



# **DEFENSE LOGISTICS AGENCY**

## **Disposition Services**

### **INVITATION FOR BID (IFB)**

#### **Number 14-0092**

## **ROLLING STOCK ASSETS SURPLUS USABLE PROPERTY LIQUIDATION SALE**

### **STEP TWO OF TWO-STEP SOLICITATION**

**Finalized: March 18, 2014 (changes in red)**

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# SURPLUS USABLE PROPERTY INVITATION FOR BID Number 14-0092

## 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/live auction sales process. 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 14-0092.

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.

***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://dispositionservices.hq.dla.mil/sales/Pages/usable-sales-property.aspx>, click on Property for Sale to Public and then Sales. Your completed Bid Forms and \$100,000.00 bid deposit must be delivered to and received by DLA DISPOSITION SERVICE'S SCO before the bid opening at 1:00 p.m. **EDT** on Wednesday, April 2, 2014. Address your Bid Forms and Bid Deposit to:

Ms. Becky Bellinger  
Sales Contracting Officer  
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 IFB relates to usable property that the Government has determined to be surplus to the needs of the Department of Defense and the Federal Government. Usable property is defined with respect to a particular item, as a designation assigned by or with the approval of DLA DISPOSITION SERVICES personnel meaning that the item has value in excess of that of the item's material content. The property will be comprised of items identified by the Government as safe to sell and generally located in the Continental United States (CONUS) to include Alaska, Hawaii, Guam, Puerto Rico, and possibly the Virgin Islands. The Government may include locations outside CONUS at mutual agreement of the Contractor. Property issued under this contract will be comprised of usable, safe to sell Rolling Stock assigned demilitarization code A, F, or Q. The product pool being offered is defined as:

***Ground related, self-propelled wheeled and track mounted vehicles (such as passenger motor vehicles, trucks and dozers) and trailers (such as semi-trailers, cargo trailers and special purpose trailers).***

DLA DISPOSITION SERVICES receives property at DLA DISPOSITION SERVICES facilities in CONUS, and Alaska, Hawaii, Guam and Puerto Rico (and possibly the Virgin Islands). The Government reserves the right to request specific advertising or movement of the property located in Puerto Rico and the Virgin Islands when the Contractor resells. Other issuing locations outside CONUS may be added to this contract at mutual agreement of the Contractor. DLA DISPOSITION SERVICES may also receive generator property that is not located at a DLA DISPOSITION SERVICES facility, therefore, may refer for sale to the Contractor at Receipt In Place (RIP) locations.

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.

A bid will consist of one bid percentage specified by the bidder indicating the share of gross revenue that the Contractor will pay the Government (to include a share of any bidder's premium or other administrative fees received) when the property issued under this contract is resold. The winning bid will be determined by the bidder offering the highest bid percentage. The successful bidder agrees to pay the Government a two-part payment. The Up-Front payment will consist of 0.25 (a quarter of a percent) of an item's assigned acquisition value. The Back-end payment will consist of a bid

percentage of the gross revenue that the Contractor will pay the Government when the Contractor resells the property.

Within ten (10) business days of contract award, the Contractor must pay DLA DISPOSITION SERVICES a payment deposit totaling five hundred thousand dollars (\$500,000). This amount is in addition to the \$100,000 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 \$3 million.

Prior to award of this contract, 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 (copy available on the DLA DISPOSITION SERVICES web site, <http://dispositionservices.hq.dla.mil/sales/Pages/usable-sales-property.aspx>, click on Property for Sale to Public and then Sales. 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.).

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 (to include updates as often as necessary) and a Demilitarization Code Change (DCC) List (also updated as often as necessary) representing items that are or have become prohibited from sale. 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). De-incentives will apply to the Contractor with regard to the resale of items that DLA DISPOSITION SERVICES has identified as becoming controlled or DEMIL required and placed on the DNS or DCC List.

Certain property identified for return may have already been resold by the Contractor and no longer in the Contractor's possession. DLA DISPOSITION SERVICES suggests the Contractor advise resale buyers that due to national security, the Government may ask for the return of property. Contractor will be required to inform their 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 may also be occasions when the Government will request the return of property issued to the Contractor because it is required for DOD/DLA DISPOSITION SERVICES mission. DLA DISPOSITION SERVICES does not anticipate a large volume of property will be requested 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 return process at DLA DISPOSITION SERVICES expense. No Contractor Direct Costs will be considered for the return 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 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. Contractor must make all sales records, property, and customer's records pertaining to such investigations available to DLA DISPOSITION SERVICES upon request.

DLA DISPOSITION SERVICES will not provide the Contractor indoor or outdoor storage space for the purposes of this contract, therefore, the Contractor is required to obtain their own storage facilities. Special circumstances may arise where DLA DISPOSITION SERVICES will allow the property to remain at a Government facility, however, expressed authorization from DLA DISPOSITION SERVICES is required. The Contractor will be charged storage charges for property not removed from a Government facility in a timely manner.

Property being stored by the Contractor at the Contractor's facility(ies) must be safeguarded to the satisfaction of the Government at all times. The Government reserves the right to conduct "no-notice" site inspections of the Contractor's facilities as needed.

No Government owned Material Handling Equipment (MHE) will be made available to the Contractor. On a case by case basis, the Government may offer assistance in loading Contractor property, to include providing specialized Government owned MHE if available.

The Contractor is required to participate in the Government's Federal Asset Sales (eFAS) Program whereby the Contractor agrees to integrate all sales being conducted by the Contractor to the website, GovSales.gov, a Real and Personal Property link that facilitates the sale for all Government Agencies. Required quarterly reports reflecting Contractor sales performance must be provided to the Sales Contracting Officer.

The contract requires that the Contractor fulfill certain requirements related to national security, DLA DISPOSITION SERVICES customer service, and compliance review. In addition, the Contractor is fully auditable, therefore, will 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, to include providing DLA DISPOSITION SERVICES copies and/or allowing DLA DISPOSITION SERVICES to make copies of all records requested. Records will be made available in either electronic or hard copy form as required by DLA DISPOSITION SERVICES. The contract also contains certain provisions regarding the logistical interface with DLA DISPOSITION SERVICES and its generators.

The Contractor must work effectively with DLA DISPOSITION SERVICES personnel with respect to logistics, and must interact with DLA DISPOSITION SERVICES personnel with regard to national security matters, customer service requests of DLA DISPOSITION SERVICES, financial reporting, compliance monitoring and dispute resolution.

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. 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 particular 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 modes. 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. Prospective bidders should assume that the provisions of the contract cannot be significantly amended after award.

This IFB may be the subject of one or more protests to the U.S. General Accountability Office. Moreover, it is possible that, either pending or after award, one or more third parties that object to this contract could institute litigation involving both DLA DISPOSITION SERVICES and the Contractor. DLA DISPOSITION SERVICES cannot predict the likelihood or the possible grounds for such litigation. Nevertheless, this is a risk factor that should be assessed by a prospective bidder.

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## 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 no longer needed by the Department of Defense or Federal Government and consist of:

**ITEM 1:** Property issued under this contract will be comprised of usable, safe to sell Rolling Stock property assigned demilitarization code A, F, or Q. The product pool being offered is defined as:

*Ground related, self-propelled wheeled and track mounted vehicles (such as passenger motor vehicles, trucks and dozers) and trailers (such as semi-trailers, cargo trailers and special purpose trailers).*

The property will be located in the Continental United States to include Alaska, Hawaii, Guam, Puerto Rico, and possibly the Virgin Islands, however, the Government may include locations outside the Continental United States at mutual agreement of the Contractor. The Government reserves the right to request specific advertising or movement of the property located in Puerto Rico and the Virgin Islands that the Contractor may resell. Under no circumstances is culling for the purpose of effecting partial or incremental removals authorized.

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

**DEMIL Code A** – Non-United States Munitions List (USML)/Non-Commerce Control List Items (CCLI) – No Demilitarization required. No Trade Security Control Assessment/Clearance required. Department of Commerce (DOC) may impose licensing requirements to certain destinations.

**DEMIL Code F** – United States Munitions List (USML) Items. Demilitarization instructions to be furnished by the Item/Technical Manager/Equipment Specialist, however, Trade Security Controls (as set forth by the Department of State) are required at the time of disposition. Demilitarization will have been performed prior to issuing to the Contractor for purposes of the contract.

**DEMIL Code Q** – Commerce Control List Items (CCLI). Demilitarization not required, however Trade Security Controls (as set forth by the Department of Commerce) required at time of disposition. Trade Security Control Assessment/Clearance required. Mutilation to the point of scrap required outside the United States.

The Government will determine items to be sold to the Contractor. 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. The Government guarantees to issue the Contractor the lesser of either 9,000 line items of property annually or property having an annual acquisition value of \$200M.

Each line item of property will be identified by either a National Stock Number (NSN) or a Local Stock Number (LSN) provided by the generator -- usually a military base or other Department of Defense (DOD) facility. NSNs are obtained from centralized federal procurement records. For items identified by the generator by NSN, DLA DISPOSITION SERVICES employs an automated system that matches the NSN to the item's acquisition value as recorded in these procurement records.

Local Stock Numbers (LSNs) are assigned by generator personnel when the item's NSN is unknown or unavailable. 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.

The link provided, <http://dispositionservices.hq.dla.mil/sales/Pages/usable-sales-property.aspx>, click on Property for Sale to Public and then Sales), provides historical information relating to past generations of usable property similar to what is being offered in this IFB. 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.

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

The following Articles (not part of the Sale By Reference (SBR), July 2012) apply and constitute additional 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 a sealed bid consisting of one bid percentage specified by the bidder. The bid must be expressed as a percentage of the gross revenue that the Contractor will share with the Government when property issued under this contract is resold. The bid must exceed zero, and limited to only two (2) digits to the right of the decimal without rounding. The Sales Contracting Officer (SCO) will open each sealed bid at the specified bid opening day and time. Bids will be read by the SCO. From the bids offered, a high bid will be determined which will be the starting point for the live auction. Bidders will then be offered an opportunity to increase their bid in incrementally during the live auction. The auction will end when no further bid increases are received. 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 winning bid will be determined by the bidder offering the highest bid percentage. The Contractor's Back-End purchase price for property will consist of the percent of gross revenue (to include any bidder's premium or other administrative fees) that the Contractor will share with the Government when property issued under this contract is resold. The Government reserves the right to not award a contract if such contract is deemed not to be in the Government's best interest. Further, the Government may also reject any bid if DLA DISPOSITION SERVICES determines that accepting such bid would not be in the Government's best interest.

**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 sixty (60) 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 security clearance 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.
- (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. 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 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 one-hundred thousand dollars (\$100,000.00) payable to U.S. Treasury. DLA DISPOSITION SERVICES will retain the Contractor's bid deposit until completion of the wind-down period. 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 at the completion of the wind-down period.

**Section 2 – Payment Deposit** - Within ten (10) calendar days of **notification of the SCO**, Contractor shall provide DLA DISPOSITION SERVICES the amount of five-hundred thousand dollars (\$500,000.00), referred to as the payment deposit. 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 of 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 one-year options to extend the performance period for up to an additional forty-eight (48) months based on Government requirements. The Government may extend the term of this contract by providing written notice to the Contractor within 120 calendar days of contract end. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

**Section 2 – Phase-In Period** - The Contractor must be fully operational and prepared to accept all property within six (6) months of award. If Contractor is unable to receive property after six months, 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 in whole or, from time to time, in part 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.

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. Stop any pending sales and make no further sales to resale buyers.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Unless otherwise directed by the SCO, assign to the Government, as directed by the SCO, all right, title, and interest of the property issued by Delivery Order whether in Contractor or subcontractor facilities. Whether property is in Contractor or subcontractor facilities, coordinate with the SCO the return of any property issued to the Contractor by Delivery Order to the Government or move property to Contractor owned facilities for Government retrieval upon written direction from the SCO.



(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.

(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.

The Contractor shall submit a complete termination inventory schedule to include a list, certified as to DTID and quantity, of termination inventory no later than 30 calendar days from the effective date of termination, unless extended in writing by the SCO upon written request of the Contractor within this 30 calendar day period. The Government will review the inventory list within 14 calendar days and contact the Contractor with any discrepancies and notify the Contractor of items that the Contractor can retain title of. The retention of title of these items will be by mutual agreement.

If the Contractor has any cost it wishes the Government to consider prior to the Government assessing settlement costs, they must be submitted within 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 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 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 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 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 the Contractor exercising the early cancellation option or by reason of a material breach, the contract shall wind-down for a period of 120 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. During contract wind-down period, should the Contractor elect not to sell property that has been previously issued on a Delivery Order, it shall be the Contractor's sole responsibility for any cost associated with the return of the property to the Government. Any purchase price paid by the Contractor shall not be refunded to the Contractor.

## **ARTICLE FIVE**

### **Distributions/Payments**

**Section 1 – Monthly Up-Front Property Payment** – Contractor will pay DLA DISPOSITION SERVICES the billed amount for the up-front purchase of property each month. DLA DISPOSITION SERVICES may issue multiple Statements of Account (SOAs) to the Contractor no later than the last day of each month. The SOAs will reflect the up-front purchase price (0.25 (a quarter of a percent) of the Government’s acquisition value) for the property issued to the Contractor during the prior month less any credits applied during the month for returned property. The balance reflected on the SOAs will be the amount owed to DLA DISPOSITION SERVICES by the Contractor for the particular month billed. Contractor is required to submit payment to DLA DISPOSITION SERVICES no later than the 15th of each month.

**Section 2 – Monthly Back-End Property Payment** – In addition to the Up-front purchase price described in Section 1 of this Article, the Contractor will also pay DLA DISPOSITION SERVICES the Contractor’s bid price when property is resold. The SOA(s) will reflect the back-end payment for property resold by the Contractor. Contractor’s bid of the resale gross revenue includes any resale revenue from the property sold to the Contractor by the Government. These proceeds include any direct proceeds received from the Contractor in the initial sales transaction and any subsequent proceeds or other revenue received by the Contractor in any subsequent arrangements/contracts with other parties. The Contractor shall not enter into any resale transaction other than on an arms-length basis or with pricing or other terms less favorable to the Contractor than otherwise reasonably obtainable. The Government anticipates the Contractor shall auction all items purchased from the Government; regardless of type of resale transaction. Contractor shall resell the property in an arms-length transaction that is intended to provide the best possible resale value. Any revenue received from such transaction, at time of transaction or deferred, shall be considered revenue for purposes of the percentage bid by the Contractor under this contract. Contractor is required to submit payment to DLA DISPOSITION SERVICES no later than the 15th 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 may, in its sole discretion, (i) apply that portion of the payment deposit that is necessary to pay the amount owed, and (ii) notify Contractor that such failure constitutes a material breach that the Contractor must cure within ten (10) calendar days of notice

thereof by paying to DLA DISPOSITION SERVICES an amount equal to one-hundred twenty percent (120%) of the subject amount owed, which payment shall be applied by DLA DISPOSITION SERVICES to replenish and increase the amount of the payment deposit. The Contractor shall also be assessed interest on the payment based on the current rate as determined by the Secretary of Treasury. The interest will be added to the next month's Statement of Account(s).

## **ARTICLE SIX**

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

#### **Section 1 – Product Pool**

(A) **Property Flow** - The property will be comprised of items identified by the Government as safe to sell and generally located in the Continental United States (CONUS) to include Alaska, Hawaii, Guam, Puerto Rico, and possibly the Virgin Islands. The Government may include locations outside CONUS at mutual agreement of the Contractor. Property issued under this contract will be comprised of usable, safe to sell Rolling Stock property assigned demilitarization code A, F, or Q. The product pool being offered is defined as:

*Ground related, self-propelled wheeled and track mounted vehicles (such as passenger motor vehicles, trucks and dozers) and trailers (such as semi-trailers, cargo trailers and special purpose trailers).*

Issuing locations outside of CONUS may be added to this contract (at mutual agreement of the Government and Contractor) after providing the Contractor ample phase-in time to implement operations at the new locations. 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.

(B) **Government's Right to Retrieve Property** - The Government reserves the right retrieve or restrict property from the Contractor that is found to have become controlled or that is needed to support the mission of DOD. Contractor must return the controlled items upon notification from the Government and return mission essential required property whenever it has not been resold by the Contractor. DLA DISPOSITION SERVICES will not reimburse the Contractor for any lost revenue associated with property that has been sold to a resale buyer.

(C) **Contractor's Right to Non-Delivery Order Items** - The Government will determine the safe to sell items to be sold to the Contractor. The Contractor has the contractual obligated to purchase all property issued on a delivery order. Contractor has no right to any property that is not issued to them on a delivery order. Subject to certain limited exceptions, the Contractor will have the contractual obligation to purchase the flow of property when issued on a delivery order. DLA DISPOSITION SERVICES reserves the right to sell property or offer property through alternative sales or contract means for all property not issued on a Delivery Order under this IFB.

#### **Section 2 – Property Referrals**

(A) **Location** - Property that is referred for sale to the Contractor shall be located within the Continental United States to include Alaska, Hawaii, Guam and Puerto Rico and possibly the Virgin Islands. DLA DISPOSITION SERVICES may opt to deliver property to the contractor located outside CONUS with contractor's agreement. The Contractor is required to transport property to the Contractor's facility(ies) within 10 business days of issue. With prior approval of the Government, certain exceptions for property movement may be considered by the SCO. The Contractor should not

assume property may be resold on a Government facility when determining a bid for this contract as the reselling of property will be on an limited basis. Under no circumstances is culling for the purpose of effecting partial or incremental removals authorized.

**(B) Receipt In Place (RIP)** – Certain items may be issued to the Contractor from a RIP location. DLA DISPOSITION SERVICES shall identify this property to the Contractor at the time it appears on the Delivery Order. The Contractor is required to pack, load and transport RIP property to the Contractor's facility(ies) within 10 business days of issue. The Government is not responsible for loading the Contractor's conveyance at a RIP location. Contractor must load property. On a case-by-case basis, the Contractor may be allowed to conduct the resale of property from the DLA DISPOSITION SERVICES location if authorized in advance by the Government, however, approval of such sales will not be routine in nature and only on a limited basis.

**(C) Initial Delivery Order** - DLA DISPOSITION SERVICES shall deliver the initial Delivery Order to the Contractor on the dates that are (i) within the time specified for the phase-in period, and (ii) the date DLA DISPOSITION SERVICES has received and approved all the information required under the provisions of this contract.

**(D) Delivery Order** - The Government shall issue a consolidated list(s) of property being transferred to the Contractor called a Delivery Order.

**(E) 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:

**Physical Location of the Property Shipment**  
**Disposal Turn in Document Number**  
**Requisition Number if RCP Property**  
**National Stock Number (NSN)/Local Stock Number (LSN)**  
**Inventory Item Name**  
**Item Unit of Issue**  
**Quantity**  
**Item Unit Price**  
**Acquisition Value**  
**Contractor's Up Front Purchase Price**  
**DEMIL Code**

**(F) 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. Any subsequent resale transactions of property are between the Contractor and the resale buyer, not the Government and the resale buyer.

**(G) 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 other property where title has transferred to the Contractor and Contractor has lost or damaged the property due to negligence.

**(H) Line Item Discrepancies** – Contractor must notify the Government of any line item discrepancies, i.e., quantity overage/shortage, acquisition value, item misdescription, etc. Contractor must provide notification to DLA DISPOSITION SERVICES with supporting documentation of such line item discrepancy and the property must be made available for inspection by DLA DISPOSITION

SERVICES. Failure to provide notice of an alleged discrepancy in accordance with the criteria set forth in this subparagraph may 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 next Statement of Account. Line item discrepancies for property issued at a DLA DISPOSITION SERVICES facility must be identified by the Contractor at the time of DLA DISPOSITION SERVICES/Contractor joint inventory and prior to Contractor removing property. Acquisition values are assigned by the Government and normally not up for dispute.

**(I) 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 within thirty (30) 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.

**(J) Property Surges** - Contractor acknowledges that certain installations may close during the performance period of this contract. As a result, large generations of property could be turned into DLA DISPOSITION SERVICES and 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. The direct costs of the increased workload upon the Contractor would not be at any additional costs to the Government to include Seller Indirect Costs.

## **ARTICLE SEVEN**

### **Demilitarization Codes/Trade Security Control (TSC) Requirements**

**Section 1 – Demilitarization Codes** Many of the items in the product pool are subject to Trade Security Controls (TSC) assessment/clearance based on their demilitarization code assignment and their offensive/defensive capabilities. Any item not assigned demilitarization code “A” requires a TSC assessment for the buyer. 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.

**Section 2 – 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 End-Use Certificate (EUC) in the form of a DLA Form 1822 (copy 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. 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.).

**(A) Resale Buyer’s Trade Security Control (TSC) Requirements** - All secondary purchasers of non-demilitarization code A property that is sold to the contractor must also receive a similar Assessment/clearance. The Contractor will be required to notify prospective buyers of the necessity to comply with TSC requirements and export controls. The Contractor will be required to obtain and keep information on file for review by DLA DISPOSITION SERVICES or other Government entities to include a properly completed EUC from the prospective resale buyer of each lot (or group of lots at a single re-sale event) of non-demilitarization code A property before releasing such items to the resale buyer. The Contractor’s export control compliance responsibilities will generally be limited accordingly to obtaining a properly completed EUC, releasing property to a buyer only after confirming that the buyer is cleared and has acknowledged their responsibilities for follow-up sales (i.e., advising buyers not to sell beyond the United States without proper Department of State/Department of Commerce documents/notice), and maintaining the associated compliance records.

**(B) Contractor’s Responsibilities Prior to Award to Resale Buyer** - Upon receipt of a properly completed EUC, the Contractor must also obtain Government approval before re-selling any TSC required item and releasing property to the buyer. The TSC Assessment Office is the assessment/clearance authority and the determining authority relative to the proper completeness of End Use Certificates (EUCs). Contractor agrees to comply with any change to current TSC procedures should they occur.

**(C) Contractor’s Liaison Responsibilities** - Contractor must assume liaison responsibilities when processing a Trade Security Control clearance for their resale customers by forming a Liaison office in the DLA DISPOSITION SERVICES Building. Responsibilities will include collecting,

reviewing, delivering, End Use Certificates to the Government. Interactions will be required between the TSC Assessment/Clearance Office and/or DLA DISPOSITION SERVICES. SCO assistance in obtaining the necessary office will be provided, however, the Government assumes no cost for establishing the Contractor's Liaison Office outside of providing an administrative work station and telephone lines. A Government furnished computer with internet access will also be provided once the Contractor's employee has been issued a security clearance (Contractor Access Card and background investigation). The Government will not provide office supplies or other equipment that the Contractor may require to complete this requirement.

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

### **Section 3 – United States Munitions List Items and Commerce Control List Items -**

(A) **Acknowledgment of Export Restrictions** - Contractor acknowledges that some items in the product pool are subject to export restrictions and Trade Security Controls (TSC) Assessments/Clearances.

(B) **Seagoing Containers** – Contractor acknowledges that whenever a seagoing container is used by a resale buyer to remove property, Contractor shall report the container number and, if known, the destination port to DLA DISPOSITION SERVICES before the container is loaded.



## **ARTICLE EIGHT**

### **Inventory Assurance**

**Section 1 – Do-Not-Sell (DNS) List** - As often as necessary, 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. Contractor is required to process their current inventory against the DNS List whenever an updated DNS List is provided by DLA DISPOSITION SERVICES. 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. Contractor must present the costs for such return to DLA DISPOSITION SERVICES for approval. DLA DISPOSITION SERVICES shall reimburse the Contractor's purchase price in addition to the cost associated with the return of the property to DLA DISPOSITION SERVICES. 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 demilitarization 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 still in the Contractor's current inventory, not physically removed by a resale buyer. DLA DISPOSITION SERVICES shall reimburse the Contractor's purchase price in addition to the cost associated with the return of the property to DLA DISPOSITION SERVICES. 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 – Property Assurance Contractor De-Incentives** – De-Incentives will apply to the Contractor with regard to conducting a resale of items that DLA DISPOSITION SERVICES has identified it as controlled and identified on the DNS or DCC List. De-Incentives will apply in that DLA DISPOSITION SERVICES will charge the Contractor 50% of the acquisition value of any item being offered for sale that DLA DISPOSITION SERVICES identifies as not eligible for sale based on the item commodity or demilitarization code.

## **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 and identify the current facility location of the item. Any change in facility location must be reported on this property. 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.

**Section 2 – Receipt of Property at the Contractor’s Facility** – Contractor is required to provide DLA DISPOSITION SERVICES a weekly listing of property that was physically removed to a Contractor’s location. The Contractor must report the location of the property. 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.

**Section 3 – Resale and Returns Report** – Contractor is required to provide a monthly report to DLA DISPOSITION SERVICES that reflects property that has either been resold/removed or that has been returned to the Government without resale. 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, bid price received and date of sale. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Contractor during the contract phase-in period.

**Section 4 – Seller Indirect Cost (SIC) Report** - In the event SIC is approved by the SCO, Contractor must provide a monthly report detailing the costs actually incurred. The report must be in a spreadsheet format and must include supporting documentation of the SIC. At no time does SIC include lost profits. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Contractor during the contract phase-in period.

**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 resale Event and Lot number applicable and includes 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 active sales information for each property to the eFAS/GovSales.gov portal.

On a quarterly basis, the Contractor is required to provide the following post sales data to the Sales Contracting Officer:

- Total Number of Assets Sold – Assets sold equals number of individual assets sold not number of lots sold
- Total Number of Assets Posted on GovSales.gov Portal
- 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

## **ARTICLE TEN**

### **Property Removal and Government owned Material Handling Equipment (MHE)**

**Section 1 – Property Removal on Government Facilities** –The Contractor will remove the property from the Government’s storage facility within 10 business days of receipt of a Delivery Order. The Contractor is required to transport property listed on a Delivery Order to the Contractor’s facility(ies). The Government will load Contractor’s conveyance. If the Government is unable to load property to the Contractor’s conveyance, the Government will allow sales in place. All sales must ensure the property is removed from the Government’s facility within 75 business days of appearing on the delivery order. The Government will not load the Contractor’s customers. 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. The Contractor should not assume property may be resold on a Government facility when determining a bid for this contract as the reselling of property will be on an limited basis. The Government may assist the Contractor with the load in certain circumstances.

**Section 2 – Storage Charges** – The Government reserves the right to implement storage charges for all property not removed timely. A \$50.00 per DTID, per day charge may be applied by the Government for any item not removed from Government premises within 10 business days. For items permitted for sale on a Government facility, storage charges in the amount of \$50.00 per day, per DTID, will apply for items not removed within 75 business days of appearing on a Delivery Order. Under no circumstance will former surplus Government property sold to the Contractor remain on Government premises beyond 121 business days after issuance of a Delivery Order. Property left on Government premises longer than 121 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 authorization of DLA DISPOSITION SERVICES.

**Section 3 – Receipt In Place (RIP) Property Storage on Government Facilities** – Receipt In Place (RIP) locations will be identified to the Contractor by the Government, generally consisting of property issued from a site outside the DLA DISPOSITION SERVICES footprint. The Government is not responsible for loading the Contractor’s conveyance at a RIP location. Contractor must load property.

When permitted by DLA DISPOSITION SERVICES, the Contractor may be allowed to resell property from the RIP location. 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. The Contractor should not assume property may be resold on a Government facility when determining a bid for this contract as the reselling of property will be on an extremely limited basis.

**Section 4 – DLA DISPOSITION SERVICES Infrastructure** - Contractor acknowledges that DLA DISPOSITION SERVICES may reduce/change its infrastructure, including without limitation by closure of field locations. The Contractor further acknowledges that this contract shall remain in force notwithstanding such infrastructure reduction/change measures that DLA DISPOSITION SERVICES in its sole discretion may implement.

**Section 5 – Government Owned Material Handling Equipment (MHE)** - Government owned Material Handling Equipment (MHE) will not be made available to the Contractor. The Contractor must provide ample MHE in order to perform the requirements of this contract at RIP locations. On a case by case basis, the Government may offer assistance in loading contractor property, to include providing specialized Government Owned MHE if available.

## **ARTICLE ELEVEN**

### **Property Returns**

**Section 1 – Property Accountability of Items Issued to Contractor** - Regardless of the ultimate disposal of items issued to the Contractor on a Delivery Order, DLA DISPOSITION SERVICES must maintain cradle-to-grave accountability of all property. Throughout the contract performance and wind-down period, at a minimum, the Contractor must identify all property regardless of the disposition method, by DTID number and make the information available to DLA DISPOSITION SERVICES.

**Section 2 – Line Item Discrepancies** – DLA DISPOSITION SERVICES will issue property to the Contractor on a Delivery Order. Line item discrepancies must be identified to DLA DISPOSITION SERVICES at the time of the DLA DISPOSITION SERVICES/Contractor joint inventory. The Contractor will return the discrepant items to DLA DISPOSITION SERVICES at the time they are identified and the applicable Delivery Order will be annotated of the discrepancy and sign the annotated delivery order. Financial adjustments will be reflected on the monthly Statement of Account.

**Section 3 – Property Retrieval of Controlled Items –**

**(A) Property Located at Contractor's Facilities** - Property issued to the Contractor may later become controlled and not eligible for sale. DLA DISPOSITION SERVICES will provide notification to the Contractor identifying such property. The Contractor must return the identified items to the Government within three (3) business days from the notification. DLA DISPOSITION SERVICES will advise the method for return based on the applicable item and will reimburse the Contractor costs associated with the return of property to DLA DISPOSITION SERVICES.

**(B) Property Resold - Not Removed from Contractor's Facilities** – Contractor may have resold items that later become controlled and not eligible for sale. If the identified controlled item has not been removed from the Contractor's facilities, Contractor agrees to not allow removal and will return the identified item to the Government within three (3) business days of the notification. DLA DISPOSITION SERVICES will advise the method for return based on the applicable item and will reimburse the Contractor costs associated with the return of the property. DLA DISPOSITION SERVICES will not reimburse the Contractor for any lost revenue associated with the return of property that has been resold.

**(C) Property Resold - Removed from Contractor's Facilities** – Contractor may have resold items that the resale buyer has physically removed from the Contractor's facilities that later becomes controlled. Within three (3) business days of the DLA DISPOSITION SERVICES notification, Contractor is required to notify their customer and request the item's return if the resale of such property has occurred within the last year. 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 the property, Contractor is responsible for contacting the resale buyer again within 21 business days of the initial contact via a registered letter.

**(D) Status Report of Non-Responsive Resale Buyers** - On a monthly basis, 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 either the retrieval attempts or those that fail to return the property. Reports must be submitted to the SCO by the 15th of

each month and must reflect the status of the previous month's actions. 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 being requested to be returned, DLA DISPOSITION SERVICES reserves the right to request that the Contractor no longer conduct a resale to non-responsive customers. DLA DISPOSITION SERVICES will notify the Contractor of individuals/companies falling into this category on a case by case basis.

**Section 4 – Reutilization/Transfer/Donation (RTD) Property Returns** - There will be occasions when the Government will request the return of property issued to the Contractor because it is needed in support of the DLA DISPOSITION SERVICES Reutilization/Transfer/Donation (RTD) mission. DLA DISPOSITION SERVICES Reutilization customers will be required to certify that the property being requested is "mission essential" and DLA DISPOSITION SERVICES will have checked current on-hand inventory to determine there is no other like items on-hand that can meet the customer's requirement. Property will only be requested back from the Contractor to meet a Transfer or Donation customer's requests when either an error was made on the part of DLA DISPOSITION SERVICES or the DLA DISPOSITION SERVICES Property Accounting system causing the item to not receive full screening or that the customer's approved requisition was not processed appropriately by DLA DISPOSITION SERVICES. The Contractor must return those items that have not been resold. Resold would indicate the Contractor has resold the item 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 and shall reimburse the Contractor for associated costs of the returned property.

## **ARTICLE TWELVE**

### **Contract Operational Requirements**

**Section 1 – Contractor Participation in Federal Asset Sales** - Contractor is required to participate in the Government's Federal Asset Sales Program whereby the Contractor agrees to link all sales being conducted to the website, GovSales.gov, a Real and Personal Property Portal that facilitates the sale for all Government Agencies.

**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 aware of how their work supports the 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. The Contractor is required to return any items identified on the DNS List or any item that has become DEMIL required on the DCC List that are in the Contractor's current inventory and have not been removed by a resale buyer.

(B) **DLA 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. De-Incentives will apply in that DLA DISPOSITION SERVICES will charge the Contractor 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.

**Section 4 – Contractor Web Based Application** – Contractor must develop a web-based application for use on this contract with regard to reviewing property for accurate coding and 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-day Government preview area of all items the Contractor is preparing to offer for sale. During the 5-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. All property approved as a result of the Q-Tool application must be offered for sale on the Contractor's web site 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
- End Use of Item (if available)
- Photograph of Item (if available)

**Section 5 - DLA DISPOSITION SERVICES Inspection of Property** – Contractor is required to allow DLA DISPOSITION SERVICES or a DLA DISPOSITION SERVICES sponsored agency to perform physical spot checks of property when requested.

**Section 6– 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 ensure all such laws and regulations are adhered.

(B) **Duty of Loyalty** – Contractor shall carry out the responsibilities under the contract with honesty, good faith and fairness towards DLA DISPOSITION SERVICES. The Contractor shall not enter into any resale transaction other than on an arms-length basis or with pricing or other terms less favorable to the Contractor than otherwise reasonably obtainable. The Government anticipates the Contractor shall auction all items purchased from the Government; regardless of type of resale transaction. Contractor shall resell the property in an arms-length transaction that is intended to provide the best possible resale value. Any revenue received from such transaction, at time of transaction or deferred, shall be considered revenue for purposes of the percentage bid by the Contractor under this contract.

## **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.

**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.

**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 – DLA DISPOSITION SERVICES Remedies for Material Breach by Contractor** - If the breaching party is the Contractor, DLA DISPOSITION SERVICES may take any 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.

**Section 7 – Indemnification of Contractor by DLA DISPOSITION SERVICES** - If the breaching party is DLA DISPOSITION SERVICES, then DLA DISPOSITION SERVICES shall indemnify and hold Contractor harmless for its damages.

**ARTICLE FOURTEEN**  
**Contract Seller Indirect Costs (SIC)**

**Section 1 – Documentation and Payment of Seller Indirect Costs –**

(A) **Seller Indirect Costs (SIC)** – Pursuant to a DLA DISPOSITION SERVICES mission changes, certain Contractor costs directly related to the mission of DLA DISPOSITION SERVICES may be deemed Seller Indirect Costs (SIC), thus, the costs to perform such duty can be deducted entirely from distributions otherwise payable to DLA DISPOSITION SERVICES. This mechanism largely leaves the risks associated with these issues with DLA DISPOSITION SERVICES and accordingly should considerably lessen these concerns for the Contractor. All costs permitted as SIC, must be allocable, allowable, reasonable, and pre-approved by DLA DISPOSITION SERVICES on a case-by-case basis prior to being executed by the Contractor. DLA DISPOSITION SERVICES approval of SIC must be in writing and not assumed to be approved. SIC are never authorized for reimbursement of loss profits. Property surges that may result are not eligible for SIC. Unless otherwise stated, transportation costs and Contractor's Direct Costs are not considered for SIC.

(B) **Supporting Documentation** - Each disbursement for a SIC 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.

## **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.

**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 prosecution 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 with all requested information regarding property or information relating to the Contractor's 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 shall have the right to conduct Compliance Reviews **and/or Investigations** of Contractor. DLA 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, **Investigations**, 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 as necessary to support the review process and DLA 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, 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, 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 stating that a Further Review is not justified, DLA 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, **Investigation**, 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 – Costs of Oversight** - DLA DISPOSITION SERVICES shall pay all fees, costs and expenses DLA DISPOSITION SERVICES incurred in connection with its Compliance Reviews, **Investigations**, and Further Reviews.

**Section 15 – 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 16 – 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 17 – 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 6 years after accrual of the claim to the SCO for a written decision. A claim by the Government against the Contractor 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. At its option, Contractor may obtain and maintain such additional insurance, including directors and officers coverage and errors and omissions coverage, as Contractor deems appropriate.



**Section 4 – Evidence of Insurance** - Within thirty (30) calendar 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, which 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 neuter 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.

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

The General Information and Instructions and Special Conditions of Sale contained in the DLA Disposition Services pamphlet entitled, "Sale by Reference - Instructions, Terms and Conditions Applicable to Department of Defense Personal Property Offered for Sale by DLA Disposition Services, July 2012" (hereinafter, Sale by Reference; a copy of the Sale by Reference 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), is hereby incorporated by reference and become a part of this IFB and any resulting contract:

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## 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:

**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, throat), edema, dermatitis, dizziness, rash, itching, swelling of extremities, eye irritation or damage to nervous system, kidney or liver. Coating may be fatal if swallowed.*

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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 of the percent of gross revenue (to include any bidder's premium or other administrative fees) that the Contractor will share with the Government.

**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 percent of gross revenue (to include any bidder's premium or other administrative fees) that the Contractor will share with the Government.

**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. Overseas, HM is defined in the applicable Final Governing Standards or Overseas Environmental Baseline Guidance Document, and/or host nation laws and regulations.

**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 a 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.

**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:** Ground related, self-propelled wheeled and track mounted vehicles (such as passenger motor vehicles, trucks and dozers) and trailers (such as semi-trailers, cargo trailers and special purpose trailers).

**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.

**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.

**Usable Property:** A designation assigned by or with the approval of DLA DISPOSITION SERVICES personnel meaning that the item has value in excess of that of the item's material content.