organization's number of employees, experience in the field, and resources available to enable it to fulfill requirements,

(C) Brief history of the offeror's activities contributing to the development of expertise and capabilities related to this requirement,

(D) Information that demonstrates the offeror's organizational (e.g. organizational chart, list of key departments) and accounting controls (e.g. processes and/or systems in place),

(E) A description of the resources presently in-house or the ability to acquire the type and kinds of personnel/products proposed,

(F) A description of the marketing strategy that will be used to reach Federal ordering activities,

(G) A description of the intended use of subcontractors.

*The requirement to provide a Corporate Experience narrative does not apply to contractors that have an active FSS program contract under this Schedule and meet the criteria for submitting a streamlined offer, see (e) 1-3.

ii. Applicable to both product and service offers. Factor Two - Past Performance*: Past performance information is one indicator of an offeror's ability to perform the contract successfully. Offerors shall demonstrate a pattern of past performance in accordance with the instructions below. Failure to submit the required information may result in rejection of the proposal.

(A) Offerors with three (3) or more contractor performance assessment reports available in the federal Contractor Performance Assessment Reporting System (CPARS)

shall verify in eOffer that they have three (3) or more assessment reports available in CPARS that represent:

- (1) contracts or orders completed within three (3) years of the date of offer submission;
- (2) at least three (3) distinct orders and/or contracts; and
- (3) work similar in scope to products/services included in this solicitation.

The offeror shall address any negative feedback in the contractor performance assessment reports not previously documented in the CPARS report. Offerors may access [CPARS](#) to view previously completed evaluations.

If unable to meet these criteria, the offer shall submit a Past Performance Evaluation in accordance with paragraph (B) below.

(B) Attention All Offerors: Open Ratings is no longer accepting new orders for Past Performance Evaluations as of Friday, December 06, 2019. Offerors that ordered an Open Ratings Past Performance Evaluation on or before December 06, 2019 may use the evaluation to demonstrate a pattern of Past Performance if the Open Ratings Past Performance Evaluation uploaded to the offer is dated within one (1) year of offer submission. Offerors with six (6) or more customer references that do not meet the criteria in paragraph (A) shall order and obtain a Past Performance Evaluation from Open Ratings. The offeror shall upload one (1) copy of the completed Past Performance Evaluation and one (1) copy of the order form (identifying the customer references submitted) with its proposal in eOffer. The following applies to the ordering of Open Ratings reports:

- (1) Offerors are responsible for payment to Open Ratings for the Past Performance Evaluation.
- (2) Past Performance Evaluations are valid for a period of one year from the date of issuance by Open Ratings. If the evaluation was issued more than one year prior to the date of proposal submission via eOffer, the proposal will be rejected.
- (3) The offeror shall include between six (6) and twenty customer references on the Open Ratings order form. A “customer reference” is defined as a person or company that has purchased relevant products/services from the offeror. The offeror is advised to use references from projects similar in scope to products/services included in this solicitation.

If Open Ratings is unable to issue an evaluation due to inadequate response from customer references, the offeror shall submit the neutral letter issued by Open Ratings along with a copy of the order form.

The offeror shall address any negative feedback for each of the feedback categories contained in the contractor performance assessment found in the Open Ratings report, to include actions taken to minimize the problems that resulted in the negative feedback.

If unable to meet these criteria, the offeror shall submit a Past Performance narrative in accordance with paragraph (C) below.

(C) Offerors that do not meet the criteria in paragraph (A) or (B) above shall upload a list of three (3) to five (5) relevant customer references to eOffer. Relevant customer references are defined as customers for which the offeror has performed work similar in scope to products/services included in this solicitation. The work referenced must have been completed within three (3) years of the date of offer submission. For each reference listed, the offeror shall identify the following:

- (1) Customer name;
- (2) Customer point of contact (including name, phone, and email address);
- (3) Brief description of work performed and the offeror's role;
- (4) Dollar value of project; and
- (5) Period of performance.

If the offeror does not have at least three (3) customer references, the offeror may substitute customer references for relevant work performed by predecessor companies or key personnel. Offeror's are strongly encouraged to notify all customer references prior to offer submission that they may be contacted by GSA for past performance information.

*The requirement to provide Past Performance Information does not apply to contractors that have an active FSS program contract under this Schedule and meet the criteria for submitting a streamlined offer, see (e) 1-3.

iii. Applicable to both product and service offers. Factor Three - Quality Control: The offeror must provide a Quality Control narrative that addresses the information below. The offeror shall provide a single narrative for this factor, regardless of the number of products/services offered. Note that this narrative must be completed directly through the eOffer application by responding to the eOffer prompts; separate attachments addressing Quality Control will not be considered.

- (A) A description of internal review procedures that facilitate high-quality standards,
- (B) Identification of individuals responsible for ensuring quality control,

- (C) Whether or not subcontractors are used and, if so, the quality control measures used to ensure acceptable subcontractor performance,
- (D) How potential problem areas and solutions are handled,
- (E) The procedures for ensuring quality performance when meeting urgent requirements,
- (F) How quality control will be managed when completing multiple projects for multiple agencies simultaneously.

iv Applicable to service offers. Factor Four – Relevant Project Experience: The offerors must submit a narrative demonstrating relevant project experience by responding to the Relevant Project Experience prompts in eOffer. A narrative is required for each proposed services SIN when proposing services and must include the following:

- (A) A description of one (1) relevant project, not to exceed four (4) pages per project. Each description must clearly indicate the SIN to which it applies, and identify the specific services being proposed under that SIN. The projects must either have been completed within the last two years or be ongoing. For ongoing contracts with a base year and option years, at a minimum, the base year must have been completed; for multi-year task orders, at a minimum, the first year must have been completed. Note: Specific services may have additional requirements under Factor Four. Offerors shall also refer to NAICS or category specific instructions, for additional Factor Four requirements.

The project description must also address the following elements:

- (1) Detailed description of SIN relevant work performed and results achieved
- (2) Methodology, tools, and/or processes utilized in performing the work
- (3) Demonstration of compliance with any applicable laws, regulations, Executive Orders, OMB Circulars, professional standards, etc.
- (4) Project schedule (i.e., major milestones, tasks, deliverables), including an explanation of any delays
- (5) How the work performed is similar in scope and complexity to the work solicited under the proposed SIN
- (6) Demonstration of required specific experience and/or special qualifications detailed under the proposed SIN.

The Offeror may use the same project in support of more than one SIN as long as the description clearly identifies the SIN relevant work. All examples of completed services must have been deemed acceptable by the customer.

If the Offeror was previously awarded a Schedule contract for these services that was cancelled or allowed to expire due to low or no sales, the Offeror's relevant project must be a Federal prime contract valued in excess of \$25,000.

(B) For each project description, must also provide the following customer reference information (this data is not counted towards the four-page-per-project limitation):

- (1) Customer/client name
- (2) Project name/contract number
- (3) Customer point of contact for project
- (4) Point of contact phone number and email
- (5) Project performance period (include begin/end dates)
- (6) Dollar value of the entire project
- (7) Dollar value received for the work performed relevant to the SIN offered
- (8) Brief summary of the project as a whole (i.e., background, purpose, etc.)
- (9) A completed copy of the Statement of Work, Performance Work Statement or Statement of Objectives for the project

(C) If relevant project experience does not exist, the Offeror may substitute the relevant projects of predecessor companies or key personnel that will be performing major aspects of the work. If the Offeror chooses to make such a substitution, the narratives must clearly identify the entity or personnel that performed the services.

* This requirement does not apply to contractors that have an active FSS program contract under this Schedule and meet the criteria for submitting a streamlined offer, see (e) 1-3.

(3) Section III – Price Proposal

i. Applicable to both product and service offers. GSA's pricing goal** is to obtain equal to or better than the offeror's Most Favored Customer (MFC) pricing under the same or similar terms and conditions. GSA seeks to obtain the offeror's best price based on its evaluation of discounts, terms, conditions, and concessions offered to commercial customers. However, offers that propose Most Favored Customer pricing that is not highly competitive will not be determined fair and reasonable and will not be accepted.

The U.S. Government Accountability Office has specifically recommended that "the price analysis GSA does to establish the Government's MAS negotiation objective should start with the best discount given to any of the vendor's customers."

**This requirement does not apply to offerors/contractors that will be participating in TDR.

ii. Applicable to both product and service offers. Submit proposed pricing using the attached Price Proposal Template. The Price Proposal Template (PPT) MUST be submitted in Microsoft Office Excel format. The proposed pricing structure must be consistent with the offeror's commercial practices. Pricing must be clearly identified as based either on a "Commercial Price List" or a "Commercial Market Price," as defined in FAR 2.101 (see "Catalog Price" and "Market Prices" under the definition of "Commercial Item").

(A) If the MFC is a Federal agency, but sales exist to commercial customers, identify which, if any, of the commercial customers receive the offeror's best price. This will allow the Government to establish a "basis of award" customer in accordance with paragraph (a) of clause 552.238-81 Price Reductions.**

**The requirement to provide MFC information on the PPT does not apply to TDR participants.

(B) Proposed prices must include the 0.75% Industrial Funding Fee (IFF) (see contract clause 552.238-80 Industrial Funding Fee and Sales Reporting OR clause 552.238-80 Industrial Funding Fee and Sales Reporting (Alternate I) if participating in the TDR). This fee will be included in the awarded prices and reflected in the total amount charged to ordering activities.

iii. Applicable to both product and service offers. Provide supporting documentation for EACH proposed product/service price. Supporting pricing documentation may consist of published and publicly-available commercial catalogs/price lists, copies of invoices, contracts, or quote sheets, and must be submitted with the offer. There must be a clear and relevant relationship between the supporting document and the proposed price it is meant to substantiate. Each supporting document must be clearly labeled with the name of the corresponding proposed product/service.**

**The requirement to provide supporting documentation with the offer does not apply to offerors/contractors that will be participating in the TDR. However, as per GSAM 538.270-2 Evaluation of offers with access to transactional data, paragraph (c)(3), if the Government cannot determine the prices offered to be fair and reasonable based on readily available data or market research, it may request the offeror provide other than certified cost or pricing data to facilitate the Government's evaluation of the proposed pricing.

iv. Applicable to both product and service offers. If the pricing offered is not equal to or better than the pricing extended to the Most Favored (commercial) Customer, offerors must provide a rationale to enable the contracting officer to determine that offered prices/rates are fair and reasonable.**

**This requirement does not apply to offerors/contractors that will be participating in the TDR.

v. Applicable to both product and service offers. The offeror must propose a mechanism for future price adjustments, as detailed below:

(A) If proposed pricing is based on a published or publicly-available commercial price list, submit a copy of the company's current, dated, price list, catalog, or standard rate sheet (note that this must be an existing, standalone document, and not prepared for purposes of this solicitation). Future price adjustments for pricing based on a commercial price list are subject to clause 552.216-70 Economic Price Adjustment – Multiple Award Schedule Contracts.

OR

(B) If proposed pricing is based on commercial market prices, future price adjustments are subject to clause I-FSS-969 Economic Price Adjustment – FSS Multiple Award Schedule. The offeror must either propose a fixed annual escalation rate in accordance with I-FSS-969 paragraph (b)(1) OR propose a relevant market indicator (e.g., the Bureau of Labor Statistics Employment Cost Index(ECI)) in accordance with I-FSS-969 paragraph (b)(2).

vi. Applicable to both product and service offers. Complete the Commercial Sales Practices Format (CSP-1)** in eOffer in accordance with instructions provided in GSAR Figure 515.4-2. Provide a rationale for the given estimate of GSA contract annual sales. Any deviation from the Offeror's commercial sales practices must be explained, including the specific circumstances and frequency of the deviations under Item 4b of the CSP.

**The requirement to complete the CSP-1 does not apply to offerors/contractors that will be participating in the TDR.

vii. Applicable to both product and service offers. Full-Product and Broad-Service Offerings. The offeror must provide a full and broad array of proposed products/services. An offer will not be accepted with limited product/service offerings unless it represents a total solution for the offeror or proposed product/service offering.

viii. Applicable to both product and service offers. Fair and Reasonable Pricing. To determine fair and reasonable pricing, the GSA contracting officer may consider many factors, including, but not limited to pricing on competitor contracts and historical pricing. Offers that propose Most Favored Customer pricing but are not highly competitive will not be determined fair and reasonable and will not be accepted.**

****Attention Offerors/contractors that will be participating in TDR:**

To determine fair and reasonable pricing, the GSA contracting officer may consider many factors, including, but not limited to pricing on competitor contracts and historical pricing. Offers that are not highly competitive will not be determined fair and reasonable and will not be accepted.

ix. Applicable to service offers. Offerors proposing services have the option to propose separate rates for "domestic" versus "overseas" and/or "customer facility" versus "contractor facility" if there are variations in costs that depend on where the work is performed. Rates proposed in this manner must be clearly labeled as such and supported through the submission of supporting price documentation, which may include published and publicly-available commercial price lists, copies of invoices, contracts and quote sheets. There must be a clear and relevant relationship between the supporting document and the proposed price it is meant to substantiate. Each supporting document must be clearly labeled with the name of the corresponding proposed service and submitted with the offer.

(A) For each proposed labor category, the Offeror must provide a detailed position description. Position descriptions must include functional responsibilities, minimum years of experience, minimum educational/degree requirements, and any applicable training or certification requirements. If it is the Offeror's standard commercial practice to substitute experience for education, explain the methodology in use (e.g., five years experience equates to a BA/BS degree).

(B) For each proposed training course, the Offeror must provide a detailed training course description which includes the following information:

- (1) Title and brief description of the course, including major course objectives
- (2) Length of course (number of hours/days)
- (3) Minimum/Maximum number of participants
- (4) Price for additional students above minimum (if applicable)
- (5) Support materials provided as part of the course (e.g., training manuals, CDs, DVDs)

(C) Fixed Price Services: Provide a description for each fixed price service offered that clearly demonstrates how each service is within scope of the applicable SIN(s). Descriptions should contain sufficient detail to ensure ordering agencies have enough information to know what they're buying.

(D) Ancillary Supplies and Services/Other Direct Costs (ODCs) for Marketing and Public Relations Services: Provide a description for all known support products and/or

Other Direct Costs (ODCs) that are proposed for award at the Schedule level that clearly describes what the ordering agencies are buying.

(E) Proposed prices must represent fully-burdened rates inclusive of all cost factors (e.g., direct labor, indirect labor, G&A, profit, and IFF).

x. Applicable to service offers. Offerors must submit a Professional Compensation Plan in accordance with provision 52.222-46 Evaluation of Compensation for Professional Employees. Individual compensation disclosure is not required. Submission of the general compensation practices printed in the Offeror's employee handbook is often sufficient.

xi. Applicable to service offers. Offerors must submit a copy of its policy that addresses uncompensated overtime, in accordance with provision 52.237-10 Identification of Uncompensated Overtime.

xii. Applicable to service offers. Service Contract Labor Standards: Applicable to this solicitation (Service Contract Labor Standards 52.222-41, and related clauses 52.222-17, 52.222-42, 52.222-43, 52.222-49, and 52.222-55)

(A) The Service Contract Labor Standards (SCLS), formerly known as the Service Contract Act (SCA) applies to some nonprofessional services to be provided under this Schedule excluding pricing offered for services outside of the United States. The SCLS wage determinations applicable to this solicitation and resultant contract are located on the [MAS roadmap](#) site. Some of the proposed labor categories may be subject to the SCLS (usually nonprofessional categories and fixed-price services). As such, the Offeror should verify that its proposed base rates and fringe benefit rates for these labor categories meet or exceed the SCLS wage determination rates and fringe benefits for the areas included in the geographic scope of the contract (i.e., nationwide); the Offeror will be required to comply with applicable SCLS wage determination locality rates and fringe benefits regardless of the price proposed and awarded on any resultant Schedule contract. The Offeror may be required to submit supporting documentation for the proposed rates that will allow the contracting officer to conduct price analysis to determine that offered prices are fair and reasonable.

(B) Schedule contractors must comply with the base rate and fringe benefit rate requirements of the prevailing SCLS Wage Determination (WD) Revision Number currently incorporated into the GSA Schedule contract. Task orders may not incorporate WDs different from those incorporated into the Schedule contract, as the order may then be in conflict with the Schedule contract terms and conditions. However, Schedule contractors shall comply with the WDs incorporated into the Schedule contract based on the rate applicable to the locality in which the work is to be performed, regardless of the pricing proposed and awarded on the contract. WDs based on collective bargaining agreements (CBAs) may be incorporated into a task order if the task order is found to be

a successor contract as used in FAR Subpart 22.10; a CBA WD would be applicable only to the task order it is incorporated into and no other orders under that Schedule contract.

(C) In the price proposal template (PPT), indicate which of the proposed labor categories or fixed price services are subject to the SCLS by placing a double asterisk (**) next to the labor category name or fixed price service.

(D) For each SCLS eligible contract labor category or fixed price service, complete the following information in the below spreadsheet format directly in eOffer (labor categories shown are for example purposes):

SCA/SCLS Matrix		
SCLS Eligible Contract Labor Category/Fixed Price Service	SCLS Equivalent Code Title	WD Number
Secretary	01115 General Clerk I	052059
Driver	31361 Truck driver, Light Truck	052059
Engineering Technician	29081 Engineering Technician I	052059
Administrative Assistant	01011 Accounting Clerk I	052059

(E) The following language shall be inserted below the SCLS/SCA matrix in the authorized price list posted on GSA Advantage:

"The Service Contract Labor Standards, formerly the Service Contract Act (SCA), apply to this contract and it includes SCLS applicable labor categories. Labor categories and fixed price services marked with a (**) in this pricelist are based on the U.S. Department of Labor Wage Determination Number(s) identified in the SCLS/SCA matrix. The prices awarded are in line with the geographic scope of the contract (i.e., nationwide)."

(F) Escalation of SCLS-covered services shall be in accordance with FAR clause [52.222-43](#) and either clause I-FSS-969 or clause 552.216-70, as applicable to the contract.

Note 1: The contractor will not automatically be allowed an increase in prices based solely on new wage determinations. Contractor may be required to furnish the Schedule Contracting Officer with additional justification for a price increase. Additional

justification may include, but is not limited to, invoices, payroll information, current e98s, RFQ, and/or task order information.

Note 2: Reference Code of Federal Regulations, Title 29, Labor, Subtitle A Office of the Secretary of Labor, Part 4 Labor Standards for Federal Service Contracts, Subpart D Compensation Standards, paragraph 4.161 Minimum monetary wages under contracts exceeding \$2,500, which states: “No change in the obligation of the contractor or subcontractor with respect to minimum wages will result from the mere fact that higher or lower wage rates may be determined to be prevailing for such employees in the locality after the award and before completion of the contract.

SCP-FSS-007 SPECIAL PROPOSAL INSTRUCTIONS FOR ORDER-LEVEL MATERIALS SPECIAL ITEM NUMBER (XXX 2019)

(a) This Schedule is authorized to allow for order-level materials (OLMs) in accordance with GSAR 538.7201. A listing of all OLM-authorized Schedules is available on GSA’s [Order-Level Materials](#) site.

(b) Clauses 552.212-4 Contract Terms and Conditions - Alternate I and 552.238-115 Special Ordering Procedures for the Acquisition of Order-Level Materials provide additional information on inclusion of OLMs in task and delivery orders placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA).

(c) OLMs are only authorized for inclusion at the order level under a Time-and-Materials (T&M) or Labor-Hour (LH) Contract Line Item Number (CLIN) and are subject to a Not To Exceed (NTE) ceiling price.

(d) Offerors proposing the Order-Level Materials Special Item Number (SIN) are not required to propose items or pricing at the contract level, since by definition OLMs are unknown at the time of FSS contract award. The ordering activity contracting officer is responsible for defining OLMs and determining proposed OLM pricing fair and reasonable for a particular order.

(e) OLMs are purchased under the authority of the FSS Program and are not “open market items.”

(f) Items awarded under ancillary supplies/services and other direct cost (ODC) SINs are not OLMs. These SINs are reserved for items that can be defined and priced up-front at the FSS contract level.

(g) The Order-Level Materials SIN cannot be the only SIN awarded on a contract. The Order-Level Materials SIN is only authorized for use in direct support of another awarded SIN.

(h) The Order-Level Materials SIN is exempt from CSP-1 Commercial Sales Practices disclosure requirements.

(i) The Order-Level Materials SIN is exempt from the following clauses:

552.216-70 Economic Price Adjustment - FSS Multiple Award Schedule Contracts

I-FSS-969 Economic Price Adjustment - FSS Multiple Award Schedule

552.238-77 Submission and Distribution of Authorized FSS Schedule Pricelists

552.238-81 Price Reductions

(j) Terms and conditions that otherwise apply to the FSS contract also apply to the Order-Level Materials SIN. Examples include but are not limited to:

Trade Agreements Act (TAA)

Sales reporting and Industrial Funding Fee (IFF) remittance

Environmental Attributes clauses

AbilityOne Program Essentially the Same (ETS) compliance

(k) Prices for items provided under the Order-Level Materials SIN must be inclusive of the IFF. The value of order-level materials in a task or delivery order [or the cumulative value of order-level materials in orders against an FSS BPA] awarded under an FSS contract, shall not exceed 33.33% .

(l) There are no administrative, technical, or price proposal requirements for the Order-Level Materials SIN (i.e., Section I - Administrative/Contract Data, Section II - Technical Proposal, and Section III - Price Proposal). The Order-Level Materials SIN will be awarded when proposed by an offeror, provided that (1) the Schedule is authorized for inclusion of OLMs, and (2) the Order-Level Materials SIN will not be the only awarded SIN under the contract.