

# U.S. Department of Homeland Security



## EAGLE

### Information Technology Support Services

Base: June 28, 2006 (Unrestricted)/September 26, 2006 (Set-Aside)  
Through Modification A00008 – Date: May 4, 2011

*This document provides the basic contract award terms and conditions for all EAGLE prime contractors. Each EAGLE contract is identical except for the award number (PIIN), the contact information (address, POCs), and Attachment B-1 Labor Category/Labor Rate tables. Attachment B-1 for each contractor is provided separately. The periods of performance for the small business and unrestricted track awards are different due to the staggered award dates (See F.2).*

Department of Homeland Security  
Office of Procurement Operations  
Information Technology Acquisition Center  
Washington D.C.

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# Table of Contents

<b>SECTION A – STANDARD FORM 26 .....</b>	<b>1</b>
<b>SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS.....</b>	<b>2</b>
B.1    General .....	2
B.2    Base and Option Periods.....	2
B.3    Contract Pricing.....	2
B.3.1    Time and Material Labor/Firm Fixed Price Rates .....	2
B.3.2    Work Outside the Continental United States (OCONUS) .....	6
B.3.3    Cost Reimbursement Pricing .....	6
B.3.4    Total Cost of Ownership Pricing .....	6
B.4    Labor Rate Tables.....	6
<b>SECTION C – STATEMENT OF WORK.....</b>	<b>8</b>
C.1    General .....	8
C.1.1    Objective.....	8
C.1.2    Scope .....	8
C.1.3    Contract and Task Order Management .....	8
C.2    Functional Categories .....	9
C.2.1    Functional Category 1 – Infrastructure Engineering Design, Development, Implementation, and Integration .....	9
C.2.2    Functional Category 2 – Operations and Maintenance .....	9
C.2.3    Functional Category 3 – Independent Test, Validation, Verification, and Evaluation .....	9
C.2.4    Functional Category 4 – Software Development .....	10
C.2.5    Functional Category 5 – Management Support Services .....	10
<b>SECTION D - PACKAGING AND MARKING.....</b>	<b>11</b>
D.1    Packing, Packaging, Marking and Storage of Equipment .....	11
D.2    Markings.....	11
D.3    Equipment Removal .....	11
<b>SECTION E - INSPECTION AND ACCEPTANCE .....</b>	<b>12</b>
E.1    Clauses Incorporated by Reference .....	12
E.2    Inspection and Acceptance .....	12
E.3    Scope of Inspection .....	12
E.4    Basis of Acceptance.....	12
E.5    Review of Deliverables .....	13
E.6    Written Acceptance/Rejection by the Government .....	13
<b>SECTION F - DELIVERIES OR PERFORMANCE.....</b>	<b>14</b>
F.1    Clauses Incorporated by Reference .....	14
F.2    Term of the Contract.....	14
F.3    Task Orders Performance Period and Pricing .....	14
F.4    Option To Extend The Term Of The Contract .....	14
F.5    Delivery .....	15
F.6    Place of Performance.....	15
F.7    Notice to the Government of Delays .....	15
F.8    Deliverables .....	15

F.9	Contract Status Report.....	16
F.10	Task Order Status Reports.....	17
F.11	Subcontracting Plan Reports .....	17
F.11.1	Individual Subcontracting Report (ISR) .....	17
F.11.2	Summary Subcontract Report (SSR) .....	17
F.12	Comprehensive Contracts Report.....	18
<b>SECTION G - CONTRACT ADMINISTRATION DATA .....</b>		<b>19</b>
G.1	Accounting and Appropriation Data.....	19
G.2	Points of Contact .....	19
G.2.2	Task Order Contracting Officer (TO CO).....	21
G.2.3	Task Order Contracting Officer's Technical Representative (TO COTR) .....	21
G.2.4	Contractor's Program Manager.....	21
G.3	Ordering-By Designated Ordering Official .....	21
G.3.1	Direct Ordering .....	21
G.3.2	Special Contract Administration Responsibilities .....	22
G.4	Task Order (TO) Procedures .....	22
G.4.1	Fair Opportunity Process .....	23
G.4.2	Fair Opportunity Exceptions.....	23
G.4.3	Task Order Solicitation.....	24
G.4.4	Task Order Process .....	26
G.4.5	Unauthorized Work.....	29
G.4.6	Task Funding Restrictions .....	29
G.4.7	Changes in Time-and-Materials (T&M) Task Orders.....	29
G.4.8	Debriefings .....	29
G.4.9	Task Order Protests.....	29
G.4.10	Task/Delivery Order Contract Ombudsman .....	30
G.5	Ordering (Indefinite Delivery Type Contracts) .....	30
G.5.1	Ordering Procedures .....	30
G.5.2	Modification of Orders .....	31
G.5.3	Unilateral Orders .....	31
G.6	Preparation of Vouchers .....	31
G.6.1	General.....	31
G.6.2	Billing Instructions .....	32
G.7	Quick-Closeout Procedure.....	32
<b>SECTION H – SPECIAL CONTRACTING REQUIREMENTS.....</b>		<b>34</b>
H.1	Authorized Users .....	34
H.2	Minimum Dollar Guarantee and Maximum Contract Limitation.....	34
H.3	Hardware and Software Acquisition.....	34
H.4	Purchasing System.....	35
H.5	Contractor Justification for Other Direct Costs (ODCs) .....	35
H.5.1	Materials .....	36
H.6	Selected Items of Costs.....	36
H.6.1	Travel Costs (Including Foreign Travel) .....	36
H.6.2	Training .....	36
H.6.3	General Purpose Office Equipment (GPOE) and IT.....	36
H.7	Leasing .....	37
H.8	Government Property, Information, Workspace .....	37
H.8.1	Contractor Acquired Property.....	38
H.8.2	Disposition of Government Property .....	38
H.9	Performance-Based Services Contracting (PBSC).....	38
H.10	Conversion to a Performance Based Task Order.....	38

H.11	Past Performance Evaluation.....	39
H.12	Disclosure of “Official Use Only” Information Safeguards.....	39
H.13	Disclosure of Information--Official Use Only .....	40
H.14	Standard of Conduct at Government Installations.....	40
H.15	Advertisements, Publicizing Awards and News Releases.....	40
H.16	Contractor Web Page.....	40
H.17	Contractor’s Employees Identification.....	41
H.18	Teaming Arrangements .....	41
H.19	Subcontracting.....	42
H.20	Incorporation of Subcontracting Plan.....	43
H.21	Notification Requirements Under T&M and Cost Reimbursement Contracts .....	43
H.22	Key Personnel.....	43
H.23	Substitution of Key Personnel .....	44
H.24	Interrelationships of Contractors .....	44
H.25	Observance of Legal Holidays and Excused Absence .....	45
H.26	Insurance.....	46
H.27	Information Technology Accessibility for Persons with Disabilities.....	46
H.28	Notice of Internet Posting of Awards .....	46
H.29	On-Line Proposal and Ordering Capability.....	47
H.30	Post Award Conference.....	47
H.31	Meetings/Conferences .....	47
H.32	Earned Value Management .....	47
H.33	Organizational Conflict of Interest.....	49
H.34	DHS Infrastructure and Enterprise Architecture Compliance .....	50
H.35	Security Review.....	51
H.36	Interconnection Security Agreements .....	51
H.37	Access to Unclassified Facilities, Information Technology Resources, and Sensitive Information.....	51
<b>SECTION I - CONTRACT CLAUSES .....</b>		<b>53</b>
I.1	Clauses Incorporated By Reference.....	53
I.2	Security Requirements For Unclassified Information Technology Resources.....	58
I.3	Prohibition on Contracts with Corporate Expatriates .....	59
I.4	Limitation of Future Contracting.....	62
I.5	Notification Of Ownership Changes .....	62
I.6	Determination of Award Fee .....	63
I.7	Performance Evaluation Plan .....	63
I.8	Distribution of Award Fee.....	64
I.9	Small Business Subcontracting Program Reporting.....	64
I.10	DHS Mentor-Protégé Program .....	64
I.11	Notification of Employee Rights Concerning Payment of Union Dues or Fees .....	65
I.12	Performance-Based Payments .....	67
I.13	Contractor Employee Access.....	72
<b>SECTION J – LIST OF ATTACHMENTS .....</b>		<b>76</b>

## SECTION A – STANDARD FORM 26

<b>AWARD/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING	PAGE OF PAGES 1   70		
2. CONTRACT (Proc. Inst. Ident.) NO. <b>SEE MASTER LIST</b>		3. EFFECTIVE DATE 6/28/06 (LB)/9/26/06 (SB)		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.			
5. ISSUED BY Department Of Homeland Security Office Of Procurement Operations Information Technology Acquisition Center 245 Murray Drive, SW, Bldg 410 Washington, DC 20526		CODE	6. ADMINISTERED BY (If other than Item 5)  See Item 5		CODE		
7. NAME AND ADDRESS IF CONTRACTOR (No., street, city, county, State, and ZIP Code) <b>SEE MASTER LIST</b>				8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)			
				9. DISCOUNT PAYMENT			
				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:		ITEM  See G.6	
CODE		FACILITY CODE					
11. SHIP TO/MARK FOR  As Specified On Individual Task Orders		CODE	12. PAYMENT WILL BE MADE BY  As Specified On Individual Task Orders		CODE		
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> 10 USC 2304(c) ( ) <input type="checkbox"/> 41 USC 253(c) ( )				14. ACCOUNTING AND APPROPRIATION DATA  As Specified On Individual Delivery Orders			
15A. ITEM NO.	15B. SUPPLIES/SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT	
	<p><b>In accordance with C.1.2 Scope, the scope of this IDIQ contract is Functional Category (See Master List).</b></p> <p>This award incorporates only the proposed labor rates, travel and material markups, labor category information and subcontracting plan. It does not incorporate the remainder of the proposal.</p>						
<b>15G. TOTAL AMOUNT OF CONTRACT</b>						\$	
<b>16. TABLE OF CONTENTS</b>							
(v)	SEC.	DESCRIPTION	PAGE(S)	(v)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	SOLICITATION/CONTRACT FORM	1	X	I	CONTRACT CLAUSES	49-69
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2-6	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
X	C	DESCRIPTION/SPECS./WORK STATEMENT	7-9	X	J	LIST OF ATTACHMENTS	70
X	D	PACKAGING AND MARKING	10	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	INSPECTION AND ACCEPTANCE	11-12		K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	N/A
X	F	DELIVERIES OR PERFORMANCE	13-16		L	INSTRS., CONDS., AND NOTICES TO OFFERS	N/A
X	G	CONTRACT ADMINISTRATION DATA	17-28		M	EVALUATION FACTORS FOR AWARD	N/A
X	H	SPECIAL CONTRACT REQUIREMENTS	29-48				
<b>CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE</b>							
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 1 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and © such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein).				18. AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number HSHQDC-05-R-00010, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or Print)				20A. NAME OF CONTRACTING OFFICER  WILLIAM J. THOREEN			
19B. NAME OF CONTRACTOR  /s/		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA  /s/		20C. DATE SIGNED 6/28/06 (LB) 9/26/06 (SB)	
(Signature of person authorized to sign)				(Signature of Contracting Officer)			

## **SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

### **B.1 General**

The Contractor shall provide, in accordance with issued Task Orders (TOs), all management, supervision, labor, facilities, and materials necessary to perform information technology support services on an Indefinite-Delivery-Indefinite-Quantity basis. Task Orders may be Cost Reimbursement, Time and Materials (T&M), and Firm Fixed Price (FFP) in accordance with Federal Acquisition Regulation (FAR) Part 16.5. Task Orders will be issued in accordance with the procedures set forth in Sections G and I.

### **B.2 Base and Option Periods**

The term of this indefinite delivery indefinite quantity (IDIQ) contract is a base five year period and two one year option periods. This is not a multi-year contract as defined in FAR Part 17.1. Task orders will be issued with performance periods up to twelve months plus option periods unless different performance periods are otherwise authorized and allowed according to the type of funding used.

### **B.3 Contract Pricing**

#### **B.3.1 *Time and Material Labor/Firm Fixed Price Rates***

All task orders issued on a T&M or FFP basis will be priced in accordance with the pricing set forth in Section B.4, Labor Rate Tables. The labor rates in this section reflect the hourly fully-burdened rates for each labor category and will apply to all direct labor hours. The loaded hourly rates are ceiling price rates and the Contractor may, at its discretion, elect to propose lower hourly rates on a task by task basis.

Indirect costs allocated to any direct materials and other direct costs shall be proposed consistent with the payment requirements in the clause at FAR 52.232-7, Payments under Time and Materials and Labor Hour Contracts (Feb 2007) and FAR 52.216-7, Allowable Cost and Payment Clause (DEC 2002).

(a) Labor. The Section B.4 Labor Rate Tables represents fully-loaded hourly rates for each skill classification. The fully-burdened labor rates include all direct, indirect, general and administrative costs and profit associated with providing the required skill. The fully-burdened labor rates include all direct labor and all indirect costs applicable to that direct labor, such as, fringe benefits, overhead, G&A, service centers, etc. The rates shown are based on the contractors established accounting practices for recording uncompensated overtime. These practices are reflected in the table. If in Attachment B-1, Labor Rate Table, the rates were computed based on the recording of all hours, then the contractor will be permitted to bill at the hourly rate for all hours worked. If the rates were computed based on recording only 40 hours per week, then the contractor will be permitted to bill only on the basis of a 40 hour week.

The rates in the Table reflect fully burdened rates for performance at a Government site and for performance at a contractor site.

(1) Government Site Rates. When performing at Government sites, the Contractor shall furnish fully-burdened labor rates. The Government will provide only office space, furniture, and office equipment and supplies, as described in Section H.8., Government Property and as specified in the individual Task Orders.

(2) Contractor Site Rates. When performing at a Contractor site, the fully-burdened labor rates shall include applicable indirect costs for office space and all normal supplies and services required to support the work. This includes, but is not limited to, telephones, faxes, copiers, personal computers, postage, including courier services such as Federal Express, ordinary business software, such as word processing, spreadsheets, graphics, etc., normal copying and reproduction costs.

(b) Competitive Task Orders - The TO CO will use competition to determine reasonableness of the subcontract rates.

*Definition: The term “EAGLE Prime” is defined as the EAGLE Prime contractor submitting the proposal in response to a Task Order Proposal Request (TORP) and the term “EAGLE Contract Holder” is defined as the EAGLE Prime contractor that is functioning in the role as a subcontractor.*

(1) EAGLE Prime subcontracts with the EAGLE Contract Holder on competed orders – If the EAGLE Prime subcontracts to the EAGLE Contract Holder, the EAGLE Prime may propose up to its ceiling rate in their respective Table B-1, Labor Rate Table, of their EAGLE contract. If the rates proposed to DHS, inclusive of the EAGLE Prime’s allocable indirect costs and a reasonable profit are at or below the EAGLE Prime contract ceiling rates, the EAGLE Prime would not have to disclose anything further in their proposal.

(2) EAGLE Prime subcontracts with the EAGLE Contract Holder on competed orders – If an EAGLE Prime subcontracts to the EAGLE Contract Holder, the EAGLE Prime may propose up to its ceiling rate in their respective Table B-1, Labor Rate Table, of their EAGLE contract. If the rates proposed to DHS, inclusive of the EAGLE Prime’s allocable indirect costs and a reasonable profit are above the EAGLE Prime’s ceiling rates, the EAGLE Prime will have to disclose the amount of the indirect costs and the amount of the profit that were added to the EAGLE Contract Holder’s proposed rate.

(3) EAGLE Prime subcontracts with non-EAGLE contractors on competed orders – If an EAGLE Prime contractor subcontracts with a non-EAGLE contractor and the rates proposed to DHS, inclusive of the EAGLE Prime’s allocable indirect costs and a reasonable profit are at or below the EAGLE Prime contract ceiling rates in Table B-1, Labor Rate Table, of their EAGLE contract, the EAGLE Prime would not have to disclose anything further in their proposal.

(4) EAGLE Prime subcontracts with non-EAGLE contractors on competed orders – If an EAGLE Prime contractor subcontracts with a non-EAGLE contractor and the EAGLE Prime may then include in their proposal, (i) the fully burdened rate proposed to the EAGLE Prime by the Subcontractor, (ii) allocation of the EAGLE Prime’s indirect costs in accordance



with established accounting practices, and (iii) a reasonable profit. If the rates proposed to DHS, inclusive of the EAGLE Prime's allocable indirect costs and a reasonable profit are above the EAGLE Prime's ceiling rates, the EAGLE Prime will have to disclose the amount of the indirect costs and the amount of the profit that were added to the Subcontractor's proposed rates. A reasonable profit will be determined by the TO CO for the specific requirement.

(c) Non-competitive Task Order – The TO CO will require cost and pricing data or other than cost or pricing data, whichever is appropriate, in accordance with the requirement of cost or pricing data described in FAR 15.404-3. Documentation will include but not be limited to the agreement that the prime has obtained with the Subcontractor showing the rate being paid to the subcontractor for that labor category. The EAGLE Prime may include in their proposal the (i) allocation of the EAGLE Prime's indirect costs in accordance with established accounting practices and (ii) a reasonable profit. A reasonable profit will be determined by the TO CO for the specific requirement.

(d) Program Management Support Costs. Contract-level program management support costs are included as a percentage of each individual labor category rate, and encompass support for contract-level management, reporting requirements (See Section F) and related travel and meeting attendance costs associated with the Contractor's program management staff, as it relates to overall management of the EAGLE Program. As a result, these program management support costs are allocated across all of the task orders issued under this contract. These "program management" support costs are differentiated from individual task order "Task Order Manager" or "Project Manager" support costs, which are billed as hourly labor rates against individual task orders for direct support to the effort performed under those task orders. This will result in direct billings at the task order level for labor hours in the "Task Order Manager" or "Project Manager" categories, to specifically support project management for the task order.

(e) Materials. Materials are defined in the clause at FAR 52.232-7, Payments under Time and Materials and Labor Hour Contracts (Feb 2007).

*Materials* means—

- Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;
- Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
- Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
- Applicable indirect costs.

Indirect costs allocated to any direct materials and other direct costs shall be proposed consistent with the payment requirements of the Payments Under Time and Materials and Labor-Hour Contracts (FEB 2007) FAR Clause 52.232-7, (b)(5), as follows:

“The Contractor may include allocable indirect costs and other direct costs to the extent they are—

- (i) Comprised only of costs that are clearly excluded from the hourly rate;
- (ii) Allocated in accordance with the Contractor's written or established accounting practices; and
- (iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.”

Indirect costs allocated to any direct materials and other direct costs shall be proposed consistent with FAR 52.216-7, Allowable Cost and Payment Clause (DEC 2002).

The cost of general-purpose items required for the conduct of the Contractor's normal business operations are not allowable materials in the performance of task orders under this contract. See also Section G and Section H for additional limitations on materials and mandatory support documentation. Profit is not allowed on materials under a T&M type task order. Fee may be negotiated on cost-reimbursement type task orders.

#### ***B.3.1.1 Firm Fixed Price (FFP) type Task Orders***

For FFP type task orders, the quantity of each item or labor category ordered will be multiplied against the rate listed in this schedule or as negotiated for the TO, and the cumulative extended total of all items ordered will define the fixed price for the TO. Travel and materials, if applicable, may be estimated for each TO, burdened with applicable indirect rates, in accordance with established accounting practices and profit. Any total rate negotiated for travel and materials will be added to the extended price of all ordered items to arrive at the total fixed price for the TO. Partial payment of FFP type TOs may be negotiated based on the completion of milestones.

#### ***B.3.1.2 Time and Material (T&M) type Task Orders***

For T&M type TOs, the quantity of hours ordered from each labor category will be specified as deliverable hours billable at the ceiling rates specified in the Section B.4 Labor Rate Tables or as negotiated, if lower rates are proposed for the TO. Materials will be estimated for each TO and may include applicable indirect costs computed in accordance with the contractor's established accounting practices. Profit on materials is not allowable. The cumulative extended total of all labor categories ordered plus materials/applicable indirect costs will define the TO ceiling price. TOs may authorize adjustments between labor category quantities of up to 10%, within the established task labor ceiling price, without a formal modification. Reimbursement under the contract shall be governed by the clause at FAR 52.232-7, Payments under Time and Materials and Labor Hour Contracts (Feb 2007).

#### ***B.3.1.3 Rate Refreshment***

(a) The labor rates are fixed for all contract year periods, however, the Contractor may submit a proposal reducing the fixed hourly rates at any time during the life of this contract. The Government will review these proposals and determine if the revised rates are realistic and in the best interest of the Government. If the rates are accepted, the Government will modify the contract by incorporating the new rates into Attachment B-1, Labor Rate Table.

(b) At any time and throughout the life of the contract, at the request of either the Contractor or the Government, the Contractor may propose additional labor categories, rates and descriptions in addition to the Government labor categories. These additional labor categories, rates and descriptions will be negotiated on a case-by-case basis (See Section G.4.4(e) for process). The additional categories, rates and descriptions proposed, upon determination by the Government that they are fair and reasonable, will be incorporated by modification into the Section B.4 Labor Rate Tables of this contract.

### **B.3.2 Work Outside the Continental United States (OCONUS)**

It is anticipated that there may be TOs under this contract for work outside the United States. Individual task order requests will set forth price proposal instructions for OCONUS task orders. The Government reserves the right to make determinations of fair and reasonable pricing at the TO level.

### **B.3.3 Cost Reimbursement Pricing**

All TOs issued on a Cost Reimbursement basis will be priced in accordance with approved DCAA (or FAR Part 31) rates. Direct and indirect cost rates will be established on a TO basis. For Cost Reimbursement task orders, the Contractor will provide complete supporting schedules identifying all applicable direct and indirect rate estimates building up to the TO cost. Contractors with approved DCAA rates should submit their most recent provisional indirect billing and actual rates for both direct and indirect rates. Contractors without audited rates shall propose indirect rates in accordance with FAR Part 31. The fee will be negotiated for each TO consistent with statutory limitations. If the TO type is to be CPAF, the fixed portion of fee and the award portion will be clearly differentiated. Payment from the award fee pool will be based on the standards and procedures outlined in Sections I.7 and I.8.

### **B.3.4 Total Cost of Ownership Pricing**

Individual TOs may require the Contractor to restructure its price proposal to provide for the total cost of ownership. For example, instead of, or in addition to, providing a cost proposal based on fixed hourly rates, specific task orders may require pricing on a per seat/workstation, usage rates, or other similar bases to determine the total life cycle cost.

## **B.4 Labor Rate Tables**

The Labor Rate Tables in Attachment B-1 provide labor category descriptions, fixed hourly rates for performance of the requirements as specified in individual Task Orders. Fully loaded hourly rates are included for each labor category both at the Contractor site and at Government sites. These fully-loaded hourly rates are the ceiling rates representing the maximum rates allowable for Prime contractors. Only Government-required labor categories are included in this table. Additional labor categories may be proposed to meet specific TO requirements, in accordance with Section B.3.1.3(b) and Section G.4.4(f).

**CLIN Structure.** The Contract Line Item Number (CLIN) structure is designed to provide consistency across all the EAGLE contracts. The use of CLINs will be limited to task orders. CLINs will have a maximum of four characters:

**X** – The first character will designate the contract year with 0 (zero) representing the first 12 month period of the contract and 6 (six) representing the seventh year.

**XX** – The second character will represent the rate/cost category as follows:

- X1XX** Government Site Rates
- X2XX** Contractor Site Rates
- X3XX** Travel costs (by task order)
- X4XX** Direct materials, subcontracts for incidental services, other direct costs, and applicable indirect costs (by task order)
- X5XX** As necessary, for FFP Task Orders
- X6XX** As necessary, Cost type Task Orders

**XXXX** – The third and fourth characters will be used for the individual labor categories derived from Attachment B-1 Labor Rate Tables and to further break out costs/rates for materials.

The following is an example of the CLIN Structure described above.

<b>CLIN</b>	<b>DESCRIPTION</b>	<b>RATE</b>
X1XX	Government Site Rates	(to be inserted at task order award)
X2XX	Contractor Site Rates	(to be inserted at task order award)
<b>Material</b>		
X3XX	Travel Costs	TBD
X4XX	Direct materials, subcontracts for incidental services, and applicable indirect costs	TBD

**(End of Section B)**

## **SECTION C – STATEMENT OF WORK**

### **C.1 General**

#### **C.1.1 Objective**

Information Technology (IT) support services represent a significant portion of the Department of Homeland Security's (DHS) IT budget. The primary goal of this acquisition is to establish a suite of indefinite-delivery indefinite-quantity contracts for IT support services that will enable DHS business and program units to accomplish their mission objectives. The acquisition and resulting multiple award contracts will collectively be referred to as EAGLE (Enterprise Acquisition Gateway for Leading Edge Solutions) and are designed to offer a broad range of services, solutions and contract types to fulfill the majority of component and departmental IT services needs. This Statement of Work is comprised of five comprehensive functional service categories. Specific requirements will be further identified and defined at the task order level.

#### **C.1.2 Scope**

The Contractor shall provide the full range of IT services, technical and management expertise, and solution-related enabling products in one or more of the functional categories to meet the mission needs of the Department of Homeland Security (DHS). As identified in individual Task Orders, information technology solutions/capabilities will support DHS on a world-wide basis. The Contractors shall furnish the necessary personnel, materials, equipment, facilities, travel, and other services required to satisfy the ordered IT capabilities and solutions. While the Statement of Work (SOW) identifies five functional categories, the suite of resulting contracts are intended to satisfy the full range of IT related requirements. The scope of each individual IDIQ contract will be based upon the functional categories for which the Contractor proposed and is selected (See contract page 1, block 15b). With the pace of change it is impossible to anticipate how IT requirements and individual programs will evolve over the life of the contracts. It is intended that the EAGLE contract remains current and continues to provide the full range of IT capabilities/solutions and emerging technologies throughout its life. The Contractor shall provide solutions for one or more of the following functional categories with specific tasks to be set forth in the TOs:

- (1) Infrastructure Engineering Design, Development, Implementation, and Integration
- (2) Operations and Maintenance
- (3) Independent Test, Validation, Verification, and Evaluation
- (4) Software Development
- (5) Management Support Services

#### **C.1.3 Contract and Task Order Management**

Contract and TO management is a mandatory element for all task orders placed under the EAGLE contract. The objective of contract and TO management is to provide the program management, project control and contract administration necessary to manage a high volume, multiple contract type TO process for a large, diversified team so that the cost, schedule and quality requirements of each order are tracked, communicated to the government, and ultimately

attained. The use of commercially available automated tools and the application of expertise on processes and metrics that support task order management are encouraged to achieve the above objectives. The objective of the tools is to provide quicker access, improved accuracy, and enhanced accessibility for Contractors/clients, real-time monitoring of status/deliverables, tracking the quality of work products and gauging overall customer satisfaction.

## **C.2 Functional Categories**

The Contractor shall furnish the full range of solutions and services necessary to meet requirements of this contract and individual TOs as related to the functional categories described below. All solutions and services must meet DHS policies, standards, and procedures as identified by individual TOs (e.g. enterprise architecture, information assurance, and personnel, physical and system security).

### **C.2.1 Functional Category 1 – Infrastructure Engineering Design, Development, Implementation, and Integration**

The Contractor shall provide any and all phases of system design and development through deployment to ensure DHS IT solutions will enable their users to meet their mission goals and objectives. These efforts include the full range of infrastructure engineering design, development, implementation and integration, including, but not limited to, concept development, planning, requirements definition and analysis, systems design and development, integration, implementation, and deployment.

### **C.2.2 Functional Category 2 – Operations and Maintenance**

The Contractor shall provide any and all operations and maintenance (O&M) solutions, processes, and procedures necessary to sustain systems within the DHS Enterprise at the highest levels of service and availability consistent with cost, schedule, and performance objectives. These solutions may be required across the DHS Infrastructure, to include, but not limited to, the following operational areas: Data Center, Help Desk and Field Support Services (e.g., Desk-side support and LAN Administration), Network and Security Operations, and Collaboration Services (e.g., E-mail, Voice, and Video Services). This functional category includes the full range of O&M solutions, from maintaining and upgrading individual pieces of hardware and software to full managed service solutions.

### **C.2.3 Functional Category 3 – Independent Test, Validation, Verification, and Evaluation**

The Contractor shall provide the full range of independent test, validation, verification, and evaluation solutions to ensure that all IT products and services meet DHS standards, and are performing to defined design, cost, schedule and performance specifications/capabilities. The Contractor shall provide best practices, technologies, tools, and support to quality and operational assessments, integration testing and system test and evaluation, including security certification and accreditation, for IT systems. The Contractor shall also provide independent verification and validation through the monitoring and evaluation of projects through activities such as, but not limited to, assessments, process and procedure audits, project and performance management, and systems analysis and design.

#### **C.2.4 Functional Category 4 – Software Development**

The Contractor shall provide any and all phases of software design and development including deployment to ensure DHS applications and databases will enable their users to meet their mission goals and objectives. These efforts include the full range of software design, development, implementation and integration, including, but not limited to, concept development, planning, requirements definition and analysis, systems design and development, coding and testing, production, deployment, implementation, integration, and software application maintenance.

#### **C.2.5 Functional Category 5 – Management Support Services**

The Contractor shall provide, as ordered, the full range of business and technical management services that assist in the development, implementation, and continuous improvement of policies, procedures, guidelines, and directives. These documents and guidance will allow DHS to comply with the requirements of law and legislation, and operate the enterprise in an efficient and effective manner. These services encompass all areas of IT policy and planning including, but not limited to, enterprise architecture, security, training, enterprise resource management, business process reengineering, IT transformation and strategy, organizational change leadership, and enterprise and program management office support (e.g. business case development and performance management).

**(End of Section C)**

## **SECTION D - PACKAGING AND MARKING**

### **D.1 Packing, Packaging, Marking and Storage of Equipment**

Unless otherwise specified, all items to be delivered under this contract shall be preserved, packaged, and packed in accordance with normal commercial practices to meet the packing requirements of the carrier and ensure safe delivery at destination.

All initial packing, marking and storage incidental to shipping of equipment to be provided under this contract shall be at the Contractor's expense. The Contractor shall supervise the packing of all acquired equipment furnished by the Contractor and shall supervise the unpacking of equipment to be installed.

### **D.2 Markings**

All deliverables submitted to the Contracting Officer, the EAGLE Program Manager, the TO Contracting Officer or the TO COTR shall be accompanied by a packing list or other suitable shipping document that shall clearly indicate the following:

- (a) Contract number;
- (b) Task order number;
- (c) Name and address of the consignor;
- (d) Name and address of the consignee;
- (e) Government bill of lading number covering the shipment (if any); and
- (f) Description of the item/material shipped, including item number, quantity, number of containers, and package number (if any).

Specific marking requirements may be addressed in individual TOs.

### **D.3 Equipment Removal**

All Contractor-owned equipment, accessories, and devices located on Government property shall be dismantled and removed from Government premises by the Contractor, at the Contractor's expense, within 90 calendar days after contract expiration, or as mutually agreed by the Government and the Contractor. Exceptions to this requirement shall be mutually agreed upon and written notice issued by the TO Contracting Officer. Specific requirements will be addressed in individual TOs.

**(End of Section D)**



## SECTION E - INSPECTION AND ACCEPTANCE

### E.1 Clauses Incorporated by Reference

(FAR 52.252-2) (Feb 1998)

This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text can be accessed electronically at this internet address: <http://acquisition.gov/far/index.html>.

FAR Clause No.	Title and Date
52.246-2	Inspection of Supplies – Fixed Price (AUG 1996)
52.246-3	Inspection of Supplies – Cost Reimbursement (APR 1984)
52-246-4	Inspection of Services—Fixed Price (AUG 1996)
52.246-5	Inspection of Services – Cost Reimbursement (APR 1984)
52.246-6	Inspection of Services – Time and Material or Labor-Hour (May 2001)
52.246-16	Responsibility for Supplies (APR 1984)

### E.2 Inspection and Acceptance

(a) Inspection and acceptance of all work and services performed under each TO will be in accordance with the FAR clauses incorporated at Section E, *Clauses Incorporated by Reference* as applicable.

(b) Final acceptance of all deliverables and or services performed as specified under each Task Order will be made in writing, at destination by the TO COTR or as detailed in individual TOs.

### E.3 Scope of Inspection

(a) All deliverables will be inspected for content, completeness, and accuracy and conformance to task order requirements by the TO COTR or as detailed in individual task orders. Inspection may include validation of information or software through the use of automated tools and/or testing of the deliverables, as specified in the task order. The scope and nature of this testing must be negotiated prior to TO award and will be sufficiently comprehensive to ensure the completeness, quality and adequacy of all deliverables.

(b) The government requires a period not to exceed thirty (30) calendar days after receipt of final deliverable items for inspection and acceptance or rejection unless otherwise specified in the TO.

### E.4 Basis of Acceptance

(a) The basis for acceptance shall be compliance with the requirements set forth in the statement of work, the TO, the Contractor's proposal and other terms and conditions of this

contract. Deliverable items rejected under any resulting task order shall be corrected in accordance with the applicable clauses.

(b) Commercial and non-developmental hardware items, software items, pre-packaged solutions, and maintenance and support solutions will be accepted within thirty (30) calendar days of delivery when performance is in accordance with delivery requirements.

(c) Custom services and cost reimbursable items such as travel and ODCs will be accepted upon receipt of proper documentation as specified in the order. If custom services are provided as part of a FFP TO, acceptance will be as specified for the milestone with which they are associated. If custom services are for software development, the final acceptance of the software program will occur when all discrepancies, errors or other deficiencies identified in writing by the government have been resolved, either through documentation updates, program correction, or other mutually agreeable methods.

(d) Reports, documents and narrative type deliverables will be accepted when all discrepancies, errors or other deficiencies identified in writing by the government have been corrected.

(e) Non-conforming products or services will be rejected. Unless otherwise agreed by the parties, deficiencies will be corrected within 30 calendar days of the rejection notice. If the deficiencies cannot be corrected within 30 days, the Contractor will immediately notify the TO Contracting Officer of the reason for the delay and provide a proposed corrective action plan within 10 working days.

## **E.5 Review of Deliverables**

(a) The government will provide written acceptance, comments and/or change requests, if any, within fifteen (15) business days from receipt by the Government of the initial deliverable.

(b) Upon receipt of the Government comments, the Contractor shall have fifteen (15) business days to incorporate the government's comments and/or change requests and to resubmit the deliverable in its final form.

(c) If written acceptance, comments and/or change requests are not issued by the Government within 30 calendar days of submission, the draft deliverable shall be deemed acceptable as written and the Contractor may proceed with the submission of the final deliverable product.

## **E.6 Written Acceptance/Rejection by the Government**

The Government shall provide written notification of acceptance or rejection of all final deliverables within 30 calendar days. Absent written notification, final deliverables will be construed as accepted. All notifications of rejection will be accompanied with an explanation of the specific deficiencies causing the rejection.

**(End of Section E)**

## SECTION F - DELIVERIES OR PERFORMANCE

### F.1 Clauses Incorporated by Reference

(FAR 52.252-2) (Feb 1998)

This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text can be accessed electronically at this internet address: <http://acquisition.gov/far/index.html>.

FAR Clause No.	Title and Date
52.242-15	Stop-Work Order (AUG 1989)(for other than cost reimbursement task orders) and ALT I (APR 1984) (for Cost Reimbursement task orders)
52.242.17	Government Delay of Work (APR 1984)
52.247-34	F.O.B. Destination (NOV 1991)
52.247-35	F.O.B. Destination, Within Consignee's Premises (APR 1984)

### F.2 Term of the Contract

The term of this indefinite delivery indefinite quantity (IDIQ) contract is a base five year period and two one-year option periods. This is not a multi-year contract as defined in FAR Part 17.1. (*Unrestricted Track*: The base period is from June 28, 2006 through June 27, 2011. Option Period 1 is June 28, 2011 through June 27, 2012. Option Period 2 is June 28, 2012 through June 27, 2013. *Small Business Set-Aside Track*: The base period is from September 26, 2006 through September 25, 2011. Option Period 1 is September 26, 2011 through September 25, 2012. Option Period 2 is September 26, 2012 through September 25, 2013.)

### F.3 Task Orders Performance Period and Pricing

Task Orders (TOs) may be issued at any time during the base period and/or option periods. The performance period will be specified in the TO and may include option periods which extend the TO up to twenty-four (24) months beyond the expiration date of this contract. TOs shall be priced using the Section B rates that will be applicable to the TO's anticipated period of performance.

For purposes of TOs that extend beyond the expiration date of the contract, the final contract year's pricing shall be used. However, Task Order Contracting Officers may negotiate rate escalations for periods beyond the contract expiration.

### F.4 Option To Extend The Term Of The Contract

(FAR 52.217-9) (Mar 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor at any time within the term of the contract, provided that the Government gives the

Contractor a preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed eighty-four (84) months.

## **F.5 Delivery**

The items required under each individual TO shall be delivered and received at destination within the timeframe specific in each order.

## **F.6 Place of Performance**

Place of performance shall be set forth in individual TOs.

## **F.7 Notice to the Government of Delays**

In the event the Contractor encounters difficulty in meeting performance requirements, or when he anticipates difficulty in complying with the contract delivery schedule or completion date, or whenever the Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately notify the TO Contracting Officer and the TO COTR, in writing, giving pertinent details; provided, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by the Government of any delivery schedule or date, or any rights or remedies provided by law or under this contract.

## **F.8 Deliverables**

(a) All applicable deliverables, their required delivery dates, and destination of delivery will be specified in each task order issued under this contract. The schedule for completion of work to be performed under this contract will be delineated in each TO issued under this contract, as applicable.

(b) For purposes of delivery, all deliverables shall be made by close of business (COB) 4:30 P.M. local time (Washington, DC) at destination, Monday through Friday, unless stated otherwise in the TO.

(c) All deliverables submitted in electronic format shall be free of any known computer virus or defects. If a virus or defect is found, the deliverable will not be accepted. The replacement file shall be provided within two (2) business days after notification of the presence of a virus.

(d) Each contract-level and TO-level deliverable shall be accompanied by a cover letter from the Contractor on Company letterhead. Multiple deliverables may be delivered with a single cover letter describing the contents of the complete package.

(e) In the event the Contractor anticipates difficulty in complying with any contract-level delivery schedule, the Contractor shall immediately provide written notice to the Contracting Officer and the EAGLE Program Manager. For any task order level deliverable, the Contractor shall provide written notification immediately to the task order-level Contracting Officer and TO COTR. Each notification shall give pertinent details, including the date by which the Contractor expects to make delivery; provided that this data shall be informational only in character and that receipt thereof shall not be construed as a waiver by the Government of any contract delivery schedule, or any rights or remedies provided by law or under this contract.

## F.9 Contract Status Report

The contractor shall provide a Monthly Task Order Activity Report, which documents the contractor's task order awards and modifications received during the period to be reported. The report is due by the 15<sup>th</sup> calendar day of each month with activity of the previous month. (For example: The report due February 15<sup>th</sup> is to cover the activity – new task orders awarded and new modifications received - for the period January 1<sup>st</sup> through January 31<sup>st</sup>. If the 15<sup>th</sup> calendar day falls on a weekend or holiday, the report is due the following business day. If there is no activity during the reporting period, a “no activity” report shall be submitted. The Monthly Task Order Activity Report shall be provided in Microsoft Excel format, as specified in Section J – List of Attachments, B-2 EAGLE Monthly Task Order Activity Report in accordance with the instructions and example provided within the spreadsheet. The specified format and corresponding instructions are hereby made part of this contract.

Additionally, the contractor shall provide copies of all task orders, including task order modifications that have been issued within the monthly reporting period. For purposes of this requirement, a task order will consist of the OF-347 or SF-30 and the SOW, SOO or PBW.

Monthly Task Order Activity Reports and copies of all basic task orders, including task order modifications shall be provided in electronic format and emailed to the EAGLE Contracting Officer at [DHSEAGLEADMIN@dhs.gov](mailto:DHSEAGLEADMIN@dhs.gov), the Program Manager at [DHSESO@dhs.gov](mailto:DHSESO@dhs.gov) and the [EagleReporting@dhs.gov](mailto:EagleReporting@dhs.gov) mailbox. The subject line of the email notice presenting the submission of the monthly report shall be annotated with - **Monthly Task Order Activity Report (state the *month*)**

Task Order Modification that has been issued within the monthly reporting period shall include the following information on the last page of the modification:

From Line: This Line shall represent the old TO Value, including Options and Total Amount Obligated from the last modification.

By Line: This Line shall represent the current amount of the increase or decrease value for the modification. The amount shall include the Total TO Value which should include the Options and Total Amount obligated.

To Line: This Line shall represent the new total amount for the TO Value which should include the Options and Total Amount Obligated.

## **F.10 Task Order Status Reports**

EAGLE requires TO Status Reports for all TOs. The type of status report may vary by the type of TO issued. The status report recipients, content, and due dates will be identified in individual TO Request for Proposal. The TO Status Report shall be at the task order level unless a lower Work Breakdown Structure (WBS) level of reporting is explicitly required and stated in the TO Request for Proposal.

## **F.11 Subcontracting Plan Reports**

Large Businesses shall submit periodic reports which show compliance with their EAGLE subcontracting plan. The Contractor shall submit via the electronic Subcontracting Reporting System (eSRS) in accordance with the instructions on the website. The Contractor shall ensure that their Subcontractors agree to submit via the eSRS when applicable. The Individual Subcontracting Report (ISR) and the Summary Subcontracting Report (SSR) are available online at <http://www.esrs.gov>.

### **F.11.1 Individual Subcontracting Report (ISR)**

(a) The Contractor shall submit the ISR electronically via the eSRS within 30 calendar days after the close of each calendar period: (1) April 30 for the period October 1 through March 31 and (2) October 30 for the period April 1 through September 30. Each semi-annual ISR reflects cumulative task order subcontracting accomplishments from the inception of the contract through the relevant ISR reporting period.

(b) One (1) ISR is required at the contract level for all subcontract awards accomplished which is a roll-up all task order awards and submitted to the EAGLE CO via eSRS for review and acceptance. When failure to meet the goals of the small business subcontracting plan as stated in Section H.19 (e) of the contract, the Contractor shall state in the report (either remarks field or separate letter) what a good faith effort has been made to meet the goals and/or future plan on how to improve small business opportunities for future task orders.

(c) No separate ISR submission at the task order level is required via eSRS. However, when the TO CO determines that the subcontracting status report is necessary to measure the extent of compliance by the Contractor, the Contractor shall submit periodic subcontracting status report to the TO CO based on mutual agreement by both parties manually.

### **F.11.2 Summary Subcontract Report (SSR)**

The Contractor shall submit the SSR electronically via the eSRS. The report is due October 30th for the calendar period October 1 through September 30. The SSR shall be submitted to the Office of Small and Disadvantaged Business Utilization (OSDBU) to [Kyle.Groome@dhs.gov](mailto:Kyle.Groome@dhs.gov).

## **F.12 Comprehensive Contracts Report**

This section is deleted in its entirety and will not be replaced.

**(End of Section F)**

## SECTION G - CONTRACT ADMINISTRATION DATA

### G.1 Accounting and Appropriation Data

Accounting and appropriation data for obligations under the contract will be set forth on individual task orders (TOs).

### G.2 Points of Contact

The following subsections describe the roles and responsibility of individuals who will be the primary points of contact for the Government on matters regarding contract administration as well as other administrative information. The Government reserves the right to unilaterally change any of these individual assignments at anytime.

The EAGLE Program Manager and COTR are updated as follows. The alternative COTR name is deleted and not replaced.

#### **EAGLE Program Manager and Contracting Officer's Technical Representative (COTR):**

##### **Program Manager:**

Name: Winnifred Parks  
Address: Department of Homeland Security  
Office of Procurement Operations  
Enterprise Information Technology Acquisitions Division (EAD)  
245 Murray Drive, Bldg 410  
Washington, DC 20526  
Email: [winnifred.parks@dhs.gov](mailto:winnifred.parks@dhs.gov)  
Tel No: 202-447-5837

##### **COTR:**

Name: Winnifred Parks  
Address: Department of Homeland Security  
Office of Procurement Operations  
Enterprise Information technology Acquisitions Division (EAD)  
245 Murray Drive, Bldg 410  
Washington, DC 20526  
Email: [winnifred.parks@dhs.gov](mailto:winnifred.parks@dhs.gov)  
Tel No: 202-447-5837



**1. G.2.1 Contracting Officer (CO) – Administrative Contracting Officer**

The EAGLE Contracting Officer and Administrative Contracting Officer are updated as follows:

Name: Brenda L. Musgrove (Administrative Contracting Officer)  
Department of Homeland Security  
Office of Procurement Operations  
Enterprise Information Technology Acquisitions Division  
245 Murray Drive, Bldg 410  
Washington, DC 20526

Email: [Brenda.Musgrove@dhs.gov](mailto:Brenda.Musgrove@dhs.gov) or [DHSEAGLEADMIN@dhs.gov](mailto:DHSEAGLEADMIN@dhs.gov)

**Task Order Manager:**

Written communications shall make reference to the contract number and shall be mailed to the address above (To be provided for each order where applicable).

**Contracting Officer (CO) – Overall Contract Level**

(a) The Contracting Officer (CO) within the Information Technology Acquisition Center has the overall responsibility for the EAGLE contracts. The CO, without right of delegation, is the only authorized individual to take actions on behalf of the Government to amend, modify or deviate from the contract terms, conditions, requirements, specifications, details and/or delivery schedules. The overall CO for this contract is:

Name: William Thoreen  
Address: Department of Homeland Security  
Office of Procurement Operations (OPO)  
Information Technology Acquisition Center (ITAC)  
245 Murray Drive, Bldg 410  
Washington, DC 20526

Email: [William.Thoreen@dhs.gov](mailto:William.Thoreen@dhs.gov) or [DHSEAGLEADMIN@dhs.gov](mailto:DHSEAGLEADMIN@dhs.gov)

(b) Within that CO authority is the ability to delegate to an Administrative Contracting Officer (ACO) for the administration, management and oversight of the contracts. That delegation is as follows:

Name: William Thoreen  
Address: Department of Homeland Security  
Office of Procurement Operations (OPO)  
Information Technology Acquisition Center (ITAC)  
245 Murray Drive, Bldg 410

Washington, DC 20526  
Email: [William.Thoreen@dhs.gov](mailto:William.Thoreen@dhs.gov) or [DHSEAGLEADMIN@dhs.gov](mailto:DHSEAGLEADMIN@dhs.gov)

(c) The ACO provides support for both large and small businesses.

(d) The COTR for this contract will be identified by the Contracting Officer through a written designation. A copy of the letter of designation with specific duties and responsibilities will be provided to the Contractor.

### **G.2.2 Task Order Contracting Officer (TO CO)**

Services will be ordered via task orders issued by TO COs within the Contract User's organization following the ordering procedures set forth in Section G.4.

### **G.2.3 Task Order Contracting Officer's Technical Representative (TO COTR)**

TO COs may designate COTRs for individual task orders that will be responsible for the day-to-day coordination of the Task Order.

The TO COTR will represent the TO CO in the administration of technical details within the scope of the task order. The TO COTR is also responsible for the final inspection and acceptance of all task order deliverables and reports, and such other responsibilities as may be specified in the task order. The TO COTR is not otherwise authorized to make any representations or commitments of any kind on behalf of the TO CO or the Government. The TO COTR does not have authority to alter the Contractor's obligations or to change the task order specifications, price, terms or conditions. If, as a result of technical discussions, it is desirable to modify task order obligations or the specification, changes will be issued in writing and signed by the TO CO.

### **G.2.4 Contractor's Program Manager**

The Program Manager shall act as the central point of contact with the Government for all program-wide technical issues, and will represent the Contractor at all post-award status meetings. The Program Manager shall be responsible for all issue resolution, program management, and other contract support including providing comprehensive account support for the EAGLE contract. The Program Manager is responsible for overall contract performance and shall not serve in any other capacity under this contract. The EAGLE PM may grant waivers from this limitation when the contractor can demonstrate that contract management will not be adversely affected.

## **G.3 Ordering–By Designated Ordering Official**

The Government will order any supplies and services to be furnished under this contract by issuing task orders on Optional Form 347, or an agency prescribed form, from the effective date of the contract through the expiration date of the contract.

### **G.3.1 Direct Ordering**

EAGLE services shall be ordered by the issuance of task orders in accordance with Section G.4-Task Order Procedures and FAR Part 52.216-18. The Contract Users may directly place orders under the contract to obtain services for their agency. The TO CO will be

responsible for the issuance, administration, payment and closeout of the order (See also Section G.4). All orders are subject to the terms and conditions of this contract. In the event of conflict between an order and this contract, the contract shall prevail.

In no event will a task order change the requirements of the EAGLE contract. Should the Contract User require such a change, specific approval must first be obtained from the CO.

### **G.3.2 Special Contract Administration Responsibilities**

Each Contract User utilizing EAGLE has the primary responsibility for the administration of any order it places with the Contractor.

The TO CO shall be responsible for:

- (a) Ensuring that task orders are within the scope of the contract;
- (b) Administration and final closeout of task orders;
- (c) Performing inspection and acceptance or rejection of the equipment/services provided by the Contractor;
- (d) Approving or withholding payments, or authorizing partial payment of invoices; and
- (e) Forwarding an end of fiscal year notification to the Contracting Officer (either by memo, letter, or electronically), stating which task orders awarded in preceding fiscal year are closed with final disposition complete, including release of claims letters (if applicable).

The Contract-Level Contracting Officer is responsible for overall administration and the final closeout of the contract, and when necessary, shall:

- (a) Provide scope oversight;
- (b) Serve as liaison between the Contractor and the Department;
- (c) Ensure compliance with contract requirements;
- (d) Issue the Contracting Officer's final decision and handle all contract-level contractual disputes under the Contract Disputes Act; and
- (e) Issue all contract modifications against the Contract.

Unless otherwise delegated, only the designated CO, as defined in Section G.2, has oversight of the contract as a whole.

### **G.4 Task Order (TO) Procedures**

The Contractor's IT services shall be obtained on an as-needed basis (i.e., through the issuance of task orders). The Contractor shall perform the required effort for these services, both within and outside the United States, throughout the term of this contract. An individual TO may relate to a single Functional Category or involve services from multiple Functional Categories. Issued TOs will identify the IT services required, provide specific technical details (including the schedule for all deliverables and the identification of any applicable Government-Furnished Property (GFP), Government-Furnished Information (GFI) and/or Government furnished workspace) and activate performance.

The following defines the process by which fair opportunity will be afforded, how a TO will be processed, priced, and awarded. It also defines specific, local provisions to be used for issues concerning task order consideration and payment. Finally, the role of the DHS Ombudsman is defined. Careful attention should be paid to those areas in which the procedures, processes and provisions change due to use of a different contract type or pricing methodology.

The EAGLE Ordering Guide provides additional guidance/templates for order processing.

#### **G.4.1 Fair Opportunity Process**

An Enterprise Solutions Office (ESO) system generated TO tracking number will be assigned to each task order requirement. Unless one of the exceptions at FAR Part 16.505(b)(2) applies, the TO CO will post each task order requirement via Prism FedConnect (if available to the Component) and solicit response in accordance with Section G.4.3. This announcement satisfies the requirement for a fair opportunity to be considered. Each Contractor shall evaluate the opportunity and determine whether or not to submit a proposal. The announcement will include, at a minimum, the following information:

- (a) TO Tracking Number;
- (b) Date of Announcement;
- (c) End User Customer Agency;
- (d) Statement of Objectives (SOO) or Statement of Work (SOW) or Performance Work Statement (PWS);
- (e) Instructions for submission of technical and cost/price proposals;
- (f) Evaluation criteria and relative order of importance (if applicable);
- (g) Anticipated Contract Type;
- (h) Incumbent Contractor, if any;
- (i) Contracting organization POC: name, phone number, e-mail address and fax (TO CO and Contract Specialist); and
- (j) Proposal Due Date.

#### **G.4.2 Fair Opportunity Exceptions.**

(a) In accordance with the Federal Acquisition Streamlining Act (FASA) and FAR Part 16.505(b), the Task Order (TO) CO will provide all awardees a “fair opportunity” to be considered for each order in excess of \$3,000, unless one of the conditions below applies:

- (1) The agency need for such services is so urgent that providing a fair opportunity would result in unacceptable delays.
- (2) Only one awardee is capable of providing the services required at the level of quality required because the services ordered are unique or highly specialized.
- (3) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task order already issued under this contract, provided that all awardees were given a fair opportunity to be considered for the original order (see “Note” below).
- (4) It is necessary to place an order to satisfy a minimum guarantee.

In accordance with FAR 16.5, when an exception to the fair opportunity to be considered exists, the task order will be processed as sole source procurement, including a sole source justification. The sole source justification must be approved by the TO CO and submitted a copy of the approved document to the DHS Office of Procurement Operations, Acquisition Program Management Branch (APMB) (formerly Enterprise Solution Office) at DHSESO@DHS.GOV.

Note: If the order is a follow-on to a TO that was not issued under EAGLE, or is a delivery order for which the EAGLE awardees were not given the opportunity to compete, this exception CANNOT be used.

### **G.4.3 Task Order Solicitation**

Each Task Order will identify the Functional Category of the work to be performed. For services that cross multiple Functional Categories, the Government will identify the predominant Functional Category and each Prime Contractor in that Functional Category will be given the fair opportunity to compete.

During the Fair Opportunity Process, the Government may conduct:

(a) Unrestricted competition in which Prime Contractors from both the Unrestricted and Set-Aside tracks for the associated functional category will be given the opportunity to compete, or

(b) Set-aside task orders in which competition will be limited to only those Prime Contractors in the Set-Aside track. The task order solicitation will notify Offerors if a set-aside will be used.

In order to ensure that the required percentage of costs under EAGLE small business set-aside TOs is performed by the prime contractor, the prime must demonstrate annually that it has performed the required percentage to that date. FAR 52.219-14 requires that, for total small business set-asides, “at least 50% of the cost of contract performance incurred for personnel shall be expended for employees of the [Offeror]” (rather than subcontracted labor). Small business prime contractors under EAGLE will be required to report annually, on the anniversary of contract award, the total cost of labor on all work performed under set-aside TOs during the 12-month reporting period, and the total subcontracted labor cost during the same period. Thus, for set-aside TOs, the combined total of all set-aside TOs issued during each 12-month period must reflect that the prime contractor has performed at least 50% of costs incurred for personnel using its own employees.

Contractors shall prepare and submit their proposals in accordance with modified FAR solicitation provision FAR 52.216-29, or FAR.52.216-30. FAR 52.216-29 has been modified in accordance with the flexibility allowed at FAR 16.601(e)(1):

(1) Submit proposals in accordance with the provision at 52.216-29, as modified below, in solicitations contemplating use of a Time-and-Materials or Labor-Hour type of contract for noncommercial items, if the price is expected to be based on adequate price competition (if the contractor is unsure whether there will be adequate price competition, contact the contracting officer for the particular task order):

**52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.**

## TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITH ADEQUATE PRICE COMPETITION (FEB 2007)

- (a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- (b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit.
- (c) The offeror must establish fixed hourly rates using separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control;

(End of provision)

(2) Submit proposals in accordance with the provision at 52.216-30, Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisitions without Adequate Price Competition, in solicitations for noncommercial items contemplating use of a Time-and-Materials or Labor-Hour type of contract if the price is not expected to be based on adequate price competition (if the contractor is unsure whether there will be adequate price competition, contact the contracting officer for the particular task order):

**52.216-30 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.**

## TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS—NON-COMMERCIAL ITEM ACQUISITION WITHOUT ADEQUATE PRICE COMPETITION (FEB 2007)

- (a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.
- (b) The offeror must specify separate fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by—
  - (1) The offeror;
  - (2) Each subcontractor; and
  - (3) Each division, subsidiary, or affiliate of the offeror under a common control.
- (c) Unless exempt under paragraph (d) of this provision, the fixed hourly rates for services transferred between divisions, subsidiaries, or affiliates of the offeror under a common control—
  - (1) Shall not include profit for the transferring organization; but
  - (2) May include profit for the prime Contractor.
- (d) The fixed hourly rates for services that meet the definition of commercial item at 2.101 that are transferred between divisions, subsidiaries, or affiliates of the offeror under a common control may be the established catalog or market rate when it is the established practice of the transferring organization to price inter-organizational transfers at other than cost for commercial work of the offeror or any division, subsidiary or affiliate of the offeror under a common control.

#### G.4.4 Task Order Process

(a) The Contract User will submit a complete Task Order Request Package (TORP) to the TO CO or as specified by the ESO. The package should include a transmittal letter, an approved purchase request, either a statement of objectives (SOO), statement of work (SOW), or a performance work statement (PWS), and an Independent Government Cost Estimate (IGCE). Performance-based work statements must be used to the maximum extent practicable. Individual TOs must clearly describe all services to be performed or supplies to be delivered. Also the proposal request will include price/cost and past performance as evaluation factors.

NOTE: In accordance with DHS OCIO Policy, certain services in functional categories over a specified threshold may be reviewed to ensure compliance with the DHS enterprise architecture. If required, the DHS CIO approval shall be received prior to submission of the TO request to the ESO/e-procurement system for processing.

(b) The TO CO will issue a proposal request to all Contractors, unless a fair opportunity exception applies or the task is set-aside for the small business Prime Contractors. If the task is set-aside for small business Prime Contractors and the services fall predominantly within Functional Category 2, the TO CO will determine whether the services are classified as Information Technology or Telecommunications, and solicit the appropriate tier(s) of small businesses. The proposal request will include a due date for proposal submission and either a SOO, SOW or PWS, that will include either the Government's objectives or a detailed description of work to be accomplished, the applicable task areas, a listing of the deliverables required and any additional data, as appropriate. The proposal request will also include specific instructions for the submission of proposals, selection criteria factors, the factors' order of importance and other information deemed appropriate.

(c) Contractors will be provided an adequate time to prepare and submit responses based on the estimated dollar value and complexity of the proposed TO. The due date will be set forth in each proposal request. If unable to perform a requirement, Contractors shall submit a "no bid" reply in response to the proposal request. All "no bids" shall include a brief statement as to why the Contractor is unable to perform, i.e. conflict of interest.

(d) Technical Proposals. The proposal request will state whether an oral proposal is required in addition to, or instead of, written technical proposals. Responses will be streamlined and succinct, to the extent practical based on the estimated dollar value and complexity of the work, stating compliance or exception to requirements, risks, assumptions and conflict of interest issues. Responses will not be a proposal as defined in FAR Part 15, but only sufficient information to be considered in accordance with FAR Part 16. Proposals shall not merely restate SOO, SOW or PWS requirements. Both oral and written technical proposals shall address, as a minimum:

- (1) Technical/Management Approach;
- (2) Key Personnel Assigned;
- (3) Quantities/Hours of Personnel by Labor Categories;
- (4) Other Direct Costs (ODCs) (materials and supplies, travel, training, etc.);
- (5) Risks;

- (6) Period of Performance;
- (7) Government-Furnished Equipment (GFE)/Government-Furnished Information (GFI);
- (8) Security (including clearance level);
- (9) Teaming Arrangement (including subcontracting); and
- (10) Other Pertinent Data, (e.g., potential conflict of interest issues).

(e) Cost Proposals. A written cost proposal shall always be required. This part of the proposal shall include detailed cost/price amounts of all resources required to accomplish the task, (i.e. labor hours, rates, travel, incidental equipment, etc.). When competing for TO awards under the fair opportunity process, the Contractor is permitted to propose labor rates that are lower than those originally proposed and established in the Section B CLIN Rate Tables. The Contractor shall fully explain the basis for proposing lower rates. The proposed, reduced labor rates will not be subject to audit, however, the rates will be reviewed for realism to ensure the Government will not be placed at risk of nonperformance. The reduced labor rates will apply only to the respective task order and will not change the fixed rates in the Section B CLIN Rate Tables. The level of detail required shall be primarily based on the contract type planned for use, as further discussed below. To add labor categories beyond the Government Labor Categories, a request for contract modification must be submitted to the Contracting Officer. This request must include information demonstrating the insufficiency of the Government's Labor Category, a description of the proposed labor category including the education and experience levels, proposed labor rates and a cross reference to other contracts that include the proposed labor categories.

(1) Firm Fixed Price (FFP) and Time-and-Materials (T&M). The proposal shall identify labor categories in accordance with the Section B CLIN Rate Tables, and the number of hours required for performance of the task. The proposal must identify and justify use of all non-labor cost elements. It must also identify any Government Furnished Equipment (GFE) and/or Government Furnished Information (GFI) required for TO performance. If travel is specified in the TO statement of work, air fare and/or local mileage, per diem rates by total days, number of trips and number of Contractor employees traveling shall be included in the cost proposal. Prior to incurring any long distance travel expenses, the Contractor shall obtain written approval from the TO COTR of approximate travel dates, expected duration, origin and destination, purpose, estimated costs and the number and names of personnel traveling.

(2) Cost-Reimbursement. Both "sanitized" and "unsanitized" cost proposals will be required for cost-reimbursement type task orders only. "Unsanitized" cost proposals are complete cost proposals which include all required information. "Sanitized" cost proposals shall exclude all company proprietary or sensitive data, but must include a breakdown of the total labor hours proposed and a breakout of the types and associated costs of all proposed ODCs. Unless otherwise noted, unsanitized proposals will only be provided to the TO CO, while sanitized proposals will be provided to the TO COTR. Cost/price proposals shall include, as a minimum, a complete Work Breakdown Structure (WBS), which coincides with the detailed technical approach; and provides proposed labor categories, hours, wage rates, direct/indirect rates, ODCs and fee. Cost-reimbursement proposals shall be submitted in accordance with FAR Part 52.215-20 - Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.



(3) Other Relevant Information. This information shall always be in writing and shall address other relevant information as required by the contract or requested by the TO proposal request. The Contractor shall assume all costs associated with preparation of proposals for task order awards under the fair opportunity process as an indirect charge. The Government will not reimburse awardees for fair opportunity proposals as a direct charge.

(f) Evaluation of TO Proposals. Proposals will be evaluated in accordance with the selection criteria set forth in the TO proposal request. The Government's award decision will be based, at a minimum, on compliance with Section 508 requirements of the Rehabilitation Act, and selection criteria which addresses past performance, technical/ management approach and cost. Among other sources, evaluation of past performance will be based on a database built from past performance assessments provided by TO COTRs on individual TOs performed throughout the life of the contract (See Section H.11). In addition to past performance, technical/management approach and cost, individual task order selection criteria may include other factor(s) relevant to the particular requirement. The order of importance for the factors will be identified in each individual request for proposal. If necessary, during the evaluation of proposals, the Government may contact a Contractor with questions concerning its proposal. Upon completion of evaluations, the CO will issue a task order to the Contractor whose proposal is most advantageous to the Government.

(g) Award Recommendation Documentation. After completion of the evaluation, discussions, if any, and Best Value analysis, the TO CO/TO COTR shall prepare a complete award recommendation package to document the selection process and to serve as evidence that the fair opportunity to be considered rule was applied, unless an exception was taken under FAR Part 16.505(b)(2). At a minimum, it shall include:

- (1) A statement indicating whether announcement of the task order requirement was made to all Contractors eligible for receiving an award for the task requirement or if an exception to the a fair opportunity to be considered rule was cited (cite the exception);
- (2) The selection criteria /methodology used to evaluate the competing Contractors;
- (3) The results of the evaluation; and
- (4) The rationale for the recommendation of the task order awardee, including a summary of any negotiations conducted, cost/price analysis and best value analysis.

(h) Resolution of Issues. In the event issues pertaining to a proposed task cannot be resolved to the satisfaction of the TO CO, the TO CO reserves the right to withdraw and cancel the proposed task. In such event, the Contractor shall be notified in writing of the TO CO's decision. This decision is final and conclusive and shall not be subject to the "Disputes" clause or the "Contract Disputes Act."

(i) Task Order Issuance. TOs may be issued by e-mail, regular mail or facsimile using an Optional Form 347, or an agency prescribed form.

(j) Task Order Unique Labor Categories. Task Order Unique Labor Categories are those categories not currently listed in the EAGLE contract but may be required to perform certain task

orders within the scope EAGLE. These additional labor categories and rates shall be approved by the EAGLE Contracting Officer (CO) prior to the award of the task order or task order modification. A recommendation by the TO CO shall be made to the EAGLE CO after proposal evaluations have been concluded. The TO CO will forward to the EAGLE CO the following: a justification for the unique labor category, a complete labor category description, and a rate price reasonableness analysis. The additional labor category and rate, once approved, shall apply to that task order only.

The EAGLE RFP Attachment J-6 *Labor Category Table* included a statement on page 1 regarding waivers that was intended to be included in the awarded contracts. The language is hereby incorporated as paragraph (k) to the G.4.4 *Task Order Process*.

(k) Waivers from education and experience requirements. Contract Attachment B-1 *Labor Rate Tables*, provides contractor-specific education and experience requirements as proposed by each respective EAGLE prime contractor. Task Order Contracting Officers may grant waivers from these requirements or allow substitution of certain technical certifications for education and/or experience if it is determined to be in the best interest of the Government. Any equivalencies or substitutions must be cited in each Task Order

#### **G.4.5 Unauthorized Work**

The Contractor is not authorized at any time to commence TO performance prior to issuance of a signed TO or other written approval provided by the TO CO to begin work.

#### **G.4.6 Task Funding Restrictions**

No unfunded TOs are allowed.

#### **G.4.7 Changes in Time-and-Materials (T&M) Task Orders**

The Contractor shall submit a request for contract modification to the contract level CO to add any new labor categories beyond the Government-required labor categories (See Section G.4.4(e)). Upon contract modification, the Contractor shall submit a revised TO cost proposal to the TO CO showing the original amount of the TO award, the proposed revised amount and the difference.

#### **G.4.8 Debriefings**

If a non-selected Contractor has questions as to why it was not selected for a TO award, the Contractor should contact the TO CO. The TO CO and the non-selected Contractor may discuss the reasons why that Contractor was not selected; however, the TO CO may not (1) discuss the other Contractor's proposals, (2) compare Contractor's proposals, or (3) allow the non-selected Contractor access to the award decision documentation.

#### **G.4.9 Task Order Protests**

In accordance with FAR 16.505(a)(9), no protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an TO under this contract, except for:

(i) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(ii) A protest of an order valued in excess of \$10 million. Protests of orders in excess of \$10 million may only file with the Government Accountability Office (GAO), in accordance with the procedures at FAR 33.104.

#### **G.4.10 Task/Delivery Order Contract Ombudsman**

(a) In accordance with FAR Part 16.505(6), the Task and Delivery Order Ombudsman has the responsibility to review contractor complaints and ensure that all contractors are afforded a fair opportunity to be considered for each task order, consistent with the ordering procedures in the contract.

(b) The Component Task/Delivery Order Ombudsman is responsible for reviewing complaints from contractors on task and delivery orders, and if any corrective action is needed, shall provide a written determination of such action to the Task and Delivery Order Contracting Officer.

(c) Issues that cannot be resolved within the Component shall be forwarded to the DHS Task and Delivery Order Ombudsman for review and resolution. The DHS Task and Delivery Order Ombudsman is also the DHS Competition Advocate.

a. The complete list of Ombudsman can be found on DHS Open for Business at: [http://www.dhs.gov/xopnbiz/regulations/gc\\_1204658767888.shtm](http://www.dhs.gov/xopnbiz/regulations/gc_1204658767888.shtm).

### **G.5 Ordering (Indefinite Delivery Type Contracts)**

All Warranted Contracting Officers of the DHS, its Components, and other Federal agencies in support of homeland security are authorized ordering officers. For those agencies outside DHS, the EAGLE Program Manager will determine on a TO basis approval for use of the EAGLE contract. Supplies or services to be furnished under this contract shall be furnished at such times as ordered by the issuance of Orders on Optional Form (OF) 347 by the CO. All orders are subject to the terms and conditions of the contract. This contract shall control in the event of conflict with any order.

#### **G.5.1 Ordering Procedures**

TOs issued shall include, but not be limited to the following information (when applicable):

- (a) Date of order;
- (b) Contract and order number;
- (c) Type of Order;
- (d) Appropriation and accounting data;
- (e) Description of the services to be performed;
- (f) Description of end item(s) to be delivered;
- (g) DD Form 254 (Contract Security Classification Specification);
- (h) Contract Data Requirements List;

- (i) The individual responsible for inspection/acceptance;
- (j) Period of performance/delivery date;
- (k) Estimated number of labor hours for each applicable labor category;
- (l) The estimated cost plus fixed fee or ceiling price for the order; and
- (m) List of Government furnished equipment, material, and information.

### **G.5.2 Modification of Orders**

The pricing (e.g., cost-plus-fixed-fee, firm-fixed price, ceiling price) for each TO may not be changed except when authorized by a modification to the TO.

Task Order Contracting Officers shall ensure that modifications to task orders that affect the value or funding on the orders include clear explanations of the changes, which reflect the current amount, the amount of the change and the revised total (e.g. The obligated amount is changed from \$, By \$ to\$).

### **G.5.3 Unilateral Orders**

TOs under this contract will ordinarily be issued after both parties agree on all terms. If the parties fail to agree, the TO CO may require the Contractor to perform and any disagreement shall be deemed a dispute within the meaning of the "Disputes" clause.

## **G.6 Preparation of Vouchers**

### **G.6.1 General**

(a) SF-1034, Public Voucher for Purchases and Services Other Than Personal, shall be prepared and submitted for payments under this contract, unless otherwise specified in the individual TO.

(b) Pursuant to the provisions of FAR Part 42.7 and 42.8, responsibility for processing public vouchers for T&M and Cost Reimbursement task orders shall be assigned to the cognizant offices identified in each TO.

(c) To ensure timely processing of payment, an original and three copies of T&M and Cost Reimbursement vouchers shall be forwarded simultaneously to the addresses specified in the TO as follows:

- (1) Original to the cognizant audit office for administrative review, provisional approval and forwarding to the Finance Office listed below;
- (2) Copy to the Finance Office;
- (3) Copy to the TO CO; and
- (4) Copy to the TO COTR.

(d) To ensure timely processing of the Contractor's invoices, an original and two copies of FFP vouchers shall be forwarded simultaneously to the addresses specified in the TO as follows (they do not have to be submitted through the cognizant audit office):

- (1) The Finance Office;
- (2) The TO CO; and

(3) The TO COTR.

(e) All vouchers submitted to the Government shall delineate cost by:

- (1) Contract and TO Number;
- (2) Funding document/order billing item or contract line item number (FFP and T&M task orders);
- (3) Funding document/order by cost category (Cost Reimbursement task orders); and
- (4) Any additional information required by specific payment clauses.

(f) The customer will forward a copy of the certified voucher to the cognizant finance office for payment.

### **G.6.2 Billing Instructions**

(a) T&M vouchers and required supporting documentation shall be submitted pursuant to FAR 52.232-7.

(b) Cost Reimbursement vouchers shall be submitted in accordance with FAR 52.216-7 and must specify as a minimum the following information for the billing period:

- (1) The total cost and fee billed for the current billing period;
- (2) The cumulative cost and fee billed for the current fiscal year; and
- (3) The cumulative cost and fee billed for the TO to date.

Current and cumulative costs will be shown at the task level and fees will be shown at the task order level. Fixed fees and award fees will be differentiated on CPAF billings.

(c) For T&M and Cost Reimbursement funding documents/orders, supporting documentation shall be provided identifying the purpose and itinerary of all travel and other cost reimbursable ODCs being billed during the billing period.

(d) For FFP TO's with performance based payments, vouchers shall be submitted upon achievement of the billing milestones identified in the TO in accordance with FAR 52.232-32.

(e) For FFP TO's with progress payments based on cost, vouchers shall be submitted in accordance with FAR Part 52.232-16.

(f) A completion voucher will be submitted for each task order in accordance with FAR 52.216-7(d) (5) and (6).

### **G.7 Quick-Closeout Procedure**

The Contractor is authorized to use the quick-closeout procedure for TOs issued under this contract in accordance with FAR 42.708, Quick-Closeout Procedure.

(a) In accordance with FAR 42.708(a), the TO Contracting Officer has the authority to negotiate settlement of indirect costs for a specific TO if it is physically complete; the amount of unsettled indirect cost to be allocated to the TO is relatively insignificant; and agreement can be reached on a reasonable estimate of allocable dollars.

(b) In accordance with FAR 42.708(b), a determination of final indirect costs under the quick-closeout procedures shall be final for the TO it covers and no adjustment shall be made to other contracts for over- or under-recoveries of costs allocated or allocable to the contract covered by the agreement.

(c) Final invoices which result in a charge to the Government in excess of \$250.00 or refunds to the Government in excess of \$250.00 shall be processed prior to quick-closeout of the TO. Amounts due to the Contractor or refundable to the Government of less than \$250.00 are considered de minimus and will not be processed.

(d) Submission of a final “0-dollar invoice” is not required. Once agreement for quick-closeout is reached on individual TOs, a bilateral modification will be issued to closeout the TO. Once the bilateral modification is executed by the CO, the TO is closed and no further invoicing, adjustments, or claims will be accepted.

(e) All TOs under this contract do not have to be closed in accordance with quick-closeout procedures. The TO CO and the Contractor will evaluate complex TOs on a case-by-case basis for applicability of quick-closeout procedures.

(f) Modifications for quick-closeout will include the following statement: “The bilateral execution of this modification releases the Government and [insert Contractor name] from any further obligation.”

**(End of Section G)**

## SECTION H – SPECIAL CONTRACTING REQUIREMENTS

### H.1 Authorized Users

This Department-Wide Acquisition Contract is available for the use by the Department of the Homeland Security and its Components, as well as other federal agencies in support of homeland security. Other federal agencies may use this contract vehicle when obligating DHS funds on behalf of DHS or any of its components. DHS Component's Head of Contracting Activity (HCA) that use another federal agency to provide contracting support services may delegate procurement authority to allow the use of the EAGLE contracts on the Component's behalf. It is the Component's responsibility to ensure that the delegation precludes non-DHS orders placed on the contracts and that awarded orders are included in the monthly contractor activity reports.

### H.2 Minimum Dollar Guarantee and Maximum Contract Limitation

(a) Minimums. Each Contractor is guaranteed a total minimum of \$250. The minimums are to be obligated during the first year of the base period and are inclusive of fee.

(b) Maximums. The maximum cumulative dollar ceiling value of all contracts in this multiple award procurement is established at \$45 Billion.

(c) The Government has no obligation to issue TOs to the Contractor beyond the amount specified in paragraph (a) of this clause. Once the conditions of paragraph (a) have been met, the Contractor will continue to have the opportunity to be issued TO(s) under the Fair Opportunity to Compete provisions in Section G.

(d) Funding will be cited on individual TOs and not on the base contract award.

### H.3 Hardware and Software Acquisition

EAGLE is a "Solutions Based Contract." The Government anticipates that the majority of work awarded under this contract will be professional services. However, the contract is structured to permit purchase of a full-range of electronic and information technology solutions, including the hardware, software and enabling products necessary to implement these solutions. Inclusion of hardware/software acquisition on a TO is within the purview of the cognizant Government CO. Any hardware/software included must be considered to be critical and related to the services being acquired under a TO. Proposals submitted in response to individual TOs shall clearly identify and price any hardware, software or other products included as part of the Contractor's proposal. Unless otherwise indicated, acceptance of a TO proposal resulting in issuance of a TO constitutes authorization to provide the proposed solution, including the hardware, software or other products proposed, subject to the requirements of Section H.5, Contractor Justification for Other Direct Costs (ODCs).

The Contractor is advised that DHS is an active participant in the Federal Electronics Challenge. The Government reserves the right to require or otherwise provide preference on Contractor solutions that include specific models of desktop computers, notebooks and monitors qualified through the Electronics Products Environmental Assessment Tool (EPEAT) or its successor. Specific requirements will be identified in Task Order Request Packages.

During the term of this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were the Electronics Products Environmental Assessment Tool (EPEAT) Bronze registered or higher where such EPEAT products are available at [www.epeat.net](http://www.epeat.net).

When a requestor specifies desktop computers, notebook computers or computer monitors and any peripheral equipment that is integral to the operation of such items, in purchase request that are not EPEAT registered and a suitable EPEAT product is available, the Contractor shall:

- Notify the requestor of the requirement to purchase an EPEAT product; and
- Provide suitable alternative products that meet EPEAT registered requirements.

The Contractor shall submit the EPEAT purchase status report annually. Annual report shall quantify the number of EPEAT registered and non-EPEAT registered products purchased or leased under this contract during each fiscal year period. The information must be reported in the template EPEAT report form provided at Attachment C and submitted to [dheso@dhs.gov](mailto:dheso@dhs.gov) for the EAGLE COTR, [dhseagleadmin@dhs.gov](mailto:dhseagleadmin@dhs.gov) for the EAGLE CO and cc to DHS Environment Program Manager at [peter.wixted@dhs.gov](mailto:peter.wixted@dhs.gov), no later than October 31 of each year. In the event no activity occurred during the reporting period, a no activity report shall be submitted.

NOTE: In cases where an EAGLE contractor must purchase IT hardware and/or software to fully implement its solution, the DHS IT commodity initiative, referred to as FirstSource, has contracts with multiple highly qualified companies that should be considered as potential sources to fulfill those hardware and software requirements. EAGLE contractors should use their normal internal procurement procedures, whether soliciting and purchasing from a FirstSource contractor or from another contractor.

#### **H.4 Purchasing System**

The Contractor shall notify the CO in writing if there is any change in the status of its approved purchasing system and provide the reason(s) for the change. Documentation required to be submitted for CO consent shall be submitted in accordance with FAR Part 44, Subcontracting Policies and Procedures.

#### **H.5 Contractor Justification for Other Direct Costs (ODCs)**

All materials required for performance under the TOs issued pursuant to this contract that are not Government-furnished, shall be furnished by the Contractor. The Contractor shall utilize Government supply sources when available, including the mandatory-for-consideration DHS commodity contracts. When requisitioning procedures reveal that required materials are not



available from Government supply sources, the Contractor shall identify them in each TO proposal. Ownership of supplies acquired by the Contractor with Government funds, for performance of this contract, shall vest with the Government. The Contractor shall include a detailed description of all proposed materials in individual TO proposals. Materials are defined in the clause at 52.232-7.

### **H.5.1 Materials**

When required in individual TOs, the Contractor shall submit the documentation required to the CO for approval prior to entering into any equipment lease or purchase agreement.

## **H.6 Selected Items of Costs**

### **H.6.1 Travel Costs (Including Foreign Travel)**

(a) Contractor personnel will be required travel to support the requirements of this contract and as stated in individual TOs. Long distance and local travel will be required both in the Continental United States (CONUS) and Outside the Continental United States (OCONUS). For those TOs requiring travel, the Contractor shall include estimated travel requirements in the proposal. The Contractor shall then coordinate specific travel arrangements with the individual TO CO to obtain advance, written approval for the travel about to be conducted. The Contractor's request for travel shall be in writing and contain the dates, locations and estimated costs of the travel.

(b) If any travel arrangements cause additional costs to the TO that exceed those previously negotiated, written approval by TO modification issued by the TO CO is required, prior to undertaking such travel.

(c) The Contractor shall, to the maximum extent practicable, minimize overall travel costs by taking advantage of discounted airfare rates available through advance purchase. Charges associated with itinerary changes and cancellation under nonrefundable airline tickets are reimbursable as long as the changes are driven by the work requirement. Travel performed for personal convenience or daily travel to and from work at the Contractor's facility or local Government facility (i.e., designated work site) shall not be reimbursed hereunder. Costs associated with Contractor travel shall be in accordance with FAR Part 31.205-46, Travel Costs.

### **H.6.2 Training**

The Government will not allow costs, nor reimburse costs associated with the Contractor training employees in an effort to attain and/or maintain minimum personnel qualification requirements of this contract. Other training may be approved on a case-by-case basis by the TO CO. Attendance at workshops or a symposium is considered training for purposes of this clause.

### **H.6.3 General Purpose Office Equipment (GPOE) and IT**

The cost of acquisition of GPOE and IT shall not be allowable as direct charges to this contract. The Contractor is expected to have the necessary facilities to perform the requirements of this contract, including any necessary GPOE and IT. GPOE means equipment normally found in a business office such as desks, chairs, typewriters, calculators, file cabinets, etc. IT means

any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, movement, control, display, switching, interchange, transmission, or reception of data or information. IT includes computers, ancillary equipment, software, firmware and similar products, services (including support services), and related resources.

## **H.7 Leasing**

The Government contemplates leases of the following types: lease to ownership; lease with an option to purchase; and straight lease IT equipment. All leases may include integrated installation and warranty. Leasing terms and conditions and associated lease documentation will be established at the TO level.

If Government awards a TO for leased equipment it contemplates the use of the equipment for the entire term of the lease identified (“Lease Term”). However, the Lease Term of the lease agreement is from the date of acceptance of the equipment through September 30 of the fiscal year in which the TO is placed. Acceptance shall be defined in each TO. The lease, LTO or LTOP does not require, and should not be interpreted as requiring, either party to take any action or perform any covenant that is contrary to the Anti-Deficiency Act or other federal law. Accordingly, any TO for leased equipment shall not be deemed to obligate succeeding fiscal years or otherwise commit the Government to continue performance beyond the current Government fiscal year.

## **H.8 Government Property, Information, Workspace**

The Government may provide the items listed below as necessary for the Contractor to fulfill the tasks described in task order statements of work.

(a) Government Furnished Property (GFP). The Government may provide hardware and/or software requiring technical analysis, evaluation, verification, or study in support of a specific task. Such GFP will be specified in individual TOs. GFP provided to the Contractor in support of individual TOs shall be tracked through applicable procedures provided by the TO CO in accordance with the FAR. Property shall be accounted for and marked accordingly for identification and tracking purposes with the Contract Number, Task Order Number, Serial Number and other information as required by the TO CO. The Government does not intend to provide hardware/software equipment required to accomplish day-to-day work requirements in support of the overall contract-level effort. All GFP shall be returned to the Government at the completion of each TO unless otherwise specified.

(b) Government Furnished Information (GFI). The Government may provide information (e.g., technical data, applicable documents, plans, regulations, specifications, etc.) in support of a specific task. Such GFI will be specified in individual TOs.

(c) Government-Furnished Workspace. Such Government Furnished workspace will be specified in individual TOs.

### **H.8.1 Contractor Acquired Property.**

In the event the Contractor is required to purchase property in the performance of this contract, compliance with the procedures of FAR Part 45 is required.

### **H.8.2 Disposition of Government Property**

Thirty (30) calendar days prior to the end of the TO period of performance, or upon termination of the contract, the Contractor shall furnish to the TO COTR a complete inventory of all Government Property in their possession under this contract that has not been tested to destruction, completely expended in performance, or incorporated and made a part of a deliverable end item. The TO COTR will furnish disposition instructions on all listed property which was furnished or purchased under this contract.

## **H.9 Performance-Based Services Contracting (PBSC)**

Performance-based contracting techniques will be applied to task orders issued under this contract to the maximum extent practicable. For information about PBSC, refer to the Federal Acquisition Community's Acquisition Central site at [http://acquisition.gov/comp/seven\\_steps/index.html](http://acquisition.gov/comp/seven_steps/index.html).

PBSC TOs must include at a minimum:

- (a) Performance requirements that define the work in measurable, mission-related terms;
- (b) Performance standards (i.e., quality, quantity, timeliness) tied to the performance requirements;
- (c) A Government Quality Assurance Surveillance Plan (QASP) or other suitable plan that describes how the Contractor's performance will be measured against the performance standards or service level agreements (SLAs); and
- (d) If the acquisition is either critical to agency mission accomplishment or requires relatively large expenditures of funds, positive and negative incentives tied to the performance standards/SLAs.

## **H.10 Conversion to a Performance Based Task Order**

If both the Government and the Contractor agree, a TO can be converted from a term contract to a fixed price completion performance based service contract after the initial period of performance. The conversion is accomplished as follows:

- (a) Within ninety calendar days prior to the end of the TOs' initial period of performance, the Contractor shall prepare and submit for Government review, comment, and concurrence:
  - (1) A performance work statement (PWS) that captures all of the types of effort performed during the base year of performance, and
  - (2) A quality assurance plan (QAP). The QAP will address performance standards which relate to the performance requirements; how the Contractor's performance will be measured against the performance standards, and surveillance schedules and methods. The QAP may either be included as part of the PWS or as a separate document.

(b) Within sixty calendar days prior to the end of the TO's initial period of performance, the Government and the Contractor will resolve to their mutual satisfaction any comments or concerns on the PWS and/or QAP. Upon exercise of the option for the first follow-on period of performance, the Government has the unilateral right to modify the TO to incorporate the agreed to documents to accomplish the conversion to a performance based contract.

## **H.11 Past Performance Evaluation**

(a) Past performance information is relevant for future TO source selection purposes, regarding a Contractor's actions under previously awarded task orders under the same contract. It includes, for example, the Contractor's record of conforming to contract requirements and to standards of good workmanship; the Contractor's adherence to contract schedules, including the administrative aspects of performance; the Contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the Contractor's business-like concern for the interests of the customer.

(b) In accordance with FAR 42.1502, federal agencies are required to prepare evaluations of the contractor performance for all contract actions including delivery or task orders in excess of the simplified acquisition threshold (\$100,000) at the time the work is completed. Interim evaluations will be performed for task orders that a period of performance including options exceeds one year. The contract level evaluation will be performed annually. Upon completion of a TO performance, the TO COTR will complete a TO evaluation using either the NIH Contract Performance System (CPS) or the Department of Defense (DoD), Contractor Performance Assessment Reporting System (CPARS) depending on component's procedure, a past performance collection tool that feeds the Government's central repository for the collection and utilization of past performance information - Past Performance Information (PPI) <http://www.ppirs.gov>. CPS and CPARS is a web-enabled tool for the COTR to evaluate the Contractor's performance and for the Contracting Officer and Contractor to review, comment on, and approve evaluations. The tool can be accessed at <http://cps.od.nih.gov/> or <http://www.cpars.csd.disa.mil>. The Contractor will be allowed thirty (30) calendar days to submit comments, rebutting statements, or additional information. Comments, if any shall be retained as part of the evaluation record. The completed evaluation shall not be released to other than Government personnel and the Contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Past performance information will not be retained for longer than three years after completion of a contract or TO.

## **H.12 Disclosure of "Official Use Only" Information Safeguards**

Any Government information made available or to which access is provided, and which is marked or should be marked "Official Use Only", shall be used only for the purpose of carrying out the provisions of this contract and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Disclosure to anyone other than an officer or employees of the Contractor or Subcontractor at any tier shall require prior written approval of the TO Contracting Officer. Requests to make such disclosure should be addressed to the TO Contracting Officer.

### **H.13 Disclosure of Information--Official Use Only**

Each officer or employee of the Contractor or Subcontractor at any tier to whom “Official Use Only” information may be made available or disclosed shall be notified in writing by the Contractor that “Official Use Only” information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such “Official Use Only” information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions imposed by 18 U.S.C. Sections 641 and 3571. Section 641 of 18 U.S.C. provides, in pertinent part, that whoever knowingly converts to his use or the use of another, or without authority sells, conveys, or disposes of any record of the United States or whoever receives the same with the intent to convert it to his use or gain, knowing it to have been converted, shall be guilty of a crime punishable by a fine or imprisoned up to ten years or both.

### **H.14 Standard of Conduct at Government Installations**

The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, appearance and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. The Contractor is also responsible for ensuring that his employees do not disturb papers on desks, open desk drawers or cabinets, or use Government telephones except as authorized.

### **H.15 Advertisements, Publicizing Awards and News Releases**

Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity/news release or commercial advertising without first obtaining explicit written consent to do so from the

- 1) EAGLE Task Order Contracting Officer and
- 2) EAGLE Program Manager

This restriction does not apply to marketing materials developed for presentation to potential government customers of this contract vehicle.

For Task Orders, the TO CO shall coordinate with the Public Affairs Office and the Program Office before providing written consent.

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

### **H.16 Contractor Web Page**

It is a material contract requirement that each Contractor maintain a publicly available webpage throughout the period of performance of the contract. The purpose of the webpage is for the Contractor to communicate with potential customers regarding the Contractor’s ability to provide world-class professional support services for all DHS Program Offices, Directorates, and Component activities. The webpage should demonstrate the functional capability associated with different products or business areas. The webpage should be easily accessible from the

Contractor's front page, intuitive for novice computer users, and Section 508 compliant (See Section H.27). This webpage at minimum must include the following items:

- (a) A copy of all TOs received under this contract (this can be a link to the "official government website");
- (b) A list of the last three (3) years experience providing professional support services, listed by functional area and DHS Program Office, Directorate and specific Program, as appropriate. The Contractor may also include a description of the products (deliverables) provided;
- (c) Point(s) of Contact to provide information on customer satisfaction with the services performed;
- (d) A description of the Contractor's quality assurance program;
- (e) Point(s) of Contact for information related to IDIQ contracts;
- (f) Teaming Coordinator's Point(s) of Contact; and
- (g) Current list of Subcontractors.

The Contractor shall provide the EAGLE Program Manager with the web address within ten (10) Government working days of receipt of the contract. The Contractor shall ensure all information provided on this web page is updated on a monthly basis.

## **H.17 Contractor's Employees Identification**

During the period of this contract, the rights of ingress and egress to and from any office for Contractor's personnel shall be made available as deemed necessary by the Government. All Contractor employees, whose duties under this contract require their presence at any Government facility, shall be clearly identifiable by a distinctive badge furnished by the Government. In addition, corporate identification badges shall be worn on the outer garment at all times. Obtaining the corporate identification badge is the sole responsibility of the Contractor. All prescribed information shall immediately be delivered to the appropriate Government Security Office for cancellation or disposition upon the termination of employment of any Contractor personnel. All on-site Contractor personnel shall abide by security regulations applicable to that site.

## **H.18 Teaming Arrangements**

Because of the diversity of IT work contemplated under this contract, the Government anticipates that teaming will occur at the TO level, in response to specific TO requirements.

(a) Prime Contractors may subcontract with other Prime Contractors on an individual TO basis; however, the Government reserves the right to prohibit Prime Contractor teaming on an individual TO basis. If Prime to Prime teaming is prohibited it will be at the sole discretion of the Government.

(b) Teaming Coordinator. Each Prime Contractor shall provide an overarching EAGLE Teaming Coordinator to serve as a single point of contact for prospective subcontractors and to continuously review the market place for companies that provide new and innovative products

and professional services with which to subcontract. The Contractor is also encouraged to have non-exclusive access to multiple product and service providers.

## H.19 Subcontracting

(a) In accordance with FAR 52.244-2 - Subcontracts, including Alternate I (JUN 2007), if the Contractor does not have an approved purchasing system, the Contractor shall obtain written Task Order (TO) Contracting Officer (CO) consent prior to subcontracting under a:

- (1) Cost-reimbursement, T&M or labor hour type contract (task order); or
- (2) Firm fixed price contract (task order) that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract (task order).

(b) If the Contractor has an approved purchasing system and consent is not required under paragraph (d) of FAR 52.244-2, the Contractor nevertheless shall obtain written TO CO consent prior to subcontract under a:

- (1) Fixed Price arrangement where 50% or more of the task order work to be conducted by the subcontractor.

(c) If the Contractor has an approved purchasing system and consent is not required under paragraph (a) and (b), the Contractor nevertheless shall notify the TO CO reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the TO.

(1) The Contractor shall notify the appropriate TO CO reasonably in advance of placing any subcontract or modification for which consent is required under paragraph (a) or (b), including the information required by paragraphs (e)(1)(i) through (e)(1)(vii) of the FAR 52.244-2 clause.

(2) The TO CO is responsible for reviewing the Contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risk involved and consistent with current policy and sound business judgment prior to consent to subcontract.

(3) If the Contractor enters into any subcontract that requires consent under the clause at FAR 52.244-2, Subcontracts, without obtaining such consent, the Government is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the Government.

(d) The Contractor may add or delete Subcontractors without the express written consent of the Government provided the conditions of paragraph (a) and (b), above, are met.

(e) The Government's small business goals through subcontracting efforts for large businesses under this contract are as follows:

Type of Business	Goal % of Total Planned Subcontracting Dollars
------------------	------------------------------------------------

Small Business (SB)	40%
Small Disadvantaged Businesses (SDB)	5%
Women-Owned Small Businesses (WOSB)	5%
Service-Disabled Veteran Owned Small Business (SDVOSB)	3%
Veteran-Owned Small Business (included in SDVOSB)	3%
HUBZone	3%

(f) The Government reserves the right to require a subcontracting plan, as prescribed in FAR 52.219-9, at the task order level.

(g) When TO solicitation requires submission of subcontracting participation plan as part of proposal evaluation factor, the Contractor shall submit detailed subcontracting information as instructed in the TO solicitation and is responsible for compliance with the subcontracting plan that is negotiated and approved by the TO CO throughout the contract period.

(h) At the discretion of the TO CO, if the TO CO finds that the contractor failed to make a good faith effort to comply with its subcontracting plan upon completion of the TO performance, the TO CO may issue a final decision to the contractor to that effect and require the payment of liquidated damages in an amount stated or appropriate contractual remedies to be processed in accordance with FAR 19.705-7, Liquidated Damages.

## H.20 Incorporation of Subcontracting Plan

The subcontracting plan proposed in response to the EAGLE solicitation, and submitted in accordance with FAR 52.219-9, is hereby approved and incorporated by reference.

## H.21 Notification Requirements Under T&M and Cost Reimbursement Contracts

Contractor notification requirements for FAR clause 52.232-20(b) “Limitation of Cost”; FAR clause 52.232-22 (c) “Limitation of Funds” for CPFF and CPAF task orders and FAR clause 52.232-7(c) “Payments under Time and Materials and Labor Hours” for T&M TOs (clauses are in Section I by reference), shall be accomplished only by separate correspondence directed to the TO CO with copies to the TO COTR. No other form of “notification” (e.g., mention in any type of monthly progress or status report) will effect compliance. Further, notification to any individual other than the TO CO shall not constitute compliance with this requirement.

## H.22 Key Personnel

Key personnel are those Contractor personnel considered to be essential to the performance of the contract and TOs.

The Contractor's Program Manager, as described in Section G.2.4, is designated as key, and may only be replaced with the approval of the EAGLE Program Manager and the CO, in accordance with the terms and conditions of Section H.23. The Contractor’s Program Manager identified for this contract is:



Name: *See Master List*  
Telephone:  
E-Mail Address:

If the Government determines that certain personnel are “key” to successful completion of a TO, they will be designated as "Key Task Order Personnel" in the TO. Key Task Order Personnel are defined as follows:

- (a) Personnel identified in the Task Proposal as key individuals to be assigned for participation in the performance of the TO and who may, at the discretion of the Government, be interviewed to verify resume representations;
- (b) Personnel whose resumes were submitted with the TO Proposal; or
- (c) Individuals who are designated as key personnel by agreement of the Government and the Contractor during TO negotiations.

### **H.23 Substitution of Key Personnel**

The Contractor shall notify the TO CO and the TO COTR prior to making any changes in Task Order Key Personnel. No changes in TO Key Personnel will be made unless the Contractor can demonstrate that the qualifications of prospective replacement personnel are equal to or better than the qualifications of the TO Key Personnel being replaced. All proposed substitutes shall have qualifications equal to or higher than the qualifications of the person to be replaced. The TO CO shall be notified in writing of any proposed substitution at least fifteen (15) days, or thirty (30) days if a security clearance is to be obtained, in advance of the proposed substitution. Such notification shall include:

- (a) an explanation of the circumstances necessitating the substitution;
- (b) a complete resume of the proposed substitute; and
- (c) any other information requested by the TO CO to enable him/her to judge whether or not the Contractor is maintaining the same high quality of personnel that provided the partial basis for award.

The EAGLE Program Manager and the contract level CO will evaluate substitutions at the contract level and the TO COTR will evaluate TO level substitutions. These individuals will evaluate such requests and promptly notify the Contractor of his/her approval or disapproval in writing. All disapprovals will require resubmission of another substitution within 15 calendar days by the Contractor.

### **H.24 Interrelationships of Contractors**

(a) The Government has entered into other contractual relationships in order to provide technical support services in the conduct of studies, analyses and engineering activities separate from the work to be performed under this contract, yet having links and interfaces to them. Further, the Government may extend these existing relationships or enter into new relationships. The Contractor may be required to coordinate with such other Contractor(s) through the Task Manager in providing suitable, non-conflicting technical interfaces and in avoidance of duplication of effort. By suitable tasking, such other Contractor(s) may be requested to assist the Government in the technical review of the Contractor’s technical efforts. Information on reports

provided under this SOW may, at the discretion of the Government, be provided to such other Contractor(s) for the purpose of such review.

(b) A Non-Disclosure Agreement (NDA), DHS Form 11000-6, shall be signed by all Contractor employees assigned to perform services under a TO prior to any work commencing on the TO.

## **H.25 Observance of Legal Holidays and Excused Absence**

(a) The Government hereby provides notification that Government personnel observe the listed days as holidays:

- |                                   |                      |
|-----------------------------------|----------------------|
| (1) New Year's Day                | (6) Labor Day        |
| (2) Martin Luther King's Birthday | (7) Columbus Day     |
| (3) President's Day               | (8) Veterans' Day    |
| (4) Memorial Day                  | (9) Thanksgiving Day |
| (5) Independence Day              | (10) Christmas Day   |

(b) In addition to the days designated as holidays, the Government observes the following days:

- (1) Any other day designated by Federal Statute
- (2) Any other day designated by Executive Order
- (3) Any other day designated by the President's Proclamation

(c) It is understood and agreed between the Government and the Contractor that observance of such days by Government personnel shall not otherwise be a reason for an additional period of performance, or entitlement of compensation except as set forth within the contract. In the event the Contractor's personnel work during the holiday, they may be reimbursed by the Contractor, however, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, other than their normal compensation for the time worked. This provision does not preclude reimbursement for authorized overtime work if applicable to this contract.

(d) When the Federal and governmental entities grants excused absence to its employees, assigned Contractor personnel may also be dismissed. The Contractor agrees to continue to provide sufficient personnel to perform critical tasks already in operation or scheduled, and shall be guided by the instructions issued by the TO CO or the TO COTR.

(e) If Government personnel are furloughed, the Contractor shall contact the TO CO or the TO COTR to receive direction. It is the Government's decision as to whether the contract price/cost will be affected. Generally, the following situations apply:

- (1) Contractor personnel that are able to continue contract performance (either on-site or at a site other than their normal work station) shall continue to work and the contract price shall not be reduced or increased.

(2) Contractor personnel that are not able to continue contract performance (e.g., support functions) may be asked to cease their work effort.

(f) In those situations that furloughed Government personnel are reimbursed, the Contractor may not invoice for their employees working during the Government furlough until such time as the special legislation affecting Government personnel is signed into law by the President of the United States.

(g) Nothing in this clause abrogates the rights and responsibilities of the parties relating to stop work provisions as cited in other sections of this contract.

## **H.26 Insurance**

### **(HSAR 3052.228-70) (DEC 2003)**

In accordance with the clause entitled “Insurance - Work on a Government Installation” [or Insurance - Liability to Third Persons] in Section I, insurance of the following kinds and minimum amounts shall be furnished at any time at the request of the CO and maintained during the period of performance of this contract:

(a) Worker's compensation and employer's liability. The Contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(a).

(b) General liability. The Contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(b).

(c) Automobile liability. The Contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(c).

## **H.27 Information Technology Accessibility for Persons with Disabilities**

All services and Electronic Information Technology (EIT) delivered as result of orders placed under this contract shall comply with accessibility standards in accordance with Federal Information Technology Accessibility as required by Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. Information about the Section 508 Electronic and Information Technology Accessibility Standards may be obtained via the Web at the following URL: [www.Section508.gov](http://www.Section508.gov).

## **H.28 Notice of Internet Posting of Awards**

DHS intends to electronically post the EAGLE contracts, including fully-burdened labor rates, to the DHS web site. This does not include Contractor proposals or any other proprietary information provided by Contractors relevant to TO performance or by Offerors in response to the EAGLE solicitation. Posting of the contract documents and associated modifications via the Internet is in the best interest of the Government as well as the Contractors. It will allow Contractors to direct future customers to the site to view labor categories and rates as they develop their Independent Government Cost Estimates (IGCE) in preparation of proposed TOs.

## **H.29 On-Line Proposal and Ordering Capability**

DHS intends to establish an internet portal for the purpose of electronic and paperless TO processing. The Contractor is required to support the electronic information requirements of the portal. The processing procedures and information requirements will be written into the contract at the time such capability is implemented.

## **H.30 Post Award Conference**

The Contractor shall participate in a post award conference that will be held approximately thirty (30) business days after contract award. The purpose of the post award conference is to aid both the Contractor and the Government in achieving a clear and mutual understanding of all contract requirements and identify and resolve potential problems (See FAR Subpart 42.5).

The ESO is responsible for establishing the time and place of the conference and will notify the appropriate Government representatives and the Contractors. The EAGLE Program Manager will designate or act as the chairperson at the conference. The chairperson of the conference shall conduct the meeting.

The conference may be conducted at a location within the Washington DC commuting area at the Government's discretion.

The Contractor further agrees to attend post award conferences on task orders as required. The TO post award conferences will establish work level points of contact for the TO, determine the TO administration strategy, roles and responsibilities and ensure prompt payment and TO close out.

## **H.31 Meetings/Conferences**

Pre-award meetings or conferences may be necessary to resolve problems and to facilitate understanding of the technical requirements of the contract or task orders. All costs associated with the attendance at pre-award meetings/conferences shall be incidental to the contract and not separately billed.

## **H.32 Earned Value Management**

In accordance with OMB Circular A-11 and the Federal Acquisition Regulation, the Government will use Earned Value Management (EVM) to monitor applicable task orders under EAGLE. "Applicable" applies to tasks in development and to those that by their nature are complex or strategic or impose sufficient risk to the effort and therefore require the insight afforded by EVM. The Contractor shall use an Earned Value Management System (EVMS) that meets the criteria as defined in the current American National Standards Institute/Electronic Industries Alliance (ANSI/EIA) Standard 748-A, *Earned Value Management Systems*, originally approved May 19, 1998, first amended in 2002 ("the ANSI/EIA Standard"), and most recently on 9 July 2007 and published as Government Electronic and Information Technology Association's EIA-748-B. The Contractor shall also provide proof of the EVMS's compliance with the EIA-748 Standard, as described below.

1. Task orders greater than or equal to \$20M that have assets in development or of sufficient risk will require the use of an EIA-748-compliant EVMS to measure the cost, schedule, and performance of those assets against the established baseline
2. Application of EVMS and associated EIA-748 compliant systems for task orders with contract value of less than \$20M will be as directed by the Task Order Contracting Officer. The decision will be based on the risk and criticality of the task order to accomplish the goals for the overall investment program and the results of a cost benefit analysis (CBA).

### Verification of the Earned Value Management System

- If the task order is subject to EVMS and is  $\geq$ \$50M, the Contractor must have a Government-verified EVMS. If the Contractor does not have a verifiable EVMS by task-order award, the Contractor shall develop an acceptable implementation plan providing the strategy for reaching verification of an EVMS and the milestones to accomplish it. The Task Order Contractor Officer's Technical Representative (COTR) must accept this plan prior to task-order award.
- If the task order is subject to EVMS and is greater than or equal to \$20M but less than \$50M, the Contractor must self-verify that the EVMS meets the EIA-748 standard. Contractors must use Attachment A, EVMS Self-Verification Form, to self-verify the compliance of its system in accordance with this paragraph.

The Government reserves the right to obtain independent verification of a Contractor's Earned Value Management System (EVMS), regardless of the type of verification previously completed.

The following table summarizes these requirements:

Task Order Level	EIA-748 Compliance
$\geq$ \$50M	Full EIA-748 compliance Government-verified EVMS
$\geq$ \$20M <\$50M	Full EIA-748 compliance Self-verified EVMS
<\$20M	Full EIA-748 compliance with self-verification, at the discretion of the Contracting Officer and the Program Manager, based on value, risk, and the nature of the work to be performed.

### Integrated Baseline Reviews (IBRs)

The Contractor shall plan for and participate in integrated baseline reviews. Such reviews shall be scheduled as early as practicable. Typically the IBR will be conducted 90 calendar days after task order award but not later than 180 days after TO award as applicable. IBRs are expected to be held at key points during project development, such as at the completion of requirements development, at the end of the design phase, following development and testing prior to implementation and after incorporation of major task order modifications and the exercise of significant task order options. The objective of the integrated baseline review is for the

Government and the Contractor jointly to assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resources, and identification of inherent risks.

### **Reporting Requirements and Data Transmission**

For all task orders requiring EVM, the Government requires the information in four monthly Earned Value Reports: the Contract Performance Report (CPR) Formats 1, 3, and 5, as listed below, and the Contract Funds Status Report (CFSR) (attachments to be provided at the task order level). The Contractor shall use the information in these reports to analyze the effectiveness of the EVMS and both the contract performance and the program progress. The Contractor shall take appropriate action based on those findings.

If the contractor EVMS data collection tool can output the raw data in ANSI Accredited Standards Committee (ASC) X.12 format, then the contractor may submit the EVM raw data to the Contracting Officer and Program Manager in that format. However, the government reserves the right to require contractors, with or without an automated EVMS, to transmit all required data in the appropriate formats by email using Microsoft-compatible software.

- **CPR Format 1** – WBS-oriented cost report. Costs are organized by WBS element at a level pre-determined by the Government.
- **CPR Format 3** – Baseline Report. This format provides information on the task order baseline; it tracks changes to it throughout the program's duration.
- **CPR Format 5** – Problem Analysis Report/Variance Narrative. This format provides explanations for cost and schedule variances that have exceeded threshold. It provides an explanation as to why the variance occurred and descriptions on how the program plans to resolve the cause of the variance.
- **CFSR** – Task Order Funds Status Report. The CFSR supplies funding data about task orders to Program Managers for:
  - Updating and forecasting contract funds requirements;
  - Planning and decision-making on funding changes in task orders;
  - Developing funds requirements and budget estimates in support of approved investments;
  - Determining funds in excess of contract needs and available for de-obligation;
  - Obtaining rough estimates of termination costs; and determining if sufficient funds are available by fiscal year to execute the task order.

### **H.33 Organizational Conflict of Interest**

#### **(HSAR 3052.209-72) (JUL 2004) (Deviation) (If applicable on a task order)**

(a) Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage. The nature of the conflict of interest and the limitation on future contracting (*description to be included in task order request*) \_\_\_\_\_.

(b) If any such conflict of interest is found to exist, the TO Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to mitigate or avoid such conflict in the task order awarded. After discussion with the offeror, the TO Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

(c) Disclosure: The offeror hereby represents, to the best of its knowledge that:

\_\_\_\_(1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this task order, or

\_\_\_\_(2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included the mitigation plan in accordance with paragraph (d) of this provision.

(d) Mitigation/Waiver. If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes it can be mitigated, neutralized, or avoided, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this provision do not apply to the extent defined in the mitigation plan. If not defined, then this provision applies fully.

(e) Other Relevant Information: In addition to the mitigation plan, the TO Contracting Officer may require further relevant information from the offeror. The TO Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) Corporation Change. The successful offeror shall inform the TO Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestitures that may affect this provision.

(h) Flow-down. The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

### **H.34 DHS Infrastructure and Enterprise Architecture Compliance**

All back-end system hardware and/or software must be located in the DHS Consolidated Data Center unless a waiver is approved by the DHS CIO. All DHS Wide Area Network circuits must be part of the OneNet architecture unless a waiver is approved by the DHS CIO.

#### DHS Enterprise Architecture Compliance

All solutions and services shall meet DHS Enterprise Architecture policies, standards, and procedures. Specifically, the contractor shall comply with the following Homeland Security Enterprise Architecture (HLS EA) requirements:

- All developed solutions and requirements shall be compliant with the HLS EA.
- All IT hardware or software shall be compliant with the HLS EA Technical Reference Model (TRM) Standards and Products Profile.
- All data assets, information exchanges and data standards, whether adopted or developed, shall be submitted to the DHS Enterprise Data Management Office (EDMO) for review and insertion into the DHS Data Reference Model.
- In compliance with OMB mandates, all network hardware shall be IPv6 compatible without modification, upgrade, or replacement.

#### DHS Geospatial Information System Compliance

All implementations shall comply with the policies and requirements set forth in the DHS Geospatial Information Infrastructure (GII), including the following:

- All developed solutions and requirements shall be compliant with the HLS EA.
- All IT hardware or software shall be compliant with the HLS EA Technical Reference Model (TRM) Standards and Products Profile.
- The DHS geospatial data model shall be used building to the GII.
- All data within the GII, whether adopted or developed, shall be submitted to the DHS Enterprise Data Management Office (EDMO) for review and insertion into the DHS Data Reference Model.

### **H.35 Security Review**

The Government may elect to conduct periodic reviews to ensure that the security requirements contained in this contract are being implemented and enforced. The Contractor shall afford DHS including the organization of the DHS Office of the Chief Information Officer, the Office of the Inspector General, authorized COTR, and other government oversight organizations, access to the Contractor's facilities, installations, operations, documentation, databases, and personnel used in the performance of this contract. The Contractor will contact the DHS Chief Information Security Officer to coordinate and participate in the review and inspection activity of government oversight organizations external to the DHS. Access shall be provided to the extent necessary for the government to carry out a program of inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability, and confidentiality of DHS data or the function of computer systems operated on behalf of DHS, and to preserve evidence of computer crime.

### **H.36 Interconnection Security Agreements**

Interconnections between DHS and non-DHS IT systems shall be established only through controlled interfaces and via approved service providers. The controlled interfaces shall be accredited at the highest security level of information on the network. Connections with other Federal agencies shall be documented based on interagency agreements; memoranda of understanding, service level agreements or interconnect service agreements.

### **H.37 Access to Unclassified Facilities, Information Technology Resources, and Sensitive Information**

The assurance of the security of unclassified facilities, Information Technology (IT) resources, and sensitive information during the acquisition process and contract performance are essential



to the DHS mission. DHS Management Directive (MD) 11042.1 *Safeguarding Sensitive But Unclassified (For Official Use Only) Information*, describes how contractors must handle sensitive but unclassified information. DHS MD 4300.1 *Information Technology Systems Security* and the *DHS Sensitive Systems Handbook* prescribe policies and procedures on security for IT resources. Contractors shall comply with these policies and procedures, any replacement publications, or any other current or future DHS policies and procedures covering contractors specifically for all Task Orders under EAGLE that require access to facilities, IT resources or sensitive information. Contractors shall not use or redistribute any DHS information processed, stored, or transmitted by the contractor except as specified in the task order.

**(End of Section H)**

## SECTION I - CONTRACT CLAUSES

### I.1 Clauses Incorporated By Reference

**(FAR 52.252-2) (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text may be accessed electronically at these Internet addresses: <http://www.arnet.gov>.

FAR Clause No.	Title and Date
52.202-1	Definitions (JUL 2004)
52.203-3	Gratuities (APR 1984)
52.203-5	Covenant Against Contingent Fees (APR 1984)
52.203-6	Restrictions on Subcontractor Sales to the Government (SEP 2006)
52.203-7	Anti-Kickback Procedures (JUL 1995)
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (SEP 2005)
52.204-2	Security Requirements (AUG 1996)
52.204-4	Printed or Copied Double-Sided on Recycled Paper (AUG 2000)
52.204-7	Central Contractor Registration (JUL 2006)
52.204-9	Personal Identity Verification of Contractor Personnel (NOV 2006)
52.204-10	Reporting Executive Compensation and first-Tier Subcontract Awards (JUL 2010)
52.204-11	American Recovery and Reinvestment Act – Reporting Requirement (JUL 2010)
52.209-6	Protecting the Government's Interest when Subcontracting with Contractor's Debarred, Suspended, or Proposed for Debarment (SEP 2006)
52.215-2	Audit and Records–Negotiation (JUN 1999)
52.215-8	Order of Precedence -- Uniform Contract Format (OCT 1997)
52.215-10	Price Reduction For Defective Cost Or Pricing Data (OCT 1997)
52.215-12	Subcontractor Cost Or Pricing Data (Oct 1997)
52.215-14	Integrity of Unit Prices (OCT 1997)
52.215-15	Pension Adjustments and Asset Reversions (OCT 2004)
52.215-18	Reversion Or Adjustment Of Plans For Postretirement Benefits (PRB) Other Than Pensions (JUL 2005)
52.215-21	Requirements For Cost Or Pricing Data Or Information Other Than Cost Or Pricing Data - Modifications (Oct 1997)
52.216-7	Allowable Cost and Payment (DEC 2002)

52.216-8	Fixed Fee (MAR 1997)
52.216-18	Ordering (OCT 1995). <i>Fill in:</i> Date of award through last day of contract period, as renewed.
52.216-19	Order Limitations (OCT 1995) <i>Fill ins:</i> (a) \$2500 (b)(1) N/A 2) N/A 3) N/A (d) 3
52.216-22	Indefinite Quantity (OCT 1995) <i>Fill in:</i> contract expiration date plus 24 months.
52.217-8	Option to Extend Services (NOV 1999) <i>Fill in:</i> Within 60 calendar days
52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JUL 2005)
52.219-6	Notice of Total Small Business Set-Aside (JUNE 2003)- <i>Applicable to Small Business Portion Only</i>
52.219-8	Utilization of Small Business Concerns (MAY 2004)
52.219-9	Small Business Subcontracting Plan (SEP 2006)
52.219-14	Limitations on Subcontracting (DEC 1996)- <i>Applicable to Set Aside TOs Only</i>
52.219-16	Liquidated Damages--Subcontracting Plan (JAN 1999)
52.219-25	Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting (OCT 1999)
52.219-28	Post-Award Small Business Program Representation (JUN 2007)
52.222-2	Payment for Overtime Premiums (JUL 1990)
52.222-3	Convict Labor (JUN 2003)
52.222-21	Prohibition of Segregated Facilities (FEB 1999)
52.222-26	Equal Opportunity (MAR 2007)
52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998)
52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
52.222-48	Exemption From Application Of Service Contract Act Provisions – Contractor Certification (JUN 2006)
52.222-50	Combating Trafficking in Persons (Apr 2006)
52.223-5	Pollution Prevention and Right-To-Know Information (AUG 2003)
52.223-6	Drug-Free Workplace (MAY 2001)
52.223-10	Waste Reduction Program (AUG 2000)
52.223-14	Toxic Chemical Reporting (AUG 2003)
52.223-15	Energy Efficiency in energy-Consuming Products (DEC 2007)
52.223-16	IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007)
52.224-1	Privacy Act Notification (APR 1984)
52.224-2	Privacy Act (APR 1984)
52.225-5	Trade Agreements (NOV 2006)
52.225-8	Duty-Free Entry (FEB 2000)

52.225-13	Restrictions on Certain Foreign Purchases (FEB 2006)
52.227-1	Authorization and Consent (JUL 1995)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
52.227-3	Patent Indemnity (APR 1984)
52.227-14	Rights in Data - General – Alternate IV (JUN 1987)
52-227-19	Commercial Computer Software License (DEC 2007)
52.228-5	Insurance – Work on a Government Installation (JAN 1997)
52.228-7	Insurance – Liability to Third Persons (MAR 1996)
52.229-3	Federal, State, and Local Taxes (APR 2003)
52.230-2	Cost Accounting Standards (APR 1998)
52.230-6	Administration of Cost Accounting Standards (APR 2005)
52.232-1	Payments (APR 1984)
52.232-7	Payments Under Time and Materials and Labor-Hour Contracts (FEB 2007)
52.232-8	Discounts for Prompt Payment (FEB 2002)
52.232-9	Limitation of Withholding of Payments (APR 1984)
52.232-11	Extras (APR 1984)
52.232-16	Progress Payments (APR 2003)
52.232-17	Interest (JUN 1996)
52.232-18	Availability of Funds (APR 1984)
52.232-19	Availability of Funds for the Next Fiscal Year (APR 1984)
52.232-20	Limitation of Cost (APR 1984)
52.232-22	Limitation of Funds (APR 1984)
52.232-23	Assignment of Claims (JAN 1986)
52.232-25	Prompt Payment (OCT 2003) ALT I (FEB 2002)
52.232-33	Payment by Electronic Funds Transfer – Central Contractor Registration (OCT 2003)
52.233-1	Disputes (JUL 2002) ALT I (DEC 1991)
52.233-3	Protest After Award (AUG 1996) ALT I (JUN 1985)
52.233-4	Applicable Law for Breach of Contract Claim (OCT 2004)
52.237-2	Protection of Government Buildings, Equipment, and Vegetation (APR 1984)
52.237-3	Continuity of Services (JAN 1991)
52.239-1	Privacy or Security Safeguards (AUG 1996)
52.242-1	Notice of Intent to Disallow Costs (APR 1984)
52.242-3	Penalties for Unallowable Costs (MAR 2001)
52.242-4	Certification of Final Indirect Costs (JAN 1997)

52.242-13	Bankruptcy (JUL 1995)
52.243-1	Changes--Fixed-Price (AUG 1987) ALT II (APR 1984)
52.243-2	Changes – Cost Reimbursement (AUG 1987) ALT I and ALT II (APR 1984)
52.243-3	Changes--Time and Material or Labor Hours (SEP 2000)
52.244-2	Subcontracts ALT I (JUN 2007)
52.244-5	Competition in Subcontracting (DEC 1996)
52.244-6	Subcontracts for Commercial Items (MAR 2007)
52.245-1	Government Property (JUN 2007)
52.245-2	Government Property Installation Operation Services (JUN 2007)
52.245-5	[Removed and Reserved]
52.246-25	Limitation of Liability – Services (FEB 1997)
52.248-1	Value Engineering (FEB 2000)
52.249-2	Termination for Convenience of the Government (Fixed Price)(MAY 2004)
52.249-4	Termination for Convenience of the Government (Services)(Short-Form)(APR 1984)
52.249-6	Termination (Cost Reimbursement)(MAY 2004) and ALT IV (SEP 1996)
52.249-8	Default (Fixed-Price Supply and Service) (APR 1984)
52.249-14	Excusable Delays (APR 1984)
52.251-1	Government Supply Sources (APR 1984)
52.253-1	Computer Generated Forms (JAN 1991)

### **52.219-28 Post-Award Small Business Program Rerepresentation.**

#### POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION (JUNE 2007)

(a) *Definitions.* As used in this clause—

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts—

- (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
- (ii) Within 60 to 120 days prior to the exercise date specified in the contract for any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardstopics/>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the rerepresentation required by paragraph (b) of this clause by validating or updating all its representations in the Online Representations and Certifications Application and its data in the Central Contractor Registration, as necessary, to ensure they reflect current status. The Contractor shall notify the contracting office by e-mail, or otherwise in writing, that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in ORCA, or does not have a representation in ORCA for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it \_ is, \_ is not a small business concern under NAICS Code \_\_\_\_\_ assigned to contract number \_\_\_\_\_

Contractor Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **I.2 Security Requirements For Unclassified Information Technology Resources**

### **(HSAR 3052.204-70) (JUN 2006) (If required for a Task Order)**

(a) The Contractor shall be responsible for Information Technology (IT) security for all systems connected to a DHS network or operated by the Contractor for DHS, regardless of location.

This clause applies to all or any part of the contract that includes information technology resources or services for which the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems that directly support the agency's mission.

(b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract.

(1) Within [“insert number of days”] days after task order award, the contractor shall submit for approval its IT Security Plan, which shall be consistent with and further detail the approach contained in the offeror's proposal. The plan, as approved by the Contracting Officer, shall be incorporated into the task order as a compliance document.

(2) The Contractor's IT Security Plan shall comply with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.); the Government Information Security Reform Act of 2000; and the Federal Information Security Management Act of 2002; and with Federal policies and procedures that include, but are not limited to, OMB Circular A-130.

(3) The security plan shall specifically include instructions regarding handling and protecting sensitive information at the Contractor's site (including any information stored, processed, or transmitted using the Contractor's computer systems), and the secure management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) Examples of tasks that require security provisions include--

(1) Acquisition, transmission or analysis of data owned by DHS with significant replacement cost should the contractor's copy be corrupted; and

(2) Access to DHS networks or computers at a level beyond that granted the general public (e.g., such as bypassing a firewall).

(d) At the expiration of the task order, the contractor shall return all sensitive DHS information and IT resources provided to the contractor during the task order, and certify that all non-public DHS information has been purged from any contractor-owned system. Components shall conduct reviews to ensure that the security requirements in the contract are implemented and enforced.

(e) Within 6 months after task order award, the contractor shall submit written proof of IT Security accreditation to DHS for approval by the DHS Contracting Officer. Accreditation will proceed according to the criteria of the DHS Sensitive System Policy Publication, 4300A (Version 2.1, July 26, 2004) or any replacement publication, which the Contracting Officer will provide upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the task order as a compliance document. The contractor shall comply with the approved accreditation documentation.

### **I.3 Prohibition On Contracts With Corporate Expatriates**

**(HSAR 3052.209-73) (JUN 2006)**

(a) Prohibitions.

Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this clause, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Definitions. As used in this clause:

*Expanded Afiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.



*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

- (1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;
- (2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—
  - (i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or
  - (ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and
- (3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) Special rules. The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

- (1) *Certain Stock Disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:
  - (i) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or
  - (ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of Section 835 of the Homeland Security Act, 6 U.S.C. 395(b)(1).
- (2) *Plan Deemed In Certain Cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years

before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain Transfers Disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special Rule for Related Partnerships.* For purposes of applying section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) Treatment of Certain Rights.

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

- (i) warrants;
- (ii) options;
- (iii) contracts to acquire stock;
- (iv) convertible debt instruments; and
- (v) others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of Section 835.

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:  it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR [3009.104-70](#) through [3009.104-73](#);

it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR [3009.104-70](#) through [3009.104-73](#), but it has submitted a request for waiver pursuant to [3009.104-74](#), which has not been denied; or

it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR [3009.104-70](#) through [3009.104-73](#), but it plans to submit a request for waiver pursuant to [3009.104-74](#).

(g) A copy of the approved waiver, if a waiver has already been granted, or the waiver request, if a waiver has been applied for, shall be attached to the bid or proposal.

## **I.4 Limitation of Future Contracting**

### **(HSAR 3052.209-73) (JUL 2004) (Deviation)**

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Sub Part 9.5 Organizational Conflicts of Interest.

(b) The nature of this conflict is: *As determined at a task order level.*

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in the solicitation as a prime or first-tier subcontractor under an ensuing DHS contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). DHS shall not unilaterally require the Contractor to prepare such specifications or statement of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

## **I.5 Notification Of Ownership Changes**

### **(FAR 52.215-19) (OCT 1997)**

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 calendar days.

(2) The Contractor shall also notify the ACO within 30 calendar days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall-

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

- (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
- (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

## **I.6 Determination of Award Fee**

### **(HSAR 3052.216-71) (DEC 2003) (For Award Fee Task Orders Only-If Applicable)**

(a) The Government shall evaluate contractor performance at the end of each specified evaluation period(s) to determine the amount of award. The contractor agrees that the amount of award and the award fee methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to a Performance Evaluation Plan. The contractor shall be periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and reasons why the award fee was or was not earned. The contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within (insert number) days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(d) The Government may specify that a fee not earned during a given evaluation period may be accumulated and be available for allocation to one or more subsequent periods. In that event, the distribution of award fee shall be adjusted to reflect such allocations.

## **I.7 Performance Evaluation Plan**

### **(HSAR 3052.216-72) (DEC 2003) (For Award Fee Task Orders Only-If Applicable)**

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor \_\_\_\_\_ (insert number) calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor\_\_\_\_\_ (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

## **I.8 Distribution of Award Fee**

**(HSAR 3052.216-73) (DEC 2003) (For Award Fee Task Orders Only-If Applicable)**

(a) The total amount of award fee available under this contract is assigned according to the following evaluation periods and amounts:

Evaluation Period:  
Available Award Fee:  
(insert appropriate information)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or \$100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro rata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

## **I.9 Small Business Subcontracting Program Reporting**

a) The Contractor shall submit the Individual Subcontracting Report (ISR) and the Summary Subcontracting Report (SSR) electronically via the Electronic Subcontracting Reporting System (eSRS). The ISR is due within 30 calendar days after the close of each calendar period: (1) April 30 for the period October 1 through March 31 and (2) October 30 for the period April 1 through September 30. The SSR is due October 30th for the calendar period October 1 through September 30.

b) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219-9.

## **I.10 DHS Mentor-Protégé Program**

**(HSAR 3052.219-71) (DEC 2003)**

a) Large businesses are encouraged to participate in the DHS Mentor-Protégé program for the purpose of providing developmental assistance to eligible small business protégé entities to enhance their capabilities and increase their participation in DHS contracts.

b) The program consists of:

(1) Mentor firms, which are large prime contractors capable of providing developmental assistance;

(2) protégé firms, which are small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns; and

(3) Mentor-Protégé agreements, approved by the DHS OSDBU.

c) Mentor participation in the program means providing business developmental assistance to aid protégés in developing the requisite expertise to effectively compete for and successfully perform DHS contracts and subcontracts.

d) Large business prime contractors, serving as mentors in the DHS mentor-protégé program, are eligible for a post-award incentive for subcontracting plan credit by recognizing costs incurred by a mentor firm in providing assistance to a protégé firm and using this credit for purposes of determining whether the mentor firm attains a subcontracting plan participation goal applicable to the mentor firm under a DHS contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar for dollar basis and reported via the SF-295; for example, the mentor/large business prime contractor reports a \$10,000 subcontract to the protégé/small business subcontractor and \$5,000 of developmental assistance to the protégé/small business subcontractor as \$15,000 (\$10,000 traditional subcontract plus \$5,000 in developmental assistance for a total of \$15,000).

e) Contractors interested in participating in the program are encouraged to contact the DHS OSDBU for more information.

## **I.11 Notification of Employee Rights Concerning Payment of Union Dues or Fees**

**(FAR 52.222-39) (DEC 2004)**

(a) Definition. As used in this clause— “United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees. Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
Division of Information  
1099 14th Street, N.W.  
Washington, DC 20570  
1-866-667-6572  
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to—  
(1) Contractors and subcontractors that employ fewer than 15 persons;  
(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

- (3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;
- (4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—
- (i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and
  - (ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or (5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—

- (1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
- (2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or
- (3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

## **I.12 Performance-Based Payments**

**(FAR 52.232-32) (FEB 2002)**

(a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.



(b) Contractor request for performance-based payment. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests.

(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 30th day after receipt of the request for performance-based payment. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) Reduction or suspension of performance-based payments. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

- (1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).
- (2) Performance of this contract is endangered by the Contractor's
  - (i) failure to make progress, or
  - (ii) unsatisfactory financial condition.
- (3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) Title.

- (1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract
- (2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:
  - (i) Parts, materials, inventories, and work in process;
  - (ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;
  - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause; and
  - (iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.
- (3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination or special tooling clauses) shall determine the handling and disposition of the property.
- (4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.
- (5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or

needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not--

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) Risk of loss. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) Records and controls. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) Reports and Government access. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) Special terms regarding default. If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) Reservation of rights.

(1) No payment or vesting of title under this clause shall:

(i) excuse the Contractor from performance of obligations under this contract, or

(ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause:

(i) shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract, and

(ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(1) Content of Contractor's request for performance-based payment. The Contractor's request for performance-based payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for performance-based payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made;

(4) Such information and documentation as is required by the contract's description of the basis for payment; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) Content of Contractor's certification. As required in paragraph (1)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that--

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

(2) (Except as reported in writing on \_\_\_\_\_), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on \_\_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated \_\_\_\_\_; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

## **I.13 Contractor Employee Access**

### **(HSAR 3052.204-71) (JUN 2006) (If Required for a Task Order)**

- (a) Sensitive Information, as used in this Chapter, means any information, the loss, misuse, disclosure, or unauthorized access to or modification of which could adversely affect the national or homeland security interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under Section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:
- (1) Protected Critical Infrastructure Information(PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);
  - (2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, “Policies and Procedures of Safeguarding and Control of SSI,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);
  - (3) Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person’s privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and
  - (4) Any information that is designated “sensitive” or subject to other controls, safeguards or Protection in accordance with subsequently adopted homeland security information handling procedures.
- (b) “Information Technology Resources” includes, but are not limited to, computer equipment, networking, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.
- (c) Contractor employees working on a task order must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer under the task order. Upon the Contracting Officer’s request, the Contractor’s employees shall be fingerprinted, or subject to other investigations as required. All contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are

required to have a favorably adjudicated background investigation prior to commencing work on the task order unless the requirement is waived under Departmental procedures.

- (d) The Task Order Contracting Officer may require the contractor to prohibit individuals from working on the task order if the government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.
- (e) Work under the task order may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized access to sensitive information, the contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after task order performance.
- (f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

#### **I.14 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.**

**(FAR 52.223-9)(MAY2008)**

(a) *Definitions.* As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to \_\_\_\_\_

[Contracting Officer complete in accordance with agency procedures].

(End of clause)

**Alternate I  
(JUNE 2006)**

- (g) Before receiving access to IT resources under the task order, the individual must receive a security briefing, which the Contracting Officer's Technical Representative (COTR) will arrange, and complete any nondisclosure agreement furnished by DHS.
- (h) The contractor shall have access only to those areas of DHS information technology resources explicitly stated in the task order or approved by the COTR in writing as necessary for performance of the work under the task order. Any attempts by contractor personnel to gain access to any information technology resources not expressly authorized by the Statement of Work, other terms and conditions in the task order or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract and the individual(s) involved.
- (i) Contractor access to DHS networks from a remote location is temporary privilege for mutual convenience while the contractor performs business for the DHS Component. It is not a right, a guarantee of access, a condition of the task order, or Government Furnished Equipment (GFE).
- (j) Contractor access will be terminated for unauthorized use. The contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the task order for any delays resulting from unauthorized use or access.
- (k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management or maintenance of Department IT systems under the task order, unless a waiver has been granted by the Head of the Component or designee, with the concurrence of both the Department's Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their designees. Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:
  - (1) The individual must be a legal permanent resident of the U.S. or a citizen of Ireland, Israel, the Republic of the Philippines, or any nation on the Allied Nations List maintained by the Department of State;
  - (2) There must be a compelling reason for using this individual as opposed to a U.S. citizen; and
  - (3) The waiver must be in the best interest of the Government.
- (l) Contractors shall identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the task order. Any additions or deletions of non-U.S. citizens after task order award shall also be reported to the Task Order Contracting Officer.

**ALTERNATE II  
(JUNE 2006)**

- (m) Each individual employee working under the task order shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by a permanent Resident Card (USCIS I-551). Any exceptions must be approved by the Department's Chief Security Officer or designee.
- (n) Contractor's shall identify in their task order proposals, the names and citizenship of all non-U.S. citizens proposed to work under the task order. Any additions or deletions of non-U.S. citizens after task order award shall also be reported to the Task Order Contracting Officer.

**End of Clause**



## **SECTION J – LIST OF ATTACHMENTS**

- Attachment A: Self-Verification of Earned Value Management System
- Attachment B-1: Labor Rate Tables
- Attachment B-2: EAGLE Monthly Task Order Activity Report
- Attachment C: Template for EPEAT Report (Basic Contract Level Report)

**(End of Section J)**