

Issue Date: September 21, 2017

**DLA-STOCKPILE MATERIALS-001-
(NEGOTIATED)**

SOLICITATION OF OFFERS

FOR STOCKPILE MATERIALS



DLA STRATEGIC MATERIALS

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<https://www.dla.mil/Strategic-Materials>

Sales Agreement Form

SALES PROGRAM AGREEMENT
BETWEEN THE
UNITED STATES OF AMERICA
AND
[Company Name]

This Sales Program Agreement (Agreement) governing the sale of various **National Defense Stockpile Materials** is entered into as of **[Date Approved]** between the United States of America, represented by the Contracting Officer executing this Agreement, and **[Company Name]**, represented by **[Submitted By]**.

This Agreement shall be effective upon signature by the Contracting Officer and shall incorporate the terms of the Acceptance Letter. An Acceptance Letter will be issued by the Contracting Officer in order to approve the single-point registration for participation in the sales program for National Defense Stockpile materials. In accordance with this Agreement, the participant will be eligible to participate competitively under any Solicitation for stockpile materials if the participant has completed the single-point registration and has registered for the specific Solicitation type. The terms and conditions of any subsequent sale of material will be as set forth in the Solicitation and shall include any revisions made to the terms and conditions by Amendments issued to the Solicitation. Such Amendments shall be accepted by **[Company Name]** and shall form a part of the Solicitation at the time of their issuance. By executing the Amendments, **[Company Name]** will acknowledge and certify its acceptance of the terms and conditions of both the Solicitation and the Amendments, as may have been modified by the Acceptance Letter. These terms and conditions shall be incorporated into each contract (awarded pursuant to a Request for Quotes) at the time of award.

An executed copy of this Sales Program Agreement shall be returned to the Contractor.

[Company Name] (Company Name)	UNITED STATES OF AMERICA
BY:	BY:
[Submitted By Account]	[Approved By Signature]
_____	_____
(Electronically Signed by Account)	(Signature)
[Submitted By]	[Approved By]
_____	_____
(Name of Signer)	(Name of Contracting Officer)
[Submitted By Title]	

(Title of Signer)	
[Date Submitted]	[Date/Time Approved]
_____	_____
(Date Signed)	(Date Signed)
	[Date Expires]

	(End of Registration Period)

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SECTION A – SOLICITATION

A.1. Introduction (SEP 17)

- a. The Defense Logistics Agency (DLA), DLA Strategic Materials, is soliciting offers for the sale of various stockpile materials in Fiscal Year 2018. Separate amendments will be issued to set specific materials and quantities to be offered under this Solicitation **DLA-Stockpile Materials-001-(Negotiated)** (Negotiated Solicitation). In future fiscal years, offerings will be dependent upon sales authority for the materials in those years and market conditions.
- b. This Negotiated-type solicitation covers negotiated offerings of stockpile materials and is issued pursuant to the Sales Program Agreement executed by the Contracting Officer and the Contractor as part of the Contractor's single-point registration (see **SECTION B - REGISTRATION TO PARTICIPATE IN THE SALES PROGRAM (SEP 17)** of this Negotiated Solicitation).

B.2. Web Page (SEP 17)

- a. DLA Strategic Materials will post all offerings under this Negotiated Solicitation on its online sales site at <https://businessportal.dla.mil/irj/portal>. Offerings will be established by the issuance of separate Amendments to this Negotiated Solicitation.
- b. DLA Strategic Materials will send email notifications when new solicitations or amendments are issued. Offerors that are not already receiving such notices must sign up to receive email notifications from the DLA Strategic Materials online sales site, <https://businessportal.dla.mil/irj/portal>.

C.3. Material Description (SEP 17)

- a. A description of the materials offered for sale, including available analytical information, will be listed on the DLA Strategic Materials online sales site (<https://businessportal.dla.mil/irj/portal>) and the DLA Strategic Materials Website (<https://www.dla.mil/Strategic-Materials>). The materials are located at the storage location(s) specified on the sites.
- b. Additional information on the material description will be added in this paragraph for specific stockpile materials, as required, through issuance of Amendments to this Negotiated Solicitation.
- c. Government records indicate that the materials conform to the data in this Section **A.3.**, the Amendments issued to this Negotiated Solicitation for specific materials, and as posted on the DLA Strategic Materials online sales site and the DLA Strategic Materials Website; however, no warranty or guarantee is made that the materials so conform or that they will be suitable for any particular purpose.

A.4. Financial Exposure Limit (JUN 17)

a. DLA Strategic Materials will establish a financial exposure limit (maximum level of business DLA Strategic Materials intends to allow) for each Offeror. The financial exposure limit shall be determined based upon the following:

- (1) Financial Position of the Offeror
- (2) Past Performance
- (3) References (Suppliers, Financial Institutions)
- (4) Credit Reports

b. If the Contractor reaches its financial exposure limit, DLA Strategic Materials, solely at its discretion, may determine to make no subsequent awards to the firm until such time as the Contractor satisfactorily performs existing contracts or DLA Strategic Materials increases the exposure limit.

c. All contracts awarded to a Contractor by DLA Strategic Materials will be applied against the Contractor's financial exposure limit.

d. DLA Strategic Materials may decide to make an award to an Offeror: (1) without the prior establishment of a financial exposure limit; or (2) at a dollar amount *which exceeds* the Offeror's previously established financial exposure limit. These actions will be taken *only if* the Contracting Officer determines that the award is in the best interest of the Government.

e. A Contractor may request that the Contracting Officer conduct another review of its financial exposure limit at any time.

A.5. Inspection (SEP 17)

Specific conditions for the inspection of material will be provided in separate Amendments to this Negotiated Solicitation.

A.6. Foreign Trade Regulations (MAR 11)

a. The Contractor shall determine any export license requirements, obtain any export license or other official authorization required for export, and carry out any U.S. Customs formalities for the export of any material awarded under this Solicitation.

b. The Contractor shall comply with United States Bureau of the Census, Department of Commerce, Foreign Trade Regulations and Export Administration Regulations as set forth in 15 CFR Parts 30 and 732 (latest editions).

c. The Contractor shall comply with the requirements set forth in 15 CFR 30 regarding filing of electronic export information (EEI).

- d.** DLA Strategic Materials shall not be named as the United States Principal Party in Interest (USPPI). DLA Strategic Materials will not execute any Shipper's Export Declaration (SED) or file any EEI through the Automated Export System (AES) or AESDirect required by the Foreign Trade Regulations.

A.7. Wood Packaging Materials Requirements (JUN 06)

Wood packaging materials utilized in the storage and shipment of National Defense Stockpile materials, including, but not limited to, pallets, boxes, kegs, and dunnage lumber, do not meet the requirements of U.S. Department of Agriculture Regulations at 7 CFR 319.40 or International Standards for Phytosanitary Measures (ISPM) 15, "Guidelines for Regulating Wood Packaging Materials in International Trade." Stockpile wood packaging materials have not been heat treated or fumigated with methyl bromide and are not marked to indicate that they meet the requirements of these regulations and standards. As a result, it may not be possible to export or import these wood packaging materials.

END OF SECTION A

SECTION B – REGISTRATION TO PARTICIPATE IN THE SALES PROGRAM (SEP 17)

1. Offerors shall register to participate in the DLA Strategic Materials sales program by completing a single-point registration on the DLA Strategic Materials online sales site at: <https://businessportal.dla.mil/irj/portal>. As part of the registration, Offerors must have previously established a Financial Exposure Limit with DLA Strategic Materials or must establish a Financial Exposure Limit at the time of registration (see Section **A.5. Financial Exposure Limit (JUN 17)** for exceptions). The single-point registration includes the completion and submittal of the following: Sales Agreement Form and Sections **I.4., I.6., I.7., I.8., and I.9.**, which are part of the Negotiated Solicitation.
2. In order to qualify under the Negotiated Solicitation, an Offeror must first register for a DLA Strategic Materials sales account, by following the directions posted on the DLA Strategic Materials online sales site at: <https://businessportal.dla.mil/irj/portal>. Complete instructions for registering for a sales account; establishing contact and company profiles; registering for the negotiated solicitation type; and accepting Amendments for one or more specific materials may be found on the DLA Strategic Materials Website at <https://www.dla.mil/Strategic-Materials> by clicking on the “Sales” tab and then the tab titled “Customer Information Guides.” The guides are available to assist first time users when attempting to register and develop a business relationship with DLA Strategic Materials.
3. Offerors must complete the single-point registration before registering for the negotiated solicitation type. Offerors shall register for the negotiated solicitation type by submitting the completed Section **I.5.** of the Negotiated Solicitation.
4. Single-point registration and Solicitation type selection may only be completed online through the DLA Strategic Materials online sales site. Sample copies of submittals are provided herein; however, all registrations must be completed online. Acceptance of Amendments for the specific materials must also be submitted online. Any Special Certifications required under Section **I.10.** of the Negotiated Solicitation shall be submitted in accordance with the amendment for the material which requires the certification.
4. New sales program registrants must submit copies of the most recent income statement, balance sheet, list of company credit references and any other documentation that will verify the financial level of business transactions. Copies of this documentation should be emailed to the attention of the DLA Strategic Materials Directorate of Contracting, Program Analyst, at DLAstrategicMaterialsSales@dlamail. Current participants in the sales program that already have an established financial exposure limit will be required to submit updated financial information in accordance with Item 10, below.
5. The Government will evaluate the single-point registration and financial documentation to determine whether or not the Offeror is considered responsible

and eligible for award. An Offeror's single-point registration will not be approved and Offerors will not be eligible to participate in negotiated offerings unless the Contracting Officer makes an affirmative determination of responsibility. The Contracting Officer may also consider other factors in determining an Offeror's responsibility, including, but not limited to, a review of exclusion records available in the System for Award Management (SAM) and items listed in paragraph 7, below.

7. To be determined responsible and eligible for an award, all Offerors shall have adequate financial resources, a satisfactory performance record with DLA Strategic Materials, and a satisfactory record of integrity and ethics. For example, an Offeror may be determined to be non-responsible and therefore ineligible to participate in DLA Strategic Materials sales offerings or the Contracting Officer may rescind an approval of a single-point registration, if there is a record of poor payment (e.g., payments made with insufficient funds) or poor performance (e.g., failure to pay for or remove material on time) on any of an Offeror's contracts. In addition to looking at past performance, DLA Strategic Materials will also review the financial statements and references submitted by the Offeror, as well as the current Dun & Bradstreet report and any other credit reports.
8. If the Contracting Officer determines that the Offeror is responsible, the Contracting Officer will approve the registration online. The Contracting Officer's approval will include the completed Sales Agreement Form and an Acceptance Letter that will set forth the financial exposure limit and identify whether or not any specially requested terms have been granted. If the Contractor changes any of the submittals in Sections **I.4.**, **I.6.**, **I.7.**, **I.8.**, or **I.9.**, after the registration has been approved, the Contractor's registration will be returned to a "pending" status and will require re-approval by a Contracting Officer.
9. The Offeror will not be eligible to submit Offers until the Contracting Officer has approved the registration and returned the signed Sales Agreement Form and the Acceptance Letter. The Contracting Officer's approval of the registration will enable the Offeror to access the solicitation types and the amendments for specific materials. However, the approval of the single-point registration does not establish a contractual relationship between the parties. The Amendment(s) must be acknowledged before an Offeror may submit Offers online for the material(s). Online submission is the only submission method permitted under the Negotiated Solicitation.
10. DLA Strategic Materials may require the Contractor to submit updated information, including financial information, at any time during the Contractor's registration term. A Contractor may request that the Contracting Officer conduct another review of its financial exposure limit at any time.

11. The term of the registration shall be for two years unless the Contracting Officer rescinds the approval of a company registration or the Negotiated Solicitation is superseded by another Negotiated Solicitation before that time. The Contracting Officer shall specify the registration period on the Sales Agreement Form and in the Acceptance Letter. Offerors shall be required to re-register online prior to the end of the registration period.

END OF SECTION B

SECTION C – PREPARATION AND SUBMISSION OF OFFERS

C.1. Submission of Offers Online (SEP 17)

- a. DLA Strategic Materials will post all offerings under this Negotiated Solicitation on its online sales site at <https://businessportal.dla.mil/irj/portal> by issuance of Amendments to this Negotiated Solicitation.
- b. All Offerors registered under Section **B** are invited to offer.
- c. Offers, modifications, and revisions to offers must be submitted through the DLA Strategic Materials online sales site. This is the only transmission method authorized by the Negotiated Solicitation. Offers, modifications, and revisions to offers submitted by any other transmission method (i.e., electronic mail, facsimile, commercial delivery service, mail, or hand delivery) will **NOT** be accepted. In order to submit Offers online, Offerors must register for an online sales account (**SECTION B – REGISTRATION TO PARTICIPATE IN THE SALES PROGRAM (SEP 17)**, Paragraph 2); establish a contact profile; company profile (or individual profile); complete the single-point registration; register for the Negotiated solicitation type by designating authorized persons and completing Section **I.5.**; and accept the Amendments for one or more specific materials.
- d. The Offeror agrees, if its offer is accepted by the Government within **thirty (30)** DLA Strategic Materials business days from the date specified in the Amendment to the Negotiated Solicitation for receipt of offers, to purchase all material on which offers are made at the price offered and to take delivery of the material within the time specified in the executed Section **I.1. Sale of Government Property Negotiated Sales Contract (SEP 17)**.
- e. Unless a designation of agent is on file at DLA Strategic Materials, an Offeror submitting an offer as agent for another party shall submit written proof, either prior to or with the offer, that it is authorized to act as agent and shall tender the offer in the name of the principal.
- f. Offers submitted through the DLA Strategic Materials online sales site constitute an electronic signature certifying that the official submitting the Offer has the authority to bind the company. Company officials are cautioned that individuals given the roles of “Administrator” and “Offeror” for the company will be able to submit an Offer for any material under this Negotiated Solicitation once the registration process is completed and the Amendment(s) for that material are accepted. The Government will not bear any responsibility if unauthorized company personnel are provided the roles of “Administrator” and “Offeror” by the company.
- g. Submission of an online Offer will result in the generation of a Section **I.1. Sale of Government Property Negotiated Sales Contract (SEP 17)** and Section **I.2. Offer Items**.

C.2. Website Information (SEP 17)

- a. Offerors requiring additional information on sales or experiencing problems accessing the website between 8:00 a.m. and 4:00 p.m., local time Fort Belvoir, VA, Monday through Friday, Federal holidays excepted, should contact the following:

DLA Strategic Materials Contracting (703) 767-6500

- b. At all other times, questions regarding the online sales site should be sent to DLA Strategic Materials at this email address: DLAStrategicMaterials@dla.mil.
- c. For questions regarding online sales accounts and log in problems, Offerors are advised to forward a request to the email address in paragraph b., above. Log in to the website requires registration for an online sales account (see **SECTION B – REGISTRATION TO PARTICIPATE IN THE SALES PROGRAM (SEP 17), Paragraph 2**) with a 15-character strong password.

Note: Password resets are handled by the DLA Enterprise Helpdesk (EHD) and can be done by contacting the helpdesk at 855-352-0001. Users are encouraged to keep their password up to date to keep their password from expiring. The Government will not be responsible if a password cannot be reset prior to the time offers are due if an Offeror requests a reset within a period of time shorter than the time the EHD requires to process the reset. Offerors are therefore encouraged to view the offering as soon as possible and to begin the process of offer submission in sufficient time to complete the submission prior to the time offers are due. The same process applies to the submission of Best and Final Offers (BAFO), if BAFOs are requested.

- d. Any type of technical issue (e.g., an outage) with the online sales site, which is within the four hours immediately prior to the time set for receipt of offers, may result in an extension of the time set for receipt of offers in accordance with Section **C.6.d.** of the Negotiated Solicitation. DLA Strategic Materials will make a decision regarding the extension based on the prevailing circumstances.
- e. The inability of an individual user to access the online sales site and submit an Offer caused by failure of the user's hardware, software, Internet Service Provider, or the World Wide Web itself, is not cause for extending or canceling an offering.

C.3. Unit Pricing (SEP 17)

Pricing for each stockpile material offered under this Negotiated Solicitation shall be as stated in future Amendments.

C.4. Price Adjustments for Specific Materials (JUN 17)

Any price adjustments for specific materials shall be stated in future Amendments.

C.5. Minimum Quantity (JUN 17)

The minimum offer quantity for each stockpile material offered under this Negotiated Solicitation shall be as stated in future Amendments.

C.6. Late Submissions, Modifications, and Withdrawals of Offers (SEP 17)

- a.** Offerors are responsible for submitting offers, and any revisions, and modifications, so as to reach the Government office designated in the Solicitation by the time specified in the Solicitation. The only transmission method authorized by the Solicitation is by online submission through the DLA Strategic Materials online sales site at <https://businessportal.dla.mil/irj/portal>.
- b.** (1) Any offer, modification, or revision, that is received at the designated Government office after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, and—
 - (i) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the sale; or
 - (ii) It was the only offer received.
- (2) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
- c.** The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp on the online submission.
- d.** If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the Solicitation, and urgent Government requirements preclude amendment of the Solicitation closing date, the time specified for receipt of offers will be deemed to be extended to the same time on the next DLA Strategic Materials business day.
- e.** Within the time frame of the initial offering or the BAFO offering (if any), Offerors may submit modifications to their offer or BAFO through the website at any time before the closing date and time of the offering or BAFO offering, respectively.
- f.** Offers may be withdrawn through the website at any time before award. The solicitation authorizes online offers only.
- g.** Offerors may submit best and final offers (BAFOs) only if requested or allowed by the Contracting Officer.

- h.** The Contracting Officer shall promptly notify any Offeror if its offer, modification, or revision was received late, and inform the Offeror whether its offer will be considered.

C.7. Consideration of Offers (OCT 13)

- a.** The Government reserves the right to --
 - (1) Reject any or all offers;
 - (2) Waive any informalities and minor irregularities in an offer;
 - (3) Award a quantity less than the quantity offered on at the unit price offered; and
 - (4) Accept any one item or group of items in an offer, as may be in the best interest of the Government.
- b.** Notwithstanding Section **C.7.a.(3)**, Offerors may submit multiple offers at various unit prices and may specify a minimum or maximum quantity. The minimum quantity specified cannot be less than the minimum quantity set forth in Section **C.5**.
- c.** The Government may request specific documentation to support the offer submitted. Failure to provide the documentation, if requested, may result in the Offeror being determined to be ineligible for award.

C.8. Evaluation of Offers (SEP 17)

The evaluation factors for each stockpile material offered under this Negotiated Solicitation shall be as stated in future Amendments.

C.9. Negotiation Procedures (SEP 15)

The Government intends to evaluate offers and award a contract after conducting discussions with all Offerors whose offers have been determined to be within the competitive range. However, the Government reserves the right to award without discussions. Accordingly, Offerors are advised to include their best possible terms in their initial offer.

If the Government determines that holding discussions is in its best interest, the following procedure will be utilized:

- a. Competitive Range** – The competitive range shall be established to include the most highly rated proposals on the basis of price and other factors that are stated in the solicitation.

- b. Negotiations/Discussions** – Only Offerors within the competitive range will be contacted to schedule the day and time for discussions to be conducted. Negotiations will be conducted only with the company official signing Section **I.1 Sale of Government Property Negotiated Sales Contract (SEP 17)** or an individual specifically authorized as an “Administrator” or an “Offeror” in Section **I.5 Certification Regarding Authorized Persons (SEP 17)**. The content and extent of the discussions is a matter of the Contracting Officer’s judgment, based on the particular facts of the sale and each Offeror’s initial offer.
- c. Discussion Session** – Only one discussion session per Offeror is intended. In order to facilitate meaningful discussions, Offerors should:
- (1) Be prepared to discuss:
 - (i) All prices and terms included in the initial offer;
 - (ii) Supporting documentation and justification for the derivation of prices offered and other terms the Offeror wishes to negotiate; and
 - (iii) Removal schedule.
 - (2) Arrange to have appropriate support personnel present during discussions, i.e., Purchasing, Marketing, etc.
- d. Best and Final Offer Requests** - At the conclusion of discussions, all Offerors with which discussions were conducted will be requested to submit a best and final offer (BAFO). Oral requests for the best and final offer will be confirmed in writing. Each individual BAFO request will include the following:
- (1) Notice that discussions are concluded;
 - (2) Time and date by which the BAFO must be submitted;
 - (3) Notice that BAFOs are subject to Section **C.6. Late Submissions, Modifications, and Withdrawals of Offers (SEP 17)**;
 - (4) A record of negotiated issues and understandings between the Government and the Offeror (as applicable);
 - (5) A list of remaining questions/deficiencies (if any);
 - (6) A caution to Offerors to provide supporting documentation for any changes to their prior offers as revised during discussions; and
 - (7) Notice that the Government intends to evaluate best and final offers and award a contract without further discussions.
- e. Best and Final Offer Responses** – The BAFO should strictly conform to the best and final offer request. If the Offeror does not submit a BAFO, the initial offer will be considered as the best and final offer. Changes that are not fully supported by documentation may not be evaluated or considered.
- f. Subsequent Discussions/BAFO Requests** – Generally, only one best and final offer will be requested. After receipt of best and final offers, discussions will not be reopened unless the Government determines that it is in its best interest to do so. If

discussions are reopened, an additional request for best and final offers will be issued to all Offerors that remain in the competitive range.

C.10. Disclosure of Information (NOV 13)

Contractor proprietary or confidential information in offers/discussions/BAFOs will not be disclosed to the public or used by the Government except for evaluation purposes, unless required by law.

C.11. Contract Award (OCT 13)

A written award signed by the Contracting Officer and sent to a successful Offeror within the time specified for acceptance shall result in a binding contract incorporating all the terms and conditions of this Solicitation unless otherwise stated in the executed Section **I.1 Sale of Government Property Negotiated Sales Contract (SEP 17)**.

C.12. Unsuccessful Offerors (NOV 13)

The Contracting Officer shall notify unsuccessful Offeror(s) at the earliest practicable time of the basis for non-award.

END OF SECTION C

SECTION D – PAYMENT

D.1. Payment (SEP 17)

- a. Payment shall be made in U.S. dollars.
- b. *All payments* shall be made *only* by wire transfer (Fedwire for domestic, within U.S. wire payment; or International wire transfer for wire payments from outside the U.S.). This includes payments for material, adjustments for variations in quantity or weight of material shipped, storage charges, interest, penalty charges, administrative charges, or any other charges. If attempted payments are made by check, the payment will be returned to the sender. The Contractor will incur charges if payments are delinquent.
- c. Payment by wire transfer (Fedwire or International).
 - (1) Wire transfer payment shall be made in accordance with the **Fedwire and International Payment Procedures (latest version)** instructions posted on the DLA Strategic Materials Website at <https://www.dla.mil/Strategic-Materials>. Fees for wire transfers are the responsibility of the Contractor. Payment shall be accompanied by **identifying information including the contract number; modification number (if applicable); invoice number (if applicable); and the name of the material purchased.**
 - (2) If wire transfer payment is not made in accordance with the **Fedwire and International Payment Procedures (latest version)** instructions or if identifying information is not provided, shipment of material may be delayed, the wire transfer may be returned to the sender, or a Contractor may incur charges if payments are delinquent.
- d. Invoices issued for adjustments for variations in quantity or weight, storage charges, interest, penalty charges, or administrative charges shall be paid promptly.
- e. If payment is not made in full within 30 calendar days of issuance of an invoice as specified in **D.1.d.**, the Contractor will be considered delinquent and any outstanding charges will be reduced by any subsequent payments. No material will be released until all delinquent charges are paid. (See Sections **F.1.b.** and **G.12.**)
- f. Instructions will be provided in future Amendments for stockpile materials offered under this Negotiated Solicitation which are subject to formula pricing and the submission of a pricing declaration worksheet.

D.2. Payment Due Date (NOV 13)

- a. Payment will be made before shipment of material and before the end of the contract period specified in the executed Section **I.1. Sale of Government Property Negotiated Sales Contract (SEP 17)**. If payment is not received by 2:00 p.m., local time Fort Belvoir, VA, on the payment due date, payment will not be credited until the next Government business day. Interest and penalty charges will accrue accordingly.
- b. Amounts shall be due at the earliest of the following dates:
 - (1) The final day of the contract period specified in Section **I.1. Sale of Government Property Negotiated Sales Contract (SEP 17)** (with or without the issuance of an invoice by the Government); or
 - (2) The date of the first written demand for payment under the contract, including any demand resulting from a default termination, unless paid within 30 days of becoming due.
- c. In the event the payment due date falls on a Saturday, Sunday, or Federal holiday, then the payment due date will be extended to the next Government business day.

D.3. Interest (NOV 13)

All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid at the Prompt Payment interest rate. The Prompt Payment interest rate shall be the interest rate established by the Secretary of the Treasury as provided by 41 U.S.C. § 611 and Public Law 92-41. The rate can found in the Federal Register and is applicable to the period in which the amount becomes due, as provided in Section **D.2.b.**, above.

D.4. Penalty and Administrative Charges (MAY 04)

In addition to interest charges specified in Section **D.3.**, above, a penalty charge of 6 percent per annum shall be assessed on any debt principal that is delinquent more than 90 calendar days. Penalty charges shall accrue from the date the principal amount due becomes delinquent until paid. Additional administrative charges may be assessed, if needed. Administrative charges relating only to delinquent debts will be assessed to cover expenses incurred by the Government in the recovery of such debts.

END OF SECTION D

SECTION E – MATERIAL REMOVAL

The Removal of Material for each stockpile material offered under this Negotiated Solicitation shall be as stated in future Amendments.

END OF SECTION E

SECTION F – SHIPPING

F.1. Request for Shipment (SEP 17)

- a.** Shipment of stockpile materials requires either handling and outloading by and at the expense of the Contractor or delivery is F.O.B. carrier's conveyance, depending on the material. Specific requirements for each material will be provided in future Amendments.
- b.** With the exception of the final request for shipment under the contract, the Contractor shall furnish commercial bills of lading to the designated depot at least **five (5) DLA Strategic Materials business days** prior to the date shipment is required to commence. For the final shipment request, the Contractor shall furnish commercial bills of lading to the designated depot at least **ten (10) DLA Strategic Materials business days** prior to the expiration of the contract. Simultaneously, the Contractor shall submit shipping instructions to the Contracting Officer by submitting a Shipping Request online through the DLA Strategic Materials online sales site. The Government will only accept Shipping Requests from those individuals designated as a "Shipment Requestor" in Section **I.5. Certification Regarding Authorized Persons (SEP 17)**. **No material will be shipped under the provisions of this contract or any other contract the Contractor has with DLA Strategic Materials until all outstanding delinquent charges and payments have been satisfied.**
- c.** "Shipping Instructions" shall include the following:
 - (1) Quantity of material to be released, unit price and total dollar value.
 - (2) Designation of type and kind of conveyance.
 - (3) Name of the carrier (including a telephone number where a contact can be reached).
 - (4) "Ship to" location.
 - (5) Minimum load per conveyance (optional)
 - (6) Desired shipping schedule.
 - (7) Name and telephone number of an agent who can furnish additional shipping information if needed.
 - (8) Any additional pertinent information, including outloader and sampler information.
- d.** The shipping schedule shall allow sufficient time for the Government to reasonably meet such schedule prior to the last day of the contract period commensurate with existing loading facilities and other commitments at the Government's storage locations. Information regarding Government commitments may be obtained from the DLA Strategic Materials Website at <https://www.dla.mil/Strategic-Materials>. The Government shall determine the order in which the material is scheduled, coordinated, and outloaded.

- e. **For Stockpile Materials for which Delivery is F.O.B. Carrier's Conveyance.** Outloading will be accomplished by truck. The Government will provide lumber and nails, if available from depot stock upon request from the Contractor's designee/driver. The Contractor's designee shall perform any necessary procedure(s) to ensure the cargo is safely secured prior to leaving the depot. The Government will not block, chock, brace, lash, band, or in any manner secure the cargo on the Contractor's conveyance(s). The designee shall witness the loading. Any expenses over and above those normally incurred by the Government to meet the public carrier's requirements for loading like materials will be at the expense of the Contractor.
- f. **For Stockpile Materials for which Handling and Outloading Must be Performed by and at the Expense of the Contractor.** The Contractor's designee shall perform any necessary procedure(s) to ensure cargo is safely secured prior to leaving the depot. Outloading will be accomplished by truck. The Contractor will be responsible for any damage to the roads at the storage location above normal wear and tear. Upon completion of the outloading, the Contractor and/or its agent(s) and employees shall make certain that the storage site is clean and in a condition acceptable to the Government. Any debris or foreign matter generated through the use of materials and/or equipment brought into the storage area to facilitate the outloading shall be removed from the storage location by the Contractor and/or its agent(s) at the Contractor's expense.
- g. The Contractor, its agents and employees shall comply with all applicable rules at the storage depot; Federal, state and local load limitations; and all safety, health, and environmental requirements, including the Environmental Safety and Occupational Health Policy of DLA Strategic Materials. See also Section **F.7. Environmental Policy (OCT 16)**
- h. Requests for shipment shall be for a minimum quantity of material. The quantity will be specified in subsequent Amendments to this Negotiated Solicitation. Shipping instructions and information requested in Section **F.1.c.**, above, must be submitted as a Shipping Request through the DLA Strategic Materials online sales site.
- i. The Contractor shall pay \$100 per day if the Contractor's conveyance fails to report to an unstaffed storage location as scheduled. The DLA Strategic Materials storage locations in Lordstown, OH; Point Pleasant, WV; and Wenden, AZ are unstaffed.

F.2. Insurance Requirements (DEC 07)

The Contractor shall procure and maintain, and require any subcontractor to procure and maintain, during the entire period of performance under this contract, such insurance as stipulated herein.

- a. Workers' compensation and employer's liability. The Contractor is required to comply with applicable Federal and State workers' compensation and

occupational disease statutes. Employer's liability coverage of at least \$100,000 is required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

- b.** General liability. Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.
- c.** Automobile liability insurance written on the comprehensive form of policy is required. The policy shall provide for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

F.3. Weighing (JUN 17)

Weighing of stockpile materials is material-specific. The requirements for each material will be provided in subsequent Amendments.

F.4. Weight Discrepancy (JUN 17)

The requirement for a Weight Discrepancy provision is material-dependent. If required, this clause will be included in a subsequent Amendment.

F.5. Assumption of Risk and Disclaimer of Liability (JAN 02)

The Contractor, its assigns or agents, assumes full responsibility for all injury or damage to persons or property occasioned by or occurring in connection with or incident to any use or possession of this material by the Contractor, Contractor's employees, or any person subject to the Contractor's control. The Government assumes no liability for any damages to the property of the Contractor, any other person or property, or any personal injury, illness, disability or death to the Contractor, Contractor's employees or any other person subject to Contractor's control, or for any other consequential damages arising from or incident to the purchase, use, loading, processing, disposition, or any subsequent operation performed upon, exposure to or contact with any component, part, constituent or ingredient of this item, material or substance.

F.6. Adjustment for Variation in Quantity or Weight (JUN 17)

The Government reserves the right to vary the quantity or weight delivered by a specific percentage from the quantity or weight listed in the awarded contract and the Contractor agrees to accept delivery of any quantity or weight within these limits. The contract price will be adjusted upward or downward in accordance with the unit price and on the basis

of the quantity or weight actually delivered. The percentage is material-dependent and will be specified in subsequent Amendments.

F.7. Environmental Policy (OCT 16)

The Contractor, its agents and employees shall comply with the current Environmental Safety and Occupational Health Management System Policy of DLA Strategic Materials while on storage facilities where stockpile material is stored. The Contractor shall review the policy statement for the DLA Strategic Materials Environmental, Safety and Occupational Health Management System (ESOHMS) and each depot's ESOHMS Orientation Guide for Contractors and Visitors. The Contractor's representatives who come onto storage facilities where stockpile material is stored shall sign the depot's ESOHMS Orientation Guide to acknowledge review. All documentation is available on the DLA Strategic Materials Website at:

<https://www.dla.mil/Strategic-Materials/Resource>

F.8. Environmental Protection (JUN 17)

a. Transportation Requirements

- (1) The transportation of hazardous material is governed by Department of Transportation (DOT) Hazardous Materials Regulations (Title 49 Code of Federal Regulations, Parts 170-189). If the material being transported is covered by DOT Regulations, the Contractor or its agent is responsible for certifying to DOT that hazardous materials are properly classified, described, packaged, marked, and labeled and are in a condition safe to transport based on the Contractor's or its agent's own examination of the material. (See especially 49 CFR 173.7(a) (1).)
- (2) The Government reserves the right to conduct reasonable inspection of the Contractor's or its agent's transportation conveyances or other equipment utilized to effect removal of the material purchased under this Negotiated Solicitation and Amendments thereto. Inspection may occur prior to, during, or subsequent to removal of the material from Government storage locations. The Contractor or its agent shall provide Government representatives with access and any reasonable assistance required to conduct this inspection.

b. Safety Data Sheets

- (1) Offerors are warned that unprotected exposure to hazardous substances, hazardous materials and hazardous chemicals may significantly increase the risk of health problems. The Contractor shall comply with all applicable Occupational Safety and Health Administration (OSHA) and any other Federal, state or local laws, codes, ordinances, and regulations (including obtaining any required licenses or permits) governing exposure to, and storage, handling, transportation, and disposition of, this material.

- (2) Safety Data Sheets as required by OSHA Hazard Communication Standard -29 CFR 1910.1200 are incorporated herein. (See copies of the Safety Data Sheets for the materials offered for sale posted on the DLA Strategic Materials Website at: <https://www.dla.mil/Strategic-Materials>.) This data provides specific toxicity and health related data for the protection of human health and the environment. Offerors should review this information carefully. It is the responsibility of the Contractor to further communicate this information to the distributor, manufacturer, user and/or transporter of this material as may be required by Federal regulations.
- (3) Offerors shall also refer to 29 CFR 1910 Occupational Safety and Health Standards, specifically sections 1910.1000 through 1050. These occupational standards set standards for permissible exposures, methods of compliance, personal protective equipment, and other measures that must be taken when working with, or in proximity to, hazardous materials, chemicals and substances in the United States and its territories and possessions.

c. Use and Disposition

- (1) The Contractor certifies that it shall use and ultimately dispose of any hazardous material purchased under this Negotiated Solicitation and Amendments thereto in accordance with all applicable Federal, state, local and international laws and regulations and in a manner safe for the public and the environment.
- (2) The material offered under this Negotiated Solicitation and Amendments thereto is not, in its present form, subject to EPA Hazardous Waste Regulations (40 CFR Part 260, et seq.) issued under the Resource Conservation and Recovery Act. However, it is possible that use of this material will lead to the creation of a hazardous waste. 40 CFR Part 260, et seq., details the responsibilities of generators, transporters, treaters, storers, and disposers of hazardous waste. Failure to comply with these regulations can lead to civil and criminal penalties.
- (3) The wood pallets or materials used to package the commodity sold under this Negotiated Solicitation and Amendments thereto may have been treated with a wood preservative to protect it from insect attack and decay. These preservatives penetrate and remain in the wood for a long time and may pose certain hazards if precautions are not taken during the handling, use, and disposal of these treated wood products. Treated wood products should not be burned in open fires. Contractors are encouraged to seek advice on proper disposal from the local environmental protection agency.

F.9. Accident Reporting (AUG 09)

In the event of an accident involving the Contractor, its employees, subcontractors or any person subject to the Contractor's control, as a result of activities occurring in performance of this contract, that results in the preparation of an accident report by the Contractor, its subcontractors or any person or entity subject to the Contractor's control, a copy of the accident report shall be forwarded to the Contracting Officer no later than 10 calendar days after the accident occurred.

END OF SECTION F

SECTION G – CONTRACT ADMINISTRATION DATA

G.1. Amendments and Modifications (MAR 11)

- a.** Changes in terms and conditions of this Negotiated Solicitation shall be accomplished by written amendment only.
- b.** Changes in terms and conditions of any resulting contract shall be accomplished only by written modification signed by the Contracting Officer.

G.2. Title (JAN 15)

Title to the material shall pass to the Contractor when the material is shipped. Nothing in this contract shall constitute a bailment under law for materials that have been paid for but not shipped from or removed from Government installations or facilities.

G.3. Risk of Loss (JAN 15)

- a.** After the award of the contract and prior to shipment of material, risk of loss for materials that have been paid for but not shipped to the Contractor will be the responsibility of the Government. The Contractor hereby acknowledges and agrees that its only recourse for loss of materials is re-payment of monies paid to the Government in the transaction. The Contractor hereby waives any and all potential or actual claims against the Government that are associated with this transaction, arising from loss of property after payment and before shipment of the property to the Contractor.
- b.** After material has been shipped, all risk of loss shall shift from the Government to the Contractor.

G.4. Limitation on Government's Liability (JAN 14)

- a.** In any case where liability of the Government to the contractor has been established, the measure of the Government's liability shall not exceed refund of whatever portion of the purchase price the Contractor has paid, except as provided in Section **G.4.b.**
- b.** Where specifically authorized in writing by the Contracting Officer, the Contractor may recover reasonable costs of packing, loading, and transportation incurred in connection with return of material to the Government.

G.5. Agency Protests (JUN 17)

- a. General.** Companies may file a protest over sales under this Solicitation with the –
 - (1) Contracting Officer;

- (2) Director, Directorate of Contracting, DLA Strategic Materials, for a decision at a level above the Contracting Officer.

Unless otherwise specified, protests will be presumed to be protests to the Contracting Officer.

b. Pre-Award Protests. A protest by a company concerning the terms of this Negotiated Solicitation and Amendments thereto shall be filed before the company submits a completed registration and accepts one or more Amendments under the Solicitation as specified in Section **B**. Protests based on alleged improprieties in the Solicitation that are apparent prior to bid opening or the time set for receipt of initial offers shall be filed prior to bid opening or the time set for receipt of initial offers. In negotiated sales, protests based on alleged improprieties that do not exist in the initial solicitation, but that are subsequently incorporated into the solicitation must be filed not later than the next closing time set for receipt of offers following the incorporation.

c. Post-Award Protests. Protests after award shall be filed not later than 10 calendar days after the basis of the protest is known or should have been known, whichever is earlier, except for protests challenging a negotiated sale under which a debriefing is requested and provided. In that situation, and where the basis was not known prior to the debriefing, the initial protest shall be filed not later than 10 calendar days after the date of the debriefing.

d. Service of Protest.

- (1) Protests seeking a decision by the Contracting Officer shall be served in writing at the following address and may be filed by mail, hand delivery, commercial delivery service, or facsimile:

ATTN: Directorate of Contracting
(Insert Name of the Contracting Officer)
DLA Strategic Materials
8725 John J. Kingman Road, Suite 3229
Fort Belvoir, VA 22060-6223
Facsimile No.: (703) 767-5484 or (703) 767-4074

- (2) As an alternative to filing a protest with the Contracting Officer, Offerors may seek an independent review by filing an agency-level protest with the DLA Strategic Materials Director, Directorate of Contracting. This process allows for a higher level decision on the initial protest. It is not a review of a Contracting Officer's decision on a protest filed with the Contracting Officer. A protest seeking an agency-level decision should clearly state that it is an "Agency Level Protest Under Executive Order 12979." The protest shall be served in writing at the following address and may be filed by mail, hand delivery, commercial delivery service, or facsimile:

ATTN: Director, Directorate of Contracting
DLA Strategic Materials
8725 John J. Kingman Road, Suite 3229
Ft. Belvoir, VA 22060-6223
Facsimile No.: (703) 767-4074

G.6. Disputes (MAR 11)

- a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).
- b. Except as provided in the Act, all disputes arising under or relating to a contract entered into pursuant to this Negotiated Solicitation shall be resolved under this clause.
- c. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- d.
 - (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
 - (2)
 - (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
 - (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
 - (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."
 - (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

- e. For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- f. The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.
- g. If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer
- h. The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- i. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

G.7. Default (JAN 14)

- a. (1) The Government may, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to –
 - (i) Make payment and remove the material within the time specified in this contract or any extension;
 - (ii) Remove the material within the time specified in this contract whether or not payment has been made;
 - (iii) Make progress, so as to endanger performance of this contract; or
 - (iv) Perform any of the other provisions of this contract.
- (2) The Government's right to terminate this contract under Section **G.7.a.(1)(iii)** and Section **G.7.a.(1)(iv)** above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure. Upon the Contractor's failure to cure such default within that period (or

such further period as the Contracting Officer may allow), the Contractor shall lose all right, title and interest which it might otherwise have acquired in and to the material as to which a default has occurred.

(3) If at any time prior to the expiration of this contract, the Contractor makes it clear either by words, actions, or circumstances, that the Contractor is unwilling or unable to perform under this contract, the Government shall not be required to furnish the Contractor notice specifying the failure under this contract prior to exercising its right to terminate this contract for default and seek damages.

- b.** If the contract is terminated, the Contractor could be held liable for damages resulting from the resale of the material, as described below. The Contractor may also be liable for additional charges including, not limited to: interest, storage charges, penalty charges, consideration fees, and administrative charges relating to the termination.
- c.** If the Government terminates the contract for default, it may subsequently resell the material for the Contractor's account, under the terms and in the manner the Contracting Officer considers appropriate, and assess the Contractor the difference between the contract price and the price obtained on resale. In no event will the Contractor be refunded any money if the Government obtains a greater price on resale, nor will an accounting of money be made until resale is complete. In the event that the Government does not resell the material within 12 months, the Contractor may be held liable for the full contract price for the quantity of material on which the default has occurred. In order to calculate the Government's damages on contracts where the contract price is determined on a formula-price basis, the Government will establish the contract price for the quantity of material on which the default has occurred as follows: Using the pricing mechanism set forth in the contract, the Government will set the price as though the material had been priced on the last day of the contract period or the date of the termination notice, whichever is earlier.
- d.** If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.
- e.** The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

G.8. Applicable Law for Breach of Contract Claim (JUL 06)

United States law will apply to resolve any claim of breach of this contract.

G.9. Bankruptcy (JAN 07)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic

commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed and the identity of the court in which the bankruptcy petition was filed.

G.10. Termination for Convenience of the Government (DEC 97)

- a.** The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall only be liable for actual costs incurred by the Contractor before the effective date of termination.
- b.** If a bona fide requirement for the material develops or exists prior to removal of the material from Government control, the Government may withdraw that material from the sale. In the event of a withdrawal under this condition, the Government shall be liable only for the refund of the contract price of the withdrawn material or such portion of the contract price as it may have received plus simple interest at the rate established by the Secretary of the Treasury.

G.11. Excusable Delays (DEC 07)

- a.** In the event either party should be prevented from performing under this contract by reason of any unforeseeable cause beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, sovereign acts of the United States, acts of a foreign Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, performance under the contract shall be suspended in whole or in part until the cause ceases to exist and thereafter the time for fulfillment of the contract shall be extended by the length of time during which the cause prevented performance under the contract.
- b.** The Contracting Officer shall make a written determination that an excusable delay condition exists.
- c.** This section shall also apply to an excusable delay condition that prevents delivery at a consignee's plant if –
 - (1) the delay meets the criteria in paragraph **a.** above; and
 - (2) the identity of the consignee is known to the Government prior to commencement of the excusable delay condition.
- d.** The Contractor shall notify the Contracting Officer, in writing, of the nature and extent of the excusable delay condition promptly after the commencement thereof, but in any event prior to outloading of the material from the storage location from which it is to be shipped. The Contractor shall notify the Contracting Officer, in

writing, within ten (10) calendar days when the excusable delay condition ceases to exist.

G.12. Setoff of Funds (MAY 04)

The Contractor agrees that the Government may use all or a portion of any monies received by Government to satisfy, in whole or in part, any debt (e.g. delinquent payments, interest, penalty charges, administrative charges, or storage charges), arising out of this or any other transaction.

G.13. Indemnification Agreement (JAN 02)

The Contractor shall save and hold harmless and indemnify the Government against any and all liabilities, claims, and costs of any kind and nature for injury to or death of any person or persons and for loss or damage to any property (Government or otherwise) occurring in conjunction with or in any way incident to or arising out of the occupancy, use, service, operations, or performance of work resulting from the acts or omissions of the Contractor, Contractor's employees, or any person subject to the Contractor's control in connection with the contract. Whether due to negligence or not of the Contractor, the Contractor agrees to reimburse the United States for any legal expenses (including salaries of attorneys) incurred by the United States in defending any and all claims or suits against the United States, whether well-founded or not, in any way whatsoever alleged to have arisen from the acts or omissions of the Contractor, Contractor's employees, or any person subject to the Contractor's control.

G.14. Covenant Against Contingent Fees (JAN 95)

- a. The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to add to the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- b. "Bona fide agency," as used in this paragraph, means an established commercial or selling agency, maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.
- c. "Bona fide employee," as used in the paragraph, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

- d.** “Contingent fee,” as used in this paragraph, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

- e.** “Improper influence,” as used in this paragraph, means any influence that induces or tends to induce a Government employee or office to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

END OF SECTION G

SECTION H – DEFINITIONS (SEP 17)

As used throughout this Negotiated Solicitation, the following terms shall have the meaning set forth below:

- a. The term “Registration” means the single-point registration on the DLA Strategic Materials online sales site at: <https://businessportal.dla.mil/irj/portal>. Offerors must register in accordance with Section B of this Negotiated Solicitation in order to participate in the sales program.
- b. The term “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.
- c. The terms “Offeror”, “Purchaser”, or “Contractor” may be used interchangeably.
- d. The term “Acceptance Letter” means the letter, signed by the Contracting Officer, indicating that the Government has approved the Contractor’s single-point registration.
- e. The term “**Sale of Government Property Negotiated Sales Contract**” means the form used by a Contractor to submit an Offer to the Government in response to an offering under the Negotiated Solicitation and Amendments thereto. A sample of Section I.1. **Sale of Government Property Negotiated Sales Contract** is shown on page 36 of the Negotiated Solicitation. The Section I.1. **Sale of Government Property Negotiated Sales Contract** will be generated when an Offeror submits an Offer online through the DLA Strategic Materials online sales site, <https://businessportal.dla.mil/irj/portal>.
- f. The terms “shall” and “must” may be used interchangeably.
- g. The term “electronic commerce” means electronic techniques for accomplishing business transactions including electronic mail or messaging and World Wide Web technology. The only acceptable form of electronic commerce which may be used under the Negotiated Solicitation is online submission through the DLA Strategic Materials online sales site.
- h. The terms “DLA Strategic Materials” and “Government” may be used interchangeably.
- i. Additional terms which may be used under this Negotiated Solicitation are specific to certain stockpile materials and will be provided in separate amendments to this Negotiated Solicitation.

END OF SECTION H

SECTION I – SUBMITTALS

THE FOLLOWING SUBMITTALS SHALL BE COMPLETED AND SUBMITTED THROUGH THE DLA STRATEGIC MATERIALS ONLINE SALES SITE. THE COPIES PROVIDED IN THIS SOLICITATION ARE SAMPLES ONLY:

1. INITIAL SUBMISSION FOR SINGLE-POINT REGISTRATION:

Sales Agreement Form

- I.4. Certification Regarding Responsibility Matters (OCT 15)
- I.6. Type of Business Organization (JUN 17)
- I.7. Contractor's Mailing Address (OCT 13)
- I.8. Contractor's Billing Address (OCT 13)
- I.9. Disputes: Agreement to Use Alternative Dispute Resolution (DEC 16)

Financial Information as appropriate in response to Section B, Item 5.

2. REGISTRATION FOR THE NEGOTIATED SOLICITATION TYPE:

- I.5. Certification Regarding Authorized Persons (SEP 17)

3. ACCEPTANCE OF MATERIAL-SPECIFIC SOLICITATION AMENDMENTS

4. SUBMISSION WITH OFFER:

- I.1. Sale of Government Property Negotiated Sales Contract: *Submission of an online Offer will result in the generation of a Section I.1. Sale of Government Property Negotiated Sales Contract.*
- I.2. Offer Items
- I.3. Certificate of Independent Price Determination (JAN 14)
- I.4. Certification Regarding Responsibility Matters (OCT 15)

Sections I.3. and I.4. are certified by the Offeror on the DLA Strategic Materials online sales site at the time of Offer submission.

- I.10. Special Certifications (JUN 17)

Special certifications are material-dependent. Any Special Certifications required under Section I.10. of the Negotiated Solicitation shall be submitted in accordance with the amendment for the material which requires the certification.

I.1. Sale of Government Property Negotiated Sales Contract (SEP 17) [SAMPLE ONLY]

I.1 SALE OF GOVERNMENT PROPERTY NEGOTIATED SALES CONTRACT	CONTRACT NUMBER [Contract Number]
<p>This contract is entered into by and between the United States of America, hereinafter called the "Government," represented by the Contracting Officer executing this contract and the Contractor identified below. The Government agrees to sell and the Contractor agrees to buy the material described below in accordance with the terms and conditions of [Solicitation]. In the event of a conflict between the terms of the Solicitation and this Negotiated Sales Contract, the terms of the Negotiated Sales Contract govern.</p> <p>CONTRACT PERIOD EXPIRES ON: [Contract Expires]</p> <p>[Award Form Text]</p>	
EXECUTION BY CONTRACTOR	EXECUTION BY GOVERNMENT
<p>Name of Contractor: [Company Billing Address]</p>	<p>UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER): [Awarded By Signature]</p>
<p>Date: [Date Submitted]</p>	<p>Date: [Date Awarded]</p>
<p>Electronically Signed By: Name: [Submitted By] ([Submitted By Account]) Title: [Submitted By Title] Email: [Submitted By Email]</p> <p>Telephone: [Submitted By Telephone]</p>	<p>NAME OF CONTRACTING OFFICER: Name: [Awarded By] Title: [Awarded By Title]</p>

I.2. Offer Items

The listing of items of stockpile materials available for an offering will be provided on the DLA Strategic Materials online sales site:

<https://businessportal.dla.mil/irj/portal>

I.3. Certificate of Independent Price Determination (JAN 14) [SAMPLE ONLY]

a	The Offeror certifies that:
a.1	The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
a.2	The prices in this offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
a.3	No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
b	Each signature on the offer is considered to be a certification by the signatory that the signatory:
b.1	Is the person in the offeror's organization responsible for determining the prices being offered in this bid or offer, and that the signatory has not participated and will not participate in any action contrary to subparagraphs a.(1) through a.(3) above; or
b.2	<p>(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs a.(1) through a.(3), above:</p> <div style="border: 1px solid black; width: 300px; height: 15px; margin-bottom: 5px;"></div> <p>(insert full name of person(s) in the Offeror's organization responsible for determining the prices offered in this bid or offer, and the title of his or her position in the Offeror's organization);</p> <p>(ii) As an authorized agent, does certify that the principals named in subparagraph b.(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs a.(1) through a.(3) above; and</p> <p>(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs a.(1) through a.(3) above.</p>
c	If the Offeror deletes or modifies subparagraph a.(2) above, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

User

Certified: (By checking this box, you are certifying that you accept the contents of the certification and that all input is correct.)

I.4 Certification Regarding Responsibility Matters (OCT 15) [SAMPLE ONLY]

a.1	The Offeror certifies, to the best of its knowledge and belief, that—
a.1.i	The Offeror and/or any of its Principals—
a.1.i.A	Are (<input type="checkbox"/>) are not (<input type="checkbox"/>) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
a.1.i.B	Have (<input type="checkbox"/>) have not (<input type="checkbox"/>), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
a.1.i.C	Are (<input type="checkbox"/>) are not (<input type="checkbox"/>) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;
a.1.i.D	Have (<input type="checkbox"/>), have not (<input type="checkbox"/>), within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.
a.1.i.D.1	Federal taxes are considered delinquent if both of the following criteria apply:
a.1.i.D.1.i	The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
a.1.i.D.1.ii	The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
a.1.i.D.2	Examples.
a.1.i.D.2.i	The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

a.1.i.D.2.ii	The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
a.1.i.D.2.iii	The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
a.1.i.D.2.iv	The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).
a.1.ii	The Offeror has (<input type="checkbox"/>) has not (<input type="checkbox"/>), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
a.2	“Principal,” for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).
	This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.
b	The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
c	A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror’s responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

d	Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
e	The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

User
Certified: (By checking this box, you are certifying that you accept the contents of the certification and that all input is correct.)

I.5. Certification Regarding Authorized Persons (SEP 17) [SAMPLE ONLY]

The Contractor represents that the following individuals are current employees of [Company Name] and are authorized to perform the indicated roles.

Administrator: Can submit, update, and negotiate the Offers for Solicitation [Solicitation].
 Offeror: Can submit, update, and negotiate the Offers for Solicitation [Solicitation].
 Shipment Requestor: Upon award, can submit Requests for Shipment for contracts awarded under Solicitation [Solicitation].

Account	Name	Company Title	Administrator	Offeror	Shipment Requestor
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

User
 Certified: (By checking this box, you are certifying that you accept the contents of the certification and that all input is correct.)

I.6. Type of Business Organization (JUN 17) [SAMPLE ONLY]

The Offeror represents that -

a	It operates as (<input type="checkbox"/>) a corporation incorporated under the laws of the State of <input type="text"/> , (<input type="checkbox"/>) an individual, (<input type="checkbox"/>) a partnership, (<input type="checkbox"/>) a nonprofit organization, (<input type="checkbox"/>) a limited liability corporation (LLC), or (<input type="checkbox"/>) a joint venture.
b	If the Offeror is a foreign entity, it operates as (<input type="checkbox"/>) an individual, (<input type="checkbox"/>) a partnership, (<input type="checkbox"/>) a nonprofit organization, (<input type="checkbox"/>) a joint venture, or (<input type="checkbox"/>) a corporation registered for business in <input type="text"/> (country).
c	If the Offeror is a corporation, it is (<input type="checkbox"/>) independent (not owned or controlled by another company), (<input type="checkbox"/>) owned or controlled by <input type="text"/> corporation/company registered for business in <input type="text"/> (state/country).
d	If the Offeror is owned or controlled by another, state the relationship (e.g., wholly owned subsidiary, etc.): <input type="text"/> .
e	The Offeror (<input type="checkbox"/>) is, (<input type="checkbox"/>) is not, affiliated with any other entity which participates in the National Defense Stockpile sales programs. If the Offeror is affiliated with another entity, the Offeror shall state the nature of the affiliation: <input type="text"/>
f	The Offeror represents that it (<input type="checkbox"/>) is, (<input type="checkbox"/>) is not a small business concern. The Offeror shall state the basis for its representation as a large or small business: <input type="text"/>
g	The Offeror agrees to provide additional information relating to the above representations if requested to do so by the Contracting Officer.

User
 Certified: (By checking this box, you are certifying that you accept the contents of the certification and that all input is correct.)

I.7. Contractor's Mailing Address (OCT 13) [SAMPLE ONLY]

The Contractor shall provide its address, telephone number, facsimile number and email address.

Use company default address

Location Type*: Domestic International

Attention Line:

Individual Title:

Department/Division:

Company Name*:

Address Line 1*:

Address Line 2:

City*:

State/Province*:

Zip/Postal Code*:

Telephone*:

Fax:

Email*:

User
Certified: (By checking this box, you are certifying that you accept the contents of the certification and that all input is correct.)

I.8. Contractor's Billing Address (OCT 13) [SAMPLE ONLY]

The Contractor shall provide its address, telephone number, facsimile number and email address.

Use company default address

Location Type*: Domestic International

Attention Line:

Individual Title:

Department/Division:

Company Name*:

Address Line 1*:

Address Line 2:

City*:

State/Province*:

Zip/Postal Code*:

Telephone*:

Fax:

Email*:

User
Certified: (By checking this box, you are certifying that you accept the contents of the certification and that all input is correct.)

I.9. Disputes – Agreement to Use Alternative Dispute Resolution (DEC 16) [SAMPLE ONLY]

a	The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. 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.
b	Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the contractor (see the Disputes clause of the Solicitation), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and with legal counsel. Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.
c	If you wish to opt out of this clause, check here <input type="checkbox"/> . Alternate wording may be negotiated with the contracting officer.

User
Certified: (By checking this box, you are certifying that you accept the contents of the certification and that all input is correct.)

I.10. Special Certifications (JUN 17)

Any special certifications will be added to the Solicitation beginning with Section **I.10**.

END OF SECTION I