



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

# INVITATION FOR BID (IFB)

## Number 21-069

D.O.D. SURPLUS TERM SALE EAST  
(STS-E)

STEP TWO OF TWO-STEP SOLICITATION

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# D.O.D. SURPLUS TERM SALE EAST (STS–E)

## INVITATION FOR BID Number 21-069

### 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 Sales Contracting Officer (SCO) will only consider those bidders that have submitted an acceptable technical proposal during Step One of this solicitation under RFTP 21-069.

The successful bidder's technical proposal will be incorporated to the extent that it complies with this IFB. Any deviations in the technical proposal from provision in the IFB will require a contract modification. Terms in the IFB are non-negotiable and cannot be removed without a contract modification. Disposition Services will hold the awardee responsible for performance in accordance with the contents of their technical proposal, but only to the extent that it is consistent with the IFB.

***In all other respects, the provisions of this IFB will 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.***

The bidding process under the IFB is being planned with a sealed bid and live auction component. All bidders should thoroughly review Article 2 Section 1 in order to understand the bidding process and to meet all necessary bid deposit requirements, documentation requirements and submission timelines to participate as a bidder in this sale.

Due to the current COVID-19 environment the government reserves the right to cancel the live auction and award solely to a responsible bidder with the highest priced responsive sealed bid. The government will provide notice to all bidders of its intent to conduct the live auction, along with all rules that will apply during the live auction at least 14 days prior to bid opening and the date the live auction is scheduled. The Government has determined that the live auction will proceed and that all participants in the live auction must attend in person. Should bidders choose not to participate in the live auction, any sealed bid submitted will be considered their only and final bid. The current schedule of key dates and events are as follows:

- a. 23 February 2021: Government issues notice of intent to conduct live auction and the rules for live auction; or Government cancels live auction and advises all bidders that award will be made solely on sealed bid;
- b. 02 March 2021: The \$100,000.00 bid deposit must be delivered via certified mail and received by the DLA DISPOSITION SERVICE'S SCO at the address stated below. Additionally, the Firms confirmation of live auction participation, the signed

Acknowledgement of Auction Rules and Supplement to Auction Rules, and the list of personnel attending and those authorized to bid must be delivered to the SCO via email submission to the DLA Disposition Services Sales STS RFTP mailbox at [DLADispSvcsSlsSTSRFTP@dla.mil](mailto:DLADispSvcsSlsSTSRFTP@dla.mil).

- c. 05 March 2021: The Firms completed Sealed Bid Form must be delivered to DLA Disposition Services by 4:00 PM, EST via email submission to the DLA Disposition Services Sales Bids mailbox at [DRMSSalesBids@dla.mil](mailto:DRMSSalesBids@dla.mil).
- d. **04 March 2021 @ 9:00 AM EST**: Bid opening. The live auction will commence afterward that same day.

Forms for submitting a bid will be provided by the DLA Disposition Services Sales Contracting Officer (SCO) with the Final IFB. The Firms Bid Form and guarantied instrument of payment for the bid deposit shall be addressed to the DLA DISPOSITION SERVICES SCO.

Finally, this IFB is a significant departure from previous Commercial Venture (CV) contracts used to sell both rolling stock and non-rolling stock property and all bidders are strongly encouraged to read all provisions. The successful awardee will not be considered as a government contractor, agent or sales broker for the US Government. Accordingly, the Purchaser will not have certain requirements from previous CV contracts, and will also not be afforded certain privileges under those CV (e.g. Common Access Cards (CAC) for base entry; ability to link sales web site to GSA web site etc...).

Ms. Erica Nowicki  
Lead Sales Contracting Officer  
DLA DISPOSITION SERVICES  
74 North Washington Avenue  
Battle Creek, Michigan 49037-3092



## GENERAL STATEMENTS OF CONTRACT

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

This is a firm fixed price contract where the bid price is expressed as a percentage of acquisition value. The Government expects the buyer to perform all the requirements under this contract at the bid price provided by the Purchaser. The Government guarantees to issue the Purchaser 160,000 DTIDs of property within the 24-month base period, or property having a total acquisition value of \$200 Million, whichever is the lesser to meet contract minimums. The maximum amount of property issued within the 24-month base period will not exceed the greater of 300,000 DTIDs of property or property having a total acquisition value of \$1.10 billion.

The Government and Purchaser agree that the government may offer an option period under the terms of this contract prior to the expiration of the base period if the maximum quantities allowed under the base period have been met. The minimum and maximum quantities offered under such an early option period may not exceed the amount authorized under the original terms of this contract. Initiating this agreed to early option period shall reduce the total performance time allowed under this contract. All performance in this option period shall continue under the terms applicable to option periods in the IFB.

For illustrative purposes: If a contract has a 24-month base period with three (3) twelve (12) month option periods for a total length not to exceed sixty (60) months; and the contract base period maximum is expected to be exceeded after the initial 12 months; then, the government may exercise the initial 12-month option period at the end of 12 months, even though 12 months are remaining on the initial base period. In doing so, the base period is being effectively reduced to 12 months and the overall permitted length of the contract would be reduced from 60 months to 48 months, assuming all other options are exercised. The minimum and maximum quantities for this option period will be calculated as a percentage of the initial stated base period requirement. The amount of material is the same amount that would have otherwise been permitted under the original terms of the contract, if all option periods were exercised during a 60-month period.

The Government will determine items to be sold to the Purchaser regardless of Federal Supply Code or location. Purchaser 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, whether it is considered part of this contract or not. Furthermore, this contract does not in any way restrict or prohibit the Government from moving property received at Disposition sites or receipt in place locations to other Disposition sites, whether they are located in the same region or not. The Government has absolute discretion to move property between Disposition sites or regions prior to placing it on delivery orders on any contract.

This IFB relates to personal property assets that the Government has determined to be surplus to the needs of the Department of Defense and the Federal Government. Property in the **East Region**

**which includes all Disposition Services and Receipt in Place Sites East of the Mississippi River to include the U.S. territories of Puerto Rico and the Virgin Islands.**

General notice on negotiated sale of limited amounts of other surplus personal property: On an infrequent basis, the government may offer personal property for sale that is not included within the scope of this IFB that requires partial mutilation, disassembly or other services necessary to remove the property. The Purchaser is not required to accept such property under this IFB but may agree to accept the property under a separate negotiated sales contract offered by the government. The sales price for such property under any negotiated sale may not exceed \$15,000 for the entire lot of property offered under such negotiated sale. If property is DEMIL required, Purchaser will be required to comply with all DEMIL training, surveillance requirements and DEMIL verification/certification requirements. Performance of any services under a negotiated sale (e.g., disassembly of furniture; moving and packing of furniture etc...) shall be taken into consideration in negotiating a sales price for the item or the lot. Such services shall not be compensated separately and shall not change the nature of the sales agreement under the Federal Property Management Regulations into a service contract under the Federal Acquisition Regulations (FAR). Property that may be offered under these limited negotiated sales would include, but are not limited to relocatable buildings, modular furniture, furniture located in barracks and office buildings that has not been removed or packed for shipment and limited DEMIL F items that require limited mutilation or demilitarization. This provision does not constitute a right of first refusal to the Purchaser or an exclusive right to purchase such property. The Government reserves the right, and it is within the government's sole discretion to offer and award negotiated sales for such personal property to any individual or firm.

Surplus personal property offered under this IFB is an item of personal property that has been determined to be safe to sell with a DEMIL code A, Limited F or Q6. Surplus personal property that is sold by DOD is in "as-is, where-is" condition. Under General Services Administration (GSA) regulations, federal agencies must make excess personal property available for: (1) reutilization within their agency or to special programs; (2) transfer to other federal agencies; or (3) donation to specified eligible entities, before an item is eligible for sale to the general public. Under section 102-36.240 of GSA regulations excess personal property includes "new" property, "usable" property, "repairable" property or "salvage" property as defined in that regulation. Surplus personal property under this IFB has been determined to be "new", "useable" or "repairable" under the GSA definitions. Surplus personal property offered under this IFB does not meet the definition of scrap, which has no value except for its basic material content. While DoD turn-in customers provide a supply condition code of A-H on all DTIDs for all property turned in to Disposition Services, these codes are used in the DoD supply system as classifications for materiel in terms of readiness for issue and use, or to identify action underway to change the status of materiel. They do not directly correspond to the suitability of property being made available for reutilization, transfer, donation or sale. Disposition Service personnel make an independent determination on whether the property should be classified as scrap because it has no value in excess of the item's material content and/or whether an item is suitable for reutilization, transfer, donation or sale as surplus.

All property covered under this contract is being sold "as-is" and "where is." No request for adjustment in price for any item or rescission of the sale will be considered. This is not a sale by sample and property issued under the terms of this contract may not be rejected by the Purchaser, unless an item has a reported acquisition value in excess of \$5 million dollars. The Purchaser has sole discretion in rejecting items with an acquisition value over \$5 million dollars. The United States Government (USG) is the sole arbiter of determining condition code and determining whether property is considered surplus

under its property regulations and thus eligible for referral under this contract. Purchaser's opinion, ability to sell or market, or the availability of customers for items have no bearing on whether the government considers the item Surplus. The Purchaser has no right to challenge an in-scope determination, no changes, modifications, downgrades to scrap, or reduction of acquisition value will be applied. Discrepancies are limited to quantity overage/shortage and/or item mis-description by Local Stock Number (LSN). The process for challenging a LSN designation is set forth in Article 7 section 2.

**In the East Region, DLA Disposition Services facilities receive property at sites located East of the Mississippi River to include the U.S. Territories of Puerto Rico and the Virgin Islands.** DLA Disposition Services sites may also receive property that is not located at a DLA Disposition Services facility and may refer for sale to the Purchaser at a "Receipt in Place" (RIP) location within the geographic areas included within the awarded contract.

DLA Disposition Services will not be providing the Purchaser with permanent indoor or outdoor storage space for property, or any space to store equipment, (including MHE), at any location where the Purchaser is required to remove property.

Property that is referred for sale to the Purchaser shall be made available for inspection prior to issuance on a Delivery Order (DO). DLA Disposition Services and the Purchaser must conduct a physical joint inventory of the property pending issuance on a DO at the Disposition Services field site and/or RIP site prior to the property being released for shipment out of the Disposition Services control. The joint inventory will be conducted and signed by both the issuer (DLA Disposition Services or authorized representative) and the receiver (Purchaser) with all identified discrepancies annotated. Line-item discrepancies must be identified to DLA Disposition Services at the time of the joint inventory prior to the transfer of title to the Purchaser. In all situations involving property inspection, the provision in Article 7 Section 1 applies with regard to whether the property is within the scope of the contract. Any discrepancies identified after the joint inventory by the Purchaser will not constitute a valid credit request.

The Government will issue a consolidated list(s) of property being transferred to the Purchaser on the DO. The DO will be reviewed and signed by both the issuer (DLA Disposition Services) and the receiver (Purchaser) acknowledging acceptance of the property. The signed DO represents the official transfer of title to the Purchaser.

Property removal must be completed within five (5) business days after receipt of the DO from the SCO for property located at DLA Disposition Services field sites, and within ten (10) business days for property located at a RIP site. Removals must be scheduled to occur during the Disposition Services site's normal working hours with coordination with the Sales POC. Special circumstances may arise where DLA Disposition Services will allow certain surplus property to remain at a Government facility beyond the five (5) business days for Disposition Services sites and/or ten (10) business days for RIP sites; however, written authorization from a DLA Disposition Services Area Manager is required for these exceptions. The Purchaser will be charged storage charges for DTIDs not removed from a Government facility within five (5) business days for Disposition Services sites and/or ten (10) business days for RIP sites calculated from the date on the DO issuance from the SCO, unless prior approval has been granted by the DLA Disposition Services Area Manager, not to exceed thirty (30) calendar days. Removals requiring more than thirty (30) calendar days must be approved by both the DLA Disposition Services Area Manager and the SCO, not to exceed sixty (60) calendar days.

The Purchaser will pay for any and all transportation costs associated with shipments of surplus property from DLA Disposition Service sites or RIP locations. Purchaser will coordinate with the Sales POC for Purchaser's conveyance pick up time frame. On the agreed day of pick-up, DLA Disposition Services will load up to the maximum capacity of the equipment at the DLA Disposition Services Field site only. DLA Disposition Services personnel will make the initial placement of the property on conveyance(s) furnished by the Purchaser and the initial placement of the Purchaser's conveyance will be determined by the Government. The Government will not block, chock, brace, lash band or in any other manner secure the cargo on such conveyance(s) furnished by the Purchaser. Purchaser personnel will not be permitted to operate Government owned MHE. The Purchaser is cautioned that RIP location loading will be the responsibility of the Purchaser. DLA Disposition Services or the USG will not provide MHE or any assistance to remove the property from RIP locations.

For purposes of bidding on this contract, Bidders shall not assume that property may be resold on a Government facility or at Receipt in Place (RIP) locations. Reselling of property at Government facilities or RIP locations will be on an extremely limited basis and must be approved by the Area Manager and SCO. Property authorized to be resold on a Government facility or at RIP locations must be removed within thirty (30) calendar days or storage charges may be charged.

Purchaser will receive a SF97, "The United States Government Certificate To Obtain Title To A Vehicle." SF97 for all vehicles. A SF97 is not a title. It is documentary evidence that provides a purchaser the ability to obtain a Title at the appropriate Department of Motor Vehicles (DMV). The SF97 is accepted in all 50 states and US Territories. The Government makes no representation or claims as to the acceptance of this form outside of these areas. The SF97 in no way serves as a waiver for payment of registration fees, nor county or State taxes assessed to the vehicle after its purchase from the Government. The Certificate to Obtain Title that accompanies vehicles may identify the vehicle as Salvage or Scrap, meaning the vehicle is not intended for driving and its condition is poor and/or it is not road-worthy in its present condition. These provisions may also be applied to certain accident-damaged vehicles. The type of title issued will be determined at the discretion of each state's Department of Motor Vehicles (DMV). Purchaser is also cautioned that some SF97 will require OFF ROAD USES ONLY be stamped on the SF97. A listing of such rolling stock items that require the OFF ROAD USES ONLY stamp will be provided to the Purchaser. DLA Disposition Services will only provide one SF97 per vehicle. DLA Disposition Services will only sign off on SF97 that have the Purchaser's information in the Transferee block. DLA Disposition Services will not sign off on a SF97 for a 3-party buyer. Purchaser is solely responsible for issuing a re-assignment letter or Bill Of Sale to subsequent purchasers and providing a copy of the original SF97 issued from the government to the purchaser. Any reassignment letter or Bill of sale should include any restrictions on the original SF97. Purchaser must retain copies of completed SF97s for a minimum of six (6) years after contract expiration.

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 Purchaser. DLA Disposition Services may exercise option periods to extend the performance period for up to an additional thirty-six (36) months based on Government requirements. Option periods will normally be in one-year increments; however, the Government reserves the right to exercise option periods for shorter periods of time. The entire length of the contract, if all option periods are exercised shall not exceed sixty (60) months.

For any option period issued after the base period that is issued for a period of time less than 24 months, such as with a six-month extension period, the minimum and maximum will be adjusted and calculated as a percentage of the stated base period requirement. For illustrative purposes, if contract had a minimum requirement for 160,000 DTID's or property having a total acquisition value of \$200 million, whichever is the lesser amount to meet the contract minimum, for a 24-month base period, then the exercise of a one-year option period for the same contract would have a minimum requirement of 80,000 DTID's or property having a total acquisition value of \$100 million, whichever is the lesser amount to meet the contract minimum for the 12 month option.

For the same option period mentioned above as an illustrative example, the maximum of the option period would also be calculated as a percentage of the stated base period requirement. For illustrative purposes, if contract had a maximum requirement for 300,000 DTID's or property having a total acquisition value of \$1.10 billion, whichever is the greater amount to stay within the limits of the contract maximum, for a 24-month base period, then the exercise of a one-year option period for the same contract would have a maximum requirement of 150,000 DTID's or property having an annual acquisition value of \$550 million, whichever is the greater amount to stay within the limits of the contract maximum of the 12 month option.

This means the government can provide a minimum of 80,000 DTID's or property having an annual acquisition value of \$100 million, whichever is the lesser amount to meet the option contract minimum in that one-year option period for this illustrative example. It also means that the government can provide a maximum of 150,000 DTID's or property having an annual acquisition value of \$550 million, whichever is the greater amount to stay within the limits of the contract maximum in the 12-month option period for this illustrative example.

Purchasers should exercise caution when incurring obligations based on an anticipated performance period as the performance period refers only to the amount of time the agency shall have to meet its commitments to provide the minimum quantities of items advertised to the Purchaser. It does not confer any right to surplus property throughout the performance period; instead, the Agency promises only to provide the minimum quantities.

An offeror's bid will consist of a bid percentage specified by the bidder for the Government's acquisition value of all property received. The minimum bid that may be submitted in the sealed bid portion of the bidding process must meet or exceed three and one half (3.5) percent. The contract will be offered to the responsive responsible bidder offering the highest bid percentage. The successful bidder agrees to pay the Government the bid percentage offered based on the Government's acquisition value for each line item issued. This is referred to in the contract as the Billing payment.

Within ten (10) business days of contract award, the Purchaser must provide a payment deposit which is the average estimated acquisition value of such material to be generated during a 3-month period multiplied by 20 percent of the bid price. For payment deposit purposes only, \$200 million will be used to calculate the payment deposit. For illustrative purposes, this IFB has a base period of 24 months and one of the contract minimums is listed as property having a total acquisition value of \$200 million, then \$200 million divided by 24 months equals \$8,333,333.33 ( $\$200,000,000/24$ ). This is the average of the acquisition value of property generated per month. The \$8,333,333.33 would be multiplied by 3 months to get \$25,000,000 ( $\$8,333,333.33 \times 3$ ). This is the average of the acquisition value of property generated over 3 months.

If the Apparent High Bidder (AHB) had bid 3.5% as their bid percentage, then \$25,000,000 (average of the acquisition value of property generated over 3 months) times the bid percentage of 3.5% equals \$875,000. The payment deposit requires 20% of the \$875,000 (\$875,000 x .20), which is \$175,000. The payment deposit would be \$175,000.

This payment deposit is in addition to the \$100,000 bid deposit required for bid submission. The payment deposit will be held by DLA Disposition Services until the conclusion of the contract. The Purchaser is also required to provide a financial guarantee bond in the amount of \$3 million dollars within thirty (30) business days of award.

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

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

All property that the Government issues under this contract requires property assurance responsibilities on the part of the Purchaser which may result in the property being returned to the Government. DLA Disposition Services will furnish the Purchaser 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. The Purchaser shall return any item on the DNS and DCC lists prior to release to resale customers and will identify the return by the applicable Delivery Order and Disposal Turn-In Document (DTID). The contract terms preclude the resale of items that DLA Disposition Services has identified as becoming controlled or DEMIL required and placed on the DNS or DCC List. After the USG has cleared the property for shipment to a Disposition site, Purchaser shall perform all packing, handling, and crating to include loading blocking and bracing of the Governments conveyance as needed. Purchaser shall send a transportation request via email to the SCO for controlled property return transportation request. The Government will refund the Purchaser its purchase price for such items. The Purchaser shall not expect any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary to the handling of any item on the DNS and DCC lists prior to release to resale customers.

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

Certain property identified for return may have already been resold by the Purchaser and may no longer be in the Purchaser's possession. The Purchaser will advise its resale buyers, prior to or at point of purchase, that due to national security, the Government may ask for the return of property. Purchaser will be required to inform their customer of the property's status and request that it be returned within 2 business days of notification from DLA Disposition Service. Purchaser agrees to withhold further sales participation from customers who are non-responsive or who refuse to return the property still within their possession until property is returned to DLA Disposition Services.

There may be occasions when the Government will request the return of property issued to the Purchaser because it is mission essential for the USG or its supported programs. The Purchaser may return those items that have not been resold upon mutual agreement. DLA Disposition Services will refund the Purchaser's purchase price for the return of the items requested by DLA Disposition Services and will advise Purchaser of the return process at DLA Disposition Services expense. DLA Disposition Services will not compensate for loss of revenue due to recall of the property.

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

Purchaser agrees to provide monthly and quarterly reports containing the following information, at a minimum, but not limited to inventory reports of property issued and removed/not yet removed, and any other required documentation that is needed for DLA Disposition Services upon request.

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

The Government reserves the right to conduct a post-award conference as early as two weeks after award. The purpose of the conference is to ensure the Purchaser 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 Purchaser personnel attending will be paid in full by the Purchaser without reimbursement by DLA Disposition Services.

Prospective bidders will be aware of certain risk factors that could affect a bidder's assessment of this contract and the calculations supporting the resulting bid. Under no circumstances is DLA

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

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

**All prospective bidders understand that Disposition Services is awarding this contract during a nationally declared emergency during the COVID-19 pandemic and the general circumstances that exists within the United States in reference to the COVID-19 pandemic.**

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. Purchaser shall not expect any equitable relief or any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary to fulfill contract obligations as written. Prospective bidders will assume that the provisions of the contract cannot be significantly amended after award.

## ITEM DESCRIPTION

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

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

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



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

**DEMIL Code F** – United States Munitions List (USML) or Commerce Control List (CCL) Military Items. Demilitarization required. Item managers, equipment specialists, or product specialists must furnish special DEMIL instructions.

**DEMIL Code Q6** – Commerce Control List Items (CCLI). Mutilation to the point of scrap is required outside the United States. Inside the United States, mutilation is required when the DEMIL integrity code (IC) is “3” and mutilation is not required when the DEMIL IC is “6”.

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

Local Stock Numbers (LSNs) consisting of a Federal Supply Class (FSC), NATO Codification Bureau Code, and noun/nomenclature and/or part number if no valid NSN exists. LSNs are assigned when an NSN is not available or Non-existent. The acquisition value of an item identified by LSN is determined by the generator and reported to DLA Disposition Services on the documentation associated with release of the item by the generator to DLA Disposition Services. LSN acquisition values are either the generator's recorded original procurement cost or its estimate of the item's replacement cost. In some instances, DLA Disposition Services receiving personnel will correct the generator's turn-in documentation by replacing an LSN with an NSN. In such cases the item's acquisition value is that corresponding to the NSN rather than that originally reported by the generator. A process for challenging acquisition values on LSNs is set forth in Article 7 Section 2.

## PROPERTY GENERATIONS DATA

The link provided,  
<https://www.dla.mil/DispositionServices/Offers/Customersupport/Library/saleshistoricaldata.aspx>, provides historical information relating to past generations of surplus personal property similar to what is being offered in this IFB. The data provides a sales history to include returns of FSCs, DEMIL Codes, line items and acquisition values. The government makes no guarantee on monthly generations of property and monthly generations may fluctuate and vary greatly. Bidders are advised that any sales history information provided is for informational purposes only. Prior year property generations and sales data are not predictors of future generations or sales.

**ADDITIONAL TERMS AND CONDITIONS OF SALE**

All provisions in the DLA pamphlet entitled, “Sale by Reference – Instructions, Terms and Conditions Applicable to Department of Defense Personal Material Offered for Sale by DLA Disposition Services, July 2012” (hereinafter, Sale by Reference), are hereby incorporated herein by reference and become a part of this IFB and any resulting contract. Where articles in the IFB contradict any articles in the Sale by Reference, the Articles in the IFB are controlling and shall over-ride or modify provisions in the Sale by Reference, as appropriate. The sections identified below specifically do not apply or have been modified as noted:

Part 1 General Information and Instructions – Section 4 does not apply.

Part 2 Sale of Government Property General Sale Terms and Conditions – Sections 3, 4, 5, 6, 7, 8, 9, 12, 13, 28, 29, 30, and 31 do not apply. Part 2, Paragraph 33 is amended to read, “Any contract awarded as a result of this sale is subject to the Contract Disputes Act 1978 (41 U.S.C. 7101-7109)”.

Part 3 Sale of Government Property Special Sealed Bid Conditions—entire Part does not apply.

Part 4 Sale of Government Property Special Sealed – Term Conditions – Sections 1, 2, 5, 7 and 7 do not apply.

Part 5 Additional Special Circumstance Conditions - Miscellaneous – Sections A, D, G, I and J do not apply.

Part 6 Additional Special Circumstance Conditions – Demilitarization and Mutilation – entire Part does not apply.

Part 7 Additional Special Circumstance Conditions - Hazardous and Dangerous Property – Miscellaneous – Sections G, H, I, J, Q, and Y do not apply.

Part 8 Additional Special Circumstance Conditions - Foreign Excess Personal Property—entire Part does not apply.

Part 9 Special Spot Bid Conditions of Sale of Government Property- entire Part does not apply.

Part 10 Sale of Government Property Special Auction Conditions—entire Part does not apply.

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

Instruction to link

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

## **TERMS AND CONDITIONS OF SALE**

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

### **ARTICLE ONE**

#### **FAR Provisions**

##### **Section 1 – FAR Provision 52.204-24:**

FAR 52.204-24 is applicable.

PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020).

Full clause text included in attachment. The provision at FAR 52.204-24 requires an offeror to represent, on an Offer-by-offer basis, whether it will or will not provide any “covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.”

**The Representation that must be signed will be sent to the apparent high bidder as part of the pre-award process.**

<https://www.acquisition.gov/far/52.204-24>

Full clause text included in attachment.

##### **Section 2 – FAR Provision 52.204-25:**

FAR Provision 52.204-25 is applicable.

FAR Provision 52.204-25 titled, “Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment” is incorporated by reference from the Federal Acquisition Regulation.

<https://www.acquisition.gov/far/52.204-25>

Full clause text included in attachment.

### **ARTICLE TWO**

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

##### **Section 1 – Bidding Process –**

The bidding process will involve two distinct parts. First, there will be a requirement to submit an initial sealed bid. Second, there will be a live auction that begins by using the highest price submitted from a responsive bidder in the sealed bid portion as an opening bid. Should bidders choose not to participate in the live auction, any sealed bid submitted will be considered their only and final bid.

Due to the current COVID-19 environment, the government reserves the right to cancel the live auction and award solely to a responsible bidder with the highest priced responsive sealed bid. The government will provide notice to all bidders of its intent to conduct the live auction, along with all rules that will apply during the live auction at least 14 days prior to bid opening and the date the live auction is scheduled.

The bidding process will commence on the bid opening day and time specified by the Government. Bidders are expected to participate in the bid opening having provided the required bid deposit and a sealed bid consisting of one bid percentage specified by the bidder to DLA Disposition Services by a specified date and time prior to bid opening. The bid must be expressed as a percentage of the acquisition value of the property delivered under this contract. The bid value must meet or exceed three and one half (3.5) percent, and only state two (2) digits to the right of the decimal without rounding. The SCO will open each sealed bid at the specified bid opening day and time. Bids will be read aloud 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 incrementally during the live auction by a minimum of .05 percent of the acquisition value each round of bidding. The auction will end when no further bid increases are received within a set period of time. The highest bid offered at that time will be considered the apparent high bid. The Government reserves the right to cancel the live auction and proceed with a sealed bid auction should circumstances prevent a viable live auction from proceeding. Should only one of the technically qualified firms choose to participate in the live auction but both firms submit a sealed bid in accordance with the terms of this IFB, the SCO will provide the firm attending the live auction the opportunity to increase their sealed bid through a three (3) minute round of the bidding process described above, if their sealed bid is not the highest bid or is equal to the bid of the firm not attending the live auction. If the firm attending the live auction increases the high bid or equal bid by the required 0.05 percent increment, that firm will be declared the apparent high bidder. If neither of the technically qualified firms indicates an intention to attend the live auction but both submit sealed bids, the technically qualified firm submitting the highest responsive sealed bid shall be considered the apparent high bidder and no additional bidding will be conducted. If by happenstance, both technically qualified bidders submit responsive sealed bids for the same amount, the SCO will conduct a virtual live auction with both bidders on 09 March 2021. Both bidders will be required to have WebRTC capability and/or redundant phone capability to participate in the virtual live auction. The SCO will issue rules for the virtual live auction after both firms have declared their intentions on 02 March 2021. The SCO will also conduct a virtual test with all participants before the virtual live auction takes place on 09 March 2021.

**Prospective bidders should be aware of certain risk factors that could affect a bidder's assessment of this contract and the calculations supporting the resulting bid. Under no circumstances is the Agency or the Government responsible for any assumptions, planning factors, or decisions the Purchaser made related to determining their high bid. This is a firm fixed price contract where the bid price is expressed as a percentage of the acquisition market value specified by the bidder.**

**The Government expects the Purchaser to perform all the requirements under this contract at the bid price submitted by the Purchaser. At no time shall the Government pay the Purchaser to take**

**material offered. There shall be no reimbursement to the Purchaser under this contract except for the limited circumstances related to reimbursement of actual expenses incurred for return of property directed by the Government.**

**The Government is not responsible for any indirect, inconsequential, or completeness (through assumption of sales value, act or omission of factors) of expenses related to performance under this contract. The measure of the Government's liability, in any case where liability of the Government to the Purchaser has been established, shall not exceed refund of such portion of the purchase price as the Government may have received.**

## **Section 2 – Bid Evaluation –**

This is not a service contract administered in accordance with the Federal Acquisition Regulations (FAR). This is a contract for the sale of personal property pursuant to provision in Title 40, US Code, Chapter 5.

The Government intends that a single award will be made to a responsible bidder with the highest acquisition value bid percentage, responsive bid, unless a determination is made to reject the bid under 41 CFR § 102-38.205. A responsive bidder is one that has complied with all instructions for properly submitting a bid. A responsible bidder is one that is able to pass the vetting process and is determined through the screening process to be an eligible transferee.

Under 41 CFR § 102-38.205, the Agency reserves the right to accept or reject any or all bids. The Agency may reject any or all bids when such action is advantageous to the Government, or when it is in the public interest to do so.

**Section 3 – Pre-Award Survey –** The Pre-Award survey is one of the factors used by the Government to ensure the Apparent High Bidders ability to satisfactorily perform the work in accordance with their technical proposal submitted in step-one of this solicitation. After bid opening/closing and prior to award, the Government may conduct a Pre-Award survey of the Apparent High Bidder who may become eligible for award after final evaluation. The evaluation will include but not limited to: Trade Security Control Clearance, Environmental Review Determination, Statement of Intent, and Department of Justice Anti-Trust Division approval. The Pre-Award survey may be conducted at the Apparent High Bidder's facility(ies) or other location(s) as deemed necessary by the Government and may include a review of Apparent High Bidder's facilities and equipment, financial capability or disclosure of a Purchaser's financial condition, quality assurance, safety, and transportation. Apparent High Bidder must cooperate in the Pre-Award process by assisting in arrangements and/or by providing requested information in a timely manner. The Apparent High Bidder is 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.

**Section 4 – Contract Award –** The contract will be awarded to the highest responsive, responsible bidder. In the event of a termination of the original Purchaser within one hundred eighty (180) calendar days of the date of award, the SCO may award the contract to the next apparent highest responsive bidder IAW Section 2 above.

When you have successfully completed the pre-award assessment as the apparent high bidder, you will receive a Notice of Award indicating the required prepayment amount. Submit payment within ten (10) calendar days of the Notice of Award. When payment is posted and confirmed by the SCO; and all other vetting has been completed, the official signed Notice of Award will be sent to the Purchaser.

**Section 5 – 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 Purchaser 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 Purchaser personnel attending will be paid in full by the Purchaser.

## **ARTICLE THREE**

### **Parties to the Contract**

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

(A) Designation of key persons, if any, in addition to those identified in Purchasers technical proposal.

(B) Purchaser will provide the SCO notification of any changes to the above within ten (10) calendar days of the change.

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

(A) **General Prohibition** – Except as specifically provided herein or specifically approved by DLA Disposition Services in writing, the Purchaser may not directly or indirectly sell, transfer, assign, pledge, offer as collateral or otherwise hypothecate all or any part of its rights or obligations under the contract. Any contract awarded under this IFB is subject to the Assignment of Claims Act. (41 USC 15, et al.)

(B) **Attempted Transfer** – Any attempted transfer in violation of the provisions of this Article will be null and void and will 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 Purchaser as the buyer. The Purchaser and DLA Disposition Services expressly disavow the creation of any other relationship, including without limitation principal-agent, employer-employee, general or limited partnership, or joint venture, between DLA Disposition Services and the Purchaser. The purchaser is not considered a contract broker or agent selling property on behalf of the US Government.

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

other communications to DLA Disposition Services from the Purchaser will be deemed ineffective unless addressed to the SCO. Communications from the Purchaser to anyone other than the SCO will 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.

**Section 5 – Authority of the Sales Point of Contact (SPOC) –**

The SCO designates the SPOC to provide direct oversight of the Purchaser and/or their agents to ensure they meet the terms and conditions of the contract. The SPOC does not have the authority to make binding contractual obligations, such as adding, deleting, or modifying contractual terms and provisions in this IFB. All changes or modifications to contractual provisions in this IFB must be approved in advance by the SCO.

## **ARTICLE FOUR**

### **Contract Financial Retention**

**Section 1 – Bid Deposit** – Bid Deposits must be submitted no later than 2 March 2021. The refundable bid deposit must be 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 Purchaser's bid deposit until completion of contract closure when all lines of accounting have been reconciled by DLA Disposition Services. The bid deposit will be applied to any unpaid billings or to offset any other claim that DLA Disposition Services may have against the Purchaser. DLA Disposition Services will return any available balance of the bid deposit, without interest, to Purchaser when contract closure has been completed, and all lines of accounting have been reconciled by DLA Disposition Services. The bid deposits of unsuccessful offerors will be returned after the conclusion of the bid opening process.

**Section 2 – Payment Deposit** – Within ten (10) calendar days of notification of the SCO, Purchaser will provide DLA Disposition Services with the Payment Deposit. The amount of the Payment Deposit required is the average estimated acquisition value of such material to be generated during a 3-month period multiplied by 20 percent of the bid price. An example of how the payment deposit will be calculated is on page 12. 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 contract. The payment deposit will be applied to any unpaid billings or to offset any other claim that DLA Disposition Services may have against the Purchaser. DLA Disposition Services will return any available balance of the payment deposit, without interest, to Purchaser upon completion of contract closure when all lines of accounting have been reconciled by DLA Disposition Services.

**Section 3 – Financial Guarantee Bond** – Within thirty (30) calendar days of notification by the SCO, Purchaser will 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 will be to provide a source of payment to DLA Disposition Services in an

amount reasonably sufficient to satisfy the financial obligations of Purchaser or for damages arising out of a material breach by Purchaser. The Financial Guarantee Bond will be issued by such surety and in such form that are acceptable to DLA Disposition Services. The Bond will be carried for the duration of the contract; however, it may be renewed on an annual basis, renewable at the sole option of the surety.

## **ARTICLE FIVE**

### **Contract Performance**

**Section 1 – Performance Period** – Subject to the early cancellation option provisions and the Termination for Convenience of the Government provisions, the Government will provide property for a twenty-four (24) month base period from the date of the initial delivery order to Purchaser. DLA Disposition Services may exercise option periods to extend the performance period for up to an additional thirty-six (36) months based on Government requirements. Option periods will normally be in one-year increments; however, the Government reserves the right to exercise option periods for shorter periods of time. The entire length of the contract, if all option periods are exercised shall not exceed sixty (60) months.

The Government may extend the term of this contract with option periods by written notice to the Purchaser and the Purchaser must mutually agree to any option periods. The Government will strive to provide written notice of its intent to exercise an option period at least one hundred eighty (180) calendar days before the twenty-four (24) month base period expires, but nothing precludes the Government and Purchaser mutually agreeing to a shorter period of notice. The Government will strive to provide written notice of its intent to exercise additional option periods at least sixty (60) calendar days before they expire, but nothing precludes the Government and Purchaser mutually agreeing to a shorter period of notice.

**Section 2 – Phase-In Period** – The Performance Period begins thirty (30) calendar days after award, whereby the Purchaser must be prepared to accept property. The Government will phase-in each individual field site or RIP location within the region within the first ninety (90) calendar days, and the Purchaser must be performing at all field sites or RIP locations within 90 days. The Purchaser will not be expected to immediately receive property at all field sites or RIP locations. The Government will set the priorities for opening a particular field site or RIP location, but will confer with the Purchaser regarding the order of Phase-In.

Purchaser must notify the Government one (1) week prior to Delivery Order (DO) issuance if they are not ready to accept property at any particular field site or RIP location. Upon notification that Purchaser is not ready to perform, DLA Disposition Services will have the right to sell property to other buyers until the Purchaser is functional and able to receive property. Purchaser may request acceleration of opening at particular field site or RIP location sites at any point during the phase-in period, and DLA Disposition Services will respond to such request in the exercise of its sole discretion.

The Purchaser will be given a grace period of an additional ten (10) business days to remove property for the first DO at each field site or RIP location that is opened within the first 90 days. During this time, property issued at DLA Disposition Services field sites must be removed within fifteen (15) business days, and property issued at RIP locations must be removed within twenty (20) business



days. If Purchaser is unable to remove property within the time allotted during this grace period, Purchaser will be charged storage fees IAW Article 10 Section 3 Storage Charges.

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

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

- (1) Stop work as specified in the notice.
- (2) Unless otherwise directed by the SCO, place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities.
- (3) Terminate all subcontracts to the extent they relate to sales of future property to be generated from the areas where the work or sales referrals have been terminated.
- (4) Unless otherwise directed by the SCO, identify to the Government any property in the Purchaser’s possession in which they believe the Government has an ownership interest including any property which the Government is entitled to have returned, such as property on a Do-Not-Sell (DNS) or Demilitarization Code Change (DCC) list, or property which the Government has specifically directed be returned.
- (5) With approval or ratification to the extent required by the SCO, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and relating to the return of Government property currently in the Purchaser’s possession.
- (6) Take any action that may be necessary, or that the SCO may direct, for the protection and preservation of the property related to this contract that is under title and/or in the possession of the Purchaser or subcontractor and in which the Government has or may acquire an interest until surrendered to the Government or its agent. The Purchaser and SCO will agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.
- (7) This is a firm fixed price contract involving the sale of Government surplus personal property. As long as the guaranteed contractual minimums have been met, it is not anticipated that the Government will be responsible for Purchaser costs arising out of the termination of the contract in whole or in part, except such costs as may arise from the obligations to complete final reporting responsibilities and to return property for which the Government has directed return, or which is required to be returned under the terms of this contract.

If the Purchaser has any costs it wishes the Government to consider prior to the Government assessing settlement costs, they must be submitted within fourteen (14) calendar days of final removal of returned surplus property to the Government. Any cost submitted by the Purchaser 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 Purchaser, the SCO will

determine the settlement proposal within fourteen (14) calendar days of receipt of any submission of final Purchaser settlement costs. If the Purchaser 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 Purchaser or owed by the Purchaser. If the Purchaser 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 Purchaser has fourteen (14) calendar days to review the contract settlement proposal and request any additional information. Payment to be made by either party will be made within thirty (30) calendar days of Purchaser receipt of the settlement proposal. Any amount due the Purchaser may include a reasonable allowance for profit for work completed. If the Purchaser 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 Purchaser and the SCO fail to agree on the amount that may have been determined due to the Purchaser by the Government due to the termination of the sales contract, the SCO will pay the Purchaser the amounts determined by the SCO within the specified time. Any amount due to be paid by the Purchaser and not paid within the specified time period will 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, will govern all costs claimed, agreed to, or determined under this clause.

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

In arriving at the amount due the Purchaser under this clause, there will be deducted:

- (1) Any claim which the Government has against the Purchaser under this contract; and
- (2) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Purchaser 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 Purchaser will maintain all records and documents relating to the terminated portion of this contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Purchaser's costs and expenses under this contract. The Purchaser will make these records and documents available to the Government, at the Purchaser'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 – Cessation of Property Referrals** – Property referred under this contract will be issued on a final Delivery Order to the Purchaser prior to the date that is the earlier of either the end of the performance period or the effective date of termination by reason of DLA Disposition Services or by reason of a material breach. The final DO will be issued in advance of the performance period end date to ensure title transfer and property removal within the performance period. There will be no further referrals of property by DLA Disposition Services to Purchaser from the performance period end date forward. Submission of Purchaser required reports will continue until completion of all requisite property removals and completion of contract closure.

**Section 5 – Contract Closure** – Beginning the earlier of either the end of the performance period or the effective date of termination by reason of DLA Disposition Services or by reason of a material breach, the contract will undergo closure processing whereby final reporting requirements are fulfilled and all lines of accounting are reconciled by DLA Disposition Services.

## **ARTICLE SIX**

### **Distributions/Payments**

**Section 1 – Monthly Billing Property Payment** – The Purchaser will pay DLA Disposition Services the total amount billed each month. The Statement of Account SOA(s) will reflect the billing payment for property that was issued to the Purchaser for the past thirty (30) calendar days. Purchaser is strongly encouraged to submit payment to DLA Disposition Services no later than the 20th of each month.

Billing Cycle runs on or about the 24th of each month at 11:59 pm EST. For illustrative purposes, if Purchaser A won the award of the contract and acquisition market price bid was 3.50% and for the month of January Purchaser A's total removals of all DTID's sum is \$300,000 of material purchased under this IFB, then Purchaser A would be billed \$10,500 dollars for the January removal of \$300,000 (\$300,000 times .0350 equals \$10,500 bill).

**Section 2 – 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 3 – Failure to Make Timely Payment** – Should Purchaser fail to pay to DLA Disposition Services the full amount owed as reflected on the SOAs each month on or before the date that such payment is due, DLA Disposition Services will stop the flow of property until account is in good standing. SCO will notify Purchaser that such failure constitutes a material breach of contract that the Purchaser must cure within ten (10) calendar days. The Purchaser will be assessed all applicable fees, penalties, and interest on the payment based on the current rate as determined by the Department of Treasury. All fees will be added to the next month's Statement of Account(s). Purchaser cannot deduct any amount from monthly billing to offset unauthorized, or unprocessed credits, or credit requests, doing so constitutes a material breach of contract.

## **ARTICLE SEVEN**

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

**Section 1 – Product Pool:** Surplus personal property is defined as an item of personal property that has been determined to be safe to sell with a DEMIL code A, Limited F or Q6 and a Department of Defense (DOD). Such property includes both non-rolling stock and rolling stock, which consists of self-propelled wheeled and track mounted vehicles (such as passenger motor vehicles, trucks and dozers) and trailers with or without property permanently affixed to it (such as semi-trailers, cargo trailers and special purpose trailers).

Surplus personal property offered under this IFB is an item of personal property that has been determined to be safe to sell with a DEMIL code A, Limited F or Q6. Surplus personal property that is sold by DOD is in “as-is, where-is” condition. Under General Services Administration (GSA) regulations, federal agencies must make excess personal property available for: (1) reutilization within their agency or to special programs; (2) transfer to other federal agencies; or (3) donation to specified eligible entities, before an item is eligible for sale to the general public. Under section 102-36.240 of GSA regulations excess personal property includes “new” property, “usable” property, “repairable” property or “salvage” property as defined in that regulation. Surplus personal property under this IFB has been determined to be “new”, “useable” or “repairable” under the GSA definitions. Surplus personal property offered under this IFB does not meet the definition of scrap, which has no value except for its basic material content. While DoD turn-in customers provide a supply condition code of A-H on all DTIDs for all property turned in to Disposition Services, these codes are used in the DoD supply system as classifications for materiel in terms of readiness for issue and use, or to identify action underway to change the status of materiel. They do not directly correspond to the suitability of property being made available for reutilization, transfer, donation or sale. Disposition Service personnel make an independent determination on whether the property should be classified as scrap because it has no value in excess of the item’s material content and/or whether an item is suitable for reutilization, transfer, donation or sale as surplus.

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

**(A) Line-Item Excessive Acquisition Value** – Any line item with a reported acquisition value in excess of \$5M (five million dollars) will be excluded from this contract at the sole option of the Purchaser. The SCO must be notified by the Purchaser within fifteen (15) calendar days of title passing to the Purchaser of the reported item. Any reported items will be returned to DLA Disposition Services and the Purchaser’s purchase price will be refunded by DLA Disposition Services. The Purchaser will be responsible for any cost associated with the return of property to DLA Disposition Services.

## **Section 2 – NSN/LSN Acquisition Values and the Process to Challenge the Reported Acquisition Value of an Item with an LSN**

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

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

The Purchaser may challenge the LSN acquisition value under the following circumstances:

- a. All challenges must be identified during the joint inventory prior to issuance of the delivery order.
- b. When LSN items have an acquisition value that exceed the acquisition value of a similar and comparable item identified with a NSN, the Purchaser may request the Government to use the lower acquisition value associated with the similar and comparable item having an NSN. The burden is on the Purchaser to establish that the LSN item is similar and comparable to the item having an NSN.
- c. LSN property that cannot be identified to match a similar and comparable item with an NSN may also be challenged but the burden is on the Purchaser to establish that the reported acquisition value is excessive. LSN acquisition values that are found to be priced 20% over the purchase price for a new item that is similar and comparable may be considered excessive. The Purchaser must provide evidence of current pricing from national known companies.
- d. Substantiating information for disputed LSN property with an acquisition value of ten thousand dollars (\$10,000) or less must be submitted for approval within one (1) week of the joint inventory.
- e. Substantiating information for disputed LSN property with an acquisition value exceeding ten thousand dollars (\$10,000) must be submitted for approval within two (2) weeks of the joint inventory.
- f. Additional time may be approved by the SCO on a case-by-case basis.

- g. The Purchaser must provide all substantiating information to the Government for validation and approval within the specified time frames or the disputed property may be issued on the next Delivery Order without further dispute or challenge.
- h. The SCO has sole discretion to determine if the substantiating documentation establishes that an item is similar and comparable and whether the price will be adjusted.
- i. After 90 days of contract performance and receipt of property, the Purchaser may submit a list to the SCO of LSN challenges that were previously approved and involved challenges on items where there is no comparable or similar NSN, and request that the established acquisition value be used for all future LSNs that are similar and comparable during the base period of the contract without a further requirement to provide documentary evidence in the challenge process. Purchaser will still be required to challenge items during the joint inventory prior to issuance of the delivery order to receive the adjusted price. The SCO has sole discretion to grant in whole or in part items on the list and the proposed adjusted price for similar and comparable LSNs; to negotiate a different standing adjusted price for specific comparable and similar LSN items; or require continued LSN challenges of any or all items. If a mutually agreed to list is established, either party may request additional LSN items be added, remove LSN items or request re-negotiation of the adjusted pricing for any LSN at any time. If mutual agreement is not reached on any item on the list, the challenge process for similar or comparable LSN items will be required. If option periods are exercised under the contract, the Parties may agree to continue the mutually agreed list, add additional items, remove items or request re-negotiation of pricing in the option period. The SCO has sole discretion to reinstitute the requirement for making challenges on LSNs at any time.
- j. Under no circumstances is culling for the purpose of effecting partial or incremental removals authorized.

### Section 3 – Property Referrals

**(A) Location** – Property that is referred for sale to the Purchaser shall be located within the United States and its territories to include Puerto Rico and the Virgin Islands. DLA Disposition Services and Receipt in Place facilities receive property at sites located East of the Mississippi River to include Puerto Rico and the Virgin Islands.

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

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

**(D) Property Inspection** – Property that is referred for sale to the Purchaser shall be made available for inspection prior to issuance on a Delivery Order (DO). DLA Disposition Services and the Purchaser must conduct a physical joint inventory of the property pending issuance on a DO at the Disposition Services field site and/or RIP site prior to the property being released for shipment out of the Disposition

Services control. The joint inventory will be conducted and signed by both the issuer (DLA Disposition Services or authorized representative) and the receiver (Purchaser) with all identified discrepancies annotated. Line-item discrepancies must be identified to DLA Disposition Services at the time of the joint inventory prior to the transfer of title to the Purchaser. In all situations involving property inspection, the provision in Article 7 Section 1 applies with regard to whether the property is within the scope of the contract. Discrepancies are limited to quantity overage/shortage and/or item mis-description by Local Stock Number (LSN). LSN Challenges must be handled in accordance with provisions in Article 7 Section 2.

**(E) Validation of Delivery Order (DO)** – The Government will issue a consolidated list(s) of property being transferred to the Purchaser on the DO. The DO will be reviewed and signed by both the issuer (DLA Disposition Services) and the receiver (Purchaser) acknowledging acceptance of the property. The signed DO represents the official transfer of title to the Purchaser.

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

**Disposal Turn In Document (DTID) Number**  
**National Stock Number (NSN)/Local Stock Number (LSN)**  
**Inventory Item Name**  
**Quantity**  
**Acquisition Value**

**(G) Title Transfer of Property** – Purchaser is responsible for paying for all items appearing on the Delivery Order unless it is approved as a line-item discrepancy by the SCO. Unless otherwise provided in this IFB, DLA Disposition Services will transfer title to the Purchaser upon property issuance on a Delivery Order signed by both the issuer (DLA Disposition Service) and the receiver (Purchaser). The signed and annotated DO represents the Purchaser's acceptance of property and the official transfer of title. Any subsequent resale transactions of property are between the Purchaser and the resale buyer, not the Government and the resale buyer.

**(H) Risk of Loss** – The risk of loss or damage to material purchased under this IFB is borne by the person who possesses title at the time of the loss or damage occurs. This means that the title and risk of loss related to the material purchased under this IFB shall transfer from Disposition Services to the Purchaser at the time both parties sign the delivery order. This specifically applies to property left at Disposition Services and Receipt in Place location sites. While the Government remains responsible for acts or omissions attributable to Government employees, contractors or other USG agents, the Purchaser assumes the risk of loss for all property damaged by natural disasters or other casualty or acts of God after title has transferred.

**(I) Credit for Line-Item Discrepancies** – Purchaser must notify the Government of any line-item discrepancies (i.e., quantity overage/shortage, item mis-description by LSN) as noted in Section 2(D) above. Discrepancies for credit adjustment must be identified during the joint inventory prior to the transfer of title. No additional credit requests will be authorized after the DO has been signed by the Government and Purchaser. Failure to provide notice of an alleged discrepancy in accordance with the criteria set forth in this subparagraph will result in denial of the line-item discrepancy. The amount of

any credit to which the Purchaser is entitled shall be deducted from the amount of the Purchaser's statement of account (SOA) when validated by the Sales Contracting Officer. The burden of proof for all credit requests falls on the Purchaser.

**(J) Property Surges** – Purchaser acknowledges that during the performance of this contract, changes in Government processes or procedures could result in large generations of property being turned into DLA Disposition Services which could ultimately be referred under this contract. DLA Disposition Services and the Purchaser agree to cooperate and institute special procedures as necessary in connection with property surges. The Purchaser shall not expect any other type of relief that is based solely upon or related in any manner to an unanticipated level of effort or additional effort necessary to the handling of such influx in property.

**(K) United States Government Certificate to Obtain Title to a Vehicle** – Purchaser will receive a SF97, "The United States Government Certificate To Obtain Title To A Vehicle." SF97 for all vehicles. A SF 97 is not a title. It is documentary evidence that provides a purchaser the ability to obtain a Title at the appropriate Department of Motor Vehicles (DMV). The SF97 is accepted in all 50 states and US Territories. The Government makes no representation or claims as to the acceptance of this form outside of these areas. The SF97 in no way serves as a waiver for payment of registration fees, nor county or State taxes assessed to the vehicle after its purchase from the Government. The Certificate to Obtain Title that accompanies vehicles may identify the vehicle as Salvage or Scrap, meaning the vehicle is not intended for driving and its condition is poor and/or it is not road-worthy in its present condition. These provisions may also be applied to certain accident-damaged vehicles. The type of title issued will be determined at the discretion of each state's Department of Motor Vehicles (DMV). Purchaser is also cautioned that some SF97 will require OFF ROAD USES ONLY be stamped on the SF97. A listing of such rolling stock items that require the OFF ROAD USES ONLY stamp will be provided to the Purchaser. DLA Disposition Services will only provide one SF97 per vehicle. DLA Disposition Services will only sign off on SF97 that have the Purchaser's information in the Transferee block. DLA Disposition Services will not sign off on a SF97 for a 3-party buyer. Purchaser is solely responsible for issuing a re-assignment letter or Bill Of Sale to subsequent purchasers and providing a copy of the original SF97 issued from the Government to the purchaser. Any reassignment letter or Bill of sale should include any restrictions on the original SF 97. Purchaser must retain copies of completed SF97s for a minimum of six (6) years after contract expiration.

#### **Section 4—Unique Items and Special Circumstances**

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

**(B) Flight Safety and Critical Aircraft Parts (FSCAP)** – The military services are responsible for ensuring all available historical records/documentation are included when repairable Flight Safety Critical Aircraft Parts (FSCAP) are turned into DLA Disposition Services. Unused FSCAP, in original, undamaged packaging must be marked with NSN, contract number, CAGE Code(s) and part number.



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

## **ARTICLE EIGHT**

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

**Section 1 – Demilitarization Codes** – Demilitarization code is a single alpha character assigned to the item. For the purposes of this IFB, the following definitions are provided:

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

**DEMIL Code F** – United States Munitions List (USML) or Commerce Control List (CCL) Military Items. Demilitarization required. Item managers, equipment specialists, or product specialists must furnish special DEMIL instructions.

**DEMIL Code Q6** – Commerce Control List Items (CCLI). Mutilation to the point of scrap is required outside the United States. Inside the United States, mutilation is required when the DEMIL integrity code (IC) is "3" and mutilation is not required when the DEMIL IC is "6".

Items in the product pool with DEMIL Codes of A and Q6 contain items that are considered Commerce Control List Items (CCLI) and subject to Department of Commerce Export Control Regulations. Any item assigned a DEMIL code other than "A" requires a Trade Security Control (TSC) assessment for the buyer. The Purchaser is required to comply with all current or future TSC procedures as mandated during the performance period of this contract.

**Section 2 – Compliance with Export Control Regulations** – Items in the product pool, including DEMIL A property, may be subject to export control restrictions. Once title transfers, the Purchaser

shall consult with Departments of State and Department of Commerce export control regulators if there are doubts about the type of export controls that apply to any item, regardless of DEMIL code. The Purchaser may request a formal Commodity Classification from the Department of Commerce, Bureau of Industry and Security (BIS), or submit a General Correspondence request to the Department of State, Directorate of Defense Trade Controls. Information on managing exports of CCL items can be found at the Bureau of Industry and Security.

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

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

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

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

The Purchaser shall ensure it retains all relevant export control information on file, including data similar to that obtained on a USG EUC for all prospective resale buyers and transactions. This information must be made available for review by DLA Disposition Services or any other USG entity including investigative and enforcement agencies within 3 business days of notification. Failure to obtain and maintain such data may result in a negative determination of responsibility and prevent participation on future sales contracts with the USG. Please refer to the BIS website provided above for information on compliant export management policies.

**Section 3 – Purchaser's Trade Security Control (TSC) Requirements** – Prior to award of this contract, the Purchaser will be required to obtain a TSC assessment/clearance by providing the Sales

Contracting Officer a properly completed EUC in the form of a DLA Form 1822, within two (2) Business days of notification of being the Apparent High Bidder (copy available on the DLA Disposition Services web site, <http://www.dla.mil/DispositionServices/Offers/Public-Sales-Offerings/Forms/>). The clearance may need to be renewed during the performance period of this contract and at the request of the Government. The clearance investigation determines that the entity is who it claims to be, doing business at the name and location claimed and that there are no disqualifying factors present (i.e., convictions for illegal export of military technology, debarment by a Government activity, etc.). The Purchaser 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 Purchaser in order to comply. Purchaser shall not expect any equitable relief or any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary related to TSC procedures.

## **ARTICLE NINE**

### **Inventory Assurance**

**Section 1 – Do-Not-Sell (DNS) List** – As often as necessary, DLA Disposition Services will furnish the Purchaser a Do-Not-Sell (DNS) List representing items that are or have become controlled and no longer eligible for sale. Purchaser is required to process their current inventory against the DNS List whenever an updated DNS List is provided. The Purchaser is required to return any item identified on the DNS List that is in the Purchaser's current inventory and not physically removed by a resale buyer. Purchaser will do all packing, handling, and crating to include loading blocking and bracing of the Governments conveyance as needed for shipment back to DLA Disposition Services. Purchaser will send a transportation request via email to the SCO for controlled property return transportation requests. The Government will refund the Purchaser its purchase price for such items only. DLA Disposition Services will not reimburse the Purchaser 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 Purchaser to notify the buyer and attempt to recover the property.

**Section 2 – Demilitarization Code Change (DCC) List** – DLA Disposition Services will provide the Purchaser a Demilitarization Code Change (DCC) List reflecting DEMIL code changes as they occur. The Purchaser must run their current inventory against the DCC List whenever provided by DLA Disposition Services. The Purchaser is required to return any item that becomes DEMIL required and is still in the Purchaser's current inventory, not physically removed by a resale buyer. After property has been cleared for shipment by the USG. Contract will do all packing, handling, and crating to include loading blocking and bracing of the Governments conveyance as needed for shipment back to DLA Disposition Services. Purchaser will send a transportation request via email to the SCO for controlled property return transportation requests. The Government will refund the Purchaser its purchase price for such items. DLA Disposition Services will not reimburse the Purchaser 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 Purchaser to notify their buyer and attempt to recover the property.

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

conducting proper checks of applicable controlled property lists and guidance, or where the Purchaser fails to exercise reasonable care in the performance of its responsibilities regarding the management, segregation and return of controlled property.

## **ARTICLE TEN**

### **Government Required Reports**

**Section 1 – Inventory Reports** – Purchaser 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. The report must record items by DTID, location, and must identify all property that has not been removed by the Purchaser from Government facilities, and property that is currently in the possession of the Purchaser. 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 Purchaser during the contract phase-in period in writing.

**Section 2 – Resale and Returns Report** – Purchaser is required to provide a monthly report to DLA Disposition Services, upon request, that reflects property that has been resold to include resale price, date removed, or that has been returned to the Government without resale, pursuant to the Government request. The report must be in a spreadsheet format and include all fields provided on a Delivery Order. For items resold, the event and lot number constituting the resale must be included as well as resale customer information. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Purchaser during the contract phase-in period in writing.

**Section 3 – Reimbursable Item Report (Formerly known as Seller Indirect Cost (SIC) Report)** – In the event reimbursements are authorized in accordance with Article 15, cost that are approved by the SCO must be reported by Purchaser in a monthly report. The report must be in a spreadsheet format and must include the proper supporting documentation. The specific reporting requirements will be further coordinated between the Sales Contracting Officer (SCO) and the Purchaser during the contract phase-in period in writing.

**Section 4 – Non-Responsive Resale Buyer Report** – On a monthly basis, the Purchaser is required to provide DLA Disposition Services a spreadsheet listing of resale buyers who failed to either respond or return property when requested by the Purchaser by the 15<sup>th</sup> of each month. The spreadsheet must identify the applicable resale event and Lot number and include all fields provided on the Delivery Order. In addition, the spreadsheet must provide the dates of Purchaser'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 Purchaser during the contract phase-in period.

## **ARTICLE ELEVEN**

### **Property Storage, Removal, and Government Owned Material Handling Equipment (MHE)**

#### **Section 1 – Temporary Staging Areas on Government Facilities**

DLA Disposition Services will not provide the Purchaser with permanent indoor or outdoor storage space for property, or any space to store equipment, including MHE, at any location where the Purchaser is required to remove property at Purchaser's expense, except as noted herein. Temporary storage areas with a minimum capacity of twenty-four (24) pallet spaces will be provided for property to accumulate before Purchaser removal. Additionally, space equivalent to three (3) pallet spaces will be provided for packing, crating and handling supplies. DLA Disposition Services Area Managers may approve additional temporary storage space on a case-by-case basis. MHE and/or other equipment may not be stored in these temporary storage areas. DLA Disposition Services will move property to the temporary storage location for shipment to the Purchaser's storage facility. This temporary storage location is provided to the Purchaser for packing, crating, handling, and transportation coordination only. Purchaser will be provided temporary bulk outdoor storage at the discretion of the DLA Disposition Services Area Manager.

#### **Section 2 – Property Removal from DLA Disposition Services Facilities**

Property must be removed from Government facilities and title transfer completed within five (5) business days after receipt of the DO from the SCO. Pickups must be scheduled to occur during the DLA Disposition Services field sites' normal working hours. The Purchaser will pay for any and all packing, handling, crating and transportation costs associated with shipments. Special circumstances may arise where DLA Disposition Services will allow certain property to remain at a Government facility beyond the five (5) business days; however, written authorization from a DLA Disposition Services Area Manager is required in advance and must be provided to the SCO. Typically, such requested extensions are not to exceed thirty (30) calendar days. Removals requiring more than thirty (30) calendar days must be approved by both the DLA Disposition Services Area Manager and the SCO, not to exceed sixty (60) calendar days.

The Purchaser should not assume property may be resold on a Government facility. Reselling of property at Government facilities will be on an extremely limited basis and must be approved in advance by the DLA Disposition Services Area Manager and the SCO. Property authorized to be resold on a Government facility must be removed within thirty (30) calendar days. Purchaser 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. Purchaser and Purchaser's resale customers will have access to property for inspection, reselling, packing, loading, or shipping only during hours that such facility is normally staffed. Purchaser will coordinate such access with the DLA Disposition Services Sales POC and Area Manager. The Purchaser is responsible for any damage that is caused to any Government equipment or facility that arises out of the negligence of the Purchaser, its vendors or resale buyers, to include the clean-up of any hazardous material spills.

**Section 3 – Removal of Receipt In Place (RIP) Property on Government Facilities** – Receipt In Place (RIP) locations will be identified to the Purchaser by the Government on the Delivery Order. RIP locations are located at alternate sites that are not under DLA Disposition Services direct control. They may be on or off military installations. The physical joint inventory must be conducted in person

IAW Article 7, Section 2D, Property Inspection. Property must be removed from Government facilities within ten (10) business days after receipt of the DO from the SCO. Removals must be scheduled to occur during the RIP personnel's normal working hours through coordination with the Sales POC. Special circumstances may arise where DLA Disposition Services will allow certain property to remain at a Government facility beyond the ten (10) business days; however, written authorization from a DLA Disposition Services Area Manager for these exceptions are required, typically not to exceed thirty (30) calendar days. Removals requiring more than thirty (30) calendar days must be approved by both the DLA Disposition Services Area Manager and the SCO, not to exceed sixty (60) calendar days. The Purchaser will be charged storage charges IAW Section 4, Storage Charges below, for property remaining on Government premises beyond the authorized time.

The Purchaser is not permitted to conduct property resale on a Government facility without the expressed written authorization of the DLA Disposition Services Area Manager and SCO for each item in question. Property authorized to be resold on a RIP location must be removed within thirty (30) calendar days. Purchaser 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. Purchaser and Purchaser's resale customers will have access to property for inspection, reselling, packing, loading, or shipping only during hours that such facility is normally staffed. Purchaser will coordinate such access with the management of each facility and the DLA Disposition Services Sales POC. Purchaser is responsible for any damage caused to any Government equipment or facility that arises out of the negligence of the Purchaser, its vendors or resale buyers, to include the clean-up of any hazardous material spills. Additionally, DOD customers may require additional storage space; therefore, property issued to Purchaser may be required to be relocated by the Purchaser and at the Purchaser's expense.

#### **Section 4 - Storage Charges**

The Government reserves the right to implement storage charges for property not removed within five (5) business days at Disposition sites or ten (10) business days at RIP locations after receipt of DO from SCO. A \$500.00 per DTID, per day charge may be applied by the Government for palletized items not removed from the Government premises. A \$50.00 charge per item, per day (not to exceed \$500.00 per DTID, per day) will be charged for rolling stock, which consists of self-propelled wheeled and track mounted vehicles (such as passenger motor vehicles, trucks and dozers) and trailers with or without property permanently affixed to it (such as semi-trailers, cargo trailers and special purpose trailers) if not removed within five (5) business days at Disposition sites or ten (10) business days at RIP locations after receipt of DO from SCO.

For palletized items authorized for sale on a Government facility, storage charges in the amount of \$500.00 per DTID, per day, will apply for items not removed after the thirty (30) calendar days authorization has expired. For rolling stock authorized for sale on a Government facility, storage charges in the amount of \$50.00 per item, per day (not to exceed \$500.00 per DTID, per day) will apply for items not removed after the thirty (30) calendar days authorization has expired.

Under no circumstance will former surplus Government property sold to the Purchaser remain on Government premises beyond sixty (60) calendar days after issuance on a Delivery Order. Property left on Government premises longer than sixty (60) calendar days will, at the Government's sole discretion, revert to Government ownership and control without refund of any Purchaser 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 Purchaser.

**Section 5 – DLA Disposition Services Infrastructure** – Purchaser acknowledges that DLA Disposition Services may add, reduce or change its infrastructure, including without limitation by opening, relocating, or closure of field locations. The Purchaser further acknowledges that this contract will remain in force notwithstanding such infrastructure addition or reduction/change measures that DLA Disposition Services in its sole discretion may implement. Such changes will require the Purchaser to relocate workforce and equipment as needed, at the expense of the Purchaser to include transportation. Purchaser will be notified a minimum of thirty (30) business days prior to changes. Purchaser will not expect any equitable relief or any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary.

**Section 6 – Material Handling Equipment (MHE)** – Purchaser is required to coordinate the schedule for property removals with the DLA Disposition Services Sales POC in advance of all scheduled conveyance/transportation arrangements. This includes, but is not limited to, days and times of conveyance arrival and out loading, as well as field site or RIP location MHE capabilities. DLA Disposition Services personnel will make the initial placement of the property on conveyance(s) furnished by the Purchaser; the initial placement of the Purchaser's conveyance shall be determined by the Government. DLA Disposition Services will tailgate load property up to the maximum capacity of the field site loading equipment capabilities. The Government will not block, chock, brace, lash band or in any other manner secure the cargo on such conveyance(s) furnished by the Purchaser. The Purchaser is responsible for providing and operating MHE to remove property if the field site does not have MHE capabilities. Purchaser personnel will not be permitted to operate Government owned MHE. RIP location loading will be the responsibility of the Purchaser. DLA Disposition Services or the USG will not provide MHE or any assistance to remove the property from RIP locations.

## **Section 7 – Purchaser Owned Storage Facilities**

### **(A) Controlled Property Storage**

Purchaser is required to provide controlled storage space within each warehouse utilized for storage of surplus personal property issued on this contract. The storage space must be gated from floor to ceiling and locked with the capability of storing up to ten (10) pallet spaces of property. Access to the space must be controlled with limited access to the space. Purchaser will send a transportation request via email to the SCO for controlled property return transportation requests. After property has been cleared for return shipment by DLA Disposition Services, the purchaser will perform all packing, handling, and crating to include loading, block, and bracing of the Governments' conveyance as needed for shipment back to DLA Disposition Services. DLA Disposition Services will refund the Purchaser its purchase price for such items. The Purchaser should not expect any other type of relief that is based upon or related in any manner to an unanticipated level of effort or additional effort necessary to the handling of any item on the DNS and DCC lists prior to release to resale customers. For property removed from DLA Disposition Services sites or RIP locations, the purchaser is not limited on the number or location of storage locations, other than all storage locations must be within the East region.

### **(B) Storage Location for Direct Shipment from Government**

The Government reserves the right to implement direct shipment practices for any or all property during the performance period of this contract and the Purchaser will be provided written notice a minimum of ninety (90) business days prior to changes occurring. Purchaser must identify one (1) location within the East region for receipt and storage of surplus personal property shipped directly from the



Government to the Purchaser at the Governments' expense, should the Government in its sole discretion decide to implement such a practice.

## **ARTICLE TWELVE**

### **Property Returns**

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

(A) **Property Not Sold – Located at Purchaser's Facilities** – Property issued to the Purchaser may have become controlled during the sales process. Property DEMIL codes may have changed after transfer, making them ineligible for further sales. DLA Disposition Services will provide written notification to the Purchaser identifying such property. For property removed from DLA Disposition Service sites or RIP locations, Purchaser must notify the SCO no later than two (2) business days after receipt of the written notification of the location of the property. The SCO will provide direction on appropriate security measures to store the property pending shipment. In all cases, DLA Disposition Services will advise the method for return based on the applicable item as described in Article 9 section 1 and 2.

(B) **Property Resold – Not Removed from Purchaser's Facilities** – Property issued to the Purchaser may have become controlled during the sales process. Property DEMIL codes may have changed after transfer, making them ineligible for further sale. Purchaser may have resold items that later become controlled and not eligible for sale. DLA Disposition Services will provide written notification to the Purchaser identifying such property. If the identified controlled item has not been removed from the Purchaser's facilities, Purchaser agrees to not allow removal. For property removed from DLA Disposition Service sites or RIP locations, Purchaser must notify the SCO no later than two (2) business days after receipt of the written notification of the location of the property. Controlled property return process described in Article 9 section 1, and 2.

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

(D) **Status Report on Return of Controlled Property** – On a monthly basis, the Purchaser is responsible for notifying DLA Disposition Services of the results of the property retrieval actions. The report must identify the resale buyers who are non-responsive to the retrieval attempts, those that refuse to return property, and those that have provided evidence the property has been sold or transferred or is not otherwise in their possession. Reports must be submitted to the SCO by the 15th of each month and

must reflect the status of the previous month's actions. The Purchaser 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 will request that the Purchaser no longer conduct a resale to non-responsive customers or those who refuse to return property believed to be in their possession. DLA Disposition Services will notify the Purchaser of individuals/companies falling into this category on a case-by-case basis. The Purchaser will comply with these requests as part of its Property Assurance responsibilities. The continued sale of property to such persons or companies following such a Government request may be considered a Material breach that threatens the Purchaser's ongoing successful performance.

**Section 2 – Reutilization/Transfer/Donation (RTD) Property Returns** – There may be occasions when the Government will request the return of property issued to the Purchaser because it is mission essential for the USG or its supported programs. The Purchaser may return those items that have not been resold upon mutual agreement. In this case resold items include any item that has been sold to a customer, regardless of whether the item has been physically removed by the re-sale customer. DLA Disposition Services will refund the Purchaser's purchase price of the returned property and will advise the Purchaser of the return process at DLA Disposition Services' expense. DLA Disposition Services will not compensate for loss of revenue to the requested return of this property.

## **ARTICLE THIRTEEN**

### **Contract Operational Requirements**

**Section 1 – Purchaser 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 Purchasers whose work activities are being conducted on Government premises and could cause real or potential environmental impacts, are required to comply with DLA Disposition Services EMS.

### **Section 2 – Inventory Assurance by Purchaser –**

**(A) Do-Not-Sell List/DEMIL Code Change List** – Initially and then periodically thereafter, DLA Disposition Services will furnish the Purchaser 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 Purchaser is required to process their current inventory against the DNS/DCC List whenever an updated List is provided by DLA Disposition Services. When property is located, the Purchaser is required comply with requirements in Article 11, Section 1 for returning the property.

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

**Section 3 – Purchaser Web Based Application** – Purchaser must develop a web-based application for use on this contract with regard to reviewing property to determine and confirm sales eligibility. The Government and Purchaser will refer to this application as the Quarantine Tool (Q-Tool). Ultimately, the Q-tool will serve as a 5-business day Government preview area of all items the Purchaser is preparing to offer for sale. During the 5-business day preview, the Purchaser is not allowed to make property visible to the general public. The Government must notify the Purchaser of any item not eligible for sale within the 5-business day preview time. All property approved as a result of the Q-Tool application must be offered for sale on the Purchaser's web site or retail centers with a system generated icon/marker identifying the item as having been reviewed by the Government prior to posting for sale. If the Purchaser reassigns a previously approved item to another sales event, the item must be returned to the Q-Tool with the system generated icon/marker. The Q-Tool application must have the ability to export the data into a spreadsheet format and must include the following fields:

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

The Purchaser shall grant to Disposition Services the following royalty free, world-wide, nonexclusive, irrevocable government purpose license rights in the computer data base to be developed and maintained pursuant to IFB 21-069 at a cost to the purchaser, which requires the purchaser to develop and maintain a web-based application and provide access to the Agency personnel assigned to conduct the property review for use on this contract to determine and confirm sales eligibility.

**Section 4 – Handling Ozone Depleting Substances (ODS) Containing Personal Property –**

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

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

**(C) Purchaser Requirements** –When transferring ownership of the property to another party, the Purchaser agrees to provide that party with a written statement that the property either (1) contains refrigerants, or (2) that the refrigerants have been removed; whichever is applicable. For property no longer containing refrigerants, the Purchaser will also provide refrigerant recovery documentation in accordance with 40 CFR 82.156(f)(2). Purchaser will keep records in accordance with 40 CFR 82.166. Records will be made available to the Government upon request.

**(D) Returning Property to DLA Disposition Services** – Small appliances, room air conditioners, MVACs, MVAC-like appliances and other property subject to 40 CFR Part 82 will not be returned to Government unless agreed by DLA Disposition Services SCO prior to return. If the Purchaser becomes a person or one of the “persons who take the final step in the disposal process”, as described in 40 CFR 82.156(b)(2), the Purchaser is responsible for ensuring that any intact ODS is properly recovered in accordance with 40 CFR 82.156(b) – (d); that records are kept in accordance with 40 CFR 82.155(c), and that any compressor oils or other environmentally controlled components (including but not limited to mercury switches) are removed and properly disposed prior to scrapping or landfill of this property. Cost associated with this requirement is at Purchaser’s expense. Records will be made available to the Government upon request.

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

**Section 5 - DLA Disposition Services Inspection of Property** – Purchaser is required to allow DLA Disposition Services, or a DLA Disposition Services sponsored agency to perform physical inspections of property when requested.

**Section 6 – Food and Drug Administration (FDA) Certification for Medical Devices** – Purchaser is required to complete a Food and Drug Administration (FDA) Certificate within ten (10) business days of award. Purchaser is also required to request and retain an FDA Certificate for each resale buyer of medical devices in Federal Stock Groups (FSGs) 65 and 66.

**Section 7– Duties of Care and Loyalty** –

**(A) Duty of Care** – Purchaser will 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 Purchaser to adhere to all such laws and regulations.

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

## **ARTICLE FOURTEEN**

### **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 Purchaser or DLA Disposition Services, the party asserting such material breach, will serve notice upon the party that committed or is alleged in the notice to have committed such material breach. The matter will be treated as a dispute under the Contract Disputes Act.

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

**Section 3 – Termination** – Termination will 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, Purchaser and DLA Disposition Services will 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 will be effective upon the later of the date of service of such notice or the expiration of the cure period.

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

- (i) Apply the payment deposit;
- (ii) Present a claim for indemnity against Purchaser;
- (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 Purchaser;

(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 Purchaser** – Purchaser will comply fully with the provisions of this contract. If the breaching party is the Purchaser, the Purchaser will indemnify and hold DLA Disposition Services harmless for all damages arising.

## **ARTICLE FIFTEEN**

### **Reimbursable Items**

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

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

**(B) Other Reimbursements Explicitly Allowed Under Specific Articles Within The IFB** – For internal accounting purposes, reimbursement explicitly allowed in specific articles of this IFB will also be treated as Emergency and Extraordinary reimbursements for reporting purposes and to ensure compliance with the documentation and pre-approval requirements, although they do not meet the strict definition of an Emergency and Extraordinary cost. For instance, under Article 12, when property is returned to the government, the reimbursements explicitly allowed under those provisions will be paid as Emergency and Extraordinary reimbursements.

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

## **ARTICLE SIXTEEN**

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

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

ANTICIPATED REGULATORY CHANGES: Performance under any contract resulting from this solicitation must be in compliance with all local, state, and federal laws and regulations. Accordingly, it is the responsibility of the offeror to ensure that all such laws and regulations are considered in the preparation of its proposal. Such consideration should include not only relevant laws and regulations currently in effect, but also revisions thereto for which public notice has been given that may reasonably be anticipated to be effective during the life of the contract.

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

**Section 3 – Prohibited Activities** – Purchaser will 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 Purchaser 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 will 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 Purchaser's creditors; or admit in writing Purchaser's inability to pay its debts as they mature, without the prior written consent of DLA Disposition Services.

**Section 4 – Purchaser Cooperation in DOD Investigations/Audits** – Purchaser 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. Purchaser agrees to provide DLA Disposition Services with all requested information regarding property or information relating to the Purchaser's operations, and resale buyer. Purchaser 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 will be provided in electronic format when possible. Purchaser personnel with knowledge of the particular subject matter must be available to cooperate with any Government investigation.

**Section 5 – Purchaser's Responsibility for Independent Audit at Government's Request** – DLA Disposition Services may request the Purchaser 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 6 – Purchaser Record Retention** – Purchaser will 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 performance period is concluded, or for such period of time as Purchaser, for its own purposes, retains its books, records, documents, and other supporting evidence, whichever is longer.

**Section 7 – Records Maintenance** – Purchaser will maintain all records accurately and in a manner that will allow clear and accurate auditing. Records pertaining to inventory will contain, at a minimum, the National Stock Number or Local Stock Number, Disposal Turn-In Document (DTID) number, quantity, date sold, sale price, date Purchaser 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 Purchaser fails to maintain or provide any of these documents to the Government, the Government may in its sole discretion seek and cause termination.

**Section 8 – Inspection of Records and Workplace by Government** – The Government has the right to audit the records and inventory in order to review Purchaser's operations. The audit may consist



of a complete or random sample examination. Purchaser must ensure that prior to any re-sale, the property is readily identifiable as formerly Government property.

### **Section 9 – Purpose and Content of Compliance Audits, Investigations, Reviews and**

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

### **Section 10 – 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 Purchaser's compliance with the provisions of this contract, including employees or of any supplier or resale buyer.

(B) **Procedures** – A Compliance Review/Investigation will be conducted at any time during normal business hours and on any business day. Purchaser will permit inspection of any physical location used by the Purchaser, 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 Purchaser with any employee, subcontracting attorney or certified public accountant of Purchaser. Purchaser will produce any records identified by DLA Disposition Services as necessary to support the review process and DLA Disposition Services may maintain copies of all documentation/electronic files that support the review being conducted. DLA will 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 Purchaser.

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

**Section 11 – Further Reviews** – If a Compliance Review determines there is a reasonable basis to believe that a default or breach of this contract has occurred, DLA Disposition Services, upon written notice to Purchaser, 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. Purchaser will permit such persons, as are designated by DLA Disposition Services, to visit and inspect any physical location used by the Purchaser, 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 Purchaser with any employee, subcontracting attorney or certified public accountant of the Purchaser. Notwithstanding the foregoing, if Purchaser gives notice to DLA Disposition Services stating that a Further Review is not justified, DLA Disposition Services will 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 Purchaser to seek a determination of the appropriateness of the Further Review.

**Section 12 – Compliance Notification** – After completing the Compliance Review and/or Further Review, DLA Disposition Services will notify Purchaser in writing of any breach or default identified during the Compliance Review and/or Further Review.

**Section 13 – 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 will give written notice thereof to the other party or parties.

**Section 14 – Procedures for Adjudication of Audit Adjustments** – If either Purchaser 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 will be deemed confirmed as asserted.

**Section 15 – Remedies for Audit Adjustments** – Upon confirmation of an audit adjustment, Purchaser will pay to the party in question, or the party will pay to Purchaser, as the case may be, the amount required to restore the parties to their respective positions status quo ante, and Purchaser will correct the records in accordance with the audit adjustment as confirmed. If, as a result of the audit adjustment, Purchaser is to pay DLA Disposition Services, each such payment will include interest calculated by the US Treasury or at the rate provided by applicable law.

## **ARTICLE SEVENTEEN**

### **Disputes**

**Section 1 – Disputes** – Any contract awarded as a result of this sale is subject to the Contract Disputes Act 1978 (41 U.S.C. 7101-7109).

**Section 2 – 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 Purchaser refuses an offer for ADR, the Purchaser will inform the SCO in writing, of the Purchaser'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 EIGHTEEN**

### **Insurance and Bond Requirements**

**Section 1 – Insurance and Bond Contract Requirements** – Purchaser will obtain and maintain the following insurance and bond requirements throughout the performance and contract closure 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 will include any and all property whether or not in the care, custody or control of Purchaser). The annual coverage will 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 Purchaser 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). Purchaser will obtain and maintain such coverage with a responsible surety company with respect to all of Purchaser's employees, officers and directors to protect Purchaser 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, will be satisfactory to DLA Disposition Services, and the policy will include a provision that the issuer will 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. Purchaser will 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. Purchaser may obtain and maintain such additional insurance, including directors and officers coverage and errors and omissions coverage.

**Section 4 – Evidence of Insurance** – Within thirty (30) business days of SCO notification, and annually thereafter, Purchaser will provide DLA Disposition Services copies of policies, certificates of

insurance or other proof evidencing the coverage required. Purchaser 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 will not be unreasonably withheld.

## **ARTICLE NINETEEN**

### **Miscellaneous Provisions**

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

**Section 2 – Defense Industrial Base, Essential Critical Infrastructure Workforce**

The awardee of this sale will be authorized to perform the conditions of this sale as part of the Defense Industrial Base, Essential Critical Infrastructure Workforce. The SPOC/SCO can provide letters of confirmation to the purchaser to confirm status under Defense Industrial Base, Essential Critical Infrastructure Workforce guidance. The purchaser should also be advised that both military installations and Disposition Service sites will be taking additional precautions for entry due to COVID-19. The purchaser should contact the SPOC or SCO at least one (1) day before seeking entry to a military installation or Disposition Site in order to be informed on entry requirements.”

The quarantine order and shelter in place orders declared by governments are not synonymous. While the Defense Industrial Base Act may allow an exception for the purchaser to perform certain government contracts functions, i.e., travel to perform site for performance directly related to the contract during quarantine orders, the Defense Industrial Base Act does not provide an exception to a government’s quarantine order. As an example, this could mean that a purchaser traveling to location A could be required to comply with location A’s 14-day quarantine period before being allowed to perform via the Defense Industrial Base Act for any quarantine orders location A may have. Bidders are advised to perform research on both quarantine orders and shelter in place orders for certain locations before bidding due to unpredictable nature of when a government issues or rescinds the quarantine and shelter in place orders.

**Section 3 – Notices** – All notices, demands, requests, consents, approvals, declarations, reports and other communications required with regard to this contract will be in writing except as otherwise provided and addressed to the Sales Contracting Officer (SCO).

**Section 4 – Severability** – If any provision of this contract or the application to any person or circumstance will be invalid or unenforceable to any extent, the remainder of this contract and the application of such provisions to other persons or circumstances will not be affected and the intent of this contract will 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 5 – 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 6 – Survival** – The rights and obligations of the parties under this contract will survive for a period of six (6) years after the completion of the performance period.

**Section 7 – 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 will 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, will not constitute a waiver by such party of its rights hereunder.

**Section 8 – Force Majeure** – The parties will 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.

Upon occurrence of a Force Majeure Event claimed by either party, one party to this IFB shall promptly notify the other that a Force Majeure Event has occurred, its anticipated effect on performance, including its expected duration. If either party can provide evidence to the satisfaction of the other of any event or combination of events beyond its reasonable control, it will be entitled to relief from performing the obligations affected by the said event under this IFB for such period as the event or combination of events continues to prevent performance.

The party claiming the Force Majeure event shall furnish to the other periodic reports regarding the progress of the Force Majeure Event. The party claiming the Force Majeure event shall use reasonable diligence to minimize damages and to resume performance as well as to avoid, overcome, or minimize wholly or partly the effect of any Force Majeure event upon the performance of its obligations under this IFB. Neither Disposition Services nor the Purchaser shall be entitled to claim relief in respect of any period during which it could have complied with any obligation (or any part thereof) by using its best endeavors to avoid, overcome or minimize wholly or partly the effects of the said event or combination of events.

**Section 9 – Use of DLA Disposition Services Name; Public Communications** – Purchaser will not use the name of DLA Disposition Services, DLA or DOD or its logos for any marketing or other purposes without the express prior written consent of DLA Disposition Services consent may be withheld for any reason whatsoever and is subject to the sole discretion of DLA Disposition Services. Purchaser will not publicly denigrate the surplus property disposition program of the Department of Defense or the conduct thereof by DLA Disposition Services.

**Section 10 – Tense and Gender** – Unless the context clearly indicates otherwise, the singular will include the plural and vice versa. Whenever the masculine, feminine or neutral gender is used inappropriately in this contract, this contract will be read as if the appropriate gender had been used.

**Section 11 – 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 will 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 will be valid unless it is in writing and signed by a duly authorized representative of the party against which it is to be enforced. Purchaser 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. Purchaser further agrees not to effect such changes without first receiving the written approval of the SCO.

**Section 12 – 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 will not be included. The last day of the period so computed will be included unless it is not a business day, in which event the period runs until the end of the next business day.

**Section 13 – Electronic Communication** – DLA Disposition Services and Purchaser will cooperate to facilitate delivery of Delivery Orders, Statement of Accounts, and other required reports to the extent reasonably practical by electronic transmission, such as by electronic mail or file transfer, rather than by delivery of a physical removable magnetic or optical storage medium.

**Section 14 – Firm Fixed Price Contract** – This is a firm fixed price contract involving the sale of Government surplus personal property. As long as the guaranteed contractual minimums have been met, it is not anticipated that the Government will be responsible for Purchaser costs arising out of the termination of the contract in whole or in part, except such costs as may arise from the obligations to complete final reporting responsibilities and to return property for which the Government has directed the return, or which is required to be returned under the terms of this contract.

## ADDITIONAL CONTRACT ADVISEMENTS

Prospective bidders will 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 will note that provisions of the Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq. and regulations promulgated there under forbid the sale of adulterated or misbranded medical devices.

Contract Related Data Disclosure:

The contractor shall keep all data, reports or other information relating to the contract confidential; that release of all such information is conditioned on Disposition Services prior written approval with this being limited to the extent that the otherwise confidential information is already in the public domain by acts of other parties (FOIA) or that the consultant or contractor is ordered by competent judicial or administrative authority to disclose the information.

Disposition Services requires the contractor to be obligated to notify Disposition Services immediately upon receipt of such an order. Disposition Services require that the contractor not to share information related to the contract in any forum in a way that would create a conflict of interest with or otherwise adversely affect Disposition Services. (i.e., we are currently in federal court; therefore, we do not want our contractor sharing things with the media that adversely hurt us in court and our relationship with our contractor because then our interest become adversarial). Disposition Services reserve for its counsel the final determination regarding whether a conflict, potential conflict, or adverse effect exists.

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

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

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

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

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

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

**Resource Conservation and Recovery Act (RCRA) Notice** - This material may ultimately be subject to EPA Hazardous Waste Regulations, 40 CFR Part 260 et seq. Civil and criminal penalties are available for noncompliance. Purchaser is cautioned that they are solely responsible to ascertain the extent to which these regulations affect it and to comply therewith. If purchasing lead acid batteries, purchaser is cautioned that they are responsible to ascertain the extent to which the 40 CFR Part 260 et seq, regulations effect it and to comply therewith, specifically Part 266 Subpart G – Spent Lead-Acid Batteries Being Reclaimed and/or 40 CFR Part 273 “Universal Waste” rule.

**Spill Response** - If Purchaser is performing the loading of materials, equipment must conform to the host installation, Federal, state and local standards for handling hazardous materials. If Purchaser is loading, Purchaser will be required for cleaning up spills of hazardous material that are caused by Purchaser, including spills from hydraulic lines on GFE, without regard to degree of culpability. For any spill that occurs, Purchaser will follow the Spill Prevention Control and Countermeasures Plan and Spill Contingency Plan. Purchaser will notify the SCO and the Agency’s Site Lead of any such spill on a Government installation by the Purchaser or their agents and will cooperate with the SCO to meet the installation’s reporting requirements.

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

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

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

**Warranty for Surplus Aircraft Components/Parts** – The Purchaser is advised that the aircraft components/parts on this sale may not currently be certified by the appropriate regulatory agencies for use on civilian aircraft. The Purchaser represents, warrants, and guarantees to the Government that this (these) item(s) will not be used, offered for sale, or sold for use in civilian aircraft unless proper



certification is obtained from the appropriate regulatory agencies. This (these) item(s) also may not be installed on any civilian aircraft unless installed by a Federal Aviation Administration (FAA) certified repairman and/or mechanic. The Purchaser agrees to hold the Government harmless from any and all demands, suits, actions, or claims of whatsoever nature arising from or out of violation of this warranty.

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

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

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## **DEFINITIONS**

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

**Allocable Cost:** A cost is allocable to a Government contract if it is incurred specifically for the contract, if it benefits both the contract and other work and can be distributed to them in a reasonable proportion to the benefits received, or is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown. A cost is allowable only when the cost is reasonable and allocable. The Purchaser 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 by the Government.

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

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

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

**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.

**Computer Data Base:** Means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

**CONUS:** Continental United States.

**Data:** Recorded information, regardless of form or the media on which it may be recorded.

**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.

**DoD Condition Code:** Classification of materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel. See, DLM 4000.25 Volume 2, Supply Standards and Procedures.

**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.

**Government Purpose Rights:** This means the rights to use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

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

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

**Hazardous Property :** Property having hazardous constituents or containing hazardous material or waste.

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

**Joint Inventory:** The physical inspection of property referred to the contract and pending issuance on a Delivery Order, conducted by both the Purchaser and DLA Disposition Services together to ensure complete and accurate property accounting.

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

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

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

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

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

**Purchaser's Purchase Price:** The Acquisition Value of a particular item of property multiplied by the applicable Bid Percentage 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 will be attached to the incurrence of costs by the Purchaser. If an initial review of the facts results in a challenge of a specific cost by the Sales Contracting Officer, the burden of proof will be upon the Purchaser to establish that such costs is reasonable.

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

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

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

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

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

**Sales Point of Contact:** An individual designated by the SCO to provide direct oversight of the Purchaser and/or their agents to ensure they meet the terms and conditions of the contract. Does not have the authority to make contractual obligations.

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

**Surplus Property:** An item of personal property that has been determined to be safe to sell with a DEMIL code A, Limited F or Q6. Surplus personal property that is sold by DOD is in "as-is, where-is" condition. Under General Services Administration (GSA) regulations, federal agencies must make excess personal property available for: (1) reutilization within their agency or to special programs; (2) transfer to other federal agencies; or (3) donation to specified eligible entities, before an item is eligible for sale to the general public. Under section 102-36.240 of GSA regulations excess personal property includes "new" property, "usable" property, "repairable" property or "salvage" property as defined in that regulation. Surplus personal property under this IFB has been determined to be "new", "useable" or "repairable" under the GSA definitions. Surplus personal property offered under this IFB does not meet the definition of scrap, which has no value except for its basic material content. While DoD turn-in customers provide a supply condition code of A-H on all DTIDs for all property turned in to Disposition Services, these codes are used in the DoD supply system as classifications for materiel in terms of readiness for issue and use, or to identify action underway to change the status of materiel. They do not directly correspond to the suitability of property being made available for reutilization, transfer, donation or sale. Disposition Service personnel make an independent determination on whether the property should be classified as scrap because it has no value in excess of the item's material content and/or whether an item is suitable for reutilization, transfer, donation or sale as surplus.

**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.