



**DEFENSE LOGISTICS AGENCY**  
**Disposition Services**

**INVITATION FOR BID (IFB)**

**Number 18-0340**

**SURPLUS USABLE PERSONAL PROPERTY**  
**TERM SALE**

**STEP TWO OF TWO-STEP SOLICITATION**

**28 November 2017**

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**SURPLUS USABLE PERSONAL PROPERTY  
INVITATION FOR BID  
Number 18-0340**

**STEP TWO OF TWO-STEP BIDDING PROCESS**

This Invitation For Bid (IFB) is issued by DLA Disposition Services to initiate Step Two of a two-step sealed bid. The only bids the Sales Contracting Officer (SCO) may consider for award of a contract are those received from bidders that have submitted an acceptable technical proposal during Step One of this solicitation under RFTP 18-0340.

The successful bidder's technical proposal shall be incorporated into any contract awarded in response to this IFB, thus any deviation from the proposal will require a contract modification. Terms within the technical proposal and IFB are not negotiable and cannot be removed or rejected by the bidder.

***In all other respects, the provisions of this IFB shall govern the contract contemplated hereby without regard to assumptions, plans, forecasts, conditions or any other matters set forth in any prospective bidder's technical proposal submitted in Step One.***

Forms for submitting a bid are provided on the DLA Disposition Services web site, <http://www.dla.mil/DispositionServices/Offers/Public-Sales-Offerings/Bidding/>. Your completed Bid Forms and \$50,000.00 bid deposit must be delivered in person to and received by DLA DISPOSITION SERVICE'S SCO before the bid opening at 11:30 a.m. EST on Tuesday December 5<sup>th</sup>, 2017. Address your bid Forms and bid deposit to:

Mr. Keoni L. Taylor  
Lead Sales Contracting Officer (SCO)  
DLA DISPOSITION SERVICES J-422  
74 North Washington Avenue  
Battle Creek, Michigan 49037-3092  
Fax: (269) 961-7568

## GENERAL STATEMENTS OF CONTRACT

***Certain contents and provisions of this IFB, including Appendices, Attachments and Schedules, are described in general. The following General Statements of Contract are not intended to be complete and do not take precedence over the terms and conditions of this contract. The requirements for all matters discussed in the General Statements are fully defined in the Terms and Conditions Section of this IFB. Any historical data provided in this IFB was derived using existing sources and is presented for general reference only.***

This is a firm fixed price contract where the bid price is expressed as a percentage of acquisition value. The Government expects the buyer to perform all the requirements under this contract at the bid price provided by the Contractor. The Government guarantees to issue the Contractor 75,000 DTIDs of property annually, or property having an annual acquisition value of \$112.5M, whichever is the lesser to meet contract minimums. The maximum amount of property issued annually will not exceed the greater of 122,947 DTIDs of property or property having an annual acquisition value of \$517M. Annually is defined as any continuous 12 month period of time during the contract performance period excluding the Phase-In and Phase-Out Periods.

The Government will determine items to be sold to the Contractor regardless of Federal Supply Code or location. Contractor has no right to any property that is not issued on a Delivery Order under the terms of this contract. DLA Disposition Services reserves the right to sell property or offer property through alternative sales or contract means for all property not considered part of this contract.

This IFB relates to usable personal property that the Government has determined to be surplus to the needs of the Department of Defense and the Federal Government. Property in the East Region which includes all Disposition Service Sites East of the Mississippi River to include Puerto Rico, and possibly the Virgin Islands

Surplus usable personal property is defined as an item of personal property that has been determined to be safe to sell with Demilitarization (DEMIL) code A or Q6 and a Department of Defense (DOD) condition code of A-H. Additionally, DLA Disposition Services may include hazardous material (e.g. lead acid batteries, paints, sealants, or fuels) upon mutual agreement of the contractor. Finally, while rolling stock and usable electronic equipment is within the definition of usable property, DLA Disposition Services intends to use separate contracts for the sale of these items. If rolling stock or electronic equipment are offered under this contract in the future, it will require mutual agreement of the parties, and contractor will be required to have or obtain appropriate certifications (i.e. "E-steward" certification for electronics) and meet other requirements (i.e. Automatic Data Processing Equipment (ADPE) measures) associated with sale of this property prior to issuance.

Usable personal property as offered under this IFB does not contain scrap which is defined as property which has no value except for its basic material content. For purposes of this contract, the term usable property also excludes records of the Federal Government and Naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.



All property covered under this contract is being sold “as-is” and “where is.” No request for adjustment in price for any item or rescission of the sale will be considered. This is not a sale by sample and property issued under the terms of this contract may not be rejected by the Contractor, unless an item has a reported acquisition value in excess of \$10 million dollars. The Contractor has sole discretion in rejecting items with an acquisition value over \$10 million dollars. The United States Government (USG) is the sole arbiter of determining condition code and determining whether property is considered usable under its property regulations and thus eligible for referral under this contract. Contractor’s opinion, ability to sell or market, or the availability of customers for items have no bearing on whether the government considers the item usable. No changes, modifications, downgrades to scrap, or reduction of acquisition value will be applied. Under no circumstances is culling for the purpose of effecting partial or incremental removals authorized.

In the East Region, DLA Disposition Services facilities receive property at sites located East of the Mississippi River to include Puerto Rico, and possibly the Virgin Islands. DLA Disposition Services sites may also receive property that is not located at a DLA Disposition Services facility, and may refer for sale to the Contractor at a “Receipt in Place” (RIP) location within the geographic areas included within the awarded contract. Property from DLA Distribution Centers called Recycling Control Point (RCP) property will be issued and delivered directly to the Contractor at Government expense. Issuance of RCP property may be removed from this contract at any point in time with thirty (30) days’ notice from the SCO. DLA Disposition Services field sites and DLA Distribution Centers may be relocated to other geographic locations to meet the needs of the agency, and will require contractor to relocate workforce and equipment as needed, at the expense of the contractor to include transportation.

The Government shall issue consolidated list(s) of property being transferred to the Contractor on the Delivery Order (DO). For property shipped from DLA Disposition Service sites or RIP sites to the Contractor’s designated facility, Contractor must do a joint inventory of the DO at the Disposition Site or RIP site prior to the property being released for shipment out of the Disposition Services control. The joint inventory will be signed by the issuer (DLA Disposition Services) and the receiver (Contractor). The signed and annotated DO represents the official transfer of title. Line item discrepancies must be identified to DLA Disposition Services at the time of the joint inventory. For RCP property shipped directly to the Contractor’s designated facility at Government expense, the Contractor must immediately notify the Disposition Services personnel assigned to the Contractor’s warehouse of any inventory discrepancies as soon as they are discovered. In all cases, this notification must be provided to the USG within Fifteen (15) days of the Contractor’s receipt.

Contractor is limited to no more than one (1) location within the East Region for shipment and storage of RCP property shipped at government expense. The Government reserves the right to ship RCP property to any facility within the United States at its sole discretion, including to facilities outside the East Region that are operated under separate contracts. For these direct shipments of RCP property, the Contractor must create a tracking system to record receipt of partial shipments for Credit, Debit, and accountability purposes.

At Contractor’s RCP warehouse, the Contractor is required to allocate private office space at its facility for two (2) government employees that is located within Contractor’s warehouse office management area in a temperature controlled area that is appropriately furnished. At a minimum, furnishings will include, but are not limited to two (2) desks, two (2) office chairs, two (2) hard phone lines, two (2) hard wired secure internet lines and WIFI access for two (2) employees, and access to all building amenities during the duration of this contract, to include option years. Contractor is required to

allow Government presence at these locations as needed to conduct compliance reviews and operating procedures related to this contract. Finally, Contractor is required to provide controlled storage space that is gated from floor to ceiling and locked with the capability of storing up to two (2) truckloads of property. Access to the space must be controlled by an in and out signature control log with restricted access to the space. After property has been cleared for shipment by the USG, Contractor will do all packing, handling, and crating to include loading blocking and bracing of the Governments conveyance as needed for shipment back to DLA Disposition Services.

At DLA Disposition Services sites, the Contractor will not be provided with permanent indoor or outdoor storage space for property, or any space to store equipment, (including MHE), at any location where the Contractor is required to remove property, except as noted herein. Temporary storage areas with a minimum capacity of 24 pallet spaces will be provided to accumulate property before Contractor removal. Additionally, space equivalent to 3 pallet spaces will be provided for packing, crating and handling supplies. Disposition Services Area Managers may delegate authority to the CV POC to approve additional temporary storage space on a case-by-case basis. MHE and/or other equipment may not be stored in these temporary storage areas. DLA Disposition Services will move property to the temporary storage location for shipment to the Contractor storage facility. This temporary storage location is provided to the Contractor for packing, crating, handling, and transportation coordination only. Property must be removed within three (3) business days after email notification has been made to the contractor by the DLA Disposition Services field site. Removals must be scheduled to occur during the Disposition Services site's normal working hours with coordination with the CV POC. Special circumstances may arise where DLA Disposition Services will allow certain property to remain at a Government facility after email notification for removal has been given, however, written authorization from a DLA Disposition Services Area Manager for these exceptions are required. The Contractor will be charged storage charges for property not removed from a Government facility within 3 business days of the email notification, unless prior approval has been granted by the DLA Disposition Services Area Manager. Normally, approval will not exceed thirty (30) days.

For removals from DLA Disposition Service sites or RIP locations, the Contractor will pay for any and all transportation costs associated with shipments. Contractor will coordinate with the CV POC for contractors conveyance pick up time frame. On the agreed day of pick-up, DLA Disposition Services will tailgate load property up to the maximum capacity of the field site loading equipment capabilities. DLA Disposition Services personnel will make the initial placement of the property on conveyance(s) furnished by the Contractor and the initial placement of the Contractor's conveyance shall be determined by the Government. The Government will not block, chock, brace, lash band or in any other manner secure the cargo on such conveyance(s) furnished by the Contractor. Contractor personnel will not be permitted to operate Government owned MHE. For RIP locations, if Government furnished MHE cannot be made available, the Contractor is responsible for the cost of providing MHE to remove the property.

For purposes of bidding on this contract, Bidders should not assume that property may be resold on a Government facility or at Receipt in Place (RIP) locations. Reselling of property at Government facilities or RIP locations will be on an extremely limited basis and must be approved by the Area Manager and the SCO.

The successful bidder commits to purchase property issued under this contract for a twenty-four (24) month performance period commencing from the date of submission of the initial Delivery Order to the Contractor. DLA Disposition Services may exercise options to extend the performance period for up

to an additional forty-eight (48) months via four, twelve month options, based on Government requirements and mutual agreement of the contractor.

An offeror's bid will consist of a bid percentage specified by the bidder for the Government's acquisition value of all property received. The contract will be offered to the responsive responsible bidder offering the highest bid percentage. The successful bidder agrees to pay the Government the bid percentage offered based on the Government's acquisition value for each line item issued. This is referred to in the contract as the Billing payment.

Within ten (10) business days of contract award, the Contractor must provide a payment deposit which is the average estimated quantity of such material to be generated during a 3-month period multiplied by 20 percent of the bid price. This amount is in addition to the \$50,000 bid deposit required at the time of bid submission. The payment deposit will be held by DLA Disposition Services until the conclusion of the contract wind-down period. The Contractor is also required to provide a financial guarantee bond in the amount of \$1.5 million dollars within thirty (30) business days of award.

Prior to award, the Contractor will be required to obtain a Trade Security Control (TSC) assessment by providing the Sales Contracting Officer a properly completed End-Use Certificate (EUC) in the form of a DLA Form 1822 within two (2) Business days of notification of being the Apparent High Bidder (copy available on the DLA Disposition Services web site, <http://www.dla.mil/DispositionServices/Offers/Public-Sales-Offerings/Forms/>). The TSC Assessment investigation verifies the entity as claimed, that the entity is doing business at the name and location claimed, and that there are no disqualifying factors present (i.e. convictions for illegal export of military technology, debarment by a Government activity, etc.).

Contractor is required to comply with Department of State and Department of Commerce export laws and regulations when re-selling property obtained from DOD. To this end, Contractor must have sufficient processes to screen re-sale purchasers and provide notice to all re-sale purchasers of their obligations to follow all export law and regulations.

All property that the Government issues under this contract requires property assurance responsibilities on the part of the Contractor which may result in the property being returned to the Government. DLA Disposition Services will furnish the Contractor a Do-Not-Sell (DNS) List, (with periodic updates, as necessary) and a Demilitarization Code Change (DCC) List (with periodic updates, as necessary) representing items that are or have become prohibited from sale. The contractor will return any item on the DNS and DCC lists prior to release to resale customers and shall identify the return by the applicable Delivery Order and Disposal Turn-In Document (DTID). The contract terms preclude the resale of items that DLA Disposition Services has identified as becoming controlled or DEMIL required and placed on the DNS or DCC List. Contractor is required to provide controlled storage space within each warehouse that is gated from floor to ceiling and locked with the capability of storing up to two (2) truckloads of property. Access to the space must be controlled by a sign in and out control log with restricted access to the space. After property has been cleared for shipment by the USG, Contractor will do all packing, handling, and crating to include loading blocking and bracing of the Governments conveyance as needed for shipment back to DLA Disposition Services. Contractor will send a transportation request via email to the USG employees at the Contractor's RCP warehouse for a controlled property return transportation request. The Government will refund the contractor its purchase price for such items. The contractor should not expect any other type of relief that is based

upon or related in any manner to an unanticipated level of effort or additional effort necessary to the handling of any item on the DNS and DCC lists prior to release to resale customers.

Contractor must develop a web-based application for use on this contract with regard to reviewing property to determine, and confirm sales eligibility. The Government and Contractor shall refer to this application as the Quarantine Tool (Q-Tool). Ultimately, the Q-tool will serve as a five (5) - business day Government preview area of all items the Contractor is preparing to offer for sale. During the five (5)-business day preview, the Contractor is not allowed to make property visible to the general public. The Government must notify the Contractor of any item not eligible for sale within the 5-day preview time.

Certain property identified for return may have already been resold by the Contractor and may no longer be in the Contractor's possession. The contractor should advise its resale buyers, prior to or at point of purchase, that due to national security, the Government may require the return of property. Contractor will be required to inform its customer of the property's status and request that it be returned. Contractor agrees to withhold further sales participation from customers who are non-responsive or who refuse to return the property still within their possession.

There will also be occasions when the Government will require the return of property issued to the Contractor because it is required for DLA Disposition Services RTD mission. DLA Disposition Services does not anticipate a large volume of property will be required in this manner. DLA Disposition Services will refund the Contractor's purchase price for the return of the items requested by DLA Disposition Services and will advise Contractor of the return process at DLA Disposition Services expense. DLA Disposition Services will not compensate for loss of revenue due to recall of the property.

Contractor agrees to fully cooperate with the Government when informed by DLA Disposition Services of any reviews or investigations by any DOD, DLA, or Federal Government investigative service or agency. Contractor agrees to provide DLA Disposition Services with all requested information regarding the property or information relating to the customer purchasing the property. This may include but is not limited to interviewing Contractor employees or sub-contracted employees within three (3) business days of Government notice. Contractor must make all sales records, property, and customer's records pertaining to such investigations available to DLA Disposition Services upon request not to exceed three (3) business days of request.

The Contractor is required to participate in the Government's Federal Asset Sales (eFAS) Program by maintaining a link to their web site on the GovSales.gov website. Contractor will not be allowed to post property directly into the GSA managed web site. The Contractor agrees to maintain and manage a working Hypertext Markup Language (HTML) object that allows customers to link to the Contractor's web site by clicking on the link. This requirement may change due to IT demands and requirements of the Government. Contractor will be notified thirty (30) business days prior to changes.

Contractor agrees to provide quarterly reports containing the following information, at a minimum, but not limited to: total DTIDs sold, total gross proceeds, contractor net sales revenue, average cycle time, FSG 23 and FSC 2420 items sold at or above market value, small business reporting, and any other required documentation that is needed for DLA Disposition Services.

The contract requires that the Contractor fulfill certain requirements related to national security, customer service, and compliance review. The Contractor must be fully auditable and remain

cooperative with DLA Disposition Services audit requirements to include accounting statements, insurance coverage, inventory control/asset tracking, inventory aging, and returning/retrieving controlled property, both prior to resale and after. Any and all of the Contractor's records must be made available to DLA Disposition Services. Records will be made available in either electronic or hard copy form as requested by DLA Disposition Services within three (3) business days of request. Contractor should not expect any equitable relief or any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary related to national security, DLA customer service, and/or compliance reviews.

The Government reserves the right to conduct a post-award conference as early as two weeks after award. The purpose of the conference is to ensure the Contractor fully understands the terms and conditions of this contract. The location and date of the conference will be determined by DLA Disposition Services and the costs incurred by Contractor personnel attending shall be paid in full by the Contractor without reimbursement by DLA Disposition Services.

Prospective bidders should be aware of certain risk factors that could affect a bidder's assessment of this contract and the calculations supporting the resulting bid. Under no circumstances is DLA Disposition Services/the Government responsible for any assumptions, planning factors, or decisions the contractor made related to determining their high bid. This is a firm fixed price contract where the bid price is expressed as a percentage of acquisition value. The Government expects the buyer to perform all the requirements under this contract at the bid price provided by the Contractor. At no time will the Government pay the Contractor to take property, sell property, or adjust bid pricing of contract or individual items due to the Contractor's inability to sell or market the property streams. There will be no reimbursement to the Contractor under this contract except for the limited circumstances related to reimbursement of actual expenses incurred for return of property directed by the Government. The Government is not responsible for any indirect, inconsequential, or unanticipated (through assumption of sales value, act or omission of factors) expenses related to performance under this contract. Although DLA Disposition Services does not represent that it has identified all such risk factors, the following, in addition to those risks identified elsewhere in this IFB, should be considered by a prospective bidder:

**The future volume, quality, condition, market value, types (i.e., distribution of property referrals across Federal Supply Classes (FSCs), and geographic concentrations (i.e., referrals for sale at delivery points) of the property cannot be predicted. Applicable statutes, regulations, policies and inter-service agreements govern whether the disposition of particular items of surplus is through DLA Disposition Services or through other disposition methods. The volume and nature of the property referred for sale under this contract could be affected by such changes.**

Described generally, applicable statutes and regulations grant DLA Disposition Services less flexibility to agree to amend a contract after award than prospective bidders may have experienced in other contractual settings. Contractor should not expect any equitable relief or any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary to fulfill contract obligations as written. Prospective bidders should assume that the provisions of the contract cannot be significantly amended after award.

## ITEM DESCRIPTION

It has been determined that after the completion of the DOD/DLA Disposition Services Reutilization, Transfer, and Donation process, the items within the property pool are surplus by the Department of Defense or Federal Government and consist of:

The property will be comprised of excess and surplus usable personal property at sites in the East Region which includes all Disposition Service Sites East of the Mississippi River to include Puerto Rico, and possibly the Virgin Islands. The property has been identified by the Government as safe to sell. Usable property is defined in the DEFINITIONS section of this Invitation. Property issued under this contract will be assigned a demilitarization code of A or Q6.

Described very generally, a demilitarization code is a single alpha character assigned to the item. For the purposes of this IFB, the following definitions are provided:

**DEMIL Code A** – Items subject to the Export Administration Regulations (EAR) in parts 730-774 of Title 15, Code of Federal Regulations (CFR) (CCLI or EAR99) and determined by the DOD to present a low risk when released out of DOD control. No further demilitarization, mutilation or end use certificate (EUC) is required. May require an export license from Department of Commerce.

**DEMIL Code Q6** – Commerce Control List Items (CCLI) that have been determined to be non-sensitive and are authorized for release within the United States. Demilitarization not required, however DOD Trade Security Controls required at time of disposition. Subsequent buyers must be advised of Department of Commerce regulations for re-sale and exporting items. Mutilation to the point of scrap is required outside the United States, however Q6 property will not be issued under this contract outside the U.S.

Each line item of property will be identified by either a National Stock Number (NSN) or a Local Stock Number (LSN). A National Stock Number is simply the official label applied to an item of supply that is repeatedly procured, stocked, stored, issued, and used throughout the federal supply system. It is a unique item-identifying series of numbers. When a NSN is assigned to an item of supply, data is assembled to describe the item. Some data elements include information such as an item name, manufacturer's part number, unit price, and physical and performance characteristics. NSNs are an essential part of the military's logistics supply chain used in managing, moving, storing, and disposing of material.

Local Stock Numbers (LSNs) consisting of a Federal Supply Class (FSC), NATO Codification Bureau Code, and noun/nomenclature and/or part number if no valid NSN exists. LSNs are assigned when an NSN is not available or Non-existent. The acquisition value of an item identified by LSN is determined by the generator and reported to DLA Disposition Services on the documentation associated with release of the item by the generator to DLA Disposition Services. LSN acquisition values are either the generator's recorded original procurement cost or its estimate of the item's replacement cost. In some instances, DLA Disposition Services receiving personnel will correct the generator's turn-in documentation by replacing an LSN with an NSN. In such cases the item's acquisition value is that corresponding to the NSN rather than that originally reported by the generator.

## PROPERTY GENERATIONS DATA

The link provided, <http://www.dla.mil/DispositionServices/Offers/CustomerSupport/Library/saleshistoricaldata.aspx>, provides historical information relating to past generations of usable property similar to what is being offered in this IFB. The data provides a sales history to include returns of FSCs, DEMIL Codes, line items and acquisition values. Bidders are advised that any sales history information provided is for informational purposes only. Prior year property generations and sales data are not predictors of future generations or sales.

## **ADDITIONAL TERMS AND CONDITIONS OF SALE**

The sections identified below contained in the pamphlet entitled, “Sale by Reference – Instructions, Terms and Conditions Applicable to Department of Defense Personal Material Offered for Sale by DLA Disposition Services, July 2012” (hereinafter, Sale by Reference), are hereby incorporated by reference and becomes a part of this IFB and any resulting contract:

Part 1 General Information and Instructions - All condition except 4.  
Part 2 Sale of Government Property General Sale Terms and Conditions - All Conditions except Articles 4, 7, 12, 14, 28, 29, 30, 31, 32, and 33.  
Part 5 Additional Special Circumstance Conditions - Miscellaneous - Articles F, H and L.  
Part 7 Additional Special Circumstance Conditions - Hazardous and Dangerous Property - Miscellaneous Articles A, B, C, D, E, F, R, S, T, and U.

A copy of the Sale by Reference is available on the DLA Disposition Services web site, <https://www.sales.dla.mil/dlab2b/init.do>

### Instruction to link

- **On the Left hand side under “Links” select View Sales Documents**
- **A list of PDF documents will appear**
- **Select Sales by Reference Pamphlet – July 2012**

Note: Where articles in the IFB contradict any articles in the Sale by Reference, the Articles in the IFB shall over-ride the Sale by Reference.

## **TERMS AND CONDITIONS OF SALE**

The following Articles apply and constitute the terms and conditions of this sale:

### **ARTICLE ONE**

#### **Bid Evaluation and Contract Award**

**Section 1 – Bidding Process** – The bidding process will commence on the bid opening day and time specified by the Government. Bidders are expected to arrive at the bid opening with the required bid deposit and a sealed bid consisting of one bid percentage specified by the bidder in person. The bid must be expressed as a percentage of the acquisition value of the property delivered under this contract (must exceed zero), and only two (2) digits to the right of the decimal without rounding. The SCO will open each sealed bid at the specified bid opening day and time. Bids will be read by the SCO. The high bid offered at that time will be considered the apparent high bid.

**Section 2 – Bid Evaluation** – Award will be made to the responsive, responsible bidder that offers the highest bid price. The Government reserves the right to not award a contract if such contract is deemed not to be in the Government's best interest or if Bidder is found non-responsible.

**Section 3 – Contract Award** – The SCO will determine if each bid is responsive and responsible prior to award of the contract. The contract will be awarded to the highest responsive, responsible bidder. In the event of a termination of the original Contractor within one hundred eighty (180) calendar days of the date of award, the SCO may award the contract to the next highest responsive, responsible bidder if bids have not expired, and such award is otherwise determined to be in the Government's best interest, price and other factors considered.

**Section 4 – Post-Award Conference** – The Government reserves the right to conduct a post-award conference as early as two weeks after award. The purpose of the conference is to ensure the Contractor fully understands the terms and conditions of this contract. The location and date of the conference will be determined by DLA Disposition Services and the costs incurred by Contractor personnel attending shall be paid in full by the Contractor.

**Section 5 – Pre-Award Survey** – The Pre-Award survey is one of the factors used by the Government to ensure the Contractor's ability to satisfactorily perform the work in accordance with their technical proposal submitted in step-one of this solicitation. After solicitation opening/closing and prior to award, the Government may conduct a Pre-Award survey of one or more bidders who may become eligible for award after final evaluation. The Pre-Award survey may be conducted at the Contractor's



facility(ies) or other location(s) as deemed necessary by the Government and may include a review of Contractor's facilities and equipment, financial capability or disclosure of a Contractor's financial condition, quality assurance, safety, and transportation. Bidders must cooperate in the Pre-Award process by assisting in arrangements and/or by providing requested information in a timely manner. Bidders are advised that accomplishment of a Pre-Award survey or furnishing documents to the Government in support of the Pre-Award survey is part of the evaluation of the responsibility process and is not to be construed as an indication that a bidder will receive award of a contract.

## **ARTICLE TWO**

### **Parties to the Contract**

**Section 1 – Contractor Information** – Within thirty (30) calendar days of the date of contract award, the Contractor shall provide DLA Disposition Services the following information:

- (A) Designation of key persons, if any, in addition to those identified in Contractors technical proposal.
- (B) Contractor shall provide the SCO notification of any changes to the above within ten (10) calendar days of the change.
- (C) Certain Contractor personnel must have a background check and obtain a Contractor's Access Card (CAC) in order to enter and conduct business at DLA Disposition Services Field Site locations. The SCO will assist the Contractor in completing this process.

### **Section 2 – Transfer and Hypothecation**

- (A) **General Prohibition** – Except as specifically provided herein or specifically approved by DLA Disposition Services in writing, the Contractor may not directly or indirectly sell, transfer, assign, pledge, offer as collateral or otherwise hypothecate all or any part of its rights or obligations under the contract. Any contract awarded under this IFB is subject to the Assignment of Claims Act. (41 USC 15, et al.)
- (B) **Attempted Transfer** – Any attempted transfer in violation of the provisions of this Article shall be null and void, and shall constitute a material breach of this contract.

### **Section 3 – Contract of Sale**

(A) **Relationship of Parties** – This contract is an agreement for the sale of the property by DLA Disposition Services as seller to Contractor as the buyer. The Contractor and DLA Disposition Services expressly disavow the creation of any other relationship, including without limitation principal-agent, master-servant, employer-employee, general or limited partnership, or joint venture, between DLA Disposition Services and the Contractor.

(B) **Parties to Contract** – The parties to this contract are DLA Disposition Services and the Contractor. The exclusive representative of DLA Disposition Services for all purposes under this contract is the SCO and all notices, demands, requests, consents, approvals, declarations, reports and

other communications to DLA Disposition Services from the Contractor shall be deemed ineffective unless addressed to the SCO. Communications from the Contractor to anyone other than the SCO shall not be deemed received by DLA Disposition Services.

**Section 4 – Authority of Sales Contracting Officer (SCO)** – On behalf of DLA Disposition Services, the SCO has the authority to represent DLA Disposition Services and to commit DLA Disposition Services to take such actions as permitted or required and to extend or waive timing requirements or deadlines as may reasonably be required under the performance of this contract.

## **ARTICLE THREE**

### **Contract Financial Retention**

**Section 1 – Bid Deposit** – Each bid must be accompanied by a refundable bid deposit in the form of a guaranteed instrument (**cashier’s or certified check**) in the amount of fifty thousand dollars (\$50,000.00) payable to U.S. Treasury. DLA Disposition Services will retain the Contractor’s bid deposit until completion of contract closure and all lines of accounting have been reconciled by DLA Disposition Services. The bid deposit will be applied to any unpaid billings or to offset any other claim that DLA Disposition Services may have against the Contractor. DLA Disposition Services shall return any available balance of the bid deposit, without interest, to Contractor when the completion of contract closure has been completed, and all lines of accounting have been reconciled by DLA Disposition Services. The bid deposits of unsuccessful offerors will be returned after the conclusion of the bid opening process.

**Section 2 – Payment Deposit** – Within ten (10) calendar days of notification by the SCO, Contractor shall provide DLA Disposition Services with the Payment Deposit. The amount of the Payment Deposit required is the average estimated quantity of such material to be generated during a 3-month period multiplied by 20 percent of the bid price. The payment deposit must be made via guaranteed instrument (cashier/certified check) wire transfer or Electronic Funds Transfer (EFT). DLA Disposition Services will retain the payment deposit until the completion of the wind-down period. The payment deposit will be applied to any unpaid billings or to offset any other claim that DLA Disposition Services may have against the Contractor. DLA Disposition Services shall return any available balance of the payment deposit, without interest, to Contractor at the completion of the wind-down period.

**Section 3 – Financial Guarantee Bond** – Within thirty (30) calendar days of notification by the SCO, Contractor shall provide Disposition Services a financial guarantee bond in favor of DLA Disposition Services in the amount of three million dollars (\$3,000,000.00). The purpose of the Financial Guarantee Bond shall be to provide a source of payment to DLA Disposition Services in an amount reasonably sufficient to satisfy the financial obligations of Contractor or for damages arising out of a material breach by Contractor. The Financial Guarantee Bond shall be issued by such surety and in such form that are acceptable to DLA Disposition Services. The Bond shall be carried for the duration of the contract, however, may be renewed on an annual basis, renewable at the sole option of the surety.

## **ARTICLE FOUR**

### **Contract Performance**

**Section 1 – Performance Period** – Subject to the early cancellation option provisions and the Termination for Convenience of the Government provisions, the Government shall provide property for a twenty-four (24) month period from the date of the initial delivery order to Contractor. DLA Disposition Services may exercise four option periods to extend the performance period for up to an additional forty-eight (48) months based on Government requirements. Option periods will normally be in one-year increments, however the Government reserves the right to exercise option periods for shorter periods of time. The Government may extend the term of this contract by written notice to the Contractor within one hundred and twenty (120) calendar days. The Government will strive to provide an earlier preliminary written notice of its intent to exercise an option period at least one hundred eighty (180) calendar days before the contract expires. The preliminary notice does not commit the Government to exercise the option and failure to provide the preliminary notice does not preclude the exercise of an option period.

**Section 2 – Phase-In Period** – The Contractor must be fully operational and prepared to accept all property on the DO within thirty (30) calendar days of award. DLA Disposition Services Field sites will be phased in within the first 3 months of the contract. Contractor will be given a phase in calendar during post award conference. If Contractor is unable to receive property on the Delivery Order (DO) after the first week of the phase in period, DLA Disposition Services shall have the right to sell property to other buyers until the Contractor is functional and able to receive property. Contractor must notify the Government when they are ready to accept property. Contractor may request acceleration of referrals at any delivery point, and DLA Disposition Services will respond to such request in the exercise of its sole discretion.

**Section 3 – Termination for Convenience of the Government** – The Government may terminate performance of work under this contract if the SCO determines that a termination is in the Government's interest. The SCO shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Note that, for purposes of this provision, the discontinuation of property referrals from a certain geographic area within the geographic scope of the contract, e.g. Texas, shall not be considered a partial termination if the Government has or will otherwise meet its contract minimums for the contract. Nor shall the discontinuation of referrals of a certain type of property due to regulatory or policy changes impacting disposition of certain usable items be considered a termination.

After receipt of a Notice of Termination, and except as directed by the SCO, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Unless otherwise directed by the SCO, place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities.
- (3) Terminate all subcontracts to the extent they relate to sales of future property to be generated from the areas where the work or sales referrals have been terminated.
- (4) Unless otherwise directed by the SCO, identify to the Government any property in the Contractor's possession in which they believe the Government has an ownership interest including any

property which the Government is entitled to have returned, such as property on a Do-Not-Sell (DNS) or Demilitarization Code Change (DCC) list, or property which the Government has specifically directed be returned.

(5) With approval or ratification to the extent required by the SCO, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and relating to the return of Government property currently in the Contractor's possession.

(6) Take any action that may be necessary, or that the SCO may direct, for the protection and preservation of the property related to this contract that is under title and/or in the possession of the Contractor or subcontractor and in which the Government has or may acquire an interest until surrendered to the Government or its agent. The Contractor and SCO shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

(7) This is a firm fixed price contract involving the sale of usable surplus Government property. As long as the guaranteed contractual minimums have been met, it is not anticipated that the Government will be responsible for Contractor costs arising out of the termination of the contract in whole or in part, except such costs as may arise from the obligations to complete final reporting responsibilities and to return property for which the Government has directed return or which is required to be returned under the terms of this contract.

If the Contractor has any costs it wishes the Government to consider prior to the Government assessing settlement costs, they must be submitted within fourteen (14) calendar days of final removal of returned surplus property to the Government. Any cost submitted by the Contractor must be determined to be allocable, allowable, and reasonable and supported with documentation to the degree required by the SCO. Unless extended in writing by the SCO, upon written request of the Contractor, the SCO shall determine the settlement proposal within fourteen (14) calendar days of receipt of any submission of final Contractor settlement costs. If the Contractor fails to submit their proposal for settlement cost within the time allowed, the SCO may determine, on the basis of information available, the amount, if any, due the Contractor or owed by the Contractor. If the Contractor pays for return of the property issued on Delivery Order, the cost of return of the property issued by Delivery Order will be offset by any payment the Government has already received for said property. If the Government pays for the return of property payment received for the property will be returned less any Government determined settlement costs to be paid by the Government.

The Contractor has fourteen (14) calendar days to review the contract settlement proposal and request any additional information. Payment to be made by either party shall be made within thirty (30) calendar days of Contractor receipt of the settlement proposal. Any amount due the Contractor may include a reasonable allowance for profit for work completed. If the Contractor fails to pay settlement cost within the specified time, the cost will be deducted from any deposit funds available from the performance of this contract. Any remaining funds from the deposit will be returned by the Government.

If the Contractor and the SCO fail to agree on the amount that may have been determined due to the Contractor by the Government due to the termination of the sales contract, the SCO shall pay the Contractor the amounts determined by the SCO within the specified time. Any amount due to be paid by the Contractor and not paid within the specified time period shall be charged interest based on the rate determined by the Secretary of Treasury.

The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the SCO, except that if the Contractor failed to submit the termination settlement proposal or a request for equitable adjustment within the time provided.

In arriving at the amount due the Contractor under this clause, there shall be deducted;

- (1) Any claim which the Government has against the Contractor under this contract; and
- (2) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

This clause has the same full effect, if this contract is terminated in partial.

Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor’s costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor’s office, at all reasonable times, without any direct charge. If approved by the SCO, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**Section 4 – Wind-Down Commencement Date** – Beginning with the date that is the earlier of either the end of the performance period or the effective date of termination by reason of DLA Disposition Services or by reason of a material breach, the contract shall wind-down for a period of one hundred eight days (180) calendar days.

**Section 5 – Cessation of Property Referrals** – There shall be no further referrals of property by DLA Disposition Services to Contractor from the wind-down commencement date forward. Submission of Contractor required reports shall continue as before the wind-down commencement date until the wind-down is completed.

**Section 6 – Conduct of Wind-Down** – From the wind-down commencement date forward, the Contractor shall perform their remaining obligations hereunder in accordance with the provisions of this contract.

## **ARTICLE FIVE**

### **Distributions/Payments**

**Section 1 – Monthly Billing Property Payment** – The Contractor will pay DLA Disposition Services the Contractor’s bid price of a property’s acquisition value as billed. The Statement Of Account SOA(s) will reflect the billing payment for property that was issued to the Contractor for the past thirty

(30) calendar days. Contractor is strongly encouraged to submit payment to DLA Disposition Services no later than the 20th of each month.

**Section 3 – Method of Payment** – Payments made to DLA Disposition Services will be via an Electronic Funds Transfer (EFT). The account number for EFT and wire transfers will be provided by the SCO and updated whenever necessary.

**Section 4 – Failure to Make Timely Payment** – Should Contractor fail to pay to DLA Disposition Services the full amount owed as reflected on the SOAs each month on or before the date that such payment is due, DLA Disposition Services will, stop the flow of property until account is in good standing. SCO will notify Contractor that such failure constitutes a material breach of contract that the Contractor must cure within ten (10) calendar days. The Contractor shall be assessed all applicable fees, penalties, and interest on the payment based on the current rate as determined by the Department of Treasury. All fees will be added to the next month's Statement of Account(s). Contractor cannot deduct any amount from monthly billing to offset unauthorized, or unprocessed credits, or credit requests, doing so constitutes a material breach of contract.

## **ARTICLE SIX**

### **Product Pool, Property Referrals and Title Transfer**

**Section 1 – Product Pool:** Surplus usable personal property is defined as an item of personal property that has been determined to be safe to sell with a DEMIL code A or Q6 and a Department of Defense (DOD) condition code of A-H. Additionally, DLA Disposition Services may include hazardous material, for example lead acid batteries, paints, sealants, or fuels upon mutual agreement of the Contractor. Finally, while rolling stock and usable electronic equipment is within the definition of usable property, DLA Disposition Services intends to use a separate contracts for the sale of these items. If rolling stock or electronic equipment are offered under this contract in the future, it will require mutual agreement of the parties, and Contractor will be required to have obtained appropriate certifications (i.e. "E-steward" certification for electronics) prior to issuance of this property.

Usable personal property as offered under this IFB does not contain scrap which is defined as property which has no value except for its basic material content. For purposes of this contract, the term usable property also excludes records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

All property covered under this contract is being sold "as-is" and "where is." No request for adjustment in price for any item or rescission of the sale will be considered. This is not a sale by sample and property issued under the terms of this contract may not be rejected by the Contractor. Except for the exception noted in paragraph A below, the USG is the sole arbiter of whether property is considered usable under its property regulations and thus eligible for referral under this contract. Purchaser's opinion, ability to sell or market, or the availability of customers for items have no bearing on whether the government considers the item usable. No changes, modifications, downgrades to scrap, or reduction of acquisition value will be applied. Under no circumstances is culling for the purpose of effecting partial or incremental removals authorized.

(A) **Line Item Excessive Acquisition Value** – Any line item with a reported acquisition value in excess of \$10M (ten million dollars) shall be excluded from this contract at the sole option of the Contractor. The SCO must be notified by the contractor within fifteen (15) calendar days of title passing to the Contractor of the reported item. Any reported items shall be returned to DLA Disposition Services and the Contractor’s purchase price shall be refunded by DLA Disposition Services. The Contractor shall be responsible for any cost associated with the return of property to DLA Disposition Services.

## Section 2 – Property Referrals

(A) **Location** – Property that is referred for sale to the Contractor shall be located in the East Region, DLA Disposition Services facilities receive property at sites located East of the Mississippi River to include Puerto Rico, and possibly the Virgin Islands

(B) **Receipt In Place (RIP)** – DLA Disposition Service sites may also receive property that is not located at a DLA Disposition Services facility and, may refer for sale to the Contractor at a “Receipt In Place” (RIP) location within the East Region.

(C) **Property Shipped Directly to the Contractor Facility** – DLA Disposition Services may also issue Recycling Control Point (RCP) property from DLA Distribution Centers. RCP property released by the DLA Distribution Centers will ship directly to the Contractor’s one (1) designated facility within the region at Government expense.

(D) **Contractor’s Receipt of Direct Shipments** – The frequency of the trucks arriving at the Contractor’s one designated facility within the region will fluctuate based on various surges of property. For planning purposes, the Contractor must be prepared to receive 60 trucks per week. This is not a delivery guarantee under the contract. Should the Government incur a surge causing an increase of trucks per week, the Government agrees to provide the Contractor with advance notification.

(E) **Initial Delivery Order** – DLA Disposition Services shall deliver the initial Delivery Order (DO) to the Contractor on the dates that are within the time specified for the phase-in period, and after the date that DLA Disposition Services has received and approved all the information required under the provisions of this contract.

(F) **Validation of Delivery Order (DO)** – The Government shall issue a consolidated list(s) of property being transferred to the Contractor on the DO. DLA Disposition Services and the Contractor must do a joint inventory of the DO at the Disposition Site or RIP site prior to the title transfer. The joint inventory will be signed by the issuer (DLA Disposition Services) and the receiver (Contractor). The signed and annotated DO represents the official transfer of title. Line item discrepancies must be identified to DLA Disposition Services at the time of the joint inventory. For RCP property shipped directly to the Contractor’s designated facility at Government expense, the Contractor must immediately notify the DLA Disposition Services USG employees on ground or SCO via email of any inventory discrepancies as soon as they are discovered. In all cases involving RCP property, the notification of any discrepancy on a DO must occur within fifteen (15) calendar days of the Contractor’s physical receipt of a shipment at their designated site; be verified by the Government representatives on-site; and the request for credit must be associated with a line item that has an acquisition value greater than \$50. Requests for credits for missing RCP property that has a line item acquisition value less than \$50 shall be considered de-minimis and no credit will be processed. In all situations involving review and

validation of DOs, the provision in Article 6 Section 1 applies with regard to whether the property is within the scope of the contract. The Contractor has no right to challenge an in-scope determination. Discrepancies to the DO are limited to quantity overage/shortage and/or item mis-description by NSN or LSN.



(G) **Delivery Order Format** – DLA Disposition Services will provide the Delivery Order to the Contractor via an electronic transmission. DLA Disposition Services shall provide training to the Contractor as necessary to clarify the fields of the Delivery Order, however as minimum, the following information will be represented on the Delivery Order:

**National Stock Number (NSN)/Local Stock Number (LSN)**  
**Inventory Item Name**  
**Quantity**

(H) **Title Transfer of Property** – Unless otherwise provided in this IFB, DLA Disposition Services shall transfer title to the Contractor when property appears on a Delivery Order after the Joint Inventory. Title to property that is shipped to the Contractor's facility will transfer to the Contractor upon physical receipt at the Contractor's facility. Any subsequent resale transactions of property are between the Contractor and the resale buyer, not the Government and the resale buyer.

(I) **Risk of Loss** – Contractor is responsible for paying for all items appearing on the Delivery Order unless it is approved as a line item discrepancy by the SCO. Contractor shall bear the risk of loss for all property where title has transferred to the Contractor and Contractor has lost or damaged the property due to negligence.

(J) **Credit for Line Item Discrepancies** – Contractor must notify the Government of any line item discrepancies (i.e., quantity overage/shortage, item mis-description by NSN or LSN Master List) as noted in Section 2(f) above. The contractor must also supply the following minimal required documents when requesting credit for RCP property: DLA Disposition Services credit request form, receiving CBL, MRO on item if available, date and time discrepancy was identified. All requests outside of the 15 business day range will not be considered for credit unless the Contractor's billing prices exceeds \$1,000.00 per DTID. The property must be made available for inspection by DLA Disposition Services. Non-RCP property credits will be identified during the Joint inventory of the DO. No additional credits requests will be authorized after the DO has been signed off by the Contractor and USG. In all cases involving RCP property, the notification of any discrepancy on a DO must occur within fifteen (15) calendar days of the Contractor's physical receipt of a shipment at their designated site; be verified by the Government representatives on-site; and the request for credit must be associated with a line item that has an acquisition value greater than \$50. Requests for credits for missing RCP property that has a line item acquisition value less than \$50 shall be considered de-minimis and no credit will be processed. Failure to provide notice of an alleged discrepancy in accordance with the criteria set forth in this subparagraph will result in denial of the line item discrepancy. The amount of any credit to which the Contractor is entitled to shall be deducted from the amount of Contractor's statement of account (SOA) when validated by the Sales Contracting Officer. The burden of proof for all credit requests fall on the Contractor.

(K) **Property Surges** – Contractor acknowledges that during the performance of this contract, changes in Government processes or procedures could result in large generations of property being turned into DLA Disposition Services which could ultimately be referred under this contract. DLA Disposition Services and the Contractor agree to cooperate and institute special procedures as necessary in connection with property surges.

### **Section 3—Unique Items and Special Circumstances**

(A) **Items Requiring Partial Mutilation** – Some end-use items within the DLA Disposition Services inventory require mutilation prior to resale and are not considered or identified by DLA

Disposition Services as usable property. However, parts from such items may be permissibly removed from the end-item prior to mutilation and would then be eligible for resale. Such items may include

parachutes requiring the shroud to be cut. DLA Disposition Services may from time to time, in the exercise of its sole discretion, notify Contractor in writing of the availability of certain such items. Within ten (10) business days of such notice, Contractor may, in the exercise of its sole discretion, notify DLA Disposition Services that Contractor elects to purchase such items at a price based on the Contractor's bid percentage and acquisition value. Contractor and DLA Disposition Services shall cooperate as necessary in the circumstances to effect delivery of such items and the Contractor shall remove the subject parts in an agreed upon time after delivery.

**(B) Airworthiness Certification** – Contractor is responsible to make arrangements with the Federal Aviation Administration (FAA) for all inspections needed to obtain airworthiness certification. The FAA provides guidance and instructions to establish eligibility for civilian airworthiness certification for surplus military aircraft and aircraft assembled from spare and surplus parts. Before an Airworthiness Certificate is issued, the assembled aircraft must be in conformity with the data forming the basis for that FAA type-certificate. The responsibility to satisfy FAA requirements lies entirely with the Contractor and subsequent resale buyers.

**(C) Flight Safety and Critical Aircraft Parts (FSCAP)** – The military services are responsible for ensuring all available historical records/documentation are included when repairable Flight Safety Critical Aircraft Parts (FSCAP) are turned into DLA Disposition Services. Unused FSCAP, in original, undamaged packaging must be marked with NSN, contract number, CAGE Code(s) and part number. FSCAP items lacking appropriate records/documentation, or which are condemned, shall be mutilated by DLA Disposition Services and are not eligible under this contract. When a FSCAP item is transferred to DLA Disposition Services, block 27 of the DTID will annotate the appropriate Criticality Code and the remarks section of the DTID shall contain the letters FSCAP. Serviceable or repairable FSCAP may undergo RTD and sales provided the historical records and documentation are furnished. DLA Disposition Services makes no representation as to a part's conformance with FAA requirements. As a condition of sale of a FSCAP, and prior to installing the parts, the receiving persons or organizations must subject the parts to inspection, repair, and/or overhaul by a competent manufacturer or other entity certified by the Federal Aviation Administration (FAA) to perform such inspection and repair. The aircraft parts may not meet FAA design standards, and/or may have been operated outside the limitations required under the Federal Aviation Regulations. Inspections and FAA approvals will be required to determine an aircraft part condition for safe operation, or a part's eligibility for installation on a civil aircraft. Failure to comply with FAA requirements can result in unacceptable safety risks and also subject Contractor or subsequent resale buyers to enforcement actions. Purchaser is required to notify resale buyers that the FSCAP cannot be used on commercial aircraft in absence of specific FAA approval (usually granted by an FAA Repair Shop), and further, cannot be sold back to the DOD or to foreign governments/military without the appropriate records/documentation.

## **ARTICLE SEVEN**

### **Demilitarization Codes, Export Control Requirements, Prohibited Sales and Trade Security Control (TSC) Requirements**

**Section 1 – Demilitarization Codes** – Items in the product pool with DEMIL Codes of A and Q6 contain items that are considered Commerce Control List Items (CCLI) and subject to Department of Commerce Export Control Regulations.

**Section 2 – Compliance With Export Control Regulations** – Items in the product pool, including DEMIL A property, may be subject to export control restrictions. Once title transfers, the Contractor should consult with Departments of State and Department of Commerce export control regulators if there are doubts about the type of export controls that apply to any item, regardless of DEMIL code. The Contractor may request a formal Commodity Classification from the Department of Commerce, Bureau of Industry and Security (BIS), or submit a General Correspondence request to the Department of State, Directorate of Defense Trade Controls. Information on managing exports of CCL items can be found at the Bureau of Industry and Security website at <https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file>

The Contractor must comply with U.S. export control laws and regulations. The Contractor is referred to the Export Administration Regulations (EAR), including parts 732, 736, and 746. The Contractor is advised that United States Munitions List (USML) and Commerce Control List (CCL) items may not be sold in foreign countries or to foreign persons unless there is compliance with Department of State/Commerce licensing requirements or a proper determination is made that no license is required.

The Contractor must notify all subsequent purchasers, in writing, of their responsibility to comply with U.S. export control laws and regulations. The Contractor must refer buyers in writing to the EAR, and provide them guidance and information in subchapter C, parts 732, 746, and 736. Specifically, the contractor must advise buyers that exports of these items may require licenses when destined to certain prohibited entities or destinations and this property may not be re-exported or transferred in contravention of the General Prohibitions specified at 15 CFR Part 736.

The Contractor is cautioned that prior to resale of the property acquired under this contract, they should become familiar with their customer and the purposes for which it is acquiring the property. The US export control regulations specified above may apply to subsequent transactions of the property. The Contractor should obtain a statement from the buyer, containing information similar to that contained in the USG's End-Use Certificate (EUC) and must check any prospective buyer to insure the buyer is not on the Department of Commerce proscribed party list (entity and person) and prohibited country list; that the transfer will not violate 15 CFR Part 736, and, issue a destination control statement in accordance with the EAR. Additional Information on managing exports of CCL items can be found at the Bureau of Industry and Security website at <https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file>.

*These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.*

The Contractor should ensure it retains all relevant export control information on file, including data similar to that obtained on a USG EUC for all prospective resale buyers and transactions. This information must be made available for review by DLA Disposition Services or any other USG entity including investigative and enforcement agencies. Failure to obtain and maintain such data may result in a negative determination of responsibility and prevent participation on future sales contracts with the

USG. Please refer to the BIS website provided above for information on compliant export management policies.

**Section 3 – Contractor’s Trade Security Control (TSC) Requirements** – Prior to award of this contract, the Contractor will be required to obtain a TSC assessment/clearance by providing the Sales Contracting Officer a properly completed EUC in the form of a DLA Form 1822, within two (2) Business days of notification of being the Apparent High Bidder (copy available on the DLA Disposition Services web site, <http://www.dla.mil/DispositionServices/Offers/Public-Sales-Offerings/Forms/>). The clearance may need to be renewed during the performance period of this contract and at the request of the Government. The clearance investigation determines that the entity is who it claims to be, doing business at the name and location claimed and that there are no disqualifying factors present (i.e., convictions for illegal export of military technology, debarment by a Government activity, etc.). The Contractor is required to comply with all current or future TSC procedures as mandated during the performance period of this contract. Such new requirements may impose higher costs upon the Contractor in order to comply. Contractor should not expect any equitable relief or any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary related to TSC procedures.

**Section 4 – Other prohibited sales: System for Awards Management (SAM)** – Contractor is prohibited from making sales or awarding contracts to a customer identified as being suspended or debarred from receiving Government contracts. Prior to making any sale or awarding any contract, Contractor agrees to search the System for Awards Management (SAM) at the following link: <https://www.sam.gov/portal/public/SAM>.

## **ARTICLE EIGHT**

### **Inventory Assurance**

**Section 1 – Do-Not-Sell (DNS) List** – DLA Disposition Services will furnish the Contractor a Do-Not-Sell (DNS) List representing items that are or have become controlled and no longer eligible for sale, with periodic updates as necessary. Contractor is required to process their current inventory against the DNS List whenever an updated DNS List is provided. The Contractor is required to return any item identified on the DNS List that is in the Contractor’s current inventory and not physically removed by a resale buyer. After property has been cleared for shipment by the USG. Contract will do all packing, handling, and crating to include loading blocking and bracing of the Governments conveyance as needed for shipment back to DLA Disposition Services. Contractor will send a transportation request via email to the USG employees at the Contractor’s RCP warehouse for controlled property return transportation request. The Government will refund the contractor its purchase price for such items. DLA Disposition Services will not reimburse the Contractor for any lost revenue associated with property that has been sold to a resale buyer. For property becoming controlled yet previously removed by a resale buyer, DLA Disposition Services may also direct the Contractor to notify the buyer and attempt to recover the property.

**Section 2 – Demilitarization Code Change (DCC) List** – DLA Disposition Services will provide the Contractor a Demilitarization Code Change (DCC) List reflecting DEMIL code changes as they occur. The Contractor must run their current inventory against the DCC List whenever provided by DLA Disposition Services. The Contractor is required to return any item that becomes DEMIL required and

is still in the Contractor's current inventory, not physically removed by a resale buyer. After property has been cleared for shipment by the USG. Contract will do all packing, handling, and crating to include loading blocking and bracing of the Governments conveyance as needed for shipment back to DLA Disposition Services. Contractor will send a transportation request via email to the USG employees at the Contractor's RCP warehouse for controlled property return transportation request. The Government will refund the contractor its purchase price for such items. DLA Disposition Services will not reimburse the Contractor for any lost revenue associated with property that has been sold to a resale buyer. For property becoming DEMIL required and previously removed by a resale buyer, DLA Disposition Services may direct the Contractor to notify their buyer and attempt to recover the property.

**Section 3 – Contractor Responsibilities for Property Assurance** – The Contractor must take immediate action upon receipt of a DNS or DSS list, or other notice, to ensure it does not resell items that have been identified as controlled and/or identified as being on the DNS or DCC List. Knowingly selling such an item will be considered a material breach of the contract, which, if recurring or not corrected, will threaten the Contractor's ongoing successful performance of the contract and may result in action by the Government to terminate the contract for default. In any instance where the Contractor has resold an item knowing it to be controlled, or on a DNS or DCC list, the Government shall be entitled to impose a penalty of 50% of the acquisition value of any item being offered for sale or the actual resale price that was received by the Contractor, whichever is greater. Imposition of the economic penalty described above shall not preclude the Government from considering such sales to be in material breach and seeking such other remedies as may be appropriate, up to and including termination of the contract for default. Note: In applying this or similar provisions related to property assurance and controlled property, the SCO need not have direct evidence of Contractor employee knowledge or intent to find a breach or impose a penalty for the resale of controlled property. Instead, knowledge or intent may be inferred where the Contractor unreasonably delays in reviewing and applying DNS, DCC or controlled property lists and notices, where the Contractor completes or conducts sales of such property without first conducting proper checks of applicable controlled property lists and guidance, or where the Contractor fails to exercise reasonable care in the performance of its responsibilities regarding the management, segregation and return of controlled property, as addressed in Article Eleven, Section 3 of this IFB.

## **ARTICLE NINE**

### **Government Required Reports**

**Section 1 – Inventory Reports** – Contractor is required to provide DLA Disposition Services monthly reports reflecting a complete list of all items issued by DLA Disposition Services on a Delivery Order that are currently in the possession of the Contractor. The report must record items by DTID, location and must identify all property that has not been removed from the Contractor /Government facilities. The report must be in a spreadsheet format and include all fields provided on a Delivery Order. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Contractor during the contract phase-in period in writing.

**Section 2 – Receipt of Property the Government Directly Ships to the Contractor** – Contractor is required to provide DLA Disposition Services a weekly listing of property that was physically received at the Contractor's location as a result of the Government directly shipping. The

report must be in a spreadsheet format and include all fields provided on a Delivery Order. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Contractor during the contract phase-in period in writing.

**Section 3 – Resale and Returns Report** – Contractor is required to provide a monthly report to DLA Disposition Services that reflects property that has been resold to include resale price, date removed, or that has been returned to the Government without resale, pursuant to the Government request. The report must be in a spreadsheet format and include all fields provided on a Delivery Order. For items resold, the event and lot number constituting the resale must be included as well as resale customer information. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Contractor during the contract phase-in period in writing.

**Section 4 – Reimbursable Item Report (Formerly known as Seller Indirect Cost (SIC) Report)** – In the event reimbursements are authorized in accordance with Article 14, cost that are approved by the SCO must be reported by Contractor in a monthly report. The report must be in a spreadsheet format and must include the proper supporting documentation. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Contractor during the contract phase-in period in writing.

**Section 5 – Non Responsive Resale Buyer Report** – On a monthly basis, the Contractor is required to provide DLA Disposition Services a spreadsheet listing resale buyers who failed to either respond or return property when requested by the Contractor. The spreadsheet must identify the applicable resale event and Lot number and include all fields provided on the Delivery Order. In addition, the spreadsheet must provide the dates of Contractor's attempts to retrieve the property and the customer's responses/non-responses. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Contractor during the contract phase-in period.

**Section 6 – Federal Asset Sales (FAS) Requirements** – Contractor is required to transmit all post sales information for each item sold to the Sales Contracting Officer (SCO) on a quarterly basis. This report will consist of the following data elements:

- Total Number of Assets Sold – Assets sold equals number of individual assets sold not number of lots sold
- Gross Revenue Received – Revenue equals sales proceeds
- Percentage of Personal Property Assets Sold Equal to Greater than Market Value - This metric only applies to FSG 14 (Aircraft); FSG 19 (Boats); FSG 23 (Motor Vehicles including cars, trucks, buses, and motorcycles; and FSG 2420 (Wheeled Tractors)
- Cycle Time – Time that an asset leaves the RTD process through payment
- Total Net Sales Revenue – Proceeds minus costs
- Contractors Resales value for each DTID

## **ARTICLE TEN**

### **Contractor Owned Facilities, Property Storage and Government owned Material Handling Equipment (MHE)**

**Section 1 – Contractor Owned Storage Facility** – Contractor is limited to no more than one (1) location within the East region for storage of RCP property shipped directly from DLA Distribution Centers at Government expense. The Government reserves the right to ship RCP property to any facility within the United States at its sole discretion, including to facilities outside the East region that are operated under separate contracts. At the site designated for RCP property, the Contractor is required to allocate private office space for two (2) government employees that is located within Contractor’s warehouse office management area in a temperature controlled area that is appropriately furnished. At a minimum, furnishings will include, but not limited to two (2) desks, two (2) office chairs, two (2) hard phone lines, two (2) hard wired secure internet lines and WIFI access for two (2) employees, and access to all building amenities during the duration of this contract, to include option years. Contractor is required to allow Government presence at these locations as needed to conduct compliance reviews and operating procedures related to this contract. Finally, Contractor is required to provide controlled storage space within each warehouse that is gated from floor to ceiling and locked with the capable of storing up to two (2) truckloads of property. Access to the space must be controlled by a sign in and out control log with limited access to the space. After property has been cleared for shipment by the USG, Contractor will do all packing, handling, and crating to include loading blocking and bracing of the Governments conveyance as needed for shipment back to DLA Disposition Services. Contractor will send a transportation request via email to the USG employees at the Contractor’s RCP warehouse for controlled property return transportation request. The Government will refund the contractor its purchase price for such items. The contractor should not expect any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary to the handling of any item on the DNS and DCC lists prior to release to resale customers. For property removed from Disposition Service sites or RIP locations contractor is not limited on the number or location of storage locations, other than all storage locations must be within the East Region.

**Section 2 – Contractor Temporary Staging Areas on Government Facilities** – DLA Disposition Services will not provide the Contractor with permanent indoor or outdoor storage space for property, or any space to store equipment, including MHE, at any location where the Contractor is required to remove property at Contractor’s expense, except as noted herein. Temporary storage areas with a minimum capacity of 24 pallet spaces will be provided for property to accumulate before Contractor removal. Additionally, space equivalent to three (3) pallet spaces will be provided for packing, crating and handling supplies. DLA Disposition Services Area Managers may approve additional temporary storage space on a case-by-case basis. MHE and/or other equipment may not be stored in these temporary storage areas. DLA Disposition Services will move property to the temporary storage location for shipment to the Contractor’s storage facility. This temporary storage location is provided to the Contractor for packing, crating, handling, and transportation coordination only. Contractor will be provide temporary bulk outside storage at the discretion of the DLA Disposition Services Area Manager. Property must be removed within three (3) business days after written notification has been made to the contractor via email by the field site. Pickups must be scheduled to occur during the Disposition Services Sites normal working hours. The Contractor will pay for any and all packing, handling, creating, and transportation costs associated with shipments. Special circumstances may arise where DLA Disposition Services will allow certain property to remain at a Government facility after email notification for removal has been given, however, written authorization



from a DLA Disposition Services Area Manager for anything beyond the original three (3) business days is required. The Contractor will be charged storage charges for property not removed from a Government facility within three (3) business days of the email notification, unless a prior approval has been granted by the DLA Disposition Services Area Manager. Normally, approval will not exceed thirty (30) days. The Contractor should not assume property may be resold on a Government facility. Reselling of property at Government facilities will be on an extremely limited basis and approved by the DLA Disposition Services Area Manager and the SCO. If the resale is permitted on Government property, the Contractor is responsible for any damage that is caused to any Government equipment or facility that arises out of the negligence of the Contractor, its vendors or resale buyers, to include the clean-up of any hazardous materials spills.

### **Section 3 - Storage Charges**

The Government reserves the right to implement storage charges for property not removed within three (3) business days after written notification has been made to the contractor via email by a DLA Disposition Services field site. A \$500.00 per pallet space, per day charge may be applied by the Government for any item that is outside of the 24 pallet temporary storage space not removed from Government premises within three (3) business days after written notification has been made to the contractor via email by a DLA Disposition Services field site. For items permitted for sale on a Government facility, storage charges in the amount of \$500.00 per day, per DTID, will apply for items not removed after the end of the authorized thirty (30) calendar days. Under no circumstance will former surplus Government property sold to the Contractor remain on Government premises beyond sixty (60) business days after issuance of a Delivery Order. Property left on Government premises longer than sixty (60) business days will, at the Government's sole discretion, revert to Government ownership and control without refund of any Contractor monies received. DLA Disposition Services will include such charges on the monthly Statement of Account and the cost for the storage will be the total responsibility of the Contractor. Contractor is responsible for ensuring their resale customers have met the security requirements to enter the facility and are responsible for escorting their customers at all times. Contractor and Contractor's resale customers shall have access to property for inspection, reselling, packing, loading or shipping only during hours that such facility is normally staffed. Contractor shall coordinate such access with the management of each facility. In addition, DOD customers may require additional storage space, therefore, property issued to Contractor may be required to be relocated by the Contractor and at the Contractor's expense. The Contractor is not permitted to conduct property resale on a Government facility without the expressed written authorization of DLA Disposition Services Area Manager and SCO for each item in question.

**Section 4 – Receipt In Place (RIP) Property on Government Facilities** – Receipt In Place (RIP) locations will be identified to the Contractor by the Government in the Delivery Order. RIP locations are located at alternate sites that are not under DLA Disposition Services direct control. They may be on or off military installations. Time-lines for removal of property at RIP locations will vary and must be coordinated and approved by the DLA Disposition Services Area Manager and SCO. Storage charges will be applied as written in Section 3, Storage Charges. DLA Disposition Services will allow certain property to remain at the RIP location after email notification for removal has been given, however, written authorization from a DLA Disposition Services Area Manager for these exceptions are required. The Contractor will be charged storage charges for property not removed from a Government

facility within 3 business days of the email notification, unless prior approval has been granted by the DLA Disposition Services Area Manager. Normally, approval will not exceed thirty (30) calendar days. If property resale is permitted, the Contractor is responsible for any damage caused to any Government equipment or facility that arises out of the negligence of the Contractor, its vendors or resale buyers, to include the clean-up of any hazardous materials spills.

**Section 5 – DLA Disposition Services Infrastructure** – Contractor acknowledges that DLA Disposition Services may add, reduce or change its infrastructure, including without limitation by opening, relocating, or closure of field locations. The Contractor further acknowledges that this contract shall remain in force notwithstanding such infrastructure addition or reduction/change measures that DLA Disposition Services in its sole discretion may implement.

**Section 6 – Material Handling Equipment (MHE)** – Contractor is required to coordinate the schedule for property removals with the DLA Disposition Services CV POC in advance of all scheduled conveyance/transportation arrangements. This includes, but is not limited to, days and times of conveyance arrival and out loading and field office or RIP MHE capabilities. DLA Disposition personnel will make the initial placement of the property on conveyance(s) furnished by the Contractor and the initial placement of the Contractor's conveyance shall be determined by the Government. DLA Disposition Services will tailgate load property up to the maximum capacity of the field site loading equipment capabilities. The Government will not block, chock, brace, lash band or in any other manner secure the cargo on such conveyance(s) furnished by the Contractor. Contractor personnel will not be permitted to operate Government owned MHE. For RIP and Non-RIP locations, if Government furnished MHE cannot be made available, the Contractor is responsible for the cost of providing MHE to remove the property.

## **ARTICLE ELEVEN**

### **Property Returns**

#### **Section 1 – Retrieval of Controlled Items –**

(A) **Property Not Sold – Located at Contractor's Facilities** – Property issued to the Contractor may have become controlled during the sales process. Property DEMIL codes may have changed after transfer, making them ineligible for further sales. DLA Disposition Services will provide written notification to the Contractor identifying such property. At the Contractor's RCP warehouse, upon locating the property and no later than two (2) business days after receipt of the written notification, the Contractor must deliver the requested controlled property to the DLA Disposition Service employees co-located at the Contractor warehouse for storage in the controlled storage area described in Article 10, Section 1. For property removed from DLA Disposition Service sites or RIP locations, Contractor must notify the SCO no later than two (2) business days after receipt of the written notification of the location of the property. The SCO will provide direction on appropriate security measures to store the property pending shipment. In all cases, DLA Disposition Services will advise the method for return based on the applicable item as described in Article 8 section 1 and 2.

**(B) Property Resold – Not Removed from Contractor’s Facilities** – Property issued to the Contractor may have become controlled during the sales process. Property DEMIL codes may have changed after transfer, making them ineligible for further sale. Contractor may have resold items that later become controlled and not eligible for sale. DLA Disposition Services will provide written notification to the Contractor identifying such property. If the identified controlled item has not been removed from the Contractor’s facilities, Contractor agrees to not allow removal. At the Contractor’s RCP warehouse, upon locating the property and no later than two (2) business days after receipt of the written notification, the Contractor must deliver the requested controlled property to the DLA Disposition Service employees co-located at the Contractor’s warehouse for storage in the controlled storage area described in Article 10, Section 1. For property removed from DLA Disposition Service sites or RIP locations, Contractor must notify the SCO no later than two (2) business days after receipt of the written notification of the location of the property. Controlled property return process described in Article 8 section 1, and 2.

**(C) Property Resold - Removed from Contractor’s Facilities** – Property issued to the Contractor may have become controlled during the sales process. Property DEMIL codes may have changed after transfer, making them ineligible for further sale. Within two (2) business days after receipt of the DLA Disposition Services notification, the Contractor is required to notify their customer and request the item’s return. The Contractor must initially contact their customer by either e-mail or registered letter. If the resale buyer is non-responsive to the initial request or fails to return property that is in its possession, the Contractor is responsible for contacting the resale buyer again within twenty-one (21) business days of the initial contact via a registered letter. The letter will inform the resale buyer of the requirement to return property IAW 10 USC 2790.

**(D) Status Report on Return of Controlled Property** – On a monthly basis, the Contractor is responsible for notifying DLA Disposition Services of the results of the property retrieval actions. The report must identify the resale buyers who are non-responsive to the retrieval attempts, those that refuse to return property, and those that have provided evidence the property has been sold or transferred or is not otherwise in their possession. Reports must be submitted to the SCO by the 15th of each month and must reflect the status of the previous month’s actions. The Contractor must identify the controlled item by DTID, NSN/LSN, and provide the resale customer’s name, address, and phone number.

**(E) Sales Participation of Non-Responsive Resale Buyers** – Based on the national security threat of the property required to be returned, DLA Disposition Services require that the Contractor no longer conduct a resale to non-responsive customers or those who refuse to return property believed to be in their possession. DLA Disposition Services will notify the Contractor of individuals/companies falling into this category on a case by case basis. The Contractor will comply with these requests as part of its Property Assurance responsibilities. The continued sale of property to such persons or companies following such a Government request may be considered a Material breach that threatens the Contractor’s ongoing successful performance.

**Section 2 – Reutilization/Transfer/Donation (RTD) Property Returns** – There may be occasions when the Government will request the return of property issued to the Contractor because it is mission essential for the USG or its supported programs. The Contractor must return those items that have not been resold. In this case resold items include any item that has been sold to a customer, regardless of whether the item has been physically removed by the re-sale customer. DLA Disposition Services will issue the Contractor’s purchaser price of the returned property.

## **ARTICLE TWELVE**

### **Contract Operational Requirements**

#### **Section 1—Contractor Participation Government’s Federal Asset Sales (eFAS) Program –**

The Contractor is required to participate in the Government’s Federal Asset Sales (eFAS) Program by maintaining a link to their web site on the GovSales.gov website. Contractor will not be allowed to post property directly into the GSA managed web site. The Contractor agrees to maintain and manage a working Hypertext Markup Language (HTML) object that allows customers to link to the Contractor’s web site by clicking on the link. This requirement may change due to IT demands and requirements of the Government. Contractor will be notified thirty (30) business days prior to changes. Contractor should not expect any equitable relief or any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary.

#### **Section 2 – Contractor Awareness of the DLA Disposition Services Environmental**

**Management System (EMS)** – DLA Disposition Services implemented Environmental Management System (EMS) in accordance with ISO 14001:2004(E). An EMS is an overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the environmental policy of an organization. The DLA Disposition Services EMS is designed to ensure all personnel, including Contractors whose work activities are being conducted on Government premises and could cause real or potential environmental impacts, are required to comply with DLA Disposition Services EMS.

#### **Section 3 – Inventory Assurance by Contractor –**

(A) **Do-Not-Sell List/DEMIL Code Change List** – Initially and then periodically thereafter, DLA Disposition Services will furnish the Contractor a Do-Not-Sell (DNS) List and a DEMIL Code Change (DCC) List representing items that are or have become controlled and no longer eligible for sale or that have experienced a DEMIL code change. The Contractor is required to process their current inventory against the DNS/DCC List whenever an updated List is provided by DLA Disposition Services. When property is located, the Contractor is required comply with requirements in Article 11, Section 1 for returning the property.

(B) **Disposition Services Verification of Assurance Process** – The DLA Disposition Services Controlled Property Verification Office (CPVO) will review items that the Contractor is offering for sale to ensure items appearing on the DNS List or DCC List are not being sold. The SCO may assess a penalty of 50% of the acquisition value of any item DLA Disposition Services has identified to the Contractor as not eligible for sale based on the item commodity or demilitarization code, yet DLA Disposition Services finds it for sale on the Contractor’s website. The repeated offering of controlled items on the DNS or DCC lists may be considered a Material breach of the terms of the contract and endanger continued performance.

**Section 4 – Contractor Web Based Application** – Contractor must develop a web-based application for use on this contract with regard to reviewing property to determine, and confirm sales eligibility. The Government and Contractor shall refer to this application as the Quarantine Tool (Q-Tool). Ultimately, the Q-tool will serve as a 5-business day Government preview area of all items the Contractor is preparing to offer for sale. During the 5-business day preview, the Contractor is not allowed to make property visible to the general public. The Government must notify the Contractor of any item not eligible for sale within the 5-business day preview time. All property approved as a result of the Q-Tool application must be offered for sale on the Contractor’s web site or retail centers with a system generated icon/marker identifying the item as having been reviewed by the Government prior to posting for sale. If the Contractor reassigns a previously approved item to another sales event, the item must be returned to the Q-Tool with the system generated icon/marker. The Q-Tool application must have the ability to export the data into a spreadsheet format and must include the following fields:

Sale Event ID Number/Lot Number  
 Site Location of the Property  
 Federal Supply Class (FSC)  
 National Item Identification Number (NIIN) or Local Stock Number (LSN)  
 Item Name/Description  
 Part Number  
 Demilitarization Code  
 Manufacturer and associated CAGE Code  
 Quarantine Date  
 Quantity  
 Acquisition Value  
 DTID  
 Condition Code  
 End Use of Item (if available)  
 Photograph of Item (if available)

**Section 5 – Handling Ozone Depleting Substances (ODS) Containing Personal Property –**

(A) **Scope and Applicability** – DLA Disposition Services reserves the right to determine the location(s) (to include Receipt In Place (RIP) locations) and volume when issuing property containing ODS and may vary the same as determined to be in the best interest of the Government.

(B) **DLA Disposition Services Requirements** – Whenever DLA Disposition Services offers the Contractor small appliances or other ODS containing property that uses refrigerants, DLA Disposition Services will provide the Contractor a written statement attesting that the property either contains refrigerants or that the refrigerants have been removed. For property no longer containing refrigerants, DLA Disposition Services will also provide refrigerant recovery documentation in accordance with 40 CFR 82.156(f)(2).

(C) **Contractor Requirements** –When transferring ownership of the property to another party, the Contractor agrees to provide that party with a written statement that the property either (1) contains refrigerants, or (2) that the refrigerants have been removed; whichever is applicable. For property no longer containing refrigerants, the Contractor will also provide refrigerant recovery documentation in

accordance with 40 CFR 82.156(f)(2). Contractor will keep records in accordance with 40 CFR 82.166. Records will be made available to the Government upon request.

**(D) Returning Property to DLA Disposition Services** – Small appliances, room air conditioners, MVACs, MVAC-like appliances and other property subject to 40 CFR Part 82 will not be returned to Government unless agreed by DLA Disposition Services SCO prior to return. If the Contractor becomes a person or one of the “persons who take the final step in the disposal process”, as described in 40 CFR 82.156(f), the Contractor is responsible for ensuring that any intact ODS is properly recovered in accordance with 40 CFR 82.156(h); that records are kept in accordance with 40 CFR 82.166, and that any compressor oils or other environmentally controlled components (including but not limited to mercury switches) are removed and properly disposed prior to scrapping or landfill of this property. Cost associated with this requirement is at Contractor’s expense. Records will be made available to the Government upon request.

**(E) Contractor Reporting Requirements** – DLA Disposition Services may periodically request that the Contractor provide reports and/or documentation that outlines the disposition of this property, to include the number of items referred for sale by the Contractor within a specific timeframe, a breakdown of that information to show how many were sold versus how many were not sold, detailed information regarding the disposition of the items that were not sold, and disposition of ODS removed from the property. Detailed information will include copies of the refrigerant recovery documentation.

**Section 6 - DLA Disposition Services Inspection of Property** – Contractor is required to allow DLA Disposition Services or a DLA Disposition Services sponsored agency to perform physical inspections of property when requested.

**Section 7 – Food and Drug Administration (FDA) Certification for Medical Devices** – Contractor is required to complete a Food and Drug Administration (FDA) Certificate within ten (10) business days of award. Contractor is also required to request and retain a FDA Certificate for each resale buyer of medical devices in Federal Stock Groups (FSGs) 65 and 66. Copy of form is available on the DLA Disposition Services web site, <http://http://www.dispositionservices.dla.mil/sales/typesale.shtml>, click on Property for Sale to Public and then Sales.

**Section 8– Duties of Care and Loyalty** –

**(A) Duty of Care** – Contractor shall not cause or permit any action or omission in the course of performing the contract that damages DLA Disposition Services and constitutes gross negligence, recklessness, or intentional harm. Performance under this contract must be in compliance with all local, state and federal laws and regulations. Accordingly, it is the responsibility of the Contractor to adhere to all such laws and regulations.

**(B) Duty of Loyalty** – Contractor shall carry out the responsibilities under the contract with honesty, good faith and fairness towards DLA Disposition Services.

## **ARTICLE THIRTEEN**

### **Material Breach**

**Section 1 – Notice of Material Breach** – In the event of a material breach or default of the respective duties in the performance of this contract, the Contractor or DLA Disposition Services, the party asserting such material breach, shall serve notice upon the party that committed or is alleged in the notice to have committed such material breach. The matter shall be treated as a dispute under the Contract Disputes Act.

**Section 2 – Response to Notice** – Except as otherwise provided, the breaching party may cure the material breach within thirty (30) calendar days of such notice referred to as the cure period or within such longer cure period as the notice may provide unless, within the cure period, the non-breaching party withdraws the notice in writing or extends the cure period in writing. Not all breaches require the Government to offer the Contractor an opportunity to cure. For example, breaches related to timeliness, such as a deadline for removal of property, need not be the subject of a cure request if providing a cure period would negatively impact the Agency mission. The failure of the Government to provide an opportunity to cure a breach related to timeliness does not in any way prevent the Government from considering such matters when assessing the Contractors actual or anticipated ability to satisfactorily perform the requirements of the contract.

**Section 3 – Termination** – Termination shall be effective upon notice by the non-breaching party to the breaching party served upon or after the date of such decision. Unless otherwise provided, Contractor and DLA Disposition Services shall continue to perform their respective duties under the contract during the cure period.

**Section 4 – Intentional Breach** – An asserted material breach comprised of an intentional breach of the duty of loyalty or the duty of care may not be cured unless DLA Disposition Services, in its sole discretion, specifies a cure period in the notice. Termination shall be effective upon the later of the date of service of such notice or the expiration of the cure period.

**Section 5 – Remedies for Material Breach by Contractor** – DLA Disposition Services may take one, any combination, or all of the following actions to satisfy its claims for any non-payments or other damages:

- (i) Apply the payment deposit;
- (ii) Present a claim for indemnity against Contractor;
- (iii) Present a claim upon the Fidelity Bond or any other applicable insurance or surety policy;
- (iv) Seek appointment of a receiver or trustee for Contractor;
- (v) Seek monetary damages, restitution or any other legal or equitable remedy to which it is entitled;
- (vi) Assert any other right, claim, or remedy available pursuant to the Contract Disputes Act.

**Section 6 – Indemnification of DLA Disposition Services by Contractor** – Contractor will comply fully with the provisions of this contract. If the breaching party is the Contractor, the Contractor shall indemnify and hold DLA Disposition Services harmless for all damages arising.

## **ARTICLE FOURTEEN**

### **Reimbursable Items**

#### **Section 1 – Requests and Documentation for Reimbursable Emergency and Extraordinary Costs**

**(A) Payment of Emergency and Extraordinary Costs, Formerly Known As Seller Indirect Costs (SIC)** – Pursuant to an emergency and extraordinary mission change or one-time event not related to regular, re-occurring and incidental operational changes that should be expected under this contract, the Contractor may be reimbursed for emergency and extraordinary costs when approved in advance by the SCO, and prior to contract performance. At no time will emergency and extraordinary costs include “lost profits” or “potential re-sale revenue.” Regular, re-occurring and incidental operational changes that should be expected under this contract are defined as: changes, fluctuations, or in-scope surges in property volume; sudden or significant changes to type of property received, or the property mix, as well as fluctuations in the generations at any particular site; changes to site locations, facilities, RIP generator locations; internal operating parameters; Delivery Order verification procedures; systems changes IT; hours of operation etc. Request for reimbursement of costs for these regular, re-occurring and incidental operational changes will not be granted, since this is a firm fixed price, and not a profit sharing/cost sharing contract, as past Commercial Venture (CV) contracts have been. There are no “distributions otherwise payable to DLA Disposition Services” from which such costs can be deducted. Thus, the use of “Seller Indirect Costs” from previous CV contracts is a misnomer in the context of this firm fixed price sale. When costs are permitted under this provision, they must be allocable, allowable, reasonable, auditable, and pre-approved by DLA Disposition Services SCO on a case-by-case basis prior to being executed by the Contractor. DLA Disposition Services approval of such costs must be in writing and not assumed to be approved. Such costs are never authorized for reimbursement of lost profits and property surges within the scope of the contract. Under no circumstances is DLA/Government responsible for any assumptions, planning factors, or decisions the contractor made related to determining their bid. The government expects the buyer to perform all the requirements under this contract at the bid price provided by the contractor. At no time will the government pay the contractor to take property, sell property, or adjust bid pricing of contract or individual item due to the contractors inability to sell or market the property streams. The government is not responsible for any indirect, inconsequential, or completeness (through assumption of sales value, act or omission of factors) expenses related to performance under this contract. Bidder's sealed bid at all times represents an irrevocable offer by bidder to enter into a binding contract to purchase the property in accordance with the specific provisions of the IFB/soliciting and these general terms and conditions.

**(B) Other Reimbursements Explicitly Allowed Under Specific Articles Within The IFB** – For internal accounting purposes, reimbursement explicitly allowed in specific articles of this IFB will also be treated as Emergency and Extraordinary reimbursements for reporting purposes and to ensure compliance with the documentation and pre-approval requirements, although they do not meet the strict definition of an Emergency and Extraordinary cost. For instance, under Article 11, when property is returned to the government, the reimbursements explicitly allowed under those provisions will be paid as Emergency and Extraordinary reimbursements.



(C) **Supporting Documentation** – Each request for an reimbursement shall be supported with bona fide documentation (including records in an electronic medium) that adequately demonstrate that each such disbursement is in the proper amount for goods or services actually provided in advance of such disbursement to include but not limited to: Contractor paid invoices, work study results, estimates from a disinterested party, and any other documentation that support the contractor costs directly related to the emergency and extraordinary mission change or onetime events that are not related to day to day operation changes.

(D) **Other Remedies** – Nothing in this Article precludes the Contractor from other remedies potentially available under the Contract Disputes Act, including a Request for Equitable Adjustment.

## **ARTICLE FIFTEEN**

### **Contract Compliance, Audits, Investigations and Reviews**

**Section 1 – Compliance with Applicable Laws and Regulations** – Contractor and its resale buyers shall comply with the requirements of all applicable federal, state, and local laws, regulations, ordinances, directives and instructions connected with the performance of this contract, including without limitation such requirements pertaining to income and payroll taxes, environmental matters and occupational safety, and export control laws.

**Section 2 – Licenses and Permits** – Contractor shall obtain any necessary licenses and permits, and comply with all federal, state, and local laws and regulations in connection with the performance of the work. This responsibility requirement will be a matter of inquiry during the SCO's pre-award evaluation of the bidder's capability to perform the contract satisfactorily. It will also be a continuing matter of inquiry by the SCO during the performance of the contract.

**Section 3 – Duties of Care and Loyalty** – The Contractor shall not cause or permit any action or omission in the course of performing the contract that constitutes gross negligence, recklessness or intentional harm. Contractor shall carry out their responsibilities under the contract with honesty, good faith and fairness toward DLA Disposition Services.

**Section 4 – Prohibited Activities** – Contractor shall not undertake the following activities without written permission from the SCO, which permission may be granted or withheld by DLA Disposition Services in the exercise of its sole discretion:

(A) Enter into a partnership, joint venture or other arrangement where the purpose or effect is to engage indirectly in a transaction that would be prohibited by the provisions of this contract if undertaken by the Contractor directly; or

(B) Enter into contracts or other arrangements that would assign all or substantially all responsibility for and control of performance of the contract to another party or parties, without the prior written approval of DLA Disposition Services which will consider such request in accordance with the Assignment of Claims Act of 1940, as amended, 41 U.S.C. sec. 15, and the Government's best interest. In the event of any improper assignment without the written approval of DLA Disposition Services, this contract shall be terminated at the option of the Government in the exercise of its sole discretion; or

(C) File a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code (or corresponding provisions of future law) or any other federal or state insolvency law; file an answer consenting to or acquiescing in any such petition; make any assignment for the benefit of Contractor's creditors; or admit in writing Contractor's inability to pay its debts as they mature, without the prior written consent of DLA Disposition Services.

**Section 5 – Contractor Cooperation in DOD Investigations/Audits** – Contractor agrees to fully cooperate with the Government when informed by DLA Disposition Services of an ongoing investigation by any DOD or Federal Government investigation service or agency or during DLA Compliance Reviews, Investigations or Audits. Contractor agrees to provide DLA Disposition Services with all requested information regarding property or information relating to the Contractor's operations, and resale buyer. Contractor must make all sales records pertaining to such investigations available to DLA at the earliest available opportunity but no later than three (3) business days of the request. Requests for information should be provided in electronic format when possible. Contractor personnel with knowledge of the particular subject matter must be available to cooperate with any Government investigation.

**Section 6 – Contractor's Responsibility for Independent Audit at Government's Request** – DLA Disposition Services may request the Contractor seek a review and analysis to be conducted by an independent audit firm agreed upon by the Government. The audit may be requested in regard to every aspect of contract performance or could be limited to a specific concern. The cost of such audit will be handled as a Seller Indirect Cost and must be approved by DLA Disposition Services prior to the onset of the audit.

**Section 7 – Contractor Record Retention** – Contractor shall make all books, records, documents and other supporting evidence available to satisfy contract administration and audit requirements by any Government agency identified by the SCO. Records must be made available for six (6) years after the wind-down period is concluded, or for such period of time as Contractor, for its own purposes, retains its books, records, documents, and other supporting evidence, whichever is longer.

**Section 8 – Records Maintenance** – Contractor shall maintain all records accurately and in a manner that will allow clear and accurate auditing. Records pertaining to inventory shall contain, at a minimum, the National Stock Number or Local Stock Number, Disposal Turn-In Document (DTID) number, quantity, date sold, sale price, date Contractor received payment from the resale buyer, name and address of the resale buyer, and storage location prior to resale. The Government reserves the right to request and inspect these documents as it deems necessary. In the event that Contractor fails to maintain or provide any of these documents to the Government, the Government may in its sole discretion seek and cause termination.

**Section 9 – Inspection of Records and Workplace by Government** – The Government has the right to audit the records and inventory in order to review Contractor's operations. The audit may consist of a complete or random sample examination. Contractor must ensure that prior to any re-sale, the property is readily identifiable as formerly Government property.

**Section 10 – Purpose and Content of Compliance Audits, Investigations, Reviews and Further Reviews** – DLA Disposition Services shall have the right to conduct Compliance Reviews and/or Investigations of Contractor. DLA Disposition Services may actually conduct the compliance

reviews and/or investigations, or use other Government agencies or private firms, as the SCO deems appropriate. DLA shall also have the right to conduct further reviews as provided herein. The purpose of such Compliance Reviews or Further Reviews is to determine, after the fact, the extent of Contractor's compliance with the terms and provisions of the contract and applicable laws and regulations.

## **Section 11 – Methods and Procedures for Compliance Reviews and Investigations**

(A) **Method** – Compliance Reviews, Investigations and Further Reviews may include, without limitation, examination of records, and, if necessary, personal interviews of persons who may have knowledge of facts regarding Contractor's compliance with the provisions of this contract, including employees or of any supplier or resale buyer.

(B) **Procedures** – A Compliance Review/Investigation shall be conducted at any time during normal business hours and on any business day. Contractor shall permit inspection of any physical location used by the Contractor, including, without limitation, the inventory (including the records relating thereto), examination of the records, making copies and abstracts, and discussions of the affairs, finances and accounts of Contractor with any employee, subcontracting attorney or certified public accountant of Contractor. Contractor will produce any records identified by DLA Disposition Services as necessary to support the review process and DLA Disposition Services may maintain copies of all documentation/electronic files that support the review being conducted. DLA shall use its best efforts to assure that Compliance Reviews/Investigations are conducted in a manner that does not unduly burden or unreasonably impinge upon the efficient operation of the affairs of Contractor.

(C) **Scope** – The scope of Compliance Reviews/Investigations shall be as necessary to confirm Contractor's compliance with the provisions of the contract.

**Section 12 – Further Reviews** – If a Compliance Review determines there is a reasonable basis to believe that a default or breach of this contract has occurred, DLA Disposition Services, upon written notice to Contractor, may conduct any such further investigation that it deems appropriate under the circumstances, using such outside consultants, including attorneys, as it deems necessary or advisable. Contractor shall permit such persons, as are designated by DLA Disposition Services, to visit and inspect any physical location used by the Contractor, including, without limitation, the inventory (including the records), and to examine the records, make copies and abstracts, and discussion of the affairs, finances and accounts of Contractor with any employee, subcontracting attorney or certified public accountant of the Contractor. Notwithstanding the foregoing, if Contractor gives notice to DLA Disposition Services stating that a Further Review is not justified, DLA Disposition Services shall delay the commencement of any such Further Review for a period of fourteen (14) calendar days after the delivery of its notice thereof to permit Contractor to seek a determination of the appropriateness of the Further Review.

**Section 13 – Compliance Notification** – After completing the Compliance Review and/or Further Review, DLA Disposition Services shall notify Contractor in writing of any breach or default identified during the Compliance Review and/or Further Review.

**Section 14 – Notice of Audit Adjustment** – If any party determines that the records reflect any inaccuracies requiring entry of an adjustment, including, without limitation, the disbursement of any amount from the operating account or a transfer account that is inconsistent with any provision of the

contract or the disposition of an item of property that is inconsistent with any provision of the contract, such party shall give written notice thereof to the other party or parties.

**Section 15 – Procedures for Adjudication of Audit Adjustments** – If either Contractor or DLA Disposition Services disputes an asserted audit adjustment, it may submit such dispute for resolution. Upon resolution of such dispute or, if no party submits a dispute for resolution within sixty (60) calendar days of the notice of audit adjustment, the audit adjustment shall be deemed confirmed as asserted.

**Section 16 – Remedies for Audit Adjustments** – Upon confirmation of an audit adjustment, Contractor will pay to the party in question, or the party will pay to Contractor, as the case may be, the amount required to restore the parties to their respective positions status quo ante, and Contractor will correct the records in accordance with the audit adjustment as confirmed. If, as a result of the audit adjustment, Contractor is to pay DLA Disposition Services, each such payment shall include interest calculated by the US Treasury or at the rate provided by applicable law.

## **ARTICLE SIXTEEN**

### **Disputes**

**Section 1 – Disputes** – Any contract awarded as a result of this sale is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

**Section 2 – Claims** – The term, “Claim” as used in this Article is defined as a written demand or a written assertion by one of the contracting parties seeking the payment of money, adjustment, or interpretation of the contract terms, or other relief arising under or relating to this contract. A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within six (6) years after accrual of the claim to the SCO for a written decision. A claim by the Contractor against the Government shall be subject to a written decision by the SCO. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Contract Disputes Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, may be converted to a claim pursuant to the Contract Disputes Act.

**Section 3 – Decisions** – For Contractor claims, the SCO must render a decision within 60 calendar days of the request or must notify the Contractor of the date by which the decision will be made. The SCO’s decision shall be final unless the Contractor appeals or files a suit as provided in the Act. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the SCO.

**Section 4 – Alternative Dispute Resolution (ADR)** – The parties agree to use their best efforts to resolve any disputes that may arise without litigation. If unassisted negotiations are unsuccessful, the parties will use Alternative Dispute Resolution (ADR) techniques in an attempt to resolve the dispute. If the ADR is not successful, the parties retain their existing rights. If the Contractor refuses an offer for ADR, the Contractor shall inform the SCO in writing, of the Contractor’s specific reasons for rejecting

the offer. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

**ARTICLE SEVENTEEN**

**Insurance and Bond Requirements**

**Section 1 – Insurance and Bond Contract Requirements** – Contractor shall obtain and maintain the following insurance and bond requirements throughout the performance and wind-down period:

**Section 2 – Modification of Special Circumstance Conditions**

(A) Sale by Reference (SBR) Part 5 - Additional Special Circumstance Conditions – Miscellaneous (DLA Disposition Services Form 86, Oct 93), Article D, Liability and Insurance, paragraphs (a)(2) and (a)(3,) is modified as follows:

(1) Bodily Injury Insurance in an amount of not less than two hundred fifty thousand dollars (\$250,000.00) any one individual and one million dollars (\$1,000,000) any one accident or occurrence.

(2) Property Damage Liability Insurance in the amount of two hundred fifty thousand dollars (\$250,000.00) (which shall include any and all property whether or not in the care, custody or control of Contractor). The annual coverage shall be not less than one million dollars (\$1,000,000).

**Section 3 – Further Modifications –**

(A) Sale by Reference Part 5, Article D, paragraph (a) is also amended as follows:

(1) All risk coverage for fire and other property perils for all property owned by Contractor with aggregate coverage of five million dollars (\$5,000,000.00).

(2) Umbrella liability coverage up to two million dollars (\$2,000,000.00).

(3) Fidelity or blanket bond coverage in the amount of at least five million dollars (\$5,000,000.00). Contractor shall obtain and maintain such coverage with a responsible surety company with respect to all of Contractor's employees, officers and directors to protect Contractor against losses, including, without limitation, those arising from theft, embezzlement, fraud, or misplacement of funds, money, or documents. The issuer, policy terms and forms and amounts of coverage, including applicable deductibles, shall be satisfactory to DLA Disposition Services, and the policy shall include a provision that the issuer shall notify DLA Disposition Services in writing within five (5) business days of the cancellation or termination of any such coverage or of any modification of such coverage. Contractor shall notify DLA Disposition Services in writing within five (5) business days after filing a claim under such coverage.

(4) Comprehensive general liability, automobile liability, umbrella liability, Worker’s compensation and other insurance coverage as may be required by law. Contractor may obtain and maintain such additional insurance, including directors and officers coverage and errors and omissions coverage.

**Section 4 – Evidence of Insurance** – Within thirty (30) business days of SCO notification, and annually thereafter, Contractor shall provide DLA Disposition Services copies of policies, certificates of insurance or other proof evidencing the coverage required. Contractor must obtain the minimum coverage specified unless DLA Disposition Services approves a variance from such minimum coverage. In the event that a specified coverage or limit is or in the future becomes commercially impractical, such approval shall not be unreasonably withheld.

## **ARTICLE EIGHTEEN**

### **Miscellaneous Provisions**

**Section 1 – Binding Effect** – Subject to the restrictions on transfers and encumbrances set forth, this contract shall insure to the benefit of and be binding upon DLA Disposition Services and the Contractor and their respective legal representatives, successors and assigns. Whenever this contract refers to any party, such reference shall be deemed to include a reference to the legal representatives, successors and assigns of such party.

**Section 2 – Notices** – All notices, demands, requests, consents, approvals, declarations, reports and other communications required with regard to this contract shall be in writing except as otherwise provided and addressed to the Sales Contracting Officer (SCO).

**Section 3 – Severability** – If any provision of this contract or the application to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this contract and the application of such provisions to other persons or circumstances shall not be affected and the intent of this contract shall be enforced to the greatest extent permitted by law, DLA Disposition Services may in the exercise of its sole discretion cause termination by notice served within thirty (30) calendar days of the date upon which such judgment becomes final, such termination to be effective five (5) calendar days after the date of service of such notice.

**Section 4 – Headings** – The headings appearing in this contract are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any article or section of this contract.

**Section 5 – Survival** – The rights and obligations of the parties under this contract shall survive for a period of six (6) years after the completion of the wind-down period.

**Section 6 – Waiver** – No consent or waiver, expressed or implied, by any party to or of any breach or default by any other party in the performance by such other party of its obligations under this contract shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party under this contract. Failure on the part of any party to complain of any act or failure to act by any of the other parties or to declare any of the other parties in default, regardless of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

**Section 7 – Force Majeure** – The parties shall be excused for the period of any delay in the performance of any obligations under this contract when prevented from performing such obligations by cause or causes beyond their reasonable control, including, without limitation, civil commotion, war, invasion, rebellion, hostilities, military or usurped power, sabotage, pestilence, riots, fire or other casualty or acts of God.

**Section 8 – Use of DLA Disposition Services Name; Public Communications** – Contractor shall not use the name of DLA Disposition Services, DLA or DOD or its logos for any marketing or other purposes without the express prior written consent of DLA Disposition Services consent may be withheld for any reason whatsoever and is subject to the sole discretion of DLA Disposition Services. Contractor shall not publicly denigrate the surplus property disposition program of the Department of Defense or the conduct thereof by DLA Disposition Services.

**Section 9 – Tense and Gender** – Unless the context clearly indicates otherwise, the singular shall include the plural and vice versa. Whenever the masculine, feminine or neutral gender is used inappropriately in this contract, this contract shall be read as if the appropriate gender had been used.

**Section 10 – Entire Agreement; Modification** – This contract, and the materials incorporated herein by reference, constitute the entire agreement between the parties regarding the matters contained in this contract. If there is any inconsistency between the terms of this contract and those of any Appendix, Schedule or Exhibit, the terms of this contract shall govern. There are no promises or other agreements, oral or written, express or implied, between the parties other than as set forth in this contract. No change or modification of, or waiver or compromise under, this contract shall be valid unless it is in writing and signed by a duly authorized representative of the party against which it is to be enforced. Contractor understands and agrees to submit a written request for contract modification to the SCO prior to effecting any change from that stated in its technical proposal (including any subcontractors identified therein), and/or sale of Government property-item bid page, whether occurring before or after the release of the property. Contractor further agrees not to effect such changes without first receiving the written approval of the SCO.

**Section 11 – Computation of Time** – In computing any period of time prescribed or allowed by this contract, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is not a business day, in which event the period runs until the end of the next business day.

**Section 12 – Electronic Communication** – DLA Disposition Services and Contractor shall cooperate to facilitate delivery of Delivery Orders, Statement of Accounts, and other required reports to the extent reasonably practical by electronic transmission, such as by electronic mail or file transfer, rather than by delivery of a physical removable magnetic or optical storage medium.

**Section 13—Firm Fixed Price Contract** – This is a firm fixed price contract involving the sale of usable surplus Government property. As long as the guaranteed contractual minimums have been met, it is not anticipated that the Government will be responsible for Contractor costs arising out of the termination of the contract in whole or in part, except such costs as may arise from the obligations to complete final reporting responsibilities and to return property for which the Government has directed return or which is required to be returned under the terms of this contract.

### ADDITIONAL CONTRACT ADVISEMENTS

Prospective bidders should note that work performed on Government premises, such as at field locations and other delivery points, may be subject to the provisions of Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973 (convict labor), and/or the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) and regulations of the Secretary of Labor there under (overtime compensation).

Prospective bidders should note that provisions of the Food, Drug and Cosmetic Act, 21 U.S.C. 311 et seq. and regulations promulgated there under forbid the sale of adulterated or misbranded medical devices.

Prospective bidders should also note that there are certain Public Laws that may impact the flow of items:

**Public Law 98-575, Commercial Space Launch Act (“CSLA”), dated October 30, 1984** – The purposes of the CSLA are to promote economic growth and entrepreneurial activity through the utilization of the space environment for peaceful purposes; encourage the private sector to provide launch vehicles and associated launch services; facilitate/encourage the acquisition (sale, lease, transaction in lieu of sale, or otherwise) by the private sector of launch property of the U.S. which is "excess or otherwise not needed for public use," in consultation with Secretary of Transportation. Donation screening is not required prior to sale.

**Wildfire Suppression Aircraft Transfer Act of 1996, dated January 3, 1996** – This act authorizes the sale of excess Department of Defense (DOD) aircraft and aircraft parts to facilitate the suppression of wildfire. Prior to the sale, the Secretary of Agriculture must certify that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air. The purchaser must certify that the aircraft and aircraft parts will be used only for wildfire suppression purposes.

**Public Law 106-181, Oil Spill Containment Act** – This statute, also known as “The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century,” allows DOD, during the period 4 April 2000 through 30 September 2002, to sell aircraft and aircraft parts to a person or entity that provides oil spill response services (including the application of oil dispersants by air).

**Hazardous Property** – Should hazardous property be issued under this contract, the Government cautions that the item, material, or substance, or one or more components, parts, constituents or ingredients thereof may be corrosive, reactive, ignitable or exhibit other hazardous or toxic properties. The Government assumes no liability for any damage to the property of the Contractor, to the property of any other person, or the public property, or for any personal injury, illness, disability or death to the Contractor, Contractor’s employees, or any other person subject to Contractor’s control, or to any other person including members of the general public, or for any other consequential damages arising from or incident to the purchase, use, processing, disposition, or any subsequent operations performed upon, exposure to or contact with any component, part, constituent or ingredient of this item, material or substance. The Contractor agrees to hold harmless and indemnify the Government for any and all costs and expenses incurred incident to any claim, suit, demand, judgment, action, debt, liability costs and attorney’s fees or any other request for monies or any other type of relief arising from or incident to the



purchase, use, processing, disposition, subsequent operation performed upon, exposure to or contact with any component, part, constituent or ingredient of this item, material or substance, whether intentional or accidental.

**Resource Conservation and Recovery Act Notice** – EPA Hazardous Waste Regulations, 40 CFR Part 260 et seq. published at 45 Federal Register 33063-33285, May 19, 1980, became effective on November 19, 1980. These cradle-to-grave regulations detail the responsibilities of generators, transporters, treaters, storers, and disposers of hazardous waste. Civil and criminal penalties are available for noncompliance. DLA Disposition Services does not intend to transfer any RCRA regulated hazardous waste under this contract as regulated waste is disposed of under DLA Disposition Services' hazardous waste contracts. However, DLA Disposition Services can make no representations as to when and under what circumstances state, federal or local environmental regulations may be applicable to Property transferred to and held by the Contractor.

**Chemical Agent Resistant Coating (CARC) Paint** – Prospective offerors are cautioned that that some items are, or likely to contain or be coated with a chemical agent resistant to coatings containing trivalent chrome, lead, cobalt-zinc hexamethylene disocyanate and other chemicals which are a hazard to human health if not processed properly. The Government brings the following precautions/warnings to the attention of prospective offerors who plan to apply the CARC paint or disturb the coating on the property in any way:

*Airline respirators should be used during application processing (applying/sanding/torch cutting, etc.) unless air sampling shows exposure to be below OSHA/host Government standards, then a chemical cartridge air-purifying respirator must be used.*

*CARC paint should be isolated from heat, electrical equipment, sparks and open flame during storage or application. Local exhaust ventilation should be used for inside processing.*

*Exposure to vapor/mist/dust or fumes can cause irritation to respiratory tract (lung, nose, and throat), edema, dermatitis, dizziness, and rash, itching, and swelling of extremities, eye irritation or damage to nervous system, kidney or liver. Coating may be fatal if swallowed.*

**Refrigerant** – Refrigeration equipment and appliances are subject to the Clean Air Act (CAA) Amendments of 1990 which prohibit the venting or release to the environment of Class I or Class II ozone depleting substances, and are also subject to the Refrigerant Recycling Rule in 40 Code of Federal Regulations (CFR) Subpart F 82, 150-166, requiring the recovery and verification of refrigerant removal by a certified technician, using certified recovery equipment prior to final disposal as scrap or in a landfill.

**Warranty for Usable Aircraft Components/Parts** – The Contractor is advised that the aircraft components/parts on this sale may not currently be certified by the appropriate regulatory agencies for use on civilian aircraft. The Contractor represents, warrants, and guarantees to the Government that this (these) item(s) will not be used, offered for sale, or sold for use in civilian aircraft unless proper certification is obtained from the appropriate regulatory agencies. This (these) item(s) also may not be installed on any civilian aircraft unless installed by a Federal Aviation Administration (FAA) certified repairman and/or mechanic. The Contractor agrees to hold the Government harmless from any and all demands, suits, actions, or claims of whatsoever nature arising from or out of violation of this warranty.

**Aircraft Insignia and Markings** – The Contractor will be required to permanently remove or obliterate all Military Service distinctive markings from aircraft prior to removal from the Government premises. The Contractor may remove or obliterate the markings by scraping, grinding, use of paint removers, or by other means upon approval of the SCO. This requirement does not apply to aircraft which are required to be demilitarized.

**Kitchen Stoves** – Contractor shall ensure that the warning statement which is affixed to such items regarding their design features and reuse will not be removed prior to sale to an ultimate user, and Contractor shall include this clause in its entirety in any later sale or transfer of title, unless Contractor modifies, replaces or repairs the stoves to remove or eliminate the hazard.

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## **DEFINITIONS**

**Actual Cost:** An amount determined on the basis of the cost incurred.

**Allocable Cost:** A cost is allocable to a Government contract if it is incurred specifically for the contract, if it benefits both the contract and other work and can be distributed to them in a reasonable proportion to the benefits received, or is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown. A cost is allowable only when the cost is reasonable and allocable. The Contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that any cost claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in FAR Part 31 and DOD or DLA supplements. The SCO may disallow all or part of a claimed cost that is inadequately supported.

**Acquisition Cost:** The amount identified as the original or estimated cost paid for property.

**Acquisition Value:** The amount indicated on Delivery Order that is computed by multiplying the "Quantity" by the "Item Unit Price".

**Alternative Dispute Resolution (ADR):** Any procedure (for example, mediation, conciliation, facilitation, fact-finding, etc.), or any other method to which the parties agree for resolving issues in controversy, except the term does not include unassisted negotiations.

**Bid Percentage:** The amount, expressed as a percentage of Acquisition Value, offered by the Contractor.

**Business Day:** Any day that is not a Saturday, Sunday or a Federal Government observed holiday. Federal holidays presently include New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day.

**Contractor's Purchase Price:** The Acquisition Value of a particular item of property multiplied by the applicable Bid Percentage offered.

**CONUS:** Continental United States.

**Day:** A business calendar day.

**DLA Disposition Services:** The organization vested with operational command and administration of the disposal solutions for Department of Defense (DOD) surplus property.

**Demilitarization Code:** A single character alpha code assigned by the Item Manager identifying the degree of demilitarization necessary prior to accomplishing final disposition of an item.

**Direct Cost:** A cost identified specifically within a contract.

**DOD:** Department of Defense.

**Disposal Turn in Document Number (DTID):** A 14-position alpha/numeric combination used to identify a line item of property consisting of Department of Defense (DOD) address code, Julian date and serial number. The DD Form 1348-1A/2 is the standard document for turn-in of property.

**Federal Supply Class (FSC):** A commodity classification code primarily used in the National Stock Number (NSN). The first 2 digits of the code identify the group and the last 2 digits identify the classes within the group.

**Generator:** The activity that produces the excess, surplus, foreign excess or other property; usually the entity formerly in physical possession and/or control of the property.

**Hazardous Material (HM):** Any material that is capable of posing an unreasonable risk to health, safety, and property during transportation in the United States.

**Hazardous Waste (HW):** Any property regulated under the Resource Conservation and Recovery Act (RCRA) or state regulation as a hazardous waste.

**Invitation For Bid (IFB):** An offer for bid submission.

**Line Item:** A single line entry on a reporting form that indicates an item of property located at any one activity having the same description, condition code and unit cost. A line item may be comprised of one or multiple units.

**Local Stock Number (LSN):** A locally purchased item with no NSN assignment.

**National Item Identification Number (NIIN):** A 9-digit number (immediately following the FSC) assigned to an item of supply that differentiates it from other items of supply.

**National Stock Number (NSN):** A 13-digit number consisting of the 4-digit FSC and the 9-digit NIIN that is assigned to identify an item of supply within the materiel management function. The NSN is an official label applied to an item of supply that is repeatedly procured, stocked, stored, issued, and used throughout the federal supply system. It is a unique item identifying series of numbers. When a NSN is assigned to an item of supply, data is assembled to describe the item. Some data elements include information such as an item name, manufacturer's part number, unit price, and physical and performance characteristics. NSNs are an essential part of the military's logistics supply chain used in managing, moving, storing, and disposing of material.

**Performance Period:** Timeframe of the contract, to include any options offered.

**Reasonable Cost:** A cost is reasonable if, in its nature and amount, does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by the Contractor. If an initial review of the facts results in a challenge of a specific cost by the Sales Contracting Officer, the burden of proof shall be upon the Contractor to establish that such costs is reasonable.

**Receipt In Place (RIP):** Property being held at a location outside the DLA Disposition Services network although on the DLA Disposition Services accountable record during the disposal process and safeguarded by the Generator.

**Rolling Stock:** Transit vehicles such as buses, vans, cars, trucks, utility vehicle for recreational and non-recreational uses, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services to include cargo trailers or anything mounted to a trailer for the purpose of being moved by a motor vehicle.

**R/T/D:** Reutilization/Transfer/Donation.

**Sales Contract:** An agreement between two parties that binds both parties and transfers title of specified property.

**Sales Contracting Officer (SCO):** A duly appointed individual granted the authority to sell surplus and foreign excess personal property by various prescribed methods of sale.

**Scrap Property:** A designation assigned by or with the approval of DLA Disposition Services personnel meaning the items has no value in excess of that of the item's basic material content.

**Surplus Usable Property:** Surplus usable personal property is defined as an item of personal property that has been determined to be safe to sell with a DEMIL code A or Q6 and a Department of Defense (DOD) condition code of A-H. Surplus usable personal property as offered under this IFB does not contain scrap which is defined as property which has no value except for its basic material content. The USG is the sole arbiter of determining condition code and determining whether property is considered usable under its property regulations and thus eligible for referral under this contract.

**Unallowable Cost:** Any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.