

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER	PAGE 1 OF 158	
2. CONTRACT NO. USAC-IA-2013-10-005	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER USAC-IA-2013-10-005	6. SOLICITATION ISSUE DATE 10/25/2013		
7. FOR SOLICITATION INFORMATION CALL: ▶	a. NAME Jim Cosson, Manager of Purchasing		b. TELEPHONE NUMBER (No collect calls) 202-776-0200	8. OFFER DUE DATE/ LOCAL TIME 11/27/2013 @ 5:00PM EDT		
9. ISSUED BY Universal Service Administrative Company 2000 L Street NW, Suite 200 Washington, DC 20036	CODE	10. THIS ACQUISITION IS <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS	<input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) <input type="checkbox"/> ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB)	% FOR: NAICS: 541211 SIZE STANDARD: \$19.0M		
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS	<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING		
15. DELIVER TO Universal Service Administrative Company 2000 L Street NW, Suite 200, Washington, DC 20036	CODE	14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP				
17a. CONTRACTOR/ OFFEROR	CODE	16. ADMINISTERED BY Universal Service Administrative Company 2000 L Street NW, Suite 200, Washington, DC 20036	CODE			
18a. PAYMENT WILL BE MADE BY Universal Service Administrative Company 2000 L Street NW, Suite 200 Washington, DC 20036	CODE					
TELEPHONE NO.						
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>	18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
1 2 3 4 5 6	Beneficiary and Contributor Audit Program Services Base Year Labor Rates Partner/Principal/Director Auditing Services Senior Manager Auditing Services Manager Auditing Services Senior Staff Auditing Services Junior Staff Auditing Services Lead Project Manager (Use Reverse and/or Attach Additional Sheets as Necessary)			Hr Hr Hr Hr Hr Hr		
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only)		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED		
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED				<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
30a. SIGNATURE OF OFFEROR/CONTRACTOR		31a. Universal Service Administrative Company (Signature of Contracting Officer)				
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print)			31c. DATE SIGNED

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	<p>See Attachment 2(2) - Direct Labor Price Schedule For Option Years 1-4 Labor Rates.</p> <p>See Continuation Sheet for performance and deliverable requirements.</p>				

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. Signature of Authorized Universal Service Administrative Company Representative		32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED UNIVERSAL SERVICE ADMINISTRATIVE COMPANY REPRESENTATIVE Jim Cosson, Purchasing Manager		
32e. MAILING ADDRESS OF AUTHORIZED UNIVERSAL SERVICE ADMINISTRATIVE COMPANY REPRESENTATIVE Universal Service Administrative Company 2000 L Street NW, Suite 200, Washington, DC 20036		32f. TELEPHONE NUMBER OF AUTHORIZED USAC REPRESENTATIVE 202-776-0200			
		32g. E-MAIL OF AUTHORIZED USAC REPRESENTATIVE rfp@usac.org			
33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER
38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY			
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT			42a. RECEIVED BY (Print)		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE	42b. RECEIVED AT (Location)		
			42c. DATE REC'D (YY/MM/DD)	42d. TOTAL CONTAINERS	

SECTION B

**CONTINUATION SHEET FOR SOLICITATION/CONTRACT/ORDER
FOR COMMERCIAL ITEMS – SF 1449**

1. SF 1449 -- Solicitation/Contract/Order for Commercial Items Block 20 – Schedule of Supplies/Services

(a) *Type of Contract*

This is an indefinite-delivery, indefinite-quantity (“IDIQ”) task order contract. USAC intends to award multiple contracts under this procurement. Firm-fixed-price or time-and-materials (“T&M”) task orders may be issued under the contract for performance of specified audits and quality assurance (“QA”) reviews. Each T&M task order will include a ceiling price. During the base year of the contract, audit task orders will primarily be priced on a T&M basis. During subsequent contract option years, audit task orders will primarily be priced on a firm-fixed-price basis. However, if USAC determines that certain task orders issued in subsequent contract option years cannot reasonably be priced on a fixed-price basis, USAC may issue such task orders on a T&M basis. Task orders for QA reviews will primarily be priced on a firm-fixed-price basis throughout the entire term of the contract. Fixed prices for firm-fixed-price task orders and hourly labor rates in Attachment 2(2) for T&M task orders must include wages, overhead, general and administrative expenses and profit. Project management that benefits the project as a whole, rather than a particular task order, is considered an indirect cost and is included in the fixed prices and hourly rates. Fixed prices for firm-fixed-price task orders shall also include travel. T&M task orders shall be priced using hourly labor rates no higher than those stated in Attachment 2(2) for the applicable labor category and contract year. Travel Expenses will be reimbursed on T&M task orders up to the task order ceiling price (see Section C.2(i) (Alternate I)), provided Contractor complies with USAC Contractor Travel Expenses Policy as set forth in Attachment 5.

(b) *Contract Term*

The term of this Contract shall be for one year with four (4) one-year renewal options (“Contract Term”). The term of this Contract shall commence on the Effective Date stated in Block 3 of Section A. USAC may award task orders at any time during the Contract Term. The performance period of each task order will be stated within the task order. USAC anticipates that the task order performance period will generally be within the Contract Term, but the performance period may extend beyond the Contract Term in accordance with section C.2(d)(4).

(c) *Contract Minimum Amount and Maximum Value*

- (1) Contract Minimum Amount. The guaranteed minimum amount for each Contract is \$30,000.00. USAC will order at least this minimum amount of services under the Contract. Orders beyond the minimum amount will be determined by USAC needs

and the results of the fair opportunity competition process in section C.2(e). USAC is not obligated to order any services from Contractor beyond the Contract minimum amount.

- (2) Contract Maximum Value. The maximum value of the Contract, including all four option years, shall not exceed \$99.8 million.
- (3) The total value of all task orders under all Contracts awarded under this solicitation shall not exceed \$18.6 million for the Base Term, \$19.3 million for Option Year One, \$19.9 million for Option Year Two, \$20.6 million for Option Year Three, and \$21.4 million for Option Year Four.

(d) *Place of Performance*

- (1) Contractor shall perform services at their own facilities and at auditees' facilities throughout the United States and its territories. USAC may conduct occasional meetings or training at its headquarters located at 2000 L Street NW, Suite 200, Washington, DC 20036. USAC shall not provide office space or computer equipment for meetings or training conducted at its headquarters location.
- (2) All Contractor personnel that perform work on site at USAC shall complete the USAC Visitor Form, located at Section D, Attachment 3, prior to being assigned a temporary USAC Visitor's Badge and being allowed on site.
- (3) Contractor shall perform all Services within the United States unless specifically authorized in writing by USAC.

(e) *USAC Background*

USAC is a not-for-profit Delaware corporation. The Federal Communications Commission (“FCC” or “Commission”) appointed USAC as the permanent administrator of the Universal Service Fund (“USF”) and the Universal Service Support Mechanisms – the High Cost (“HC”) program; the Lifeline (“LI”) program; the Rural Health Care (“RHC”) program, including the RHC Pilot and Healthcare Connect programs; and the Schools and Libraries (“SL”) program (collectively referred to as “programs” or “support mechanisms”) – as set forth in Title 47, Part 54, Section 701 of the Code of Federal Regulations. USAC administers the support mechanisms pursuant to FCC regulations.¹ Subject to Commission oversight, USAC performs the billing, collection, and disbursement functions associated with the USF and the programs. Certain aspects supporting program administration are outsourced to USAC contractors.

(f) *Beneficiary and Contributor Audit Program (“BCAP”) Objectives*

¹ See 47 C.F.R. Part 54.

The general objective of the BCAP is program oversight to support the effective and efficient implementation of the USF and to help ensure that entities receiving support or paying into the USF are in compliance with program rules. Program beneficiaries receive support in widely varying amounts, from a few hundred dollars annually to more than \$10 million. USF contributors' (i.e., telecommunications companies) service revenues range from a relatively *de minimis* amount (< \$10,000) to over \$49 billion annually. The purpose of this procurement is to acquire services from outside audit firms to support the compliance audit program activities, including performance audits of USF contributors and program beneficiaries and QA reviews to ensure compliance with auditing standards and objectives.

Audits must be performed by licensed accounting/audit firms ("firms") that comply with American Institute of Certified Public Accountants ("AICPA") professional standards. Auditors must be familiar with applicable FCC regulations governing the USF and the particular universal service support mechanism under which the audited beneficiary is receiving support. Audits must be conducted in accordance with Generally Accepted Government Auditing Standards ("GAGAS") issued by the Comptroller General of the United States (December 2011).

The audits are designed to: (1) assess compliance by USF beneficiaries and USF contributors with applicable law; (2) deter waste, fraud, and abuse by beneficiaries and contributors of the universal service programs; (3) detect waste, fraud, and abuse by beneficiaries and contributors to the USF; and (4) identify areas for improvement in the compliance of beneficiaries and contributors with applicable law and in the administration of the USF. USAC anticipates conducting, at a minimum, the number of audits necessary to assess general rates of compliance with FCC rules on an annual basis among program participants. The time required to audit each beneficiary or contributor may vary significantly depending on the scope of the beneficiary's or contributor's participation in the program. USAC's Internal Audit Division ("IAD") will provide the audit firms with the audit objectives and scope for the audit program. To assist the firm(s) in the achievement of the stated objectives, USAC IAD will also provide the firms with suggested procedures, reasonably necessary training, and guidance on the subject areas included with the audits.

USAC anticipates awarding approximately 200 compliance audits and 40 QA reviews to multiple contractors during the first year of the IDIQ contracts. The number of audits and QA reviews for the subsequent option years may vary significantly for each year. Table 1 is a summary of the planned audits for contributors and the planned audits for each Program during the first year of BCAP. This Table represents a projected plan and may be modified based on business need. For example, LI Pilot audits are not included in the initial plan, but may be added as required. Also included in Table 1 are 10 audits classified as targeted, risk-based audits. The objectives and scope for these audits have not been determined at this time.

Audits are categorized based on size stratifications (i.e., amount of disbursement to beneficiaries or revenue received from contributors) and the anticipated complexity of the

audit, with “A” representing the most complex and “E” representing the least complex. Some program and complexity combinations are not planned for the first year of BCAP, but may be included in task orders issued in subsequent option years. The “Estimated Hours per Audit” (“Hours”) to perform an audit (based on complexity) are provided below to indicate the level of effort generally required for the assigned complexity level, and were derived from USAC’s actual experience in conducting similar audits and historical data from previous out-sourced audits. The Hours are estimates only and the actual hours to perform an audit may vary. The detail regarding size, complexity and projected hours of planned audits is set forth in Tables 2 through 6, below.

Table 1
Base Term 1 2014/2015 Audit Plan

Program	Complexity				Total Audits	Total QA Reviews
	A	B	C	P Pilot		
Contributor						
	8	7			15	5
High Cost						
		59			59	15
Lifeline						
		10	3		13*	7
Schools and Libraries						
	14	31	35		80	15
Rural Health Care						
	4	4	2	7	17	1
Targeted/ Risk-Based					10	
Totals					194*	43

*An additional 15 Lifeline audits are part of the Audit Plan but are not incorporated in the number of Total Audits above. The sample for the additional audits is pending; therefore the complexity is unknown at this time. For purposes of this RFP estimate that 28 Lifeline audits will be performed by the selected Contractor.

Selected Contractors shall be required to assign staffing sufficient to complete an audit or QA review assignment and provide USAC with a final audit report or QA review report within the task order period of performance. The period of performance will vary for individual task orders, but the term will generally range from 90 to 180 days for the audit program and 45 to 90 days for the QA reviews. USAC will assign the appropriate period of performance to each task order by estimating the amount of time necessary to perform the field work and then adding approximately 20 days (4 weeks) for draft report preparation for audits and 10 days for QA reviews. Audits and QA reviews must be completed within the required time to ensure that audits and QA reviews assigned in a contract year are completed within the same contract year, unless otherwise specified in a task order pursuant to Section C.2(d)(4).

The audit program was developed pursuant to the following objectives:

- (1) Provide for audits of USF contributors and beneficiaries of the four universal service support mechanisms;
- (2) Tailor the audit type and scope to program risk elements, size of disbursement, audit timing, and other specific factors that affect the risk and consequences to program integrity;
- (3) Incur reasonable audit costs in relation to overall program disbursements, amount disbursed to the beneficiary being audited, and USF administrative costs;
- (4) Spread audits throughout the year to smooth workload, improve efficiencies, control costs, reduce unnecessary burdens on beneficiaries, and maintain a pool of trained auditors; and
- (5) Retain capability and capacity for targeted and risk-based audits to be conducted as recommended by USAC management, the FCC and/or law enforcement entities.

(g) *USAC and Contractor Roles and Responsibilities*

- (1) Contractor shall perform compliance audit services in accordance with GAGAS issued by the Comptroller General of the United States (December 2011), for the federal USF contributors and the universal service beneficiary programs: RHC and the RHC Pilot, SL, HC, and LI. In addition to compliance audits, Contractor shall perform Agreed Upon Procedure (“AUP”) audits as directed (see section (h)(1) below).
- (2) USAC will issue task orders for all audits and QA reviews. *See Attachment 1 for a sample task order.* Task order RFPs will be issued, and task orders will be awarded, in accordance with the procedures set forth in Section C.2(e). Task order RFPs will require submission of a task plan and staffing plan for each audit or QA review and a price proposal. Contractor shall provide trained and experienced personnel who are capable of performing the services specified in a task order in accordance with the

terms of this Contract, and who meet the minimum qualifications listed in the position descriptions set forth in Section D, Attachment 2(1).

- (3) Contractor shall perform all work under a task order in accordance with the requirements set forth in this Contract and in the task order. All Contractor personnel assigned to task orders shall, in addition to meeting the position-specific minimum qualifications, have good technical writing ability, interpersonal skills, and communication skills, and conduct themselves in a professional manner.
- (4) It is essential to the mission of this oversight audit program that the Contractor provides a consistent, quality work product based on its experience, knowledge and continuing professional education in performing GAGAS audits. USAC, or its designee, will provide specialized USF beneficiary program or contributor training as USAC deems reasonably necessary to support the objectives of each task order. All Contractor personnel assigned to performance of this Contract shall attend training that may be presented by USAC or its designee.
- (5) USAC, or designated QA contractor (selected from among the other BCAP contractors), may conduct QA reviews of any or all of the audits performed by Contractor. Audits which are deemed unacceptable by USAC or its designated QA contractor in accordance with GAGAS standards shall be made acceptable by Contractor through, as appropriate, re-performance, revision or correction in accordance with Section C.1(a) or C.1(a) (Alternate I), as applicable to a particular task order.
- (6) USAC, or USAC's designee, may accompany and monitor the performance of the Contractor on any audit engagement.

(h) *Services/Deliverables*

- (1) Contractors shall provide professional audit services and provide the deliverables set forth herein to achieve the BCAP objectives set forth in Section B.1(f) above. The audits shall be conducted in accordance with GAGAS issued by the Comptroller General of the United States (December 2011) and be performed using the performance audit standards.
- (2) Contractor shall certify that each audit was conducted in accordance with GAGAS.
- (3) Contractor shall certify that each person on the audit team assigned to each task order has sufficient training and is competent in the subject matter to be audited.
- (4) Contractor shall provide professionals with appropriate language fluency, particularly Spanish-speaking personnel for audits conducted in Puerto Rico.
- (5) Contractor shall provide immediate notification of any suspected fraudulent activity disclosed during the performance of any task order. A detailed

description of the suspected fraudulent activity must be included with the notification. Notice shall be given contemporaneously to:

- FCC OMD, Gina Spade, Office of the Managing Director, Financial Operations, 202-418-7105, gina.spade@fcc.gov.
- USAC, Wayne Scott, Vice President of Internal Audit, 202-776-0200, wscott@usac.org.

(6) Audit Objectives and Scope for Beneficiaries and Contributors

The audits performed by the Contractor shall accomplish the following specific objectives:

- i. Detect non-compliance with applicable laws and FCC rules that have an effect on the determination of amount of USF contribution obligations or USF support received by beneficiaries. These exceptions can identify monetary and/or non-monetary findings. If reliable information comes to the Contractor's attention that provides evidence of possible non-compliance with the universal service rules, the auditor must include in the report the areas of non-compliance.
- ii. Follow up on known findings and recommendations from previous audits.
- iii. Prepare working papers containing sufficient information to enable an experienced auditor having no previous connection with the audit to ascertain from them the evidence that supports the Contractor's significant conclusions and judgments.

(7) High Cost Support

The table below describes the complexity levels for the audits of HC beneficiaries, with "A" being the most complex. The description includes the characteristics for each complexity level, as well as the qualifications a Contractor must possess in order to perform the audit. The estimated hours include reviews and revisions after the draft report is prepared, including participation in the quality assurance review.

Table 2
HIGH COST

Complexity	Audit Characteristics	Audit Firm Requirements	Estimated Hours Per Audit
A - D	<p>Rate of Return (ROR) Cost Company – received funds for one or more of the following components: High Cost Loop (HCL); Local Switching Support (LSS); Interstate Common Line Support (ICLS); Interstate Access Support (IAS); or Connect America Fund Inter-carrier Compensation (CAF ICC). Safety Net Additive (SNA) and/or Safety Valve Support (SVS).</p> <p>Audit may require in-depth financial analysis of two or three cost studies. The HCL and LSS components are very similar and consist of reviewing many of the same telecommunications related general ledger accounts. ICLS requires an additional telecommunications revenue analysis.</p> <p>IAS runs from July 1st to June 30th and does not coincide with the calendar year audit period, which requires analyzing multiple years. The audit requires in-depth financial analysis of three cost studies and revenue accounts.</p> <p>CAF ICC is a new component to High Cost and</p>	<ul style="list-style-type: none"> • Experience auditing complex financial statements. • Experience auditing telecommunications companies. • Knowledge of cost studies. • Experience with inventories of fixed assets. • Experience working with complex formulas and calculating the monetary effect of audit findings. 	<ul style="list-style-type: none"> • 1,000 - 1,400

Complexity	Audit Characteristics	Audit Firm Requirements	Estimated Hours Per Audit
	<p>will require time for the auditor to confirm the accuracy of carrier's certifications.</p> <p>SNA audit requires analysis of significant investments made by the carrier. SVS audit requires analysis of high cost exchanges acquired with substantial post-transaction investments.</p>		
E	<p>ROR Average Schedule Company</p> <p>Audit requires validation of line counts, eligibility, minutes of use, and the number of exchanges. This type of audit does not require financial analysis.</p>	<ul style="list-style-type: none"> • Experience auditing telecommunications companies. 	<ul style="list-style-type: none"> • 300
F	<p>Competitive Carrier</p> <p>These audits require that line count data is validated, eligibility is verified, lines are properly classified, and lines are accurately assigned to the appropriate Incumbent Local Exchange Carrier (ILEC). These audits do not require financial analysis.</p>	<ul style="list-style-type: none"> • Experience auditing telecommunications companies. • Experience auditing line counts and utilizing software to determine the reporting and categorization of lines. 	<ul style="list-style-type: none"> • 250

Complexity	Audit Characteristics	Audit Firm Requirements	Estimated Hours Per Audit
G	<p>Price Cap (Including ROR affiliates)</p> <p>Legacy High Cost support is frozen at December 31, 2011 levels.</p> <p>CAF ICC is a new component to High Cost and will require time for the auditor to confirm the accuracy of carrier's certifications.</p>	<ul style="list-style-type: none"> • Experience auditing telecommunications companies. 	<ul style="list-style-type: none"> • 350

The procedures developed by the Contractor to conduct performance audits of HC beneficiaries shall include, but are not limited to, the following:

- a. Ensure that the carrier is eligible to receive HC support.
- b. Obtain understanding and ensure reasonableness of related party transactions.
- c. Evaluate the accuracy of the carrier's line counts, access minutes and/or number of exchanges, and ensure line counts are mapped and/or classified appropriately.
- d. Review the carrier's supporting documentation for the 47 C.F.R. Part 32 account line items on the Data Collection Form (High Cost Loop) and Local Switching Support ("LSS") Form (e.g., trial balance, cost study, etc.).
 1. Examine cost studies for reasonableness and proper allocations.
 2. Ensure proper categorization of cable and wire facilities and central office equipment.
 3. Examine additional supporting documentation for select transactions (e.g., invoices, overhead allocation worksheets, etc.).
 4. Conduct physical inventory of selected fixed assets (via continuing property records or equivalent documentation).
- e. Review the carrier's supporting documentation for the following Interstate Common Line Support ("ICLS") FCC Form 509 line items:
 1. Common line revenue requirement.
 2. Subscriber line charge revenue.

3. Special access surcharges.
 4. Line port costs in excess of basic analog service.
- f. Review the carrier's supporting documentation for the following required data for Interstate Access Support ("IAS"):
1. Common line, marketing, and transport ("CMT") revenue (47 C.F.R. § 61.3(dd) (2011)).
 2. Unbundled network element ("UNE") zone rates (47 C.F.R. § 54.802(a)(1)(ii) (2000)).
 3. Zone classification (47 C.F.R. § 54.802(a)(1)(iii) (2000)).
- g. In connection with the required data for CAF ICC, review the carrier's supporting documentation for the Certification that the Eligible Recovery and ARC rates are properly calculated.

(8) Schools and Libraries Support

The table below describes the complexity levels for the audits of SL beneficiaries, with "A" being the most complex. The description includes the characteristics for each complexity level, as well as the minimum qualifications a Contractor must possess in order to perform the audit. The estimated hours include reviews and revisions after the draft report is prepared, including participation in the quality assurance review.

Table 3
SCHOOLS AND LIBRARIES

Complexity	Audit Characteristics (Disbursement Amount)	Audit Firm Requirements	Estimated Hours Per Audit
A	Greater than \$3,000,000	<ul style="list-style-type: none"> Experience with telecommunications services and equipment. Experience with inventories of fixed assets. 	<ul style="list-style-type: none"> 700
B	\$1,000,000 - \$3,000,000	<ul style="list-style-type: none"> Experience with telecommunications services and equipment. Experience with inventories of fixed assets. 	<ul style="list-style-type: none"> 600
C	\$300,000 - \$1,000,000	<ul style="list-style-type: none"> Experience with telecommunications services and equipment. 	<ul style="list-style-type: none"> 450

Complexity	Audit Characteristics (Disbursement Amount)	Audit Firm Requirements	Estimated Hours Per Audit
		<ul style="list-style-type: none"> • Experience with inventories of fixed assets. 	
D	\$15,000 - \$300,000 Priority 1: Telecommunication services	<ul style="list-style-type: none"> • Experience with telecommunications services and equipment. 	<ul style="list-style-type: none"> • 285
E	Less than \$15,000 Basic telecommunication services	<ul style="list-style-type: none"> • Experience with telecommunications services and equipment. 	<ul style="list-style-type: none"> • 200

The procedures developed by the Contractor to conduct performance audits of SL beneficiaries shall include, but are not limited to, the following:

- a. Ensure that the applicant is eligible to receive Schools and Libraries Program support.
- b. Evaluate the applicant's technology planning process.
- c. Evaluate the applicant's compliance with the requirements of the Children's Internet Protection Act ("CIPA").
- d. Evaluate the applicant's discount calculation methodology.
- e. Evaluate the applicant's competitive bidding process.
- f. Evaluate the applicant's inventory management and tracking process.
- g. Ensure the applicant had the required elements to demonstrate effective use of SL program funding.
- h. Evaluate the applicant's invoicing processing and approval process.

(9) Lifeline Support

The table below describes the complexity levels for the audits of LI beneficiaries, with "A" being the most complex. The description includes the characteristics for each complexity level, as well as the minimum qualifications a Contractor must possess in order to perform the audit. The estimated hours include reviews and revisions after the draft report is prepared, including participation in the quality assurance review.

Table 4
LIFELINE

Complexity	Audit Characteristics (Disbursement Amount)	Audit Firm Requirements	Estimated Hours Per Audit
A	Greater than \$10 million	Experience utilizing software to test subscriber listing by testing for completeness and accuracy of reporting.	• 400
B	\$500,000 - \$10 million	Experience utilizing software to test subscriber listing by testing for completeness and accuracy of reporting.	• 300
C	Less than \$500,000	Experience utilizing software to test subscriber listing by testing for completeness and accuracy of reporting.	• 150

The procedures developed by the Contractor to conduct performance audits of LI beneficiaries shall include, but are not limited to, the following:

- a. Examine evidence of advertising.
- b. Evaluate the accuracy of the number of the carrier's Lifeline, Link Up and Toll Limitation Service ("TLS") subscribers.
- c. Examine supporting documentation for the following:
 - 1. Approved tariff listing for the subscriber line and connection charges.
 - 2. Incremental cost of providing TLS.
- d. Ensure subscribers are eligible to receive low-income discounts.
- e. Examine select subscriber bills to ensure:
 - 1. Amounts claimed are passed on subscriber's bill.
 - 2. Certain fees are not assessed (e.g., Local Number Portability or TLS) or are assessed properly (federal USF fee).
 - 3. Tribal subscriber's bill does not fall below one dollar for basic service.

(10) Rural Health Care Support

The table below describes the complexity levels for the audits of RHC beneficiaries, with “A” being the most complex. The description includes the characteristics for each complexity level, as well as the minimum qualifications a Contractor must possess in order to perform the audit. The estimated hours include reviews and revisions after the draft report is prepared, including participation in the quality assurance review.

Table 5
RURAL HEALTH CARE

Complexity	Audit Characteristics (Disbursement Amount)	Audit Firm Requirements	Estimated Hours Per Audit
A	Greater than \$300,000	Experience with telecommunications services and equipment.	• 200
B	\$100,000 - \$300,000	Experience with telecommunications services and equipment.	• 150
C	Less than \$100,000	Experience with telecommunications services and equipment.	• 125
P	Pilot Program	Experience with telecommunications services and equipment.	• 500

The procedures developed by the Contractor to conduct performance audits of RHC beneficiaries shall include, but are not limited to, the following:

- a. Ensure the applicant is eligible to receive RHC program support.
- b. Evaluate the applicant’s competitive bidding process.
- c. Determine if the service is eligible for RHC program support.
- d. Evaluate the applicant’s invoice processing and approval procedures.

(11) USF Contributors

The table below describes the complexity levels for the audits of USF Contributors, with “A” being the most complex. The description includes the characteristics for each complexity level, as well as the minimum qualifications a Contractor must possess in order to perform the audit. The estimated hours include reviews and revisions after the draft report is prepared, including participation in the quality assurance review.

Table 6
CONTRIBUTOR AUDITS

Complexity	Audit Characteristics	Audit Firm Requirements	Estimated Hours Per Audit
A	<ul style="list-style-type: none"> • Greater than \$100 million in total revenue and has 3 or more of the following: <ul style="list-style-type: none"> ○ Revenue reported for more than seven products and/or services on FCC Form 499-A ○ Private line revenue ○ Reseller revenue ○ Other telecommunications revenue. ○ Qualifies for Limited International Revenue Exception (“LIRE”); or • Greater than \$500 million in total revenue; or • Main revenue source is pre-paid. 	<ul style="list-style-type: none"> • Experience auditing telecommunications revenue. • Experience with financial statement audits of large companies. • Experience analyzing systems. • Knowledge of telecommunications products. • Experience with financial internal controls or knowledge of the Form 499-A. 	<ul style="list-style-type: none"> • 1,800
B	<ul style="list-style-type: none"> • Greater than \$10 million in total revenue, and less than \$100 million in total revenue and has 3 or more of the following: <ul style="list-style-type: none"> ○ Revenue reported for more than 5 products and/or services on 	<ul style="list-style-type: none"> • Experience auditing revenue. • Knowledge of telecommunications products. • Experience analyzing systems. 	<ul style="list-style-type: none"> • 1,400

Complexity	Audit Characteristics	Audit Firm Requirements	Estimated Hours Per Audit
	<ul style="list-style-type: none"> FCC Form 499-A ○ Private line revenue ○ Reseller revenue ○ Other telecommunications revenue ○ Qualifies for LIRE; or • Greater than \$100 million in total revenue and less than \$500 million in total revenue; or • Greater than \$100 million in total revenue and reseller revenue only. 		
C	<ul style="list-style-type: none"> • Less than \$10 million in total revenue and has 3 or more of the following: <ul style="list-style-type: none"> ○ Revenue reported for more than 3 products and/or services on FCC Form 499-A ○ Private line revenue ○ Reseller revenue ○ Other telecommunications revenue ○ Qualifies for LIRE; or • Greater than \$10 million in total revenue and less than \$100 million in total revenue; or • Less than \$100 million in total revenue and reseller revenue only. 	<ul style="list-style-type: none"> • Financial audit experience. • Knowledge of telecommunications products. 	<ul style="list-style-type: none"> • 900
D	Less than \$10 million in total revenue	Financial audit experience.	<ul style="list-style-type: none"> • 500

The procedures developed by the Contractor to conduct performance audits of USF contributors shall include, but are not limited to, the following:

- a. Ensure total revenues on the FCC Form 499-A agrees with the contributor's financial statements or other reliable source documents.
- b. Obtain an understanding of the contributor's processes, business, and environment as they relate to the reporting of information on the FCC Form 499-A.
- c. Resellers of Telecommunications Services:
 1. Evaluate steps the contributor has taken to develop a reasonable expectation that the identified reseller customers were contributors to the USF.
 2. Verify that the carrier is not assessing USF pass through surcharges to reseller customers.
- d. Verify USF Surcharges:
 1. Examine end-user invoices to ensure the USF surcharge assessed to customers does not exceed the interstate and/or international telecommunications portion of the customer's invoices multiplied by the relevant contribution factor for a given quarter.
 2. Verify that USF surcharges collected from customers are reported on FCC Form 499-A Line 403 and with the appropriate jurisdiction.
- e. Products and Jurisdiction:
 1. Ensure that the contributor's products and services are accurately reported on the form lines per the FCC Form 499-A Instructions ("Instructions").
 2. For contributors that report traffic jurisdiction based on actual revenues, ensure that the amounts are properly classified.
 3. For contributors that report traffic jurisdiction based on good faith estimates, confirm that traffic reports or minutes of use reports properly support the estimates.
 4. Ensure that the revenue reported on FCC Form 499-A Line 418 is revenue received from non-telecommunication products and services.
 5. For contributors that offer private line services, determine that the jurisdictional breakout is reasonable.
 6. For contributors that offer interconnected voice over internet protocol ("VoIP") services, ensure that the products meet the required description per FCC Order 06-94. Verify that traffic studies for VoIP are reasonable.

7. Ensure that safe harbor percentages are used only for lines allowed by the Instructions.
 - f. Verify that the amounts reported as uncollectible revenue are reasonable and in accordance with generally accepted accounting principles (“GAAP”).
 - g. Evaluate whether the contributor qualifies for the LIRE.
 - h. Calculate the monetary effect of any reporting errors as well as the overall impact to the USF contribution base.
- (12) Investigative Support

In the event any potential civil or criminal improprieties are uncovered in the audit process, Contractor shall provide, upon request, investigative support, which includes, but is not limited to, audit, telecommunications expertise and computer forensic support. Contractor shall bring potential improprieties immediately to the attention of the FCC’s Office of Managing Director (“OMD”), the FCC’s Office of Inspector General, and USAC’s Internal Audit Division. FCC has a close working relationship with USAC as well as established relationships with the Federal Bureau of Investigation and the Department of Justice to investigate potential criminal and civil improprieties related to the USF and the programs. To the extent Contractor is asked to provide investigative support to third-party investigations of potential civil or criminal improprieties, the relevant level of investigative support will be determined on a case-by-case basis. Task orders for investigative support services will be awarded separately and priced on a T&M basis in accordance with the labor rates and pricing procedures set forth herein.

(13) Reporting Requirements

i. Audit Report

- (A) Contractor shall work with USAC in developing a standardized audit report template that complies with GAGAS requirements and elements. Contractor shall prepare an audit report for each audit using the USAC-approved template.
- (B) Contractor shall calculate the monetary effect of rule violations, if any, noted during the audit and include such calculation and the monetary amount in the audit report in sufficient detail as specified by USAC.
- (C) Contractor shall prepare an advance draft report of all audit findings. The advance draft report of the findings shall be submitted via a web-based portal provided by USAC no later than (20 days) four weeks after completion of fieldwork. Contractor shall not provide the draft findings to the beneficiary or contributor until USAC reviews and approves such findings.

- (D) After receiving approval by USAC, Contractor shall provide a draft report to the beneficiary or contributor to obtain written responses from the beneficiary or contributor. Contractor shall provide USAC with a copy of the draft audit report, including the responses of the beneficiary or contributor, for final review and approval. The draft report must reflect auditee responses and have been through all levels of Contractor internal review (e.g., concurring partner review) prior to submission to USAC.
- (E) USAC will review the draft audit report and, if correct, approve the release of the draft report. If USAC does not approve the draft report, Contractor shall promptly address all comments provided by USAC and re-submit a revised draft report for USAC to review and approve.
- (F) Contractor shall submit the final audit report, via a web-based portal provided by USAC, after receiving approval of the draft report from USAC. The final report is due no later than two weeks after receipt of approval of the draft report.
- (G) Prior to USAC's acceptance of draft reports, final reports, and any audit data submitted in electronic form, such reports or data may be evaluated by USAC, FCC or one or more independent accounting firms of USAC's choosing. Contractor shall cooperate in all respects with USAC's QA review process, including adequately addressing all comments made during a QA review.
- (H) All draft and final reports shall be the sole property of USAC.

- (I) Contractor shall maintain copies of all work papers prepared in the course of each audit for a period of seven (7) years starting with the date the final audit report is approved by the USAC Board of Directors, and shall make the work papers available to USAC, or its designee, upon request.

ii. Q A Review

- (A) Contractor shall review the draft report, final report, and any audit data submitted in electronic form as requested by USAC to ensure the audit performed was consistent with GAGAS requirements.
- (B) Contractor shall redline the document(s) with exceptions and comments as needed as the review process is conducted.
- (C) Contractor shall submit the audit report that was examined as part of the QA process to USAC via a web-based portal provided by USAC.

(14) Project Management

Contractor shall provide a dedicated Lead Project Manager who shall cooperate in all respects with USAC's Project Management Office ("PMO"). The Contractor's Lead Project Manager shall be the primary point of contact to the USAC PMO and shall be responsible for implementing the Contract Project Management Plan at start-up, and the performance of individual tasks orders from award to completion.

i. Contract Project Management

(A) Contract Staffing.

The Contractor shall provide qualified personnel to fill the positions, and to perform the corresponding functions for each position, identified in Attachment 2.

(B) Contract Project Management Plan

The Contractor shall provide a final Contract Project Management Plan within 10 calendar days of contract award, that specifies the activities the Contractor will complete to execute and manage the USAC contract, and which includes, but is not limited to: the tasks to fulfill the staffing plan and prepare the staff for the engagement; the process that will be implemented to ensure audit milestone dates are met with quality deliverables; and the development of a communication plan which will be used to establish the guidelines for written and verbal communications between the Contractor and USAC.

ii. Task Order Project Management

(A) Task Plan

The Contractor shall provide a final task plan within 10 calendar days of each task order award that includes, but is not limited to: milestones, the milestone start/end dates, and resources assigned to conduct and manage the completion of the audits included in the task order.

(B) Weekly Status Report

During the performance of a task order, the Contractor's Lead Project Manager shall provide a weekly written status report to USAC to convey the status of each task order in progress, including major milestones accomplished/missed, and any issues and risks related to the timely completion of the task order(s). In the case of a T&M task order, the status report shall include the number of labor hours worked and Travel Expenses incurred on each audit. Contractor shall use a standardized reporting template that is approved by USAC to prepare the status report. Contractor shall submit the written status report to the USAC Lead Project Manager and the USAC Contracting Officer Technical

Representative (COTR) assigned to the Contractor's task order one business day in advance of the status meeting.

(C) Status Meeting

During the performance of a task order, the Contractor's Lead Project Manager and personnel responsible for the management of individual task orders, as well as any other Contractor personnel specifically invited by USAC, shall attend regularly scheduled status meetings (every other week at a minimum) hosted by the USAC PMO to discuss and report task order progress, address issues/concerns, report labor hours worked on each audit, and identify any concerns that need to be brought to the attention of USAC's IAD management. Although not required to be present at every status meeting, the Partner/Principal/Director Auditing Services shall attend status meetings if expressly requested by USAC. The Weekly Status Report shall be used as the basis of the status meeting discussion. The status meetings will be conducted on-site at USAC with the participants attending in person or by conference call.

(D) Management Review

A management review will be held each quarter in which the Contractor is performing at least one task order to report the progress on services/deliverables specified on outstanding task orders. The Partner/Principal/Director Auditing Services and the Contractor's Lead Project Manager, in addition to Contractor personnel specifically invited by USAC, shall attend the management review meetings. USAC personnel will include the USAC Lead Project Manager, USAC contracting officer, and other USAC staff as determined by USAC, for the purposes of allowing all interested stake holders to review current status and address issues/concerns.

Contractor shall prepare a project review report for each management review meeting. The project review report shall describe achievements, work in progress, issues incurred and resolutions, risks identified and related mitigations, major milestones accomplished/missed, and amounts billed. The project review report shall provide sufficient information to validate the Contractor's performance for the time period. The Contractor shall submit a draft of the report three (3) business days in advance of the management review meeting. The management review meeting will be conducted on-site at USAC with individuals attending in person, unless unforeseen circumstances require attendance by conference call.

(E) Project Tools

Contractor shall use MS Office 2010 and MS Project 2010 to prepare deliverables and manage the agreed upon final Contract Project Management Plan and/or task plans, and budget/costs. The Contractor shall also use the

USAC web-based audit management site to manage and track audit milestones, and draft and final audit reports, in addition to communicating issues and questions for resolution.

In order to access the USAC web-based site, the Contractor shall adhere to multi-factor authentication to comply with USAC's security requirements for remote access of sensitive information. This authentication shall be supported through a virtual private network ("VPN") connection between Contractor's PMO location and USAC headquarters, or the use of a USAC security key and Citrix. Contractor shall provide a technical point of contact to work with USAC staff to establish the VPN connection between the two locations, if the Contractor elects to install a VPN connection.

SECTION C – CONTRACT CLAUSES

1. Contract Terms and Conditions—Commercial Items, 48 C.F.R. (FAR) § 52.212-4 (July 2013) (Deviation) (Tailored as indicated)

[Note: Alternate language for paragraphs (a), (e), (g), (i), (l), and (m) is set forth in Section C.1 (Alternate I), which follows this Section C.1 and is applicable to time-and-materials task orders in lieu of paragraphs (a), (e), (g), (i), (l), and (m) in this Section.]

(a) *Inspection/Acceptance.* Contractor shall only tender for acceptance those items that conform to the requirements of this Contract. USAC reserves the right to inspect or test any supplies or services that have been tendered for acceptance. USAC may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, USAC may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. USAC must exercise its post-acceptance rights:

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* With the exception of the assignment of rights to receive payment, neither this Contract, nor any right or interest hereunder, shall be assigned or delegated by Contractor without the prior written agreement of USAC. Any purported assignment or delegation that violates this section is void. Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency upon submitting a notice of assignment in a form acceptable to USAC signed by an authorized officer of Contractor and accompanied by a true copy of the instrument of assignment executed by Contractor and the assignee. However, when a third party makes payment (*e.g.*, use of a USAC credit card), Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* Contractor shall submit all requests for equitable adjustment, claims or other disputes to the Contracting Officer for informal resolution prior to initiating any action in a court of appropriate jurisdiction. The parties shall use good faith efforts to resolve all disputes informally without the need for litigation. Failure of the parties to this Contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Contract shall be resolved in the courts of appropriate jurisdiction sitting in the

District of Columbia. Contractor shall proceed diligently with performance of this Contract, pending final resolution of any dispute arising under the Contract.

(e) *Definitions.* The clause at FAR § 52.202-1, Definitions, is incorporated herein by reference. As appropriate, insert “USAC” in the FAR definitions for “government” or “agency.” Additional definitions for capitalized words not defined at FAR § 52.202-1 are set forth at section C.2(a), below.

(f) *Excusable delays.* Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of USAC, acts of the United States Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Contractor shall notify USAC in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to USAC of the cessation of such occurrence.

(g) *Invoice (Tailored)*

Contractor shall submit invoices for payment for a task order in accordance with the invoice schedule and based on the milestones set forth in the task order, but not more frequently than once a month. Contractor shall submit invoices electronically to USAC Accounting at accounting@usac.org. An invoice shall include: (1) summary of charges invoiced; and (2) charges based on a percentage of the task order firm-fixed price as specified in the task order invoice schedule. The invoice summary and audit detail shall be submitted to the USAC Lead Project Manager using an Excel template to be provided by USAC. A separate invoice shall be submitted for each task order.

(1) The invoice summary shall include:

- i. Name and address of Contractor;
- ii. Invoice date and invoice number;
- iii. Contract number and task order number;
- iv. Terms of any discount for prompt payment offered;
- v. Name and address of official to whom payment is to be sent;
- vi. Name, title, and phone number of person to notify in event of defective invoice;
- vii. Taxpayer Identification Number (TIN). Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- viii. Electronic funds transfer (EFT) banking information.

- (A) Contractor shall include EFT banking information on the first invoice pursuant to section C.3(b)49.
- (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with section C.3(b)49.

(2) The invoice detail shall include:

- i. One line item for each audit included in the task order;
- ii. Each line item shall include:
 - (A) Audit identification number and audit name;
 - (B) Audit phase covered by current invoice and amount invoiced for that phase (as specified in the task order invoice schedule);
 - (C) Amount invoiced to date for each audit phase; and
 - (D) Total amount invoiced to date.
 - (E) Percentage of audit fixed price associated with audit phase (as specified in the invoice schedule).

(h) *Patent indemnity.* Contractor shall indemnify and defend USAC and its officers, employees and agents against any and all claims and liability, including attorney's fees and other costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Contract, provided Contractor is reasonably notified of such claims and proceedings.

(i) *Payment (Tailored)*

- (1) Items and services accepted. Payment shall be made for items and services accepted by USAC that have been delivered to the delivery destination(s) set forth in this Contract.
- (2) Contract Financing Payments. USAC's payments to the Contractor for invoices that the task order invoice schedule permits to be submitted prior to USAC's acceptance of services (e.g., upon completion of the testing phase of an audit) shall constitute contract financing payments. USAC will make contract financing payments to Contractor in accordance with Section C.3(b)46 below, and based on the invoice schedule set forth in each task order issued under this Contract. USAC may suspend contract financing payments if Contractor fails to make satisfactory progress in compliance with all Contract requirements. USAC will monitor Contractor's performance through, among other things, regular verbal and written communications, weekly status reports, status meetings, management review meetings, project review reports, and review of submitted deliverables. Contractor's current financial condition as of the Contract Effective Date has been determined by USAC to be adequate security for contract financing payments under this section, but USAC may require Contractor to provide additional security during the term of the Contract pursuant to Section C.3(b)45 in the event that Contractor's financial condition changes and is determined by the Contracting Officer to no longer provide USAC with adequate security. Contract financing payments for a task order shall be liquidated in full upon USAC's acceptance of all work required by the task order (under Section B.1(h) and as set forth in the task order).

- (3) Prompt payment. USAC will pay for accepted items and Services within 30 calendar days of receipt of Contractor's invoice provided such invoice is proper and submitted in accordance with terms set forth herein.
- (4) Electronic Funds Transfer (EFT). If USAC makes payment by EFT, see section C.3(b)49 (FAR § 52.232-34, Payment by Electronic Funds Transfer – Other than System for Award Management).
- (5) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (6) Overpayments. If Contractor becomes aware of a duplicate contract financing or invoice payment or that USAC has otherwise overpaid on a contract financing or invoice payment, Contractor shall:
 - i. Remit the overpayment amount to the payment office cited in the Contract along with a description of the overpayment including the:
 - (A) Circumstances of the overpayment (*e.g.*, duplicate payment, liquidation errors, date(s) of overpayment);
 - (B) Affected contract number and delivery order number, if applicable;
 - (C) Affected contract line item or sub-line item, if applicable; and
 - (D) Contractor point of contact.
 - ii. Provide a copy of the remittance and supporting documentation to the Contracting Officer.
- (7) Interest.
 - i. All amounts that become payable by Contractor to USAC under this Contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (i)(7).iii of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
 - ii. USAC may issue a demand for payment to Contractor upon finding a debt is due under the Contract.

- iii. Amounts shall be due at the earliest of the following dates:
- (A) The date fixed under this Contract.
 - (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- iv. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on:
- (A) The date on which the designated office receives payment from Contractor;
 - (B) The date of issuance of a USAC check to Contractor from which an amount otherwise payable has been withheld as a credit against the Contract debt; or
 - (C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to Contractor.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with Contractor until, and shall pass to USAC upon:

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Delivery of the supplies to USAC at the destination specified in the contract, if transportation is f.o.b. destination.
- (k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for USAC's convenience.* (Tailored) USAC reserves the right to terminate this contract, or any part hereof (including any task order or any part thereof), for its sole convenience. In the event of such termination, Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges Contractor can demonstrate to the satisfaction of USAC using its standard record keeping system, have resulted from the termination. Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give USAC any right to audit Contractor's records. Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* (Tailored) USAC may terminate this contract, or any part hereof (including any task order or any part thereof), for cause in the event of any default by Contractor, or if Contractor fails to comply with any contract or task order terms and conditions, or fails to provide USAC, upon request, with adequate assurances of future performance. In the event of

termination for cause, USAC shall not be liable to Contractor for any amount for supplies or services not accepted, and Contractor shall be liable to USAC for any and all rights and remedies provided by law. If it is determined that USAC improperly terminated this contract or any task order for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this Contract, title to items furnished under this Contract shall pass to USAC upon acceptance, regardless of when or where USAC takes physical possession.

(o) *Warranty.* Contractor warrants that it shall render all services with promptness and diligence and in a professional and courteous manner, and in accordance with industry best practices and professional standards for these services. Contractor warrants that it shall use adequate numbers of qualified individuals to perform the Services.

(p) *Limitation of liability.*

(1) Except as provided in the following paragraph (2), USAC's entire cumulative liability from any causes whatsoever, and regardless of the form of action or actions, whether in contract, warranty or tort (including negligence), arising under this Contract, shall in no event exceed the amounts paid to Contractor under this Contract. Except as provided in paragraph (2) or otherwise provided by an express warranty, in no event will either Party be liable for any indirect, special, consequential, incidental or punitive damages in connection with or arising out of the performance of or the use of any information, items, products or services provided under this Contract.

(2) Notwithstanding the provision of (1) above, the following liabilities shall not be limited or exculpated by this clause:

- i. damages caused by the illegal or intentional misconduct of the breaching Party;
- ii. indemnification claims under section C.2(q);
- iii. damages incurred by USAC arising from the Contractor's default, in whole or part, which are recoverable under section C.2(o)(1); or
- iv. theft or other losses of USAC funds resulting from fraud, embezzlement, conversion, misappropriation or other intentional acts or omissions of Contractor, its Subcontractors, or their respective employees.

(q) *Other compliances.* Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this Contract.

(r) *Compliance with laws unique to Government contracts.* Contractor agrees to comply with the following laws to the same extent that they would be applicable if this were a federal government contract: 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C.

3701, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. § 8701 et seq., Anti-Kickback Act of 1986; 41 U.S.C. § 4705 relating to whistleblower protections; 49 U.S.C. § 40118, Fly American; and 41 U.S.C. § 2101 et seq., relating to procurement integrity. This clause, and the laws identified herein, do not impose any obligations on USAC unless otherwise expressly stated in the terms of the Contract.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause (section C.1).
- (3) The clause at FAR § 52.212-5 (section C.3).
- (4) Addenda to this solicitation or contract, including section C.2 and any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Solicitation/Contract/Order for Commercial Items form (Section A).
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) *System for Award Management (SAM).*

- (1) Unless exempted by an addendum to this Contract, Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from USAC's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this Contract and is not a substitute for a properly executed contractual document.
- (2)
 - i. If Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the Contract), or has transferred the assets used in performing the Contract, but has not completed the necessary

requirements regarding novation and change of name agreements (see generally FAR Subpart 42.12), Contractor shall provide the Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of FAR Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the Contracting Officer. Contractor must provide with the notification sufficient documentation to support the legally changed name.

- ii. If Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows Contractor to be other than Contractor indicated in the Contract will be considered to be incorrect information within the meaning of section C.3(b)49(d) ("Suspension of Payment") of this Contract.
- (3) Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (*see* section C.1(b)). Assignees shall be separately registered in the SAM database. Information provided to Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of section C.3(b)49(d) ("Suspension of Payment") of this Contract.
- (4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.acquisition.gov>.

(u) *Unauthorized Obligations.*

- (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring USAC to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:
 - i. Any such clause is unenforceable against USAC.
 - ii. Neither USAC nor any USAC authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (*e.g.*, "click-wrap" or "browse-wrap" agreements), execution does not bind USAC or any USAC authorized end user to such clause.
 - iii. Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

- (2) Paragraph (u)(1) of this clause does not apply to indemnification by USAC that is expressly authorized by statute and specifically authorized under applicable regulations and procedures.

1. (Alternate I) Contract Terms and Conditions—Commercial Items, 48 C.F.R. (FAR) § 52.212-4 Alternate I (Aug 2012) (Deviation) (Applicable only to time-and-materials task orders) (Tailored as indicated)

When a time-and-materials task order is issued, substitute the following paragraphs (a), (e), (g), (i), (l), and (m) for those in Section C.1 above.

(a) Inspection/Acceptance

- (1) USAC has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. USAC may also inspect the plant or plants of Contractor or any subcontractor engaged in contract performance. USAC will perform inspections and tests in a manner that will not unduly delay the work.
- (2) If USAC performs inspection or tests on the premises of Contractor or a subcontractor, Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (3) Unless otherwise specified in the contract, USAC will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (4) At any time during contract performance, but not later than six months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, USAC may require Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause (section C.1(i)), but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the “hourly rate” attributable to profit shall be 10 percent. Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [Insert portion of labor rate attributable to profit.]
- (5) i. If Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed

within the ceiling price (or the ceiling price as increased by the USAC), USAC may:

- (A) By contract or otherwise, perform the replacement or correction, charge to Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
 - (B) Terminate this contract for cause.
- ii. Failure to agree to the amount of increased cost to be charged to Contractor shall be a dispute under the Disputes clause of the contract.
- (6) Notwithstanding paragraphs (a)(4) and (5) above, USAC may at any time require Contractor to remedy by correction or replacement, without cost to USAC, any failure by Contractor to comply with the requirements of this contract, if the failure is due to—
- i. Fraud, lack of good faith, or willful misconduct on the part of Contractor's managerial personnel; or
 - ii. The conduct of one or more of Contractor's employees selected or retained by Contractor after any of Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
- (8) Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
- (9) Unless otherwise specified in the contract, Contractor's obligation to correct or replace USAC-furnished property shall be governed by the clause pertaining to USAC property.

(e) *Definitions*

- (1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause:
- i. *Direct materials* mean those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

ii. *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are:

- (A) Performed by Contractor;
- (B) Performed by the subcontractors; or
- (C) Transferred between divisions, subsidiaries, or affiliates of Contractor under a common control.

iii. *Materials* means:

- (A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of Contractor under a common control;
- (B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
- (C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);
- (D) The following subcontracts for services which are specifically excluded from the hourly rate: [Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.]; and
- (E) Indirect costs specifically provided for in this clause.

iv. *Subcontract* means any contract, as defined in FAR Subpart 2.1, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(2) Additional definitions for capitalized words not defined at FAR § 52.202-1 are set forth at section C.2.(a), below.

(g) *Invoice* (Tailored)

Contractor shall submit invoices electronically to USAC Accounting at accounting@usac.org. An invoice shall include: (1) summary of labor charges and Travel Expenses; (2) labor charge detail; and (3) Travel Expenses detail. The receipts for Travel Expenses shall be transmitted in PDF format and marked by audit and individual. The invoice summary, labor charge detail, and Travel Expenses detail shall also be submitted to the USAC Lead Project Manager using an Excel template to be provided by USAC.

(1) The invoice summary shall include:

- i. Name and address of Contractor;
- ii. Invoice date, number, and invoice period;
- iii. Contract number and task order number;
- iv. Terms of any discount for prompt payment offered;
- v. Total amount of task order ceiling price;
- vi. Current invoice amount total and total amount invoiced to date;
- vii. Name and address of official to whom payment is to be sent;
- viii. Name, title, and phone number of person to notify in event of defective invoice;
- ix. Taxpayer Identification Number (TIN). Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- x. Electronic funds transfer (EFT) banking information.
 - (A) Contractor shall include EFT banking information on the first invoice pursuant to section C.3(b)49.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with section C.3(b)49.
- xi. A separate line item for each audit included in the task order. Each line item shall include the following information for the invoice period:
 - (A) Amounts for current period labor charges and total labor charges invoiced to date; and
 - (B) Amounts for current period reimbursable Travel Expenses and total reimbursable Travel Expenses invoiced to date.

(2) Labor charge detail shall include:

- i. One line item per person assigned to the audit;
- ii. Each line item shall include the following detail for the invoice period: name, labor category, hourly rate, number of hours accrued for current period, labor charge for current period, total hours accrued for audit to date, and total labor charge accrued for audit to date; and
- iii. Labor detail shall be grouped by audit with each person from the audit team listed as a separate line item under the audit.

(3) Travel Expenses detail shall include:

- i. A separate line item per person assigned to the audit;
- ii. Each line item shall include the following detail for the invoice period: name, amount by expense type, total expenses for current period, and total accumulated expenses per audit to date; and
- iii. Receipts for all Travel Expenses shall be grouped by audit and person assigned to the audit, and shall be attached in one PDF file per person, accompanying the invoice.

(i) *Payment* (Tailored)

- (1) *Work Performed.* USAC will pay Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:
- i. Hourly rate.
 - (A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract, or set forth in a task order if the Contractor agrees to lower hourly rates applicable to such task order, by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.
 - (B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.
 - (C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer and the COTR.
 - (D) In addition to submitting the documentation required by paragraph (g)(1)iv, when requested by the Contracting Officer, Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rates in Attachment 2(2)) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract or task order.
 - (E) Unless the task order prescribes otherwise, the hourly rates in Attachment 2(2) shall not be varied by virtue of Contractor having performed work on an overtime basis.
 1. If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.
 2. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.
 3. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

ii. Materials.

- (A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR § 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the:
 - 1. Quantities being acquired; and
 - 2. Any modifications necessary because of contract requirements.
 - (B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, USAC will reimburse Contractor the actual cost of materials (less any rebates, refunds, or discounts received by Contractor that are identifiable to the contract) provided Contractor—
 - 1. Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
 - 2. Makes these payments within 30 days of the submission of Contractor's payment request to USAC and such payment is in accordance with the terms and conditions of the agreement or invoice.
 - (C) To the extent able, Contractor shall:
 - 1. Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - 2. Give credit to USAC for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.
 - (D) Other Costs. Unless listed below, other direct and indirect costs will not be reimbursed.
 - 1. *Other Direct Costs.* USAC will reimburse Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: Travel Expenses, provided Contractor complies with the USAC Contractor Travel Expense Policy set forth in Attachment 5.
 - 2. *Indirect Costs (Material Handling, Subcontract Administration, etc.).* USAC will reimburse Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: \$0.
- (2) *Total cost.* It is estimated that the total cost to USAC for the performance of each task order shall not exceed the ceiling price set forth in the task order and Contractor agrees

to use its best efforts to perform the work specified in the task order and all obligations therein within the task order ceiling price. If at any time Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing the task order in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 75 percent of the task order ceiling price, Contractor shall notify the Contracting Officer giving a revised estimate of the total price to USAC for performing the task order with supporting reasons and documentation. If at any time during the performance of any task order, Contractor has reason to believe that the total price to USAC for performing the task order will be substantially greater or less than the then stated ceiling price, Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing the task order, with supporting reasons and documentation. If at any time during performance of any task order, USAC has reason to believe that the work to be required in performing the task order will be substantially greater or less than the respective stated ceiling price, the Contracting Officer will so advise Contractor, giving the then revised estimate of the total amount of effort to be required under the task order.

- (3) *Ceiling price.* USAC will not be obligated to pay Contractor any amount in excess of the ceiling price stated in each task order issued under this Contract, and Contractor shall not be obligated to continue performance of a task order if to do so would exceed the task order ceiling price, unless and until the Contracting Officer notifies Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under the task order. When and to the extent that the ceiling price set forth in the task order has been increased, any hours expended and material costs incurred by Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by Contractor and the Contracting Officer):
 - i. Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;
 - ii. For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—
 - (A) The original timecards (paper-based or electronic);
 - (B) Contractor's timekeeping procedures;
 - (C) Contractor records that show the distribution of labor between jobs or contracts; and

- (D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.
- iii. For material and subcontract costs that are reimbursed on the basis of actual cost:
- (A) Any invoices or subcontract agreements substantiating material costs; and
- (B) Any documents supporting payment of those invoices.
- (5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. USAC within 30 days will pay any such increases, unless the parties agree otherwise. Contractor's payment will be made by check. If Contractor becomes aware of a duplicate invoice payment or that USAC has otherwise overpaid on an invoice payment, Contractor shall:
- i. Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
- (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
- (B) Affected contract number and delivery order number, if applicable;
- (C) Affected contract line item or sub-line item, if applicable; and
- (D) Contractor point of contact.
- ii. Provide a copy of the remittance and supporting documentation to the Contracting Officer.
- (6)
- i. All amounts that become payable by Contractor to USAC under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.
- ii. USAC may issue a demand for payment to Contractor upon finding a debt is due under the contract.

- iii. Amounts shall be due at the earliest of the following dates:
 - (A) The date fixed under this contract.
 - (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
 - iv. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on:
 - (A) The date on which the designated office receives payment from Contractor;
 - (B) The date of issuance of a USAC payment to Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
 - (C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to Contractor.
 - v. Upon receipt and approval of the invoice designated by Contractor as the “completion invoice” and supporting documentation, and upon compliance by Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by Contractor as promptly as practicable following completion of the work under this contract, but in no event later than one year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.
- (7) *Release of claims.* Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging USAC, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.
- i. Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by Contractor.
 - ii. Claims, together with reasonable incidental expenses, based upon the liabilities of Contractor to third parties arising out of performing this contract, that are not known to Contractor on the date of the execution of the release, and of which Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to Contractor that USAC is prepared to make final payment, whichever is earlier.
 - iii. Claims for reimbursement of costs (other than expenses of Contractor by reason of its indemnification of USAC against patent liability), including reasonable

incidental expenses, incurred by Contractor under the terms of this contract relating to patents.

- (8) *Prompt payment.* USAC will pay for accepted services within 30 calendar days of receipt of Contractor's invoice provided such invoice is proper and submitted in accordance with terms set forth herein.
- (9) *Electronic Funds Transfer (EFT).* USAC will make payment by EFT. See section C.3(b)49 (FAR § [52.232-34](#), Payment by Electronic Funds Transfer – Other than System for Award Management).
- (10) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the specified payment date of the electronic funds transfer payment.
 - (l) *Termination for USAC's convenience.* (Tailored) USAC reserves the right to terminate this task order, or any part hereof, for its sole convenience. In the event of such termination, Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to Contractor plus reasonable charges Contractor can demonstrate to the satisfaction of USAC using its standard record keeping system that have resulted from the termination. Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give USAC any right to audit Contractor's records. Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
 - (m) *Termination for cause.* (Tailored) USAC may terminate this task order, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract or task order terms and conditions, or fails to provide USAC, upon written request, with adequate assurances of future performance. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i) Payments of this clause, but the "hourly rate" for labor hours expended in furnishing work not delivered to or accepted by USAC shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (a)(4) of this clause, the portion of the "hourly rate" attributable to profit shall be 10 percent. In the event of termination for cause, the Contractor shall be liable to USAC for any and all rights and remedies provided by law. If it is determined that USAC improperly terminated this task order for default, such termination shall be deemed a termination for convenience.

2. Addendum to Contract Terms and Conditions—Commercial Items, FAR § 52.212-4 (July 2013) (Deviation)

(a) *Definitions*

- (1) Unless otherwise defined herein or in any attachment hereto, and supplementing the FAR definitions incorporated by reference in section C.1.(e), terms capitalized for other than grammatical purposes and used herein or in any attachment hereto shall have the meanings set forth below.
- (2) “Contract” means the legally binding, written agreement between USAC and Contractor that shall consist of the signed Solicitation/Contract/Order for Commercial Items (Section A -- SF 1449) cover sheet, sections B through D of the solicitation, including any amendments, and all attachments and appendices thereto as issued by the Contracting Officer to Contractor following award (including Contractor’s completed representations and certifications, and other sections of Contractor’s proposal to the extent explicitly incorporated), and any modifications that may be entered into by the parties from time to time.
- (3) “Contracting Officer” is the USAC representative identified in block 31b of the Solicitation/Contract/Order for Commercial Items (Section A -- SF 1449).
- (4) “Contracting Officer Technical Representative” (“COTR”) means a USAC employee designated and authorized in writing by the Contracting Officer as the USAC representative for specific technical or administrative functions related to the Contract.
- (5) “Contractor Software” means Software used by Contractor for which Contractor has acquired all ownership rights. Contractor Software does not include Third-Party Software or USAC Software.
- (6) “Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- (7) “Disabling Code” means Software code that is included in software to permit the owner of the software to disable the operations performed by the software at the remote command of such owner, or at a predetermined time or upon predetermined circumstances.
- (8) “Effective Date” means the date set forth in block 3, entitled “Award/Effective Date,” of the Section A – SF 1449 that is the cover of this Contract.
- (9) “Electronic Format” means deliverables and data created, by means other than scanning, using an industry standard, commercially available software program. To

the extent materials are not available to Contractor in a format that complies with the requirements of the preceding sentence (i.e., catalog cuts, materials received from third parties, etc.), scanning is acceptable.

- (10) “Including” shall mean including without limitation. This term is as defined, whether or not capitalized in this Contract
- (11) “Malicious Code” means Software code such as computer viruses, worms, trojan horses that is inserted into software and that is deliberately designed to damage data, provide unauthorized access to USAC Information, or produce an unexpected and unwanted result or computer operation.
- (12) “Offeror” means a person or entity submitting a proposal in response to a Request for Proposals (“RFP”).
- (13) “Party” and “Parties” shall be USAC and Contractor .
- (14) The “Schedule” means blocks 19 through 24 of section A and section B.
- (15) “Services” means the services, functions and responsibilities described in this Contract as they may be supplemented, enhanced, modified or replaced.
- (16) “Software” means computer programs that allow or cause a computer to perform a specific operation or series of operations, together with all modifications to, or enhancements (derivative works) thereof.
- (17) “Stakeholder” means any or all of the schools, libraries and rural health care provider applicants, and the service providers that deliver services to those entities.
- (18) “Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor in connection with the performance of this Contract.
- (19) “Telecommunications Services” is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- (20) “Telecommunications Services Provider” means a provider of Telecommunications Services.
- (21) “Third-Party Software” means Software that is provided under license or lease by a third party to Contractor or USAC. Third-Party Software includes any Subcontractor Software that is not USAC Software.
- (22) “Travel Expenses” means the actual costs of transportation to and from the audit location, meals while working at the audit location, accommodations in the event

travel requires an overnight stay to work at an audit location, and certain other expenses, to the extent that such expenses are permitted in, and incurred in accordance with, the USAC Contractor Travel Expenses Policy, Attachment 5, and provided that the audit location is more than 50 miles from the Contractor or Subcontractor employee's regular place of business.

- (23) "USAC Confidential Information" has the meaning set forth in Attachment 4 of this Contract.
 - (24) "USAC Information" means all written, electronically, magnetically or optically stored, or printed material, including without limitation, reports, Stakeholder applications and submissions, all beneficiary payment related information, FCC forms, manuals, memoranda, electronic mail, images, specifications, drawings, databases (including all related documentation, but not including database management software) screen format and other visual effects, technical information, Stakeholder information, procedures for administering federal universal service fund ("USF") Programs, and business information (not including information relating only to Contractor's or any Subcontractor's business or operations) that is created, modified, reproduced or maintained by USAC. "USAC Information" also includes information concerning USAC's business, Stakeholders or operations that is collected, developed or recorded by Contractor or any Subcontractor in the performance of the Contract, including without limitation, program procedures and program specific information that is provided to Contractor or Subcontractor by a Stakeholder in the course of performance of the Contract or that is created or derived from such information. "USAC Information" includes USAC's Confidential Information.
 - (25) "USAC Software" means (1) Software developed by USAC or title to which was acquired by USAC from a third party, or (2) Software first produced in the performance of this Contract.
 - (26) "Work Made for Hire" has the meaning set forth in 17 U.S.C. § 101.
- (b) *Ordering* (FAR § 52.216-18, Oct 1995) (Deviation)
- (1) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the Effective Date through expiration of the Contract Term.
 - (2) All delivery orders or task orders are subject to the terms and conditions of this Contract. In the event of conflict between a delivery order or task order and this Contract, the Contract shall control.
 - (3) If mailed, a delivery order or task order is considered "issued" when USAC deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(c) *Order Limitations* (FAR § 52.216-19, Oct 1995) (Deviation)

- (1) Minimum order. When USAC requires supplies or services covered by this contract in an amount of less than \$3,000.00, USAC is not obligated to purchase, nor is Contractor obligated to furnish, those supplies or services under the contract.
- (2) Maximum order. Contractor is not obligated to honor:
 - i. Any order for a single item in excess of five million dollars;
 - ii. Any order for a combination of items in excess of eighteen million dollars; or
 - iii. A series of orders from the same ordering office within thirty days that together call for quantities exceeding the limitation in subparagraph (2)(i) or (2)(ii) of this section.
- (3) [Reserved]
- (4) Notwithstanding paragraph (2) of this section, Contractor shall honor any order exceeding the maximum order limitations in paragraph (2), unless that order (or orders) is returned to the ordering office within 5 days after issuance, with written notice stating Contractor's intent not to perform the services called for and the reasons. Upon receiving this notice, USAC may acquire the supplies or services from another source.

(d) *Indefinite Quantity* (FAR § 52.216-22, Oct 1995) (Deviation)

- (1) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (2) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Contractor shall furnish to USAC, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." USAC shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (3) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. USAC may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (4) Any order issued during the effective period of this contract and not completed within that period shall be completed by Contractor within the time specified in the order. The Contract shall govern Contractor's and USAC's rights and obligations with respect to that order to the same extent as if the order were completed during the Contract's

effective period; provided, that Contractor shall not be required to make any deliveries or perform any services under this contract after six months following expiration of the Contract Term.

(e) *Task Order Issuance Procedures*

- (1) Prior to issuing each task order solicitation, the CO will make a determination whether to set-aside the task order for competition exclusively among small businesses by limiting competition to contractors under the Small Business Track. USAC will automatically set-aside task orders with an estimated value of less than \$1 million , unless the Contracting Officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business contractors that are competitive in terms of market prices, quality, and delivery. USAC will set-aside task orders in excess of \$1,000,000 if it has a reasonable expectation that: (1) offers will be obtained from at least two responsible small business contractors; and (2) the award will be made at fair market prices. Only Small Business Track contractors will be requested to submit proposals for task orders that are set-aside for competition among small businesses.
- (2) All IDIQ contractors, both large and small, will be requested to submit quotes for all task orders competed on an unrestricted basis. USAC will provide eligible contractors a fair opportunity to be considered for each order exceeding \$3,000 by issuing a task order RFP electronically. Task order RFPs will: (1) specify whether the task order competition is limited to contractors under the Small Business Track or is unrestricted, *i.e.*, open to all IDIQ contractors; (2) describe the work to be performed; (3) identify the period of performance; (4) request proposals by a specified date; (5) request information concerning any potential or actual conflicts of interest or appearance issues relating to the proposed task order; (6) include instructions for submission of technical proposals, including the submission of a task plan and staffing plan; (7) identify the evaluation factors, including price, and their respective importance, and the basis for task order award; and (8) require either a firm-fixed price or a time & materials (“T&M”) proposal. When USAC requests T&M proposals, IDIQ contractors must propose fixed labor rates no higher than those established in their IDIQ contracts (*i.e.*, discounted fixed labor rates may be proposed for an individual task order) and a task order ceiling price that includes estimated Travel Expenses. All proposals received will be evaluated in accordance with the evaluation factors stated in the task order RFP.
- (3) Exceptions to the fair opportunity process described in paragraphs (1) and (2) above, as authorized by the Contracting Officer, are:
 - i. USAC’s need for the services is so urgent that providing a fair opportunity would result in unacceptable delays;
 - ii. 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;

- iii. 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 an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or
- iv. It is necessary to place an order to satisfy a guaranteed minimum amount.

(f) *Task Order Ombudsman*

- i. A Task Order Ombudsman will be available to assist in the resolution of any complaints regarding task order awards. The Task Order Ombudsman's responsibilities are to review contractor complaints regarding task order awards and to ensure that all contractors are afforded a fair opportunity to be considered for each task order, consistent with the procedures in section C.2(e).
- ii. Prior to contacting the Task Order Ombudsman, Contractors are encouraged to first try to resolve any issues with the Contracting Officer.
- iii. The Task Order Ombudsman for this Contract is Ed Falkowitz, USAC's Competition Advocate and Director of Accounting and Financial Reporting. Mr. Falkowitz may be reached by calling 202-776-0200 or via e-mail at efalkowitz@USAC.org

(g) *Record Retention*

Contractor shall retain all electronic records and paper records relating to this Contract to permit examination in accordance with section C.3(d).

(h) *Information Security*

Contractor shall establish and maintain safeguards to protect the confidentiality and integrity of USAC Confidential Information in its possession according to industry best practice standards. This includes all information that is sent to and received from USAC and Stakeholders. Contractor and its Subcontractors shall ensure that their respective local area networks, servers, and personal computers are secure from unauthorized access from within or outside their respective organizations.

(i) *Provision, Retention, and Replacement of Contractor Personnel; Key Personnel*

- (1) Contractors will be selected to perform task orders based on, among other factors, proposed personnel. If selected to perform a task order, Contractor must assign the proposed personnel to the task order for the duration of the task order. No substitution of personnel shall be made except in accordance with this clause.
- (2) Contractor agrees that, unless otherwise stated in the applicable task order, no personnel substitutions will be made unless necessitated by reasons deemed by the Contracting Officer to be compelling, such as: an individual's illness, death,

termination of employment, or family leave. In such an event, Contractor must promptly provide the information required by paragraph (4) below to the Contracting Officer for approval prior to the substitution of personnel

- (3) If Contractor becomes aware that personnel assigned to a task order are, or will be, (A) unavailable for work on the task order for a continuous period exceeding 10 working days, or (B) unavailable to provide the level of effort indicated in the task order, Contractor shall propose a substitution to such personnel, in accordance with paragraph (4) below.
- (4) All proposed personnel substitutions shall be submitted, in writing, to the Contracting Officer at least 5 days prior to the proposed substitution. Each request shall provide a detailed explanation of the circumstances necessitating the proposed substitution, a complete resume for the proposed substitute and any other information required by the Contracting Officer to approve or disapprove the proposed substitution at his/her sole discretion. All proposed personnel substitutes (no matter when they are proposed during the performance period) shall be capable of performing the services described in, and meet all qualifications listed under, the applicable position description(s) set forth in Section D, Attachment 2(1).
- (5) The Contracting Officer shall promptly notify Contractor, in writing, of whether the request for personnel substitution is approved or disapproved.
- (6) If the Contracting Officer determines that suitable and timely replacement of personnel who have been reassigned, terminated or have otherwise become unavailable to perform under the task order is not reasonably forthcoming, or that the resultant reduction of productive effort would impair the successful completion of the contract or the task order, the task order may be terminated by the Contracting Officer for cause or for the convenience of USAC, as appropriate. The Contractor will be liable for any damages incurred by USAC that result from Contractor's failure to provide a timely replacement.
- (7) In the event USAC determines in good faith that the continued assignment of a Contractor employee to perform any part of the Services is not in the best interests of USAC, then USAC shall give Contractor written notice to that effect. After receipt of such notice, Contractor shall have 2 working days in which to investigate the matters stated in such notice, discuss its findings with USAC, and resolve any problems with such person. If, following such period, USAC requests replacement of such person, Contractor shall remove such person from performance of the task order and shall, within five days, propose replacement personnel with acceptable experience, training and qualifications for the position. Failure to promptly propose an acceptable replacement with the qualifications required for the position, or failure to promptly staff the task order with such replacement, is grounds for termination of the task order. Notwithstanding the foregoing, in the event USAC determines there exists a potential for imminent harm to the programs, USAC, or USAC's employees, Contractor shall remove the employee immediately upon request by USAC.

(8) Key personnel identified in the Contract shall not be removed from the contract effort, or otherwise replaced, unless necessitated by reasons deemed by the Contracting Officer to be compelling (such as an individual's illness, death, termination of employment, or family leave) or unless USAC requires their replacement. Key personnel for this contract are: (1) the Partner/Principal/Director Auditing Services; (2) Senior Manager(s) Auditing Services; (3) the Lead Project Manager; and (4) any other Contractor personnel identified expressly as key personnel elsewhere in this Contract. Any proposed changes to key personnel must be submitted in writing to the Contracting Officer for approval prior to the addition, removal or replacement of key personnel.

(j) *USAC Information*

USAC Information is provided to Contractor solely for the purpose of rendering the Services, and USAC Information or any part thereof shall not be sold, assigned, leased, or otherwise transferred to any third party by Contractor (except as required to perform the Services or as otherwise authorized in this Contract), commingled with non-USAC Information, or commercially exploited by or on behalf of Contractor, or its employees or agents. Promptly upon the expiration of the Contract term, or such earlier time as USAC may direct, Contractor shall, at the direction of USAC, and at no additional cost to USAC, return or destroy all copies of USAC Information in the possession or under the control of Contractor or its employees or any subcontractors or their employees. Contractor shall not withhold any USAC Information as a means of resolving any dispute. To the extent that there is a dispute between Contractor and USAC, Contractor may make a copy of such USAC Information as is necessary and relevant to resolution of the dispute. Any such copies shall promptly be destroyed upon resolution of the dispute.

(k) *Confidentiality*

(1) USAC Confidential Information

Contractor acknowledges that during the course of this Contract, it may be exposed to USAC Confidential Information the misappropriation, unauthorized use, or disclosure of which would cause irreparable harm to USAC and the entities affiliated with USAC programs. USAC Confidential Information does not include information that Contractor can demonstrate (A) was, at the time of disclosure to it, in the public domain; (B) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of Contractor; (C) was lawfully in Contractor's possession, without an obligation of confidentiality, prior to receipt hereunder, as evidenced by written records of Contractor; (D) was received independently by Contractor from a third party who was free to lawfully disclose such information to Contractor without restriction of confidentiality; or (E) was independently developed by Contractor without reference to USAC Confidential Information.

(2) Non-Disclosure/Confidentiality Obligations

During the term of this Contract and at all times thereafter, Contractor shall maintain the confidentiality of all USAC Confidential Information and prevent its unauthorized disclosure, publication, dissemination, destruction, loss, or alteration. Contractor agrees that it will disclose USAC Confidential Information to employees and Subcontractors only as necessary for the performance of this Contract, and only to the extent necessary to discharge their duties as required by this Contract.

Contractor shall require each of its employees and the employees of any Subcontractor who will receive access to USAC Confidential Information to sign the Confidentiality Agreement set forth in section D, Attachment 4 as a condition to performance under this Contract. Upon the termination of any employee, Contractor, and any Subcontractor(s), shall remind their employees of their continuing confidentiality obligations.

(3) Contractor Enforcement of Confidentiality Agreement

Contractor shall comply with the terms of the Confidentiality Agreement as well as the provisions with respect to USAC Confidential Information set forth herein. Any breach or violation of the Confidentiality Agreement shall be reported to the USAC General Counsel, or the USAC General Counsel's designee, immediately upon becoming aware of the breach or violation. Any report in connection with a breach or violation of the Confidentiality Agreement must contain a complete account of the nature and extent of the violation, the identity and positions of the individuals participating in the violation, the steps taken to recover any improperly disclosed USAC Confidential Information, the extent to which such recovery was accomplished, and the steps being taken to prevent future occurrences of a similar nature.

(4) USAC Enforcement of Confidentiality Agreement

USAC may enforce the terms of the Confidentiality Agreement against a Contractor or Subcontractor employee as a third-party beneficiary of the Confidentiality Agreement.

(5) Exclusions

Contractor shall not be considered to have breached its obligations under this section C.2(k) for disclosing USAC Confidential Information as required to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request and to the extent that it may legally do so, Contractor advises USAC of the USAC Confidential Information to be disclosed and the third party requiring such disclosure, in order that USAC may interpose an objection to such disclosure, take action to assure confidential handling of the USAC Confidential Information, or take such other action as it deems appropriate to protect the USAC Confidential Information.

(6) **Warranties**

USAC represents and warrants that it has the right to disclose all USAC Confidential Information that it discloses to Contractor pursuant to this Contract. Otherwise, USAC makes no representation or warranty, express or implied, with respect to any USAC Confidential Information.

(l) *Proprietary Rights and Software*

- (1) Data First Produced in Performance of this Contract. USAC shall have exclusive ownership of all Data first produced in the performance of this Contract and, with regard to such Data, USAC shall have the rights to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so. Notwithstanding any provision in this Contract that states otherwise, Contractor hereby assigns to USAC the copyrights in all Data first produced by Contractor in the performance of this contract, including, but not limited to, any Stakeholder information, including but not limited to reports, notes, or other deliverables. Contractor agrees to execute any additional documents which may be necessary to vest ownership of all such copyrights in USAC. USAC's rights in Data first produced in performance of this contract are transferrable to any future USF administrator or the FCC at no cost in the event USAC's participation in administering the USF ends. Except as otherwise specifically provided for in this Contract, the Contractor shall not use, release, reproduce, distribute, or publish any Data first produced in the performance of this contract, nor authorize others to do so, without prior written permission of USAC.
- (2) Data Not First Produced in the Performance of this Contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in Data delivered under this contract any Data not first produced in the performance of this contract unless the Contractor:
 - (i) Identifies the Data; and
 - (ii) Grants to the USAC, or acquires on USAC behalf, a license of the same scope as set forth in paragraph (1) of this section.
- (3) Third-Party Software supplied by USAC. USAC grants to Contractor or, at Contractor's request, to one of its Subcontractors, to the extent authorized by the Third-Party Software license, the same rights of access and use during the term of the Third-Party Software held by USAC, for the sole purpose of performing the Contract.
- (4) Malicious Code. Contractor represents and warrants that it shall prevent the introduction and proliferation of any Malicious Code into USAC's computer environment. In the event any Malicious Code is found in USAC's computer environment and such Malicious Code originated in equipment, Software, or Services provided by Contractor or originated from any person for whom Contractor is

responsible, Contractor shall at its own expense take all necessary efforts to: (a) promptly remove such Malicious Code and restore or recover lost or damaged USAC Information to the extent possible, caused by such Malicious Code using generally accepted data restoration techniques including the use of the most recent available backup unaffected by the Malicious Code and (b) eliminate, and reduce the effects of, the Malicious Code.

- (5) **Disabling Code.** Contractor shall not introduce into any Software operating in USAC's computer environment, or permit to be invoked, any Disabling Code.
- (6) Contractor shall obtain from its Subcontractors all Software and Data, and all rights therein, necessary to fulfill Contractor's obligations to USAC under this Contract.
- (7) **Residual Knowledge.** Nothing contained in this Contract shall restrict either Party from the use of any ideas, concepts, know-how, or techniques relating to the Services which either Party, individually or jointly, develops or discloses under this Contract, provided that in doing so such Party does not breach its obligations under sections C.2.(e) and (f) or infringe the intellectual property rights of the other Party or third parties who have licensed or provided materials to the other Party. However, neither this Contract nor any disclosure made hereunder grants any license to either Party under any patents or copyrights of the other Party.

(m) *Insurance*

- (1) All insurance policies required shall be maintained in full force until all services under this Contract are completed. Contractor shall provide 30 days' prior written notice to USAC in the event of cancellation of or material change in the policy.
- (2) Upon the Effective Date, Contractor shall furnish USAC with insurance certificates evidencing that the required coverage is in force. USAC shall not be liable for the payment of any premiums.
- (3) The insurance companies indicated in the certificates shall have an AM Best rating of A or better and a surplus rating of 7.
- (4) Compliance with the insurance requirements set forth herein shall not release Contractor of full responsibility for all liability as set forth in the indemnification clause stated in section C.2(q).
- (5) The minimum requirements of insurance to be carried by Contractor shall be as follows:
 - (i) Workers' Compensation and Employer's Liability Insurance:

- a) Coverage A, Workers' Compensation - Statutory benefits as required by the Workers' Compensation Laws of all appropriate jurisdictions and reference to such compliance made on all certificates of insurance.
 - b) Coverage B, Employer's Liability - One Million Dollars (\$1,000,000), or as otherwise required by law.
- (ii) Commercial General Liability Insurance.
- a) Commercial General Liability Insurance in an amount not less than Three Million Dollars (\$1,000,000) combined single limit, or the equivalent, as respects Bodily and Personal Injury and Property Damage in any one occurrence/Five Million Dollars (\$5,000,000) aggregate
 - b) Contractual Liability Insurance to include coverage for the liabilities assumed under section C.2(q) in an amount not less than Three Million Dollars (\$1,000,000). Acceptance of coverage in this amount by USAC does not release Contractor of full responsibility for all liability as set forth in the indemnification clause set forth in section C.2.(q).
- (iii) Professional Liability Insurance

Professional Liability Insurance in an amount not less than Five Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$2,000,000) aggregate for claims arising out of Professional Services provisions under this Contract. Upon termination of Contractor's Contract, Contractor shall present evidence of an extended reporting period to provide coverage for claims for a period of three years from the date of termination.

- (6) USAC shall be informed in writing within 10 days of any Contractor insurance cancellation during the term of this Contract.
- (7) Contractor shall also maintain, to the extent it deems advisable, and at its own expense, any medical payments, life, disability, car rental, or other insurance necessary for its own protection. In no event will USAC be responsible for maintaining any of the foregoing insurance coverage.

(n) *Actions on Termination*

- (1) This subsection C.2(n) supplements C.1(l) "Termination for USAC's Convenience" and C.1(m) "Termination for Cause", above.
- (2) In the event of a partial termination for cause or for convenience, Contractor shall continue the work not terminated.

(3) Upon receipt of a notice of termination, unless otherwise directed by USAC, Contractor shall: (A) stop work to the extent specified in said notice; and (B) subject to the prior written approval of USAC, transfer title to USAC and deliver to USAC or as directed by USAC all materials, Data, work in process, completed work and other USAC Information and material produced in connection with, or acquired for, the work terminated.

(o) *Supplemental Terms Applicable to Terminations for Cause*

- (1) If USAC terminates this Contract for cause in whole or in part, it may acquire, under commercially reasonable terms and conditions, the terminated products and/or Services from another source, and Contractor will be liable to USAC for any reasonable excess costs incurred by USAC together with any incidental or consequential damages incurred because of the termination.
- (2) USAC's right to terminate this Contract in whole or part for cause may be exercised by USAC ten (10) calendar days after providing a written cure notice to Contractor specifying Contractor's failure to comply with terms or conditions of the Contract if Contractor does not cure such failure within such period.
- (3) To the extent requested in writing by USAC on partial or complete termination for cause, Contractor shall use its reasonable commercial efforts to make available to USAC or its designee, pursuant to reasonable terms and conditions, any third-party services being utilized by Contractor in the performance of the Contract prior to termination. Contractor shall be entitled to retain and utilize any such third-party services in connection with the performance of services for any other Contractor customer.
- (4) To the extent requested in writing by USAC on partial or complete termination for convenience, Contractor will, to the extent permitted by the terms of the subcontract, immediately assign to USAC any subcontract between Contractor and any Subcontractor that is dedicated to providing terminated Services to USAC.

(p) *Notices*

- (1) Except as otherwise specified in this Contract, any notice, demand for information, consent, approval or documents required or authorized by this Contract to be given to a Party shall be given in writing and shall be: (A) personally delivered, (B) mailed by registered or certified mail (return receipt requested) postage prepaid, (C) sent by overnight delivery service (with a receipt for delivery), (D) sent by facsimile with a signed acknowledgement of receipt by return facsimile, or (E) sent by electronic mail with a confirmation of receipt returned by recipient's electronic mail server to such Party at the following address.

For USAC	For Company
<p>Jim Cossen Contracting Officer Universal Service Administrative Company 2000 L Street, NW Suite 200 Washington, DC 20035 (202) 776-0200 jcosson@usac.org</p>	See Blocks 17A and 30B of the fully signed Solicitation/Contract Order for Commercial Items Cover Sheet
<p>With a copy to:</p> <p>David A. Capozzi Acting General Counsel Universal Service Administrative Company 2000 L Street, NW Suite 200 Washington, DC 20036 Telefax: 202-776-0080 Telephone: 202-776-0200 dcapozzi@usac.org</p>	With a copy to:

- (2) Each Party's designation of such person and/or address may be changed at any time by such Party upon written notice given pursuant to the requirements of this section. A notice served by mail shall be effective upon receipt.

(q) *Indemnity*

Contractor shall defend, indemnify and hold harmless USAC from and against, any costs, liabilities, damages or expenses (including reasonable attorneys' fees) arising out of or relating to:

- (1) Claims for personal injuries, death or damage to tangible personal or real property to the extent proximately caused by the negligent acts or negligent omissions of Contractor or its employees, agents, consultants, or Subcontractors in connection with this Contract; and
- (2) Claims of any nature whatsoever to the extent caused by the violation of contract terms, negligence, illegal or intentional wrongful acts or omissions of Contractor or its employees, agents, consultants, or Subcontractors in connection with the performance of the Services.

(r) *Gratuities*

- (1) The right of Contractor to proceed may be terminated by written notice if the USAC Contracting Officer determines that Contractor, its agent, or another representative:
 - i. Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of USAC; and
 - ii. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (2) If this Contract is terminated under paragraph (1) of this clause, USAC is entitled to pursue the same remedies as in a breach of the Contract.
- (3) The rights and remedies of USAC provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

(s) *Choice of Law/Consent to Jurisdiction*

- (1) This Contract shall be governed by and construed in accordance with the laws of the District of Columbia without regard to any otherwise applicable principle of conflicts of laws except as they may be preempted by, or in conflict with, any federal laws, rules, regulations or regulatory action.
- (2) The Parties hereto agree that all actions or proceedings arising in connection with this Contract shall be litigated exclusively in the State and Federal courts located in the District of Columbia. The choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this Contract in any jurisdiction other than that specified in this paragraph. Each Party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts located in the District of Columbia shall have *in personam* jurisdiction over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Contract.

(t) *Independent Contractor*

Contractor acknowledges and agrees that it is an independent contractor to USAC and Contractor's personnel, employees, representatives, directors, officers, subcontractors and agents are not employees of USAC. USAC will not withhold or contribute to Social Security, workers' compensation, federal or state income tax, unemployment compensation or other employee benefit programs on behalf of Contractor or Contractor personnel. Contractor shall indemnify and hold USAC harmless against any and all loss, liability, cost and expense (including attorneys' fees) incurred by USAC as a result of USAC not

withholding or making such payments. Neither Contractor nor any of Contractor's personnel are entitled to participate in any of the employee benefit plans of, or otherwise obtain any employee benefits from, USAC. USAC has no obligation to make any payments to Contractor's personnel, employees, representatives, directors, officers, subcontractors and agents.

(u) *Invalidity of any Provision*

It is the intent of the Parties that the provisions of this Contract will be enforced to the fullest extent permissible, but that the unenforceability of any provision will not render unenforceable or impair the remainder of this Contract, which will be deemed amended to delete or modify, as necessary, the invalid or unenforceable provisions. The Parties further agree to negotiate replacement provisions for any unenforceable term that are as close as possible to the original term and to change such original term only to the extent necessary to render the same valid and enforceable.

(v) *Waiver*

The waiver by either Party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach by either Party.

(w) *Binding Effect*

This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legatees, personal representatives and other legal representatives, successors, and assigns.

(x) *Entire Agreement*

This Contract constitutes the entire agreement between the Parties on the subject matter hereof, and there are no representations, warranties, covenants, or obligations except as set forth herein. This Contract supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the Parties hereto relating to the subject matter of this Contract. Except as otherwise specifically provided herein, nothing in this Contract is intended or shall be construed to confer upon or to give any person other than the Parties hereto any rights or remedies under or by reason of this Contract.

(y) *Public Statements*

Neither Contractor nor its Subcontractors shall issue any public statement relating to or in any way disclosing any aspect of this Contract without the prior written consent of USAC.

(z) *Conflict of Interest*

- (1) USAC is the appointed neutral administrator of the federal universal service programs and the federal universal service fund (USF). USAC is governed by a Board of Directors comprised of various stakeholders in the universal service programs, and is forbidden from advocating positions on universal service policy matters.¹ Because of USAC's unique role as neutral administrator, it is essential that any Contractor providing assistance to USAC in administering the universal service programs and the USF maintain the same neutrality, both in fact and in appearance. Moreover, because the USF constitutes public funds, it is essential that Contractor avoid strictly any conflict of interest or even the appearance of a conflict of interest relating to the performance of this Contract. To the extent that Contractor or any Subcontractor has client, membership, financial and/or any other material affiliation with entities that participate in the federal USF in any respect (including but not limited to receiving universal service support, contributing to the universal service programs, advocating policy positions on matters related to the programs), there may be actual, potential and/or apparent conflict(s) of interest associated with providing services related to the administration of the USF. An actual or potential conflict of interest, or the appearance of a conflict of interest, may also arise from any employment or consultation arrangement involving USAC or FCC employees and the Contractor or any Subcontractor, or from the existence of any ownership or control of the Contractor or any Subcontractor by an FCC or USAC employee.
- (2) During the term of this Contract, Contractor shall take all necessary actions to ensure that Contractor employees and Subcontractor employees providing services under the Contract do not participate in the federal universal service programs in any respect (including but not limited to receiving universal service support, contributing to the universal service programs, advocating policy positions on matters related to the programs or providing services to entities participating in the universal service programs or the USF). A failure of Contractor employees or Subcontractor employees to comply with the aforesaid requirements shall be deemed a conflict of interest on the part of Contractor.
- (3) During the term of this Contract, Contractor shall promptly notify USAC of any actual or potential conflicts of interest involving Contractor or any Subcontractor, or any circumstances that give rise to the appearance of a conflict of interest, and the means by which it proposes to avoid, neutralize, or mitigate such conflicts. Contractor shall report such conflicts or potential conflicts or appearance issues to USAC in writing and provide detailed information regarding the nature of the conflict, including as applicable: (1) any ownership, control or other business or contractual relationship(s) between Contractor (or Subcontractor) and the Telecommunications Services Provider(s) or beneficiaries of, or other organizations that participate in, the universal service programs; (2) the percentage of Contractor's (or Subcontractor's) revenues received from, and Contractor's (or Subcontractor's) debt held by, Telecommunications Services Provider(s) or beneficiaries of, or other organizations

¹ See 47 C.F.R. §§ 54.703, 54.702(d).

that participate, in the universal service programs or contribute to the USF (the percentages shall be calculated as of the date of Contractor's notification or for the twelve-month period immediately preceding the notification, as applicable); and (3) whether any of the personnel assigned to this engagement also will be assigned to an engagement with a Telecommunications Services Provider or beneficiary of, or other organization that participates in, the universal service programs or contributes to the USF in the preceding 12 months. Contractor shall promptly provide USAC with a detailed proposal on how Contractor intends to avoid, neutralize, or mitigate the actual or potential conflict of interest.

- (4) Failure to avoid, neutralize or mitigate any actual or potential conflict of interest, or the appearance of a conflict of interest, to USAC's satisfaction may result in termination of this Contract.
- (5) Contractor and any Subcontractors must refrain from advocating policy positions with respect to federal universal service matters.
- (6) Contractor shall include the requirements of this section C.2(z), including this flow down requirement, in all subcontracts and consultant agreements.

(aa) *Corporate Authorizations*

Each Party represents and warrants to the other that:

- (1) It has the requisite corporate power and authority to enter into this Contract and to carry out the transactions contemplated by this Contract; and
- (2) The execution, delivery and performance of this Contract and the consummation of the transactions contemplated by this Contract have been duly authorized by the requisite corporate action on the part of such Party.

(bb) *Option to Extend Services (FAR § 52.217-8, Nov 1999) (Deviation) (Applicable only to task orders)*

USAC may require continued performance of any services within the limits and at the rates specified in the task order. The option provision may be exercised more than once, but the total extension of performance hereunder for any single task order shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to Contractor within 15 days of the expiration of the then current term of a task order.

(cc) *Contracting Officer Technical Representative (COTR)*

The Contracting Officer will identify in each task order a COTR who is responsible for monitoring the Contractor's performance of services under the task order and for providing technical direction within the scope of the Contract. The COTR has authority to:

- (1) Review and accept or reject work and deliverables.

- (2) Review and recommend approval or disapproval of invoices.

In no event will any understanding or agreement, modification, directive, or other matter deviating from the terms and conditions of the Contract be effective or binding upon USAC unless formalized in a contract modification executed by the Contracting Officer prior to completion of this Contract. Whenever, in the opinion of the Contractor, the COTR requests any effort outside the scope of the Contract, the Contractor shall notify the COTR. If the COTR persists and there still exists a disagreement as to the proper contractual coverage, the Contractor shall notify the Contracting Officer immediately, in writing. If the Contractor proceeds with work without proper contractual coverage, it does so at its own risk and may not receive payment for such work.

The Contractor shall communicate the scope and limitations of the COTR's authority to its employees working on this contract and to any subcontractors providing support.

(dd) *USAC and Contract Status*

USAC is not a Federal agency, government corporation, government controlled corporation or other establishment in the Executive Branch of the United States Government. USAC is not a contractor to the Federal Government. The Contract is not a subcontract under a Federal prime contract. However, USAC conducts its procurements in accordance with the terms of a Memorandum of Understanding with the FCC, which requires USAC, as a general matter, to apply designated provisions of the FAR, including requirements for full and open competition.

(ee) *Option to Extend the Term of the Contract* (FAR § 52.217-9, Mar 2000) (Deviation)

- (1) USAC may extend the term of this contract by written notice to the Contractor within 60 prior to Contract expiration, provided that USAC gives the Contractor a preliminary written notice of its intent to extend at least 90 days before the Contract expires. The preliminary notice does not commit USAC to an extension.
- (2) If the Government exercises this option, the extended Contract shall be considered to include this option clause.
- (3) The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five years.

3. FAR § 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (Aug 2013) (Deviation)

(a) Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses (as amended):

1. FAR § 52.222-50, Combating Trafficking in Persons (Feb 2009) (Deviation)

A. *Definitions.* As used in this clause:

“Coercion” means:

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced Labor” means knowingly providing or obtaining the labor or services of a person:

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of:

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means:

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

B. *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. USAC, as the Administrator of the USF, supports this policy. Contractors and contractor employees shall not:

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

C. *Contractor requirements.* Contractor shall:

- (1) Notify its employees of:
 - i. The United States Government’s zero tolerance policy described in paragraph B of this clause and USAC’s support of this policy; and
 - ii. The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph B of this clause.

D. *Notification.* Contractor shall inform the Contracting Officer immediately of:

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

E. *Remedies.* In addition to other remedies available to USAC, Contractor’s failure to comply with the requirements of paragraphs C, D, or F of this clause may result in:

- (1) Requiring Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring Contractor to terminate a subcontract;
- (3) Suspension of contract payments; or
- (4) Termination of the contract for default or cause, in accordance with the termination clause of this contract.

F. *Subcontracts.* Contractor shall include the substance of this clause, including this paragraph F, in all subcontracts.

G. *Mitigating Factor.* The Contracting Officer may consider whether Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

2. [Reserved]

3. [Reserved]

(b) Contractor shall comply with the following FAR clauses (with deviations) in this paragraph (b):

1. FAR § 52.203-6, Restrictions on Subcontractor Sales to USAC (Sep 2006), with Alternate I (Oct 1995) (Deviation).

(A) Except as provided in (B) of this clause, Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to USAC of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(B) The prohibition in paragraph (A) of this clause does not preclude Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (A) applies only to the extent that any agreement restricting sales by subcontractors results in USAC being treated differently from any other prospective purchaser for the sale of the commercial item(s).

(C) Contractor agrees to incorporate the substance of this clause, including this paragraph (C), in all subcontracts under this contract which exceed the simplified acquisition threshold.

2. FAR § 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Deviation):

(A) Definitions. As used in this clause—

“Agent” means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

“Full cooperation:”

- (1) Means disclosure to USAC of the information sufficient to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to USAC’s request for documents and access to employees with information;
- (2) Does not foreclose any Contractor rights arising in law or the terms of the contract. It does not require:
 - i. A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or
 - ii. Any officer, director, owner, or employee of Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and
- (3) Does not restrict a Contractor from:
 - i. Conducting an internal investigation; or
 - ii. Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

“United States,” means the 50 States, the District of Columbia, and outlying areas.

(B) Code of business ethics and conduct:

- (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, Contractor shall:
 - i. Have a written code of business ethics and conduct; and
 - ii. Make a copy of the code available to each employee engaged in performance of the contract.
- (2) Contractor shall:
 - i. Exercise due diligence to prevent and detect criminal conduct; and
 - ii. Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
- (3)
 - i. Contractor shall timely disclose, in writing, to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, Contractor has credible evidence that a principal, employee, agent, or subcontractor of Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code.
 - ii. USAC, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by USAC to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to Contractor. USAC may transfer documents provided by Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction. All information and documents provided by Contractor may be transferred to the appropriate department within the Federal Communication Commission.

(C) Contractor business ethics awareness and compliance program and internal control system. This paragraph (C) does not apply if Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR § 2.101. Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

- (1) An ongoing business ethics awareness and compliance program.

- i. This program shall include reasonable steps to communicate periodically and in a practical manner Contractor's standards and procedures and other aspects of Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.
 - ii. The training conducted under this program shall be provided to Contractor's principals and employees, and as appropriate, Contractor's agents and subcontractors.
- (2) An internal control system.
- i. Contractor's internal control system shall:
 - a) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with USAC contracts; and
 - b) Ensure corrective measures are promptly instituted and carried out.
 - ii. At a minimum, Contractor's internal control system shall provide for the following:
 - a) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.
 - b) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with Contractor's code of business ethics and conduct.
 - c) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with Contractor's code of business ethics and conduct, including:
 - (1) Monitoring and auditing to detect criminal conduct;
 - (2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and
 - (3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

- d) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.
- e) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.
- f) Timely disclosure, in writing, to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any USAC contract performed by Contractor or a subcontract thereunder, Contractor has credible evidence that a principal, employee, agent, or subcontractor of Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C.
 - (1) The disclosure requirement continues until at least 3 years after final payment on the contract.
 - (2) USAC will safeguard such disclosures in accordance with paragraph (B)(3)(i) of this clause.
 - (3) Full cooperation with USAC and any Government agencies responsible for audits, investigations, or corrective actions.

(D) Subcontracts.

Contractor shall include the substance of this clause, including this paragraph (D), in subcontracts that have a value in excess of \$5,000,000 and a performance period of more than 120 days

- 3. [Reserved]
- 4. [Reserved]
- 5. [Reserved]
- 6. FAR § 52.209-6, Protecting USAC's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Aug 2013) (Deviation).
 - (A) *Definition.* “Commercially available off-the-shelf (COTS)” item, as used in this clause:
 - (1) Means any item of supply (including construction material) that is:
 - i. A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);
 - ii. Sold in substantial quantities in the commercial marketplace; and

- iii. Offered to USAC, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
- (B) The Federal Government suspends or debars Contractors to protect the Federal Government's interests. Other than a subcontract for a commercially available off-the-shelf item, Contractor shall not enter into any subcontract, in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.
- (C) Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (D) A corporate officer or a designee of Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR § 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
 - (4) The systems and procedures Contractor has established to ensure that it is fully protecting the USAC's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

7. FAR 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (July 2013) (Deviation)

Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management database at <https://www.acquisition.gov>.

8. FAR § 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (May 2012) (Deviation).

(A) *Definitions.* As used in this clause:

“Inverted domestic corporation” means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. § 395(b), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. § 395(b), applied in accordance with the rules and definitions of 6 U.S.C. § 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. § 7874.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned:

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

(B) If Contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, USAC may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. USAC may seek any available remedies in the event Contractor fails to perform in accordance with the terms and conditions of the contract as a result of USAC action under this clause.

9. [Reserved]

10. FAR § [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 2011) (Deviation) (if the offeror elects to waive the preference, it shall so indicate in its offer) (**Applicable only to contracts awarded under the Unrestricted Track.**)

(A) *Definitions.* See 13 CFR § 125.6(e) for definitions of terms used in paragraph (d).

(B) *Evaluation preference.*

- (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except:
 - i. Offers from HUBZone small business concerns that have not waived the evaluation preference; and
 - ii. Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) [Reserved]

(4) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(C) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraphs (D) and (E) of this clause do not apply if the offeror has waived the evaluation preference.

[] Offeror elects to waive the evaluation preference.

(D) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for:

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction:

i. At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

ii. At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

iii. No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) Construction by special trade contractors:

i. At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

- ii. At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;
- iii. No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(E) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(F)

- (1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.
- (2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.
- (3) Paragraphs (F)(1) and (F)(2) of this section do not apply in connection with construction or service contracts.

(G) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR § 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

11. [Reserved]

12. FAR § 52.219-6, Notice of Total Small Business Set-Aside (Nov 2011) (Deviation)
(Applicable only to contracts awarded under the Small Business Track)

(A) Definition. "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the

field of operation in which it is bidding, and qualified as a small business under the size standards in this solicitation.

(B) Applicability. This clause applies only to

- (1) Contracts that have been totally set aside or reserved for small business concerns; and
- (2) Orders set aside for small business concerns under multiple-award contracts as described in FAR 16.505(b)(2)(i)(F).

(C) General.

- (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.
- (2) Any award resulting from this solicitation will be made to a small business concern.

(D) Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

13. [Reserved]

14. FAR § 52.219-8, Utilization of Small Business Concerns (July 2013) (Deviation).

(A) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns. USAC, as the Administrator of the USF, supports this policy.

(B) Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. Contractor further agrees to cooperate with USAC as may be necessary to determine the extent of Contractor's compliance with this clause.

(C) *Definitions.* As used in this contract:

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern”:

(1) Means a small business concern:

- i. Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - ii. The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. § 101(2), with a disability that is service-connected, as defined in 38 U.S.C. § 101(16).

“Small business concern” means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that:

- (1)
 - i. It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
 - ii. No material change in disadvantaged ownership and control has occurred since its certification;
 - iii. Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR § 124.104(c)(2); and
 - iv. It is identified, on the date of its representation, as a certified small disadvantaged business in the Dynamic Small Business Search database maintained by the Small Business Administration, or
- (2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and

controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR § 124.1002.

“Veteran-owned small business concern” means a small business concern:

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. § 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern:

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(D)

- (1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- (2) Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management (SAM) database or by contacting the SBA. Options for contacting the SBA include:
 - i. HUBZone small business database search application web page at http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm; or <http://www.sba.gov/hubzone>;
 - ii. In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or
 - iii. The SBA HUBZone Help Desk at hubzone@sba.gov.

15. FAR § 52.219-9, Small Business Subcontracting Plan (July 2013) (Deviation) (**Applicable only to contracts awarded under the Unrestricted Track**).

- (A) This clause does not apply to small business concerns.

(B) *Definitions.* As used in this clause:

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. § 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. § 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. § 1626(e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. § 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. § 1452(e).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a USAC prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(C) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic

contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(D) The offeror's subcontracting plan shall include the following:

- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all sub-contracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. § 1626:
 - i. Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
 - ii. Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
- (A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
- (B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.
- (C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
- (D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of:

- i. Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
 - ii. Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
 - iii. Total dollars planned to be subcontracted to veteran-owned small business concerns;
 - iv. Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
 - v. Total dollars planned to be subcontracted to HUBZone small business concerns;
 - vi. Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
 - vii. Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to:
- i. Small business concerns;
 - ii. Veteran-owned small business concerns;
 - iii. Service-disabled veteran-owned small business concerns;
 - iv. HUBZone small business concerns;
 - v. Small disadvantaged business concerns; and
 - vi. Women-owned small business concerns.
- (4) A description of the method used to develop the subcontracting goals in paragraph (D)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's

size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with:
 - i. Small business concerns (including ANC and Indian tribes);
 - ii. Veteran-owned small business concerns;
 - iii. Service-disabled veteran-owned small business concerns;
 - iv. HUBZone small business concerns;
 - v. Small disadvantaged business concerns (including ANC and Indian tribes); and
 - vi. Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.
- (10) Assurances that the offeror will:
 - i. Cooperate in any studies or surveys as may be required;
 - ii. Submit periodic reports so that USAC can determine the extent of compliance by the offeror with the subcontracting plan;
 - iii. Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (L) of this clause to

the Contracting Officer via email. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

- iv. Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR to the offeror via email; and
- v. Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- i. Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- ii. Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
- iii. Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating:
 - (A) Whether small business concerns were solicited and, if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;

- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
 - (D) Whether HUBZone small business concerns were solicited and, if not, why not;
 - (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
 - (F) Whether women-owned small business concerns were solicited and, if not, why not; and
 - (G) If applicable, the reason award was not made to a small business concern.
- iv. Records of any outreach efforts to contact:
 - (A) Trade associations;
 - (B) Business development organizations;
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
 - (D) Veterans service organizations.
 - v. Records of internal guidance and encouragement provided to buyers through:
 - (A) Workshops, seminars, training, etc.; and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
 - vi. On a contract-by-contract basis, records to support award data submitted by the offeror to USAC, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (E) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
 - (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned

small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

- (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all “make-or-buy” decisions.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
 - (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.
 - (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor’s subcontracting plan.
 - (6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.
- (F) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided:

- (1) The master plan has been approved;
- (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
- (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(G) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror’s planned subcontracting generally, for both commercial and government business, rather than solely to the USAC contract. Once the Contractor’s commercial plan has been approved, USAC will

not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (D)(10) of this clause by submitting one SSR for all contracts covered by its commercial plan. This report shall be acknowledged or rejected by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(H) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(I) A contract may have no more than one plan. When a modification meets the criteria in FAR § 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(J) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(K) The failure of the Contractor or subcontractor to comply in good faith with:

- (1) The clause of this contract entitled “Utilization Of Small Business Concerns;” or
- (2) An approved plan required by this clause, shall be a material breach of the contract.

(L) The Contractor shall submit ISRs and SSRs to the Contracting Officer via email. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports.

- (1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.
 - i. The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been

- any subcontracting activity since the inception of the contract or the previous reporting period.
- ii. When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR § 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.
 - iii. The authority to acknowledge receipt or reject the ISR resides:
 - (A) In the case of the prime Contractor, with the Contracting Officer; and
 - (B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.
- (2) *SSR:*
- i. Reports submitted under individual contract plans:
 - (A) This report encompasses all subcontracting under prime contracts and subcontracts with USAC, regardless of the dollar value of the subcontracts.
 - (B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by USAC.
 - (C) The report shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.
 - (D) The authority to acknowledge or reject SSRs, including SSRs submitted by subcontractors with subcontracting plans, resides with USAC unless stated otherwise in the contract.
 - ii. Reports submitted under a commercial plan:
 - (A) The report shall include all subcontract awards under the commercial plan in effect during the government's fiscal year.
 - (B) The report shall be submitted annually, within thirty days after the end of the government's fiscal year.
 - iii. The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan

16. FAR 52.219-13, Notice of Set-Aside of Orders (Nov 2011)

The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in 19.000(a)(3) and the applicable small business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in 19.000(a)(3).

17. FAR § 52.219-14, Limitations on Subcontracting (Nov 2011) (**Deviation**) (**Applicable only to contracts awarded under the Small Business Track**)

(A) This clause does not apply to the unrestricted portion of a partial set-aside.

(B) *Applicability.* This clause applies only to:

- (1) Contracts that have been set aside or reserved for small business concerns or 8(a) concerns;
- (2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) concerns; and
- (3) Orders set aside for small business or 8(a) concerns under multiple-award contracts as described in FAR 16.505(b)(2)(i)(F)

(C) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

- (1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
- (2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
- (3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
- (4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

18. FAR § 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (**Deviation**) (**Applicable only to contracts awarded under the Unrestricted Track**).

(A) “Failure to make a good faith effort to comply with the subcontracting plan,” as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract

entitled “Small Business Subcontracting Plan,” or willful or intentional action to frustrate the plan.

- (B) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to USAC contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled “Small Business Subcontracting Plan,” the Contractor shall pay USAC liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor’s failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- (C) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay USAC liquidated damages as provided in paragraph (b) of this clause.
- (D) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- (E) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.
- (F) Liquidated damages shall be in addition to any other remedies that USAC may have

19. [Reserved]

20. [Reserved]

21. [Reserved]

22. [Reserved]

23. FAR § 52.219-28, Post-Award Small Business Program Rerepresentation (July 2013) (Deviation).

(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 USAC 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. Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(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 date specified in the contract for exercising 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/content/table-small-business-size-standards>.

- (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 Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (B) of this clause 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 SAM, or does not have a representation in SAM 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 to sign and date and insert authorized signer's name and title].

24. [Reserved]

25. [Reserved]

26. FAR § 52.222-3, Convict Labor (June 2003).

(A) Except as provided in paragraph (B) of this clause, Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(B) Contractor is not prohibited from employing persons:

- (4) On parole or probation to work at paid employment during the term of their sentence;
- (5) Who have been pardoned or who have served their terms; or
- (6) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S.

Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if:

- iii. The worker is paid or is in an approved work training program on a voluntary basis;
- iv. Representatives of local union central bodies or similar labor union organizations have been consulted;
- v. Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
- vi. The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- vii. The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

27. [Reserved]

28. FAR § 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

- (A) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (B) Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (C) Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

29. FAR § 52.222-26, Equal Opportunity (Mar 2007) (Deviation).

- (A) *Definition.* “United States,” as used in this clause, 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) If Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of Contractor’s activities.
- (C)
- (1) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation.
 - (2) Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to:
 - i. Employment;
 - ii. Upgrading;
 - iii. Demotion;
 - iv. Transfer;
 - v. Recruitment or recruitment advertising;
 - vi. Layoff or termination;
 - vii. Rates of pay or other forms of compensation; and
 - viii. Selection for training, including apprenticeship.
 - (3) Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
 - (4) Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

- (5) Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) If USAC determines that Contractor is not in compliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part.
- (7) Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that exceeds \$10,000 and is performed within the United States, so that these terms and conditions will be binding upon each subcontractor or vendor.

30. FAR § 52.222-35, Equal Opportunity for Veterans (Sep 2010) (Deviation).

(A) *Definitions.* As used in this clause:

“All employment openings” means all positions except executive and senior management, those positions that will be filled from within Contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Armed Forces service medal veteran” means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

“Disabled veteran” means:

- (1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

“Executive and senior management” means:

- (1) Any employee:
 - i. Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;
 - ii. Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

- iii. Who customarily and regularly directs the work of two or more other employees; and
 - iv. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
- (2) Any employee who owns at least a bona fide 20 percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

“Other protected veteran” means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

“Positions that will be filled from within Contractor’s organization” means employment openings for which Contractor will give no consideration to persons outside Contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings Contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified disabled veteran” means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

“Recently separated veteran” means any veteran during the three–year period beginning on the date of such veteran’s discharge or release from active duty in the U.S. military, ground, naval or air service.

(B) General.

- (1) Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:
- i. Recruitment, advertising, and job application procedures.

- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
- iii. Rate of pay or any other form of compensation and changes in compensation.
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
- v. Leaves of absence, sick leave, or any other leave.
- vi. Fringe benefits available by virtue of employment, whether or not administered by Contractor.
- vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. § 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
- viii. Activities sponsored by Contractor including social or recreational programs.
- ix. Any other term, condition, or privilege of employment.

(C) Listing openings.

- (1) Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.
- (2) Contractor shall make the listing of employment openings with the appropriate employment service delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (3) Whenever Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in each State where it has establishments of the name and location of each hiring location in the State. As long as Contractor is contractually bound to these terms and has so advised the State

agency, it need not advise the State agency of subsequent contracts. Contractor may advise the State agency when it is no longer bound by this contract clause.

(D) *Applicability*. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(E) *Postings*.

- (1) Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
- (2) The employment notices shall:
 - i. State the rights of applicants and employees as well as Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and
 - ii. Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.
- (3) Contractor shall ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (*e.g.*, Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
- (4) Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that Contractor is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

(F) *Noncompliance*. If Contractor does not comply with the requirements of this clause, USAC may take appropriate actions, including:

- (1) Withholding progress payments; or
- (2) Termination or suspension of the contract.

(G) *Subcontracts*. Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more.

31. FAR § 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010)
(Deviation).

(A) General

- (1) Regarding any position for which the employee or applicant for employment is qualified, Contractor shall not discriminate against any employee or applicant because of physical or mental disability. Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as:
 - i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;
 - vi. Fringe benefits available by virtue of employment, whether or not administered by Contractor;
 - vii. Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by Contractor, including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.

(2) [Reserved]

(B) Postings.

- (1) Contractor agrees to post employment notices stating:
 - i. Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - ii. The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that Contractor is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(C) *Noncompliance*. If Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the contract including termination.

(D) *Subcontracts*. Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000.

32. [Reserved]

33. FAR § 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (Deviation).

(A) During the term of this contract, Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the Contract.

(2) If Contractor customarily posts notices to employees electronically, then Contractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's website that contains the full text of the poster. The link to the Department's website, as referenced in (B)(2) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(B) This required employee notice, printed by the Department of Labor, may be:

- (1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;
- (2) Provided by the Contracting Officer if requested;
- (3) Downloaded from the Office of Labor-Management Standards Web site at www.dol.gov/olms/regulations/compliance/EO13496.htm; or
- (4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(C) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(D) Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(E) In the event that Contractor does not comply with the requirements set forth in paragraphs (A) through (D) of this clause, this contract may be terminated or suspended in whole or in part.

(F) Subcontracts.

- (1) Contractor shall include the substance of this clause, including this paragraph (F), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, so that such provisions will be binding upon each subcontractor.
- (2) Contractor shall not procure supplies or services in a way designed to avoid the applicability of this clause.

34. FAR § 52.222-54, Employment Eligibility Verification (Aug 2013) (Deviation):

(A) *Definitions.* As used in this clause:

“Commercially available off-the-shelf (COTS) item”:

- (1) Means any item of supply that is:
 - i. A commercial item (as defined in paragraph (1) of the definition at FAR § 2.101);
 - ii. Sold in substantial quantities in the commercial marketplace; and

- iii. Offered to USAC, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR § 525.1(c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under the Contract. An employee is not considered to be directly performing work under the Contract if the employee:

- (1) Normally performs support work, such as indirect or overhead functions; and
- (2) Does not perform any substantial duties applicable to the Contract.

“Subcontract” means any contract, as defined in FAR § 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States”, as defined in 8 U.S.C. § 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

(B) Enrollment and verification requirements:

- (1) If Contractor is not enrolled in E-Verify at time of contract award, Contractor shall:
 - i. Enroll. Enroll in the E-Verify program within 30 calendar days of contract award;
 - ii. Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (B)(3) of this section); and
 - iii. Verify employees assigned to the contract. For each employee assigned to the Contract, initiate verification within 90 calendar days after date of enrollment or

within 30 calendar days of the employee's assignment to the Contract, whichever date is later (but see paragraph (B)(4) of this section).

- (2) If Contractor is enrolled in E-Verify at time of Contract award, Contractor shall use E-Verify to initiate verification of employment eligibility of:

- i. All new employees:

- (A) Enrolled 90 calendar days or more. Contractor shall initiate verification of all new hires of Contractor, who are working in the United States, whether or not assigned to the Contract, within 3 business days after the date of hire (but see paragraph (B)(3) of this section); or
- (B) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment in E-Verify, Contractor shall initiate verification of all new hires of Contractor, who are working in the United States, whether or not assigned to the Contract, within 3 business days after the date of hire (but see paragraph (B)(3) of this section); or

- ii. Employees assigned to the Contract. For each employee assigned to the Contract, Contractor shall initiate verification within 90 calendar days after date of Contract award or within 30 days after assignment to the Contract, whichever date is later (but see paragraph (B)(4) of this section).

- (3) If Contractor is an institution of higher education (as defined at 20 U.S.C. § 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. Contractor shall follow the applicable verification requirements at (B)(1) or (B)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the Contract.

- (4) Option to verify employment eligibility of all employees. Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the Contract. Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of:

- i. Enrollment in the E-Verify program; or

- ii. Notification to E-Verify Operations of Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(C) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site:
<http://www.dhs.gov/E-Verify>.

(D) *Individuals previously verified.* Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee:

- (1) Whose employment eligibility was previously verified by Contractor through the E-Verify program;
- (2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
- (3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(E) *Subcontracts.* Contractor shall include the requirements of this clause, including this paragraph (E) (appropriately modified for identification of the parties), in each subcontract that:

- (1) Is for:
 - i. Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
 - ii. Construction;
- (2) Has a value of more than \$3,000; and
- (3) Includes work performed in the United States.

35. [Reserved]

36. [Reserved]

37. [Reserved]

38. FAR § 52.223-18, Encouraging Contractor Policies To Ban Text Messaging While Driving (Aug 2011) (Deviation).

(A) *Definitions*. As used in this clause:

“Driving”:

- (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(B) Contractor is encouraged to:

- (1) Adopt and enforce policies that ban text messaging while driving:
 - i. Company-owned or -rented vehicles; or
 - ii. Privately-owned vehicles when on official USAC business or when performing any work for or on behalf of USAC.
- (2) Conduct initiatives in a manner commensurate with the size of the business, such as:
 - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(C) *Subcontracts*. Contractor shall insert the substance of this clause, including this paragraph (C), in all subcontracts that exceed the micro-purchase threshold.

39. [Reserved]

40. [Reserved]

41. [Reserved]

42. [Reserved]

43. [Reserved]

44. [Reserved]

45. [Reserved]

46. FAR § 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (Deviation).

(A) Contractor entitlement to financing payments. Contractor may request, and USAC shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this Contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of USAC's security under this contract.

(B) Special terms regarding termination for cause. If this contract is terminated for cause, Contractor shall, on demand, repay to USAC the amount of unliquidated contract financing payments. USAC shall be liable for no payment except as provided by section C.1(m), Termination for cause.

(C) Security for USAC financing. In the event Contractor fails to provide adequate security, as required in section C.1(i)(2) of this contract relating to fixed-price task orders, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by Contractor is insufficient, Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to Contractor; and Contractor shall repay to USAC the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(D) Reservation of rights.

(1) No payment or other action by USAC under this clause shall:

- i. Excuse 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) USAC'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 USAC.

- (3) Dates for payment. The designated payment office will pay approved payment requests within 30 days of submittal of a proper request for payment

47. [Reserved]

48. [Reserved]

49. FAR § 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (July 2013) (Deviation)

(A) Method of payment.

- (1) All payments by USAC under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (A)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event USAC is unable to release one or more payments by EFT, Contractor agrees to either:
 - i. Accept payment by check or some other mutually agreeable method of payment; or
 - ii. Request USAC extend payment due dates until such time as USAC makes payment by EFT (but see paragraph (D) of this clause).

(B) Mandatory submission of Contractor's EFT information.

- (1) Contractor is required to provide USAC with the information required to make payment by EFT (see paragraph (J) of this clause). Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") with its first request for payment (invoice) submitted to USAC. If not otherwise specified in this contract, the payment office is the designated office for receipt of Contractor's EFT information. If more than one designated office is named for the contract, Contractor shall provide a separate notice to each office. In the event that the EFT information changes, Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If Contractor provides EFT information applicable to multiple contracts, Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(C) *Mechanisms for EFT payment.* USAC may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.

(D) *Suspension of payment.*

(1) USAC is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract.

(2) If the EFT information changes after submission of correct EFT information, USAC shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(E) *Liability for uncompleted or erroneous transfers.*

(1) If an uncompleted or erroneous transfer occurs because USAC used Contractor's EFT information incorrectly, USAC remains responsible for:

- i. Making a correct payment; and
- ii. Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Contractor's EFT information was incorrect, or was revised within 30 days of USAC's release of the EFT payment transaction instruction to the Electronic Payments Network (EPN) or the Federal Reserve System, and:

- i. If the funds are no longer under the control of the payment office, USAC is deemed to have made payment and Contractor is responsible for recovery of any erroneously directed funds; or
- ii. If the funds remain under the control of the payment office, USAC shall not make payment and the provisions of paragraph (D) shall apply.

- (F) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the EPN or Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the National Automated Clearing House Association or Federal Reserve System.
- (G) *EFT and assignment of claims.* If Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract (Section C.1(b)), Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (J) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were Contractor. EFT information that shows the ultimate recipient of the transfer to be other than Contractor, in the absence of a proper assignment of claims acceptable to USAC, is incorrect EFT information within the meaning of paragraph (D) of this clause.
- (H) *Liability for change of EFT information by financial agent.* USAC is not liable for errors resulting from changes to EFT information provided by Contractor's financial agent.
- (I) *Payment information.* The payment or disbursing office shall forward to Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the EPN or the Federal Reserve System. USAC may request Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, USAC does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to USAC. If USAC makes payment by check in accordance with paragraph (A) of this clause, USAC shall mail the payment information to the remittance address in the contract.
- (J) *EFT information.* Contractor shall provide the following information to the designated office. Contractor may supply this data for this or multiple contracts (see paragraph (B) of this clause). Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (C) of this clause.
- (1) The contract number (or other procurement identification number).
 - (2) Contractor's name and remittance address, as stated in the contract(s).
 - (3) The signature (manual or electronic, as appropriate), title, and telephone number of Contractor official authorized to provide this information.

- (4) The name, address, and 9-digit Routing Transit Number of Contractor's financial agent.
- (5) Contractor's account number and the type of account (checking, saving, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of Contractor's financial agent.
- (7) If applicable, Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

50. [Reserved]

51. [Reserved]

52. [Reserved]

(c) [Reserved]

(d) *Comptroller General Examination of Record.* Contractor shall comply with the provisions of this paragraph (d).

- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of Contractor's directly pertinent records involving transactions related to this contract.
- (2) Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require Contractor to create or maintain any record that Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

- (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, Contractor is not required to flow down any FAR clauses (including

FAR deviation language set forth in paragraphs (a), (b), (c), and (d)), other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause:

- i. FAR § 52.203-13, Contractor Code of Business Ethics and Conduct (April 2010) (Deviation).
 - ii. FAR § 52.219-8, Utilization of Small Business Concerns (Dec 2010) (Deviation), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include FAR § 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - iii. [Reserved]
 - iv. FAR § 52.222-26, Equal Opportunity (Mar 2007) (Deviation).
 - v. FAR § 52.222-35, Equal Opportunity for Veterans (Sep 2010) (Deviation).
 - vi. FAR § 52.222-36, Affirmative Action for Workers with Disabilities (Oct 2010) (Deviation).
 - vii. FAR § 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (Deviation). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
 - viii. [Reserved]
 - ix. FAR § 52.222-50, Combating Trafficking in Persons (Feb 2009) (Deviation).
 - x. [Reserved]
 - xi. [Reserved]
 - xii. FAR § 52.222-54, Employment Eligibility Verification (Aug 2013) (Deviation).
 - xiii. [Reserved]
 - xiv. [Reserved]
- (2) While not required, Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

SECTION D – CONTRACT ATTACHMENTS

1. List of Attachments

- (a) Attachment 1 – Sample Task Order RFP
- (b) Attachment 2 – Labor Category Descriptions and Direct Labor Price Schedule
- (c) Attachment 3 -- USAC Visitor Form
- (d) Attachment 4 -- USAC Confidentiality Agreement
- (e) Attachment 5 -- USAC Contractor Travel Expenses Policy

SECTION E – SOLICITATION PROVISIONS

1. Instructions To Offerors—Commercial Items, FAR § 52.212-1 (July 2013) (Deviation) (Tailored as indicated).

- (a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.
- (b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show:
 - (1) The solicitation number;
 - (2) The time specified in the solicitation for receipt of offers;
 - (3) The name, address, and telephone number of the offeror;
 - (4) A technical description of the services being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
 - (5) Terms of any express warranty;
 - (6) Price and any discount terms;
 - (7) “Remit to” address, if different than mailing address;
 - (8) A completed copy of the representations and certifications in sections E.4 and E.5 (see section E.4(b) for those representations and certifications that the offeror shall complete electronically);
 - (9) Acknowledgment of solicitation amendments;
 - (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
 - (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation.

Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(12) Proposals that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* (Tailored) The offeror agrees to hold the prices in its offer firm for 120 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) [Reserved]

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, Modifications, Revisions, and Withdrawals of Offers*

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the USAC office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated USAC office on the date that offers or revisions are due.

(2)

i. Any offer, modification, revision, or withdrawal of an offer received at the USAC office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and:

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the USAC infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) If this solicitation is a request for proposals, it was the only proposal received.

ii. However, a late modification of an otherwise successful offer, that makes its terms more favorable to USAC, will be considered at any time it is received and may be accepted.

(3) If an emergency of unanticipated event interrupts normal USAC processes so that offers cannot be received at the USAC office designated for receipt of offers by the exact time specified in the solicitation, and urgent USAC requirements preclude

amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal USAC processes resume.

- (4) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.
- (g) *Contract awards.* (Tailored) USAC intends to conduct discussions with offerors in accordance with § E.3(c). USAC may reject any or all offers if such action is in the public interest; accept other than the lowest offers; and waive informalities and minor irregularities in offers received.
- (h) *Multiple awards.* (Tailored) USAC may accept an offer with respect to one or more of the labor categories identified in the Schedule, unless the offeror qualifies the offer by specific limitations.
 - (i) [Reserved]
- (j) *Data Universal Numbering System (DUNS) Number.* The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional System for Award Management (SAM) records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://fedgov.dnb.com/webform>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number.
- (k) *System for Award management.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the SAM database accessed through <https://www.acquisition.gov>.

- (l) *Debriefing.* If a post-award debriefing is given to requesting offerors, USAC shall disclose the following information, if applicable:
 - (1) USAC's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.
 - (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
 - (3) The overall ranking of all offerors, when any ranking was developed by USAC during source selection.
 - (4) A summary of the rationale for award;
 - (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
 - (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by USAC.

2. Addendum To Instruction to Offerors

(a) Background Information Regarding USAC

USAC is a not-for-profit Delaware corporation. The FCC appointed USAC as the permanent administrator of the Universal Service Fund (“USF”) and the Universal Service Support Mechanisms – the High Cost (“HC”) Program, the Low Income (“LI”) Program, the Rural Health Care (“RHC”) Program, and the Schools and Libraries (“SL”) Program (collectively referred to as “programs” or “support mechanisms”) – as set forth in Title 47, Part 54, Section 701 of the Code of Federal Regulations (“C.F.R.”). USAC administers the mechanisms pursuant to FCC regulations in 47 C.F.R. Part 54. Subject to Commission oversight, USAC performs the billing, collection, and disbursement functions associated with the programs. Certain aspects supporting program administration are outsourced to USAC contractors.

USAC is not a Federal agency, a government corporation, a government controlled corporation or other establishment in the Executive Branch of the United States Government. USAC is not a contractor to the United States Government. The contract awarded as a result of this RFP will not be a subcontract under a Federal prime contract. However, USAC conducts its procurements in accordance with the terms of a Memorandum of Understanding with the FCC, which requires USAC, as a general matter, to apply designated provisions of the FAR, including requirements for full and open competition.

(b) General

Any proposal that fails to comply in all respects with the following preparation and submission requirements may be rejected. Proposals must concisely address USAC’s requirements, and should not contain a significant amount of corporate boiler-plate marketing information. They must be prepared with Times New Roman 12-point font. Complete proposals must be submitted to Jim Cosson, USAC Contracting Officer for this procurement, no later than the date and time set forth in the RFP. An electronic copy and five hard copies of the proposal are required. Proposals may be mailed or delivered to: Universal Service Administrative Company, Attn: Jim Cosson, 2000 L Street, NW, Suite 200, Washington, DC 20036. Inquiries may be directed to Tucker Smith by electronic mail at rfp@usac.org by telephone at (202) 776-0200; or by fax at (202) 776-0080.

USAC reserves the right to amend, revise or cancel this RFP at any time at the sole discretion of USAC and no legal or other obligations are assumed by USAC by virtue of the issuance of this RFP, including any commitment to procure the services sought therein. This RFP may include unintended errors or omissions, and the accuracy and completeness of this document is not guaranteed. In the future, regulatory authorities may issue rules, requirements, or policy directives that may increase, decrease, or otherwise affect the functions to be performed by the Contractor.

(c) Identification of Confidential Information

The proposal shall identify information contained in the proposal that the offeror contends is confidential information. USAC will treat confidential information identified as such on the sheet in which such confidential information appears with the same degree of care that it employs in the handling of its own confidential business information. USAC reserves the right to provide copies of proposals received to the FCC. The FCC may be required to disclose Contractor proposal information in accordance with the Freedom of Information Act (5 U.S.C. § 552), but if such disclosure is contemplated an offeror would be provided the opportunity to object to the release of confidential information (see 47 C.F.R. § 0.461(d)(3)).

Note: If Offerors submit technical information that the offeror contends is a trade secret of the offeror, USAC will not be responsible for any loss or damage that the offeror may sustain as a result of inadvertent disclosure by USAC of such trade secrets contained in a proposal. USAC does not consider pricing information to be “technical information.”

(d) Proposal Schedule

Schedule	Event
November 1, 2013	Deadline for submitting written questions to USAC at rfp@usac.org .
November 13, 2013	USAC's response to written questions.
November 27, 2013	Proposals due to USAC by 5:00pm EDT.

(e) Proposal Format

Proposals shall be presented in four separate volumes:

- (1) Corporate Information – Volume I.
- (2) Technical Capability and Corporate Experience – Volume II.
- (3) Past Performance – Volume III.
- (4) Price Proposal – Volume IV.

(f) Proposal Content

Each proposal volume must contain a cover page. The cover page shall include the name of the offeror's organization, and the offeror's contact name, address, telephone number, facsimile number, e-mail address, website address, date, a statement verifying the proposal is valid for a period of 120 days, and signature of a duly authorized offeror representative. The proposal cover page should also indicate the award track for which the Offeror is competing, i.e. small business or unrestricted.

(1) Corporate Information (Volume I)

- (A) Executive Summary. This section shall summarize all key features of the proposal, including the identification of any subcontractors and affiliated individuals or firms that will assist the offeror in performing this contract. A list of any deviations from, and exceptions to, the requirements contained in this RFP shall be identified in the Executive Summary. Pricing information shall not appear in the Executive Summary.
- (B) Confidentiality and Information Security. Offerors must explain in detail how they will establish and maintain safeguards to protect the confidentiality and integrity of USAC Confidential Information in their possession as required by section C.2.(k) and Section D, Attachment 4.
- (C) Conflicts of Interest. USAC is the appointed neutral administrator of the federal USF. USAC is governed by a Board of Directors comprised of various stakeholders in the universal service programs, and is prohibited from advocating positions on universal service policy matters.¹ Because of USAC's unique role as neutral administrator, it is essential that any contractor providing assistance to USAC in administering the USF maintain the same neutrality, both in fact and in appearance. Moreover, because the USF constitutes public funds, it is essential that contractors avoid strictly any conflict of interest or even the appearance of a conflict of interest relating to the performance of USAC contracts.

Offerors shall identify any actual or potential conflicts of interest involving the Offeror or any proposed Subcontractor, or any circumstances that give rise to the appearance of a conflict of interest, and the means by which it proposes to avoid, neutralize, or mitigate such conflicts. Offerors shall identify such conflicts or potential conflicts or appearance issues to USAC in writing and provide detailed information regarding the nature of the conflict, including as applicable: (1) any ownership, control or other business or contractual relationship(s) between the Offeror (or proposed Subcontractor) and the Telecommunications Services Provider(s) or beneficiaries of, or other organizations that participate in, the universal service programs; (2) the percentage of Offeror's (or proposed Subcontractor's) revenues received from, and Offeror's (or proposed Subcontractor's) debt held by, Telecommunications Services Provider(s) or beneficiaries of, or other organizations that participate, in the universal service programs or contribute to the USF (the percentages shall be calculated as of the date of the Offeror's proposal or for the twelve-month period immediately preceding the date of the Offeror's proposal, as appropriate) in the preceding 12 months; (3) whether any of the personnel assigned to this engagement also will be assigned to an engagement with a Telecommunications Services Provider or beneficiary of, or other organization that participates in, the universal service programs or contributes to the USF; (4) any employment or consultation arrangement involving USAC or FCC employees and the Offeror or any proposed

¹ See 47 C.F.R. §§ 54.703, 54.702(d).

Subcontractor; and (5) any ownership or control interest in the Offeror or any proposed Subcontractor that is held by an FCC or USAC employee. Offerors must also identify any participation by the Offeror or any proposed Subcontractor(s) or proposed personnel associated with the Offeror in any of the federal Universal Service Support Mechanisms. These programs are described in the synopsis that preceded this solicitation.

Offerors shall propose specific and detailed measures to avoid, neutralize, or mitigate address actual, potential and/or apparent conflicts of interest raised by the affiliations and services described above. Offerors should be as specific as possible in describing what the measures would be, how they would be implemented and monitored, and how they would eliminate or mitigate particular conflicts or concerns. In addition, if an Offeror's proposed measures include use of an affiliated organization, Offeror shall provide as much detail as possible regarding how the separateness of the organizations will be maintained and enforced, including with respect to staffing, confidential information, computer systems and other matters. If USAC determines that Offeror's proposed mitigation plan does not adequately avoid, neutralize or mitigate any actual or potential conflict of interest, or the appearance of a conflict of interest, Offeror will not be eligible for award of a contract.

- (D) The Contractor must refrain from advocating policy positions with respect to federal universal service matters (*see* section C.2.(z)(5)). If your organization has advocated policy positions on universal service in the past, or if it anticipates doing so in the future, discuss how it will comply with this contractual requirement.
 - (E) Litigation and Other Proceedings. The proposal shall identify any current or threatened litigation or other proceeding, including bankruptcy and related matters, in any judicial court or administrative agency in any jurisdiction, as well as any matter currently in, or expected to be in, arbitration, mediation, or other form of dispute resolution, the resolution of which could materially affect the Offeror's financial strength or ability to perform the duties set forth in this RFP, and shall provide a summary description of the liabilities the Offeror anticipates may occur as a result of such proceedings.
 - (F) Representations and Certifications. Offerors shall include completed copies of all representations and certifications required by sections E.4 and E.5.
 - (G) Offerors must include a signed copy of the Section A – SF 1449, “Solicitation/Contract/Order for Commercial Items” cover sheet.
- (2) Technical Capability and Corporate Experience (Volume II)
- (A) Corporate Experience

For each of the items below in which Offeror has experience, describe relevant work performed and identify the name of the entity, contact name, address, and telephone number. Only proposals submitted by firms that are registered with the American Institute of Certified Public Accountants (AICPA) will be considered for evaluation.

- i. Describe your firm's experience with FCC regulations governing the USF and the universal service support mechanism, with FCC regulations governing the USF contribution process, and with regulations governing state universal service funds.
- ii. Describe your firm's experience in performing audits, specifically in conducting performance audits in accordance with GAGAS and AICPA.
- iii. List all matters in the last three years where your firm has performed audits or examinations in accordance with GAGAS.
- iv. Describe your firm's experience in providing investigative support, including audit and computer forensic support, to clients.
- v. Describe your firm's experience in analyzing service provider bills, subscriber listings, cost studies, billing system reports, tariff documents, and FCC forms specific to the telecommunications industry.
- vi. Describe your firm's experience with statistical sampling.
- vii. Describe your firm's experience with information technology and telecommunication applications. For example: billing systems, mapping software, and cost allocation software.
- viii. Describe your firm's experience in conducting inventories of telecommunications equipment and/ or computer hardware.
- ix. Describe your firm's experience and level of knowledge with telecommunications products.
- x. Define how your prior auditing experience would affect the number of audit hours expended on an audit and the outcome this would have on the resulting audit and fees.
- xi. Describe how your firm has successfully met schedule and cost constraints in performing similar audit engagements. Include metrics regarding schedule compliance and cost performance relative to budget/NTE limits in addition to qualitative statements.
- xii. Submit certification that your firm is a licensed accounting/audit firm that complies with AICPA professional standards.

(B) Task Order Management and Key Personnel

- i. Describe the project management tools and/or audit software your firm utilizes.
- ii. Describe the level of support and assistance you expect from USAC in developing information, preparing schedules, or supporting computer-aided review effort.
- iii. Identify the key personnel for this contract, by name if possible (otherwise, by position). Key personnel identified in the proposal shall include: (1) the Partner/Principal/Director Auditing Services; (2) the Senior Manager(s) Auditing Services; and (3) the Lead Project Manager. For each of these individuals, Offerors shall provide a resume (2-page maximum) that includes their educational background, job experience and skills, and the specific efforts they have supported related to the content of this RFP.

If Offeror, at time of proposal, has information that any such key personnel anticipate terminating his or her employment or affiliation with Offeror, Offeror shall identify such personnel and include the expected termination date in the proposal. For those key personnel positions that Offeror anticipates filling after submission of the proposal or after the award of the contract, Offeror shall provide the minimum educational background and job experience that will be acceptable.

- iv. Discuss your firm's policies and procedures for resolving engagement issues such as disputes with auditees regarding program rules.
- v. Describe your firm's plan for simultaneously performing large numbers of audits. What resources are available with and without subcontracting?
- vi. Describe the project management support you will provide to manage the tasks and audit deliverables assigned to your firm, and to interface with the USAC PMO to manage the contract requirements.
- vii. Submit a draft Contract Project Management Plan (see RFP § B.1(h)(14) for discussion of the Contract Project Management Plan).
- viii. Submit a technical proposal to perform the Sample Task Order set out in the Sample Task Order RFP (Attachment 1). The proposal shall include the task plan and staffing plan as required by Sample Task Order RFP Section 7.0.

(3) Past Performance (Volume III)

- (A) Offerors shall include in Volume III a list of at least three current or recently completed contracts for performance audits similar to those required by this solicitation. Each entry on the list shall contain the client's name, the project title, the period of performance, the Contract number, the Contract value, and two points of contact (including the telephone number and email address for each point of contact, if available). The list shall be included at the beginning of this section. USAC will transmit Past Performance Questionnaires to the contacts identified in the offerors' proposals. Although USAC will follow-up with the contacts, the offeror, not USAC, is responsible for ensuring that the questionnaire is completed and returned by the specified date in USAC's transmittal. If USAC does not receive a completed Past Performance Questionnaire, and is unable to obtain verbal responses to the questions, USAC will not consider the contract in assigning a risk level under the past performance factor.
- (B) Offerors shall provide descriptions of the relevant performance on each of the identified contracts. A past performance description shall consist of an overview of the engagement, a description of the scope of work performed, its relevance to this effort, and the results achieved. Offerors shall also provide information on unique characteristics of the project, problems encountered and corrective actions taken. The past performance description shall also list the personnel and subcontractors who are being proposed for this effort and who also worked on the project cited in the detailed reference. Each overview shall not exceed three pages.
- (C) If the Offeror intends to rely on the past performance of proposed personnel or proposed subcontractors performing major or critical aspects of this requirement, then the past performance information required by the preceding two paragraphs shall be included for contracts on which the proposed personnel or proposed subcontractors have performed.

(4) Price Proposal (Volume IV)

- (A) Offerors shall complete the Direct Labor Price Schedule in Attachment 2(2) and include fixed hourly labor rates for each of the labor categories specified in the Attachment.
- (B) Hourly labor rates set forth in Attachment 2(2) shall be fully loaded and include wages, overhead, general and administrative expense, and profit.
- (C) Offerors that are GSA Schedule holders are strongly encouraged to propose labor rates that are lower than the labor rates on their GSA Schedules.
- (D) Offerors shall provide a time-and-materials ("T&M") price proposal for the Sample Task Order (see Attachment 1, Section 7.4). The price proposal shall include the Offeror's proposed price for performing the Sample Task Order in the base year and in each of the option years, and a total ceiling price for all five years combined. For each year, Offerors shall specify the estimated labor hours for each proposed labor category, the estimated extended price for each labor

category, and a subtotal estimated price for performing the Sample Task Order in that year. Offerors must use the hourly labor rates proposed in their completed Attachment 2(2) to prepare their Sample Task Order price proposals. Offerors shall not propose discounted hourly rates for the Sample Task Order. Offerors shall not include any materials (*i.e.*.. travel) costs for the Sample Task Order. An electronic version of the Sample Task Order price proposal shall be delivered as an Excel file.

- (E) Because USAC may limit the number of proposals in the competitive range for purposes of conducting discussions (see section E.3(c) below), Offerors are strongly encouraged to propose their best prices in their initial price proposals.

3. Evaluation

- (a) *Basis for Awards.* USAC intends to award multiple IDIQ contracts under two separate award tracks: (1) Unrestricted and (2) Small Business. USAC will make multiple contract awards under each track. Award decisions under one track will not affect the other track. USAC will consider numerous factors in determining the number of contract awards to make under each track, including:

- i. The anticipated number and complexity of the audits and QA reviews;
- ii. The expected duration and frequency of task orders;
- iii. The need to establish pools of contractors for the competition of unrestricted and small business set-aside task orders;
- iv. The mix of resources a contractor must have to perform expected task order requirements; and
- v. The ability to maintain competition among the awardees (for both unrestricted and small business set-aside task orders) throughout the contracts' period of performance.

At this time, USAC anticipates making a total of six to eight IDIQ contract awards. Of this number, USAC anticipates awarding three to four IDIQ contracts under the small business award track. Depending on the number of small businesses and other companies responding to the RFP, and other considerations, such as conflicts of interest, USAC may increase or decrease the number of awards.

- (b) *Selection Factors, Subfactors, and Elements.* Within each award track, awards will be made to those responsible offerors whose proposals represent the best value to USAC based on the following evaluation factors: (1) technical, (2) past performance, and (3) price. The non-price factors are of equal importance and each is more important than price. The non-price factors, when combined, are significantly more important than price. Awards will not necessarily be made to the lowest price offers. However, when the non-price factors of competing proposals are rated relatively equal, the importance of price will increase and may become the determining factor in award. If the lowest priced proposals

are not also superior in terms of the non-price evaluation factors, a price-technical trade-off will be performed to determine the best value offers.

(1) Technical.

The technical subfactors listed below (i.e., experience, personnel resources and management capability) are of equal importance.

(A) Experience

- i. Experience with FCC regulations governing the USF and the universal service support mechanism, with FCC regulations governing the USF contribution process, and with regulations governing state universal service funds. .
- ii. Experience in performing audits, specifically in conducting performance audits in accordance with GAGAS.
- iii. Experience in the last three years performing audits or examinations in accordance with GAGAS.
- iv. Experience in providing investigative support, including audit and computer forensic support.
- v. Experience in analyzing service provider bills, subscriber listings, cost studies, billing system reports, tariff documents, and FCC forms specific to the telecommunications industry.
- vi. Experience with statistical sampling.
- vii. Experience with information technology and telecommunication applications (e.g., billing systems, mapping software, cost allocation software, etc.).
- viii. Experience in conducting inventories of telecommunications equipment and/or computer hardware.
- ix. Experience and level of knowledge with telecommunications products.
- x. Experience with successfully meeting schedule and cost constraints in executing similar performance audits.
- xi. Experience in utilizing a project manager to manage and track audit deliverables, milestones, and costs; and lead progress meetings and management reviews.

(B) Personnel Resources

- i. Availability of staff sufficient to complete multiple audits or QA reviews within short time frames, i.e., less than six months.
- ii. Knowledge and experience of key personnel relating to FCC regulations governing the USF and, in particular, the four universal service support mechanisms, as well as regulations governing contributor revenue.

- iii. Key personnel experience in working with USAC on prior audits and/or accounting matters.
- iv. Sample Task Order Staffing Plan.

(C) Management Capability.

- i. Internal quality control procedures.
- ii. Policies for identifying, avoiding and mitigating conflicts of interest.
- iii. Contract Project Management Plan.
- iv. Sample Task Order task plan.
- v. Firm's policies and procedures for resolving engagement issues such as disputes with auditees regarding program rules.

(2) Past performance.

Past performance information will be evaluated to assess the risks associated with an offeror's performance of this effort, considering the relevance, currency and quality of the offeror's past performance on past or current contracts. The offeror's past performance will be evaluated based on the offeror's discussion of its past performance for similar efforts, information obtained from past performance questionnaires for the offeror's references (including detailed references for the offeror's proposed teaming partner(s) and/or subcontractor(s), as applicable) and information that may be obtained from other sources (including government databases and contracts listed in the offeror's proposal that are not identified as references). USAC may contact past performance points of contact to obtain information regarding the past performance of offerors, teaming members, and proposed key personnel, as applicable.

In the case of an offeror without a record of relevant past performance, or for whom information on relevant past performance is not available, USAC will evaluate the offeror's lack of relevant past performance as an unknown performance risk, having no favorable or unfavorable impact on the evaluation. Therefore, the offeror will receive an "Unknown Risk" rating for the subfactor(s) for which it has no relevant past performance

- (3) Price. USAC will evaluate offerors' total estimated prices to perform the Sample Task Order (see Attachment 1). The total T&M price for evaluation purposes will include the proposed price for the base and option years. USAC will also consider whether the proposed price is realistic and reasonable. USAC will evaluate the hourly labor rates in an Offeror's completed Direct Labor Price Schedule for reasonableness. USAC may compare an Offeror's proposed rates to the Offeror's GSA Schedule rates (if applicable), the rates submitted by other Offerors, or using other means.

- (c) *Discussions/Competitive Range.* USAC intends to evaluate proposals and award contracts after conducting discussions with Offerors whose proposals have been determined to be

within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the Offeror's initial proposal should contain the Offeror's best terms from a price and technical standpoint.

- (d) *Notice of Award.* A written notice of award or acceptance of an offer, mailed or otherwise furnished to a successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, USAC may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(e) *Responsibility Determination*

USAC will make a responsibility determination based on information available in the Federal Awardee Performance and Integrity Information System (FAPIIS), SAM and other data services, as well as information submitted in an Offeror's proposal, including whether:

- (1) the Offeror's has sufficient financial resources to perform the Contract;
- (2) the Offeror has adopted a corporate ethics policy and has a satisfactory record of integrity and business ethics;
- (3) the Offeror has the accounting systems and internal controls, quality assurance processes and organizational structure and experience necessary to assure that contract work will be properly performed and accurately invoiced;
- (4) the Offeror has the facilities, technical and personnel resources required to perform the contract; and
- (5) the Offeror's financial credit requirements, if any, for performing the contract will be met.

(f) *Single or Multiple Awards (FAR § 52.216-27, Oct 1995) (Deviation)*

USAC may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation. USAC anticipates making a total of six to eight IDIQ contract awards. Of this number, USAC anticipates awarding three to four IDIQ contracts under the small business award track.

Depending on the number of small businesses and other companies responding to the RFP, and other considerations, such as conflicts of interest, USAC may increase or decrease the number of awards.

**4. Offeror Representations and Certifications—Commercial Items, FAR § 52.212-3
(Aug 2013) (Deviation)**

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically via <http://www.acquisition.gov>. If an offeror has not completed the annual representations and certifications electronically at the System for Award Management (SAM) website, the offeror shall complete only paragraphs (c) through (o) of this provision.

(a) *Definitions.* As used in this provision:

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

“Forced or indentured child labor” means all work or service:

- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Inverted domestic corporation”, as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. § 395(b), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. § 395(b), applied in accordance with the rules and definitions of 6 U.S.C. § 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. § 7874.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate:

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or
- (6) Have been voluntarily suspended.

“Sensitive Technology”

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically:
 - (A) To restrict the free flow of unbiased information in Iran; or
 - (B) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

“Service-disabled veteran-owned small business concern”:

- (1) Means a small business concern:
 - (A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (B) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. § 101(2), with a disability that is service-connected, as defined in 38 U.S.C. § 101(16).

“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 USAC

contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned:

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

“Veteran-owned small business concern” means a small business concern:

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern:

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

“Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b)

- (1) Annual Representations and Certifications. Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the SAM website.
- (2) The offeror has completed the annual representations and certifications electronically via the SAM website accessed through <http://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of this offer that the

representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR § 4.1201), except for paragraphs _____.

[Offeror to identify the applicable paragraphs at (c) through (o) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]

[These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.]

[Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]

- (c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.
- (1) Small business concern. The offeror represents as part of its offer that it ___ is, ___ is not a small business concern.
 - (2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it ___ is, ___ is not a veteran-owned small business concern.
 - (3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it ___ is, ___ is not a service-disabled veteran-owned small business concern.
 - (4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it ___ is, ___ is not a small disadvantaged business concern as defined in 13 CFR 124.1002.
 - (5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it ___ is, ___ is not a women-owned small business concern.
 - (6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that:
 - i. It ___ is, ___ is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in

circumstances or adverse decisions have been issued that affects its eligibility; and

- ii. It __ is, __ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [*The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: _____.*] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

- (7) Economically disadvantaged women-owned small business (EDWOSB) concern. [*Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.*] The offeror represents that:

- (A) It __ is, __ is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and
- (B) It __ is, __ is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [*The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: _____.*] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

Note: Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

- (8) Women-owned business concern (other than small business concern). [*Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents that it __ is a women-owned business concern.
- (9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: _____.

- (10) [Reserved]

- (11) HUBZone small business concern. [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents, as part of its offer, that:

- (A) It __ is, __ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and
- (B) It __ is, __ is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) *Representations required to implement provisions of Executive Order 11246:*

- (1) Previous contracts and compliance. The offeror represents that:
- (A) It __ has, __ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and
- (B) It __ has, __ has not filed all required compliance reports.
- (2) *Affirmative Action Compliance.* The offeror represents that:
- (A) It __ has developed and has on file, __ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or
- (B) It __ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.
- (e) [Reserved]
- (f) [Reserved]
- (g) [Reserved]
- (h) *Certification Regarding Responsibility Matters (Executive Order 12689).* (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals:
- (1) __ Are, __ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

- (2) __ Have, __ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
- (3) __ Are, __ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and
- (4) __ Have, __ have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
- i. Taxes are considered delinquent if both of the following criteria apply:
- (A) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
- (B) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
- ii. Examples.
- (1) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
- (2) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax

liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

- (3) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
 - (4) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. § 362 (the Bankruptcy Code).
- (i) *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]*
- (1) Listed end products.
- | Listed End Product | Listed Countries of Origin |
|---------------------------|-----------------------------------|
| | |
| | |
- (2) *Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]*
- [] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.
- [] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.
- (j) [Reserved]
- (k) *Certificates regarding exemptions from the application of the Service Contract Act.* (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the

exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

[] (1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror __ does __ does not certify that:

- (A) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;
- (B) The services will be furnished at prices which are, or are based on, established catalog or market prices (*see* FAR § 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and
- (C) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

[] (2) Certain services as described in FAR 22.1003-4(d)(1). The offeror __ does __ does not certify that:

- (A) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;
- (B) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (*see* FAR § 22.1003-4(d)(2)(iii));
- (C) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the USAC contract; and
- (D) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies:

- (A) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination

to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(B) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(1) *Taxpayer Identification Number (TIN)*. (Not applicable if the offeror is required to provide this information to the SAM database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(2) through (l)(4) of this provision.

(2) Taxpayer Identification Number (TIN).

TIN: _____.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(3) *Type of organization*.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other _____.

(4) *Common parent.*

- ___ Offeror is not owned or controlled by a common parent;
- ___ Name of common parent: _____.

(m) *Restricted business operations in Sudan.* By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) *Prohibition on Contracting with Inverted Domestic Corporations*

(1) *Relation to Internal Revenue Code.* An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code 25 U.S.C. § 7874.

(2) Representation. By submission of its offer, the offeror represents that:

- i. It is not an inverted domestic corporation; and
- ii. It is not a subsidiary of an inverted domestic corporation.

(o) *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.*

(1) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(2) Representation and certifications. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf of or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act ([50 U.S.C. 1701 et seq.](#)) (see

OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) [Reserved]

5. Additional Offeror Representations and Certifications for USAC Procurements

(a) Prohibition Against Obtaining Source Selection Information or Contractor Bid or Proposal Information

(1) Definitions. As used in this provision:

“Contractor bid or proposal information” means any of the following information submitted to USAC as part of or in connection with a bid or proposal to enter into a USAC procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (A) Cost or pricing data (as defined in FAR § 2.101).
- (B) Indirect costs and direct labor rates.
- (C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.
- (D) Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation.
- (E) Information marked by the contractor as confidential (see section E.2(b)).

“Source selection information” means any of the following information that is prepared for use by USAC for the purpose of evaluating a bid or proposal to enter into a USAC procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (A) Bid prices submitted in response to a USAC invitation for bids, or lists of those bid prices before bid opening.
- (B) Proposed costs or prices submitted in response to a USAC solicitation, or lists of those proposed costs or prices.
- (C) Source selection plans.
- (D) Technical evaluation plans.

- (E) Technical evaluations of proposals.
 - (F) Cost or price evaluations of proposals.
 - (G) Competitive range determinations.
 - (H) Rankings of bids, proposals, or competitors.
 - (I) Reports and evaluations of source selection panels, boards, or advisory councils.
 - (J) Other information marked as “Source Selection Information—*See FAR §§ 2.101 and 3.104*” based on a case-by-case determination by USAC’s Contracting Officer, that its disclosure would jeopardize the integrity or successful completion of the USAC procurement to which the information relates.
- (2) Representation. The offeror represents, by submission of this offer, that it has not knowingly obtained, and will not knowingly obtain, contractor bid or proposal information or source selection information before the award of a USAC procurement to which the information relates.

(b) Prohibition Against Contractor Gratuities to USAC Personnel

The Offeror represents, by submission of this offer that it has not:

- i. Offered or given a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of USAC; and
- ii. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(c) Payments to Influence USAC Transactions

By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds (including USF funds) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of USAC or the Federal Communications Commission, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(d) Information Regarding Responsibility Matters, FAR § 52.209-7 (Jul 2013) (Deviation)

- (1) Definitions. As used in this provision:

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and

Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means:

- i. The total value of all current, active contracts and grants, including all priced options; and
- ii. The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

- (2) The offeror [] has [] does not have current active Federal contracts and grants with total value greater than \$10,000,000.
- (3) If the offeror checked “has” in paragraph (2) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:
 - i. Whether the offeror, and/or any of its principals, __ has or __ has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:
 - (A) In a criminal proceeding, a conviction.
 - (B) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
 - (C) In an administrative proceeding, a finding of fault and liability that results in (1) the payment of a monetary fine or penalty of \$5,000 or more; or (2) the payment of a reimbursement, restitution, or damages in excess of \$100,000.

- (D) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (3)(i)(A), (3)(i)(B), or (3)(i)(C) of this provision.
- ii. If the offeror has been involved in the last five years in any of the occurrences listed in (3)(i) of this provision, whether the offeror has provided the requested information with regard to each occurrence.
- (4) The offeror shall post the information in paragraphs (3)(i)(A) through (3)(i)(D) of this provision in FAPIIS as required through maintaining an active registration in the SAM database via <https://www.acquisition.gov> (see section C.1(t)).

(f) Certificate of Independent Price Determination

By submitting its proposal, the Offeror certifies in connection with this solicitation:

- i. The prices proposed have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other Offeror or with any competitor;
- ii. Unless otherwise required by law, the prices proposed have not been and will not be knowingly disclosed by the Offeror before award of a contract, directly or indirectly to any other Offeror or to any competitor; and
- iii. No attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.

(g) Anti-Kickback Certification

The Offeror by signing this proposal hereby certifies that Offeror has not: solicited, accepted, or attempted to accept any kickback from any subcontractor(s) included in its proposal; or included, directly or indirectly, the amount of any kickback in any prices stated in its pricing proposal. For purposes of this representation, “kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to Offeror, or any Offeror employee, subcontractor, or subcontractor employee, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract awarded by USAC or in connection with a Subcontract relating to a contract awarded by USAC.

Attachment 1
Sample Task Order RFP

(To be used for Contract evaluation purposes only)

SAMPLE

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
Beneficiary & Contributor Audit Program
Task Order Request for Proposals # 00x
[month day, year]
Unrestricted

1.0 TASK

1.1 Task Title

Task Order No. 00x – Schools & Libraries audit.

1.2 Task Objectives

This task order (“Task Order”) is for a complexity level A audit of a beneficiary of the Federal Universal Services Fund to be performed by CONTRACTOR NAME (“Contractor”) in connection with and pursuant to the Contract, USAC-IAD-2013-mm-xx, between Contractor and the Universal Service Administrative Company (“USAC”) executed effective Month xx, 2013 (the “Contract” or “Agreement”). This Task Order is made a part of, and subject to the terms of, the Contract.

1.3 Statement of Work

Contractor shall conduct a performance audit of the entity set forth in Attachment 1.A. The audit shall be conducted in accordance with Section B of the Contract, this Task Order and the audit procedures set forth in Attachment 1.A.

1.4 Task Order Type

This is a time-and-materials (“T&M”) task order.

2.0 PLACE OF PERFORMANCE

Contractor shall perform services at their own facilities and at the auditee’s location in accordance with all terms and conditions of the Contract during the performance of this Task Order. USAC will not provide space for the Contractor to perform the services.

3.0 PERIOD OF PERFORMANCE

The period of performance for this Task Order shall not exceed six months and shall commence on [month day, year].

4.0 COMPLIANCE WITH CONTRACT

The Contractor shall comply with all terms and conditions of the Contract during the performance of this Task Order.

5.0 CONTRACTING OFFICER TECHNICAL REPRESENTATIVE (COTR)

The COTR for this Task Order is Jane Smith, Senior Program Manager for USF Projects.

6.0 TERMINATION

This Task Order may be terminated in accordance with the Contract Termination for Convenience clause (Section C.1(l)) and the Contract termination for Cause clause (Section C.1(m)).

7.0 TASK ORDER PROPOSAL INSTRUCTIONS

The proposal submission shall include: (1) a task plan; (2) a staffing plan; (3) a statement regarding any actual or potential conflicts of interest or appearance issues relating to this Task Order; and (4) a time-and-materials (“T&M”) price proposal.

Any proposal that fails to comply in all respects with the following preparation and submission requirements may be rejected. Proposals must concisely address USAC’s requirements, and should not contain a significant amount of corporate boiler-plate marketing information. They must be prepared with Times New Roman 12-point font. Complete proposals must be submitted to Jay Beard, USAC Contracting Officer for this procurement, no later than the date and time set forth in the RFP. An electronic copy and five hard copies of the proposal are required. Proposals shall be mailed or delivered to: Universal Service Administrative Company, Attn: Jay Beard, 2000 L Street, NW, Suite 200, Washington, DC 20036. Inquiries may be directed to Jay Beard by electronic mail at rfp@usac.org; by telephone at (202) 776-0200; or by fax at (202) 776-0080.

7.1 Task Plan

Offeror’s task plan shall describe the tasks (including travel), milestones and resources necessary to conduct the task order work and produce the required deliverables (see Section B.1(h) of the Contract) within the specified task order period of performance. Deliverables shall include the final task plan, draft audit report and final audit report.

7.2 Staffing Plan

Offerors shall identify the names and qualifications of proposed personnel who will work on this Task Order, their labor categories, and their estimated level of effort (i.e., hours) for the Task Order. Personnel assigned to the Task Order shall meet the minimum qualifications

listed in Attachment 2(1) (Labor Category Descriptions) of the Contract. Include a certification that each person to be assigned to the task order performance has sufficient training and is competent in the subject matter to be audited.

7.3 Conflict of Interest Statement

With reference to Section C.2(z) (Conflict of Interest) of the Contract, identify any actual or potential conflicts of interest, or any circumstances that may give rise to the appearance of a conflict of interest, relating to the performance of this Task Order, or provide a statement that no such conflict of interest or appearance issues are known to exist.

7.4 Price Proposal

Offerors shall propose an estimated total price to perform all the services required by this Task order using the labor categories and labor rates documented in Contract Attachment 2(2).

Note: For the sample task order, offerors shall use the labor rates proposed in completed Attachment 2(2), without any discounts. Furthermore, to enable evaluation of labor rates for each of the option years, offerors shall propose a subtotal price for performance of this task order in each of the five contract years (i.e., the base year and each of the four options years). The total price shall be the sum of the subtotal prices for each of the five years. Offerors shall use the same labor mix and estimated labor hours for each labor category for each year. For this sample task order, the total price shall not include any estimated Travel Expenses.

8.0 TASK ORDER EVALUATION (for illustrative purposes only – no actual task order will be issued under this Sample Task Order solicitation; contract awards will be made in accordance with Section E.3(a) of the BCAP RFP)

Award will be made to the responsible offeror whose proposals represents the best value to USAC based on the following evaluation factors, which are listed in descending order of importance: (1) Task Plan; (2) Staffing Plan; (3) Past and current performance on task orders performed or being performed under this Contract; and (4) Price. The non-price factors are of equal importance and, when combined, the total non-price factors are more important than price.

Award will not necessarily be made to the lowest price offer. However, when the non-price factors of competing proposals are rated relatively equal, the importance of price will increase and may become the determining factor in award. If the lowest priced proposal is not also superior in terms of the non-price evaluation factors, a price-technical trade-off will be performed to determine the best value offer.

Attachment 1.A

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
Beneficiary & Contributor Audit Program
Task Order Request for Proposals # 00x
[month day, year]

Beneficiary Profile – For Example Purposes Only

Beneficiary Name: Green Tree Elementary School

Program: Schools and Libraries

Location: Palm Springs, California

Audit Type: Performance

Disbursements:

Service Type	Amount Disbursed
Internal Connections	\$408,500
Internet Access	\$126,316
Telecommunications	\$600,856
Total	\$1,135,672

Pursuant to provision 1(f) of Section B, each actual task order request for proposal will include USAC's suggested procedures for the relevant program.

Audit Procedures – For Example Purposes Only

The procedures developed by the Contractor to conduct performance audits of SL beneficiaries shall include, but are not limited to, the following:

- a. Ensure that the applicant is eligible to receive Schools and Libraries Program support.
- b. Evaluate the applicant's technology planning process.
- c. Evaluate the applicant's compliance with the requirements of the Children's Internet Protection Act ("CIPA").
- d. Evaluate the applicant's discount calculation methodology.
- e. Evaluate the applicant's competitive bidding process.
- f. Evaluate the applicant's inventory management and tracking process.

- g. Ensure the applicant had the required elements to demonstrate effective use of SL program funding.
- h. Evaluate the applicant's invoicing processing and approval process.

SAMPLE

ATTACHMENT 2(1)
LABOR CATEGORY DESCRIPTIONS

Name/Title	Minimum Education	Minimum Experience	Functional Responsibility
<i>Partner/Principal/ Director Auditing Services</i>	Bachelor's Degree in relevant business or technical field	10 years of applicable financial or business consulting experience, including substantial experience in managing the business associated with client requirements.	Organizes and directs overall engagement performance. Ensures that goals and objectives are accomplished within prescribed timeframe and funding parameters. Negotiates and makes decisions for the firm. Participates in project meetings to resolve issues. Ensures compliance with Firm policies and professional standards. Signature authority for final audit reports. Ultimate responsibility for accuracy of audits reports and compliance with GAGAS standards.
<i>Senior Manager Auditing Services</i>	Bachelor's Degree in relevant business or technical field	6 years of applicable financial or business consulting experience, including 3 years of management experience.	Responsible for ensuring that all audits are completed as scheduled and that milestone deliverables are timely and meet GAGAS quality standards. Manages firm staff assigned to audits and resolves project staffing and planning issues. Assigns work to team members. Develops, maintains and monitors work plans. Performs first-line issue resolution. Provides updates on engagement progress and helps draft final report. Conducts on-site quality control inspections if needed. Reviews and approves all milestone documentation.
<i>Manager Auditing Services</i>	Bachelor's Degree in relevant business or technical field	5 years of applicable financial or business consulting experience, including two years of management experience.	Supervises and reviews the work product prepared by more junior personnel and is responsible for authoring draft and final audit reports. Assumes responsibility for coordination of subordinate activities. Monitors project performance and staff relationships. Corrects errors identified during acceptance process. Responsible for tracking and reporting project costs and level of effort of project staff.

Name/Title	Minimum Education	Minimum Experience	Functional Responsibility
<i>Senior Staff Auditing Services</i>	Bachelor's Degree in relevant business or technical field.	3 years of applicable financial or business consulting experience including one year of experience in a supervisory capacity.	Analyzes and develops audit recommendations with team. Prepares documentation, reports, and other deliverables for client approval. Assigns specific work tasks to more junior staff. Participates in planning of engagement and is responsible for all tasks delegated by managers. Supports team in implementation and acceptance process. Ensures that deliverables are in compliance with statement of work.
<i>Junior Staff Auditing Services</i>	Bachelor's Degree in relevant business or technical field	1 year of applicable financial or business consulting experience.	Responsible for planning and performing compliance, financial, and operational audit work in accordance with applicable audit standards. Provides the necessary corrective recommendations when deficiencies are discovered. Prepares clear and concise audit work papers, reports, and other communications to document audit procedures performed and exceptions noted. Assists manager in reporting and tracking of project costs and level of effort.
<i>Lead Project Manager</i>	Bachelor's Degree in relevant business or technical field	7 years of project management experience managing large scale audit initiatives. Project Management Professional (PMP) certified and has expertise in project management, budgeting and planning, and strong MS Office and SharePoint skills.	Performs as Firm's primary POC with the USAC PMO to manage the execution and completion of an assigned Task Order. Responsible for establishing the project plan to accomplish goals pursuant to the agreed upon task order and produce the audit deliverables required within schedule, cost, and quality standards. Monitors progress related to the project plan and the budget, and reports back to USAC Senior Management and the USAC Lead Project Manager at pre-defined intervals. Documents, analyzes, and manages issues and risks, and takes corrective action to ensure that scope, schedule, quality and cost are not impacted. Responsible for creating the weekly status report and the quarterly management review report.

ATTACHMENT 2(2)
DIRECT LABOR PRICE SCHEDULE

Contractor shall use the following table of labor categories, which are more fully described in **Attachment 2(1)** above, in submitting labor rates and pricing for their proposal. Labor rates provided must be on a fully burdened basis.

Labor Category	Base Year Rate	Option Year Rates			
		1	2	3	4
Partner/Principal/Director Auditing Services					
Senior Manager Auditing Services					
Manager Auditing Services					
Senior Staff Auditing Services					
Junior Staff Auditing Services					
Lead Project Manager					

ATTACHMENT 3

USAC VISITOR FORM

NAME: _____

USAC DIVISION: _____

USAC ID Badge (VISITOR BADGE # _____)

Replacement value \$20.00.

Visitor Direction: Visitor is required to sign the Visitors Log at the 2nd floor reception each day he/she will be working at USAC's offices. USAC hours of operations are from 9:00 a.m. – 6:00 p.m. A Visitor needing to work within USAC space outside of these standard hours must have his/her USAC employee point of contact onsite with them at all times. If no USAC point of contact is available, Visitor will not be permitted to work within USAC space. Visitors are required to visibly display the assigned USAC ID Badge at all times while in USAC space. Visitors must present the assigned badge to any inquiring USAC employee for security purposes. If Visitor's USAC ID Badge is lost, missing or has been left at home, Visitor must notify the receptionist and be assigned another temporary badge. Visitor is required to pay USAC the replacement value stated in this form for the USAC ID Badge if Visitor does not return it immediately upon request by any USAC employee or at the end of Visitor's assignment.

USAC Device and Network Security: USAC performs periodic scanning of network devices. Any device connected to the USAC network is subject to these scans. Visitor understands that if he/she is connected to the USAC network, he/she consents to these scans.

Visitor agrees that he/she shall use his/her best efforts to ensure that no software, device, or other undisclosed feature, including, without limitation, a time bomb, virus, software lock, spyware, adware, drop-dead device, malicious logic, worm, Trojan horse, back door or trap door, that is designed to delete, disable, deactivate, interfere with, harm any software or systems, or USAC's information, or that is intended to provide access to or produce modifications not authorized by USAC or similar items ("Malicious Software") will be introduced into USAC's systems or networks. Visitor agrees that, in the event Malicious Software is found to have been introduced into the systems used by Visitor, Visitor or the company he/she represents shall use its best efforts at no charge to USAC to assist in reducing and eliminating the effects of the Malicious Software and, if the Malicious Software causes a loss of operational efficiency or loss of data, to mitigate and restore such losses.

If Visitor is using a USAC workstation, laptop, mobile or other device and/or the USAC network, then Visitor shall not, without the prior express written permission of the USAC IT Security Manager, (i) install or download any software, personal content or 3rd party content through the USAC network and/or onto a USAC workstation, laptop, mobile or other device; or (ii) make any configuration changes to any USAC workstation, laptop, mobile or other device. Visitor shall abide by all USAC computer, email, internet and network usage policies.

Space Agreement: Visitor agrees to leave his/her assigned workspace in the same condition in which it was originally assigned. Visitor, or the company he/she represents, will be held

financially responsible for any damages incurred as a direct result of the occupancy. USAC reserves the right to inspect said workspace at any time. No workspace assignment is guaranteed and Visitors are subject to seat reassignment based on seating considerations at anytime for any reason.

By signing this form I acknowledge and agree to the terms stated herein.

Visitor's Signature ("Visitor")

By: _____

Name: _____

Title: _____

Date: _____

Company Name (if applicable): _____

Receptionist must initial below, indicating when badge is issued and returned.

Badge provided to visitor: _____ Initial _____ Date _____

Badge returned: _____ Initial _____ Date _____

ATTACHMENT 4

USAC CONFIDENTIALITY AGREEMENT

1. I recognize and acknowledge that as an employee of, or consultant to, a contractor or subcontractor to the Universal Service Administrative Company ("USAC"), I may have access, in connection with the performance of USAC Contract USAC-IA-2013-10-005, Beneficiary and Contributor Audit Program ("BCAP") or any subcontract or consulting agreement thereunder (collectively "the Contract"), to Confidential Information, as that term is defined in Appendix A to this USAC Confidentiality Agreement ("Confidentiality Agreement").
2. I acknowledge and agree that I will treat any Confidential Information in the manner set forth in this Confidentiality Agreement. I acknowledge and agree that this obligation applies to the treatment of all Confidential Information to which I obtain access while working as a Staff Person for or on behalf of USAC, regardless of the form of the Confidential Information or the manner in which I obtain access to it. I acknowledge and agree that my obligations herein with respect to Confidential Information apply to oral and written communications, drafts and final documents, information obtained directly or indirectly, and information obtained as a result of, or in connection with, performance of the Contract.
3. I acknowledge and agree that my obligation to treat Confidential Information in the manner set forth in this Confidentiality Agreement will continue for five years after the termination of the Contract.
4. I acknowledge and agree that I will not use Confidential Information for any purpose other than performance of the Contract.
5. I acknowledge and agree that, except as provided in paragraphs 6 and 7 herein or as authorized by the USAC Chief Executive Officer or the USAC General Counsel, or in either one's absence, a respective designee, I will not disclose Confidential Information to any person or entity other than: (a) the provider of the Confidential Information at issue, or (b) contractor or subcontractor employees or consultants performing work under the Contract (individually and collectively, "Contract Personnel") who have executed a copy of this Confidentiality Agreement.
6. I acknowledge and agree that this Confidentiality Agreement shall not apply to requests for Confidential information made by an employee of the Federal Communications Commission ("FCC"), except that I may not disclose Personally Identifiable Information (as that term is defined in Appendix A to this Confidentiality Agreement) without the express advance written approval of the USAC Director of Human Resources or the USAC General Counsel, or in either one's absence, a respective designee.
7. I acknowledge and agree that, subject to the notice requirement in paragraph 8 below, this Confidentiality Agreement shall not prevent disclosure of Confidential Information in

response to an official request from the Comptroller General of the United States, the Government Accountability Office, or the United States Congress or a Committee or Subcommittee thereof, except that I may not disclose Personally Identifiable Information without the express advance written approval of the USAC Director of Human Resources or the USAC General Counsel, or in either one's absence, a respective designee.

8. I acknowledge and agree that if I receive a subpoena or any other request or demand for Confidential Information, I will take all reasonable and appropriate steps to ensure that the request is submitted within one business day of receipt, and prior to any disclosure of such information or records, to the USAC General Counsel, or in the USAC General Counsel's absence, a respective designee.

9. I acknowledge and agree that if I know or have a reasonable basis for believing that any Contract Personnel is/are using or disclosing Confidential Information in violation of this Confidentiality Agreement, I will immediately notify the USAC Contracting Officer or the USAC General Counsel.

10. I acknowledge and agree that if I intentionally or unintentionally disclose any Confidential Information in violation of this Confidentiality Agreement, I will immediately notify the USAC Contracting Officer or the USAC General Counsel.

11. I acknowledge and agree that if I am uncertain or have questions about my obligations under this Confidentiality Agreement, I will immediately seek advice from the USAC Contracting Officer or the USAC General Counsel.

12. I acknowledge and agree that any violation of this Confidentiality Agreement may result in suspension or termination of the Contract, civil and criminal liability or any other remedies provided by law.

13. I acknowledge and agree that upon completion or termination of the Contract, I will return to the USAC General Counsel, the USAC Contracting Officer, or other person designated by either of them, any Confidential Information in my possession.

14. I acknowledge and agree that this Confidentiality Agreement is binding upon me as of the date of my signature, that any modification to this Confidentiality Agreement is binding on me as of the date that I sign such modified version, and that my obligations under the Confidentiality Agreement, including any modifications, continue through and beyond the termination of the Contract and for as long as I have in my possession, access to, or knowledge of Confidential Information. I further acknowledge and agree that USAC may, in its sole discretion, modify Appendix A and such modification(s) shall be effective and enforceable against me following written notice to me, which may be by any reasonable method, including but not limited to hand delivery, mail, courier service, email, or facsimile, and that my signature or agreement is not required for the modification to Appendix A to be effective and binding on me.

15. If any provision of this Confidentiality Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed stricken and the remainder of the Confidentiality Agreement shall continue in full force and effect as if it had been executed without the invalid provision.

Acknowledged and agreed:

Name (print)

By (signature): _____

Date: _____

CONFIDENTIALITY AGREEMENT - ATTACHMENT A

Personally Identifiable Information is defined as information whose disclosure would constitute an unwarranted invasion of personal privacy, including but not limited to, personnel records, salary and compensation information, medical records, social security number or residential address. In the event of a question about whether disclosure would constitute an unwarranted invasion of personal privacy, the USAC General Counsel or his or her designee will use for guidance the standards set forth in 47 C.F.R. § 0.457(f) and decisions made thereunder.

Confidential Information is defined as:

1. Information, data, material, or communications in any form or format, whether tangible or intangible, including notes, analyses, data, compilations, studies, or interpretations (collectively referred to hereafter as "Information") and any data, material or communications in any form or format, whether tangible or intangible, that contains, reflects, or is derived from or based upon any information or is related to internal USAC management, business and financial matters.
2. Information related to the development of statements of work or evaluation criteria for USAC or FCC procurements (but not final solicitation or procurement documents that are formally released to one or more prospective bidders or offerors), contractor bids or proposals, evaluation of bidders or offerors, selection of contractors, or the negotiation of contracts.
3. Information that is excluded by applicable statute or regulation from disclosure, provided that such statute (a) requires that the information be withheld from the public in such a manner as to leave no discretion on the issue, or (b) establishes particular criteria for withholding or refers to particular types of information to be withheld. Such information includes copyrighted or trademarked information.
4. Information containing trade secrets or commercial, financial or technical information that (a) identifies company-specific (i.e., non-aggregated) proprietary business information about a Universal Service Fund (USF) contributor (or a potential contributor) or its parent, subsidiary, or affiliate, and (b) has not previously been made publicly available.
5. Information concerning USAC relationships with financial institutions, including but not limited to, account locations, identifiers, balances, transaction activity and other account information and any advice or guidance received from such institutions.
6. Information regarding or submitted in connection with an audit or investigation of a USF contributor, potential USF contributor, USF beneficiary, applicant for USF support, USAC contractor, or USAC Staff Person.
7. Information to which USAC, the FCC, or any other government agency might assert a claim of privilege or confidentiality, including but not limited to attorney-client communications, information that constitutes work product or reflects USAC, FCC or other government agency decision-making processes, including law enforcement investigations and program compliance matters. Such information includes but is not

limited to internal USAC information, information exchanged between USAC and the FCC or another government agency and information exchanged between two or more government agencies in any form, including but not limited to letters, memoranda, draft settlement documents, and working papers of USAC, the FCC, other government agencies, and their respective staff.

8. Information that was submitted with a corresponding written request for confidential treatment, protection, or nondisclosure, including, but not limited to, submissions marked "proprietary," "privileged," "not for public disclosure," or "market sensitive information," unless and until such request is denied.
9. Information developed in security investigations. Such information is the property of the investigative agency and may not be made available for public inspection without the consent of the investigative agency.
10. All audit, tax and financial material and information of any kind.
11. All information received from, or submitted to, the FCC in connection with the performance of the Contract.

Attachment 5

USAC Contractor Travel Expenses Policy

In accordance with the terms and conditions in Section C of the Contract, USAC will reimburse Contractor for necessary and reasonable Travel Expenses incurred on behalf of the Contractor while performing Services on a time-and-materials (T&M) basis only. “Travel Expenses” is defined in Section C.2(a) of the Contract. The Travel Expenses reimbursable under this Contract are set forth in paragraphs I. to IV., below. Contractor shall exercise sound, practical, and prudent judgment when determining the need for travel on behalf of USAC as well as the appropriate expenses to be incurred in connection with such travel. Contractor will only be reimbursed for the most cost-effective means of travel consistent with the circumstances. Contractor shall schedule trips to the same location in the most efficient manner to avoid multiple trips and limit the expense to USAC.

Contractor shall pay for Travel Expenses incurred and may seek reimbursement for Travel Expenses only through submission of a proper invoice in accordance with Section C.1(g) (Alternate I). The Contractor shall provide itemized receipts for all Travel Expenses allowed under the Contract. USAC will reimburse Contractor for Travel Expenses only after the expenses have been incurred.

The terms of this Policy apply only to non-local travel, *i.e.*, travel in excess of 50 miles from the Contractor employee’s regular place of business. USAC will not reimburse any expenses for travel by a Contractor employee to locations within a 50-mile radius of his or her regular place of business (local travel).

The terms of this Policy apply to USAC Contractors and their Subcontractors, and thus the terms “Contractor” and “Contractor employee” apply also to “Subcontractor” and “Subcontractor employee,” respectively.

I. Transportation

- (A) Air and rail transportation by USAC Contractor employees, regardless of duration or destination, must be at the lowest practical and available fare. No upgrades from basic (coach) service are reimbursable.
- (B) If a Contractor employee uses a personal vehicle for travel related to the Contract, it is the Contractor employee’s responsibility to be adequately insured.
- (C) Reimbursement for non-local travel in excess of 50 miles from the Contractor employee’s regular place of business will be for the lesser of the total dollar amount of mileage (plus tolls and parking charges) reimbursed at the current federal Internal Revenue Service (IRS) rate (<http://www.irs.gov/uac/2013-Standard-Mileage-Rates-Up-1-Cent-per-Mile-for-Business,-Medical-and-Moving>) or the total dollar amount for the equivalent commercial transportation fare. If a Contractor employee chooses to use his or her

personal vehicle for non-local travel greater than 700 miles in total mileage, (s)he must submit documentation to support that this option was less expensive than a commercial option (e.g., bus, train or plane).

(D) Car Rentals: Contractor employees shall use the most reasonable cost rental vehicle that can accommodate travel requirements (i.e., terrain and weather) and the number of occupants. Intermediate/standard size cars should meet most travelers' needs. If a more expensive option is required, an explanation must be attached to the invoice. When on travel together, Contractor personnel should share a single rental vehicle. However, no more than four people are required to share a vehicle.

1. GPS (Global Positioning System) navigation systems may be obtained from the rental car agencies and are reimbursable.
2. USAC will not reimburse Contractor for insurance on car rentals. It is recommended that Contractor employees keep all insurance information with them at all times when traveling and renting automobiles. Contractor is responsible for paying the costs associated with accidents and theft involving rental car.
3. EZ-pass and prepaid toll devices may be obtained from the rental car agencies and costs will be reimbursed if related to contract travel.

II. Meals

(A) Contractor may be reimbursed for meal expenses incurred by employees on non-local travel. Meal expenses must be reasonable and itemized receipts are required for each meal expense in excess of \$25. Meal expenses must be itemized and recorded on an expense statement using actual amounts and broken out by individual meals.

(B) On the days that the non-local travel begins and ends, meals prior to or subsequent to traveling will be reimbursed if travel occurs between the following times:

1. Breakfast: If the Contractor employee leaves home before 7:00 a.m.
2. Lunch: If the Contractor employee leaves Contractor's facility before 11:30 a.m. and/or returns after 3:30 p.m.
3. Dinner: If the Contractor employee arrives home after 8:00 p.m.

(C) Contractor will only be reimbursed for meal expenses for staff identified in the task order staffing plan.

III. Accommodations

- (A) In cases where non-local travel requires an overnight stay, Contractor will be reimbursed for the cost of a single room at the lowest price suitable and appropriate for the business purpose.
- (B) Contractor will be reimbursed the room charge for internet connection per day provided the internet is used for Contract purposes only.

IV. Other Expenses

Contractor will be reimbursed for the following expenses, provided they are reasonable and necessary:

- (A) Gratuities at usual and customary amounts; and
- (B) Normal and customary baggage fees associated with airline travel.

V. Non-Reimbursable Expenses

Contractor will not be reimbursed for the following expenses. This list is not all inclusive.

- (A) Expenses for hiring rapid mode of transportation vehicles such as “Zip Cars.”
- (B) Expenses of spouses or other family members accompanying Contractor employees on business trips related to the Contract.
- (C) Costs of privately owned or rented aircraft.
- (D) Alcohol (including pro rata portion of gratuities for combined receipts).
- (E) In-room lodging entertainment and services (e.g., movie rentals, concierge and turn-down services, etc.).
- (F) Parking tickets or fines for violation of motor vehicle laws incurred by Contractor.
- (G) Insurance for rental cars.
- (H) Overweight personal baggage in excess of the normal baggage fee charge for the flight.
- (I) Transportation between home and the regular work location as well as any personal travel.
- (J) Expenses for entertainment (alcohol, amusement or recreation, such as visiting nightclubs, theater expenses, sporting events, meals purchased in surroundings not conducive to a business discussion).