

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER	PAGE 1 OF 100
2. CONTRACT NO. USAC-SL-2012-10-08	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER USAC-SL-2012-10-08	6. SOLICITATION ISSUE DATE October 8, 2012	
7. FOR SOLICITATION INFORMATION CALL:	a. NAME Jay Beard, Senior Manager of Purchasing		b. TELEPHONE NUMBER (No collect calls) 202-776-0200	8. OFFER DUE DATE/ LOCAL TIME 11/19/2012 @12:00PM ET	
9. ISSUED BY Universal Service Administrative Company 2000 L Street NW, Suite 200 Washington, DC 20036		CODE	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB) <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A)		NAICS: 541611 SIZE STANDARD: \$14.0M
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING
15. DELIVER TO Universal Service Administrative Company 2000 L Street NW, Suite 200, Washington, DC 20036		CODE	16. ADMINISTERED BY Universal Service Administrative Company 2000 L Street NW, Suite 200, Washington, DC 20036		
17a. CONTRACTOR/OFFEROR	CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY Universal Service Administrative Company 2000 L Street NW, Suite 200 Washington, DC 20036		
TELEPHONE NO.		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER					
19. ITEM NO. 1	20. SCHEDULE OF SUPPLIES/SERVICES Risk Assessment of Schools & Libraries Support Mechanism. See Continuation Sheet for performance and deliverable requirements. <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>		21. QUANTITY 1	22. UNIT Lot	23. UNIT PRICE
25. ACCOUNTING AND APPROPRIATION DATA			24. AMOUNT		
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"/> ARE <input type="checkbox"/> ARE NOT ATTACHED			
<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 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

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 Jay Beard, Senior Purchasing Manager
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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 jbeard@usac.org
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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
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38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (<i>Print</i>)
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE
	42b. RECEIVED AT (<i>Location</i>)
	42c. DATE REC'D (<i>YY/MM/DD</i>)
	42d. TOTAL CONTAINERS

SECTION B
CONTINUATION SHEET FOR
SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
(Standard Form (SF) 1449)

1. SF 1449 Item 20 – Schedule of Supplies/Services

(a) Type of Contract

This is a firm-fixed-price contract. The total firm-fixed-price for this contract is stated in Block 26 of the SF 1449. The fixed price includes all direct and indirect costs, including travel for field work and onsite meetings, and profit.

(b) Contract Term

The term of this Contract is one year. The term of this Contract shall commence on the Effective Date stated in Block 3 of the SF 1449.

(c) Place of Performance

- (1) Contractor shall perform field work primarily at USAC's headquarters located at 2000 L Street NW, Suite 200, Washington, DC 20036. USAC shall provide appropriate office space and appropriate access to the computer network for duties performed at USAC headquarters. Status meetings (see section B.1(f)(4)) shall be held at USAC offices, except to the extent that USAC, at its discretion, permits meetings to be held telephonically.
- (2) All Contractor personnel that perform work on site at USAC shall complete the USAC Visitor Form, located at Section D, Attachment 2, prior to being assigned a temporary USAC Visitor's Badge and being allowed on site.
- (3) Other locations at which the Contractor may be required to perform field work in performance of this Contract include:
 - FCC (E-rate regulatory authority), Washington, DC.
 - Solix, Inc. (E-rate Operational Support Services contractor), Parsippany, NJ.
 - Vangent, Inc. (E-rate Operational Support Services subcontractor to Solix), Lawrence, KS.
 - Selected group of schools and libraries beneficiaries at their respective sites in the United States.

(d) *General Performance Requirements*

- (1) Contractor must be an independent and objective consultant capable of conducting a robust risk assessment of USAC's administration of the E-rate program, as more specifically described in subsection (e) below, to determine and identify potential risks to the primary E-Rate Program goals: (1) ensuring that eligible schools and libraries have affordable access to modern telecommunications and information services that would enable them to provide educational services to all parts of the nation, and (2) protecting the fund against waste, fraud, and abuse.
- (2) The assessment shall evaluate whether USAC's administrative resources are structured to provide reasonable assurance that program goals are met in a cost-effective manner and that risks are appropriately targeted and addressed. Among the matters to be addressed in the risk assessment are the findings and concerns about the administration of the program set forth in the September 2010 report of the Government Accountability Office ("GAO") titled: "FCC Should Assess the Design of the E-rate Program's Internal Control Structure," GAO 10-908, <http://www.gao.gov/products/GAO-10-908>. ("GAO 2010 E-rate Report").
- (3) The risk assessment shall be conducted in accordance with the procedures set forth in the GAO report entitled "Standards for Internal Control in the Federal Government," (GAO/AIMD-00-21.3.1) (November 1999)("1999 GAO Internal Control Report"). The contractor shall also use concurrently both GAO's "Internal Control Management and Evaluation Tool" (August 2001) and Office of Management and Budget, Management's Responsibility for Internal Controls, Circular No. A-123 (Dec. 21, 2004).
- (4) Contractor must be familiar with the FCC's rules governing the E-rate program located at 47 C.F.R. §§ 54.500 - 54.523 and 47 C.F.R. § 54.701 through § 54.725. Additionally, the Contractor must be generally familiar with the FCC decisions and orders regarding the E-rate program. USAC will provide the Contractor with a list of the orders most relevant to the work to be performed under this procurement. Commission orders can be located at the following link at the FCC's website http://www.fcc.gov/wcb/tapd/universal_service/schoolsandlibs.html. Additional materials relevant to the E-rate program may be found on the USAC website.

(e) *Risk Assessment*

The risk assessment shall be conducted in the manner required by section (d). At a minimum, any risk assessment shall:

- (1) Evaluate whether USAC's performance objectives for its administration of the E-rate program are clear and consistent.
- (2) Assess the effectiveness and efficiency of USAC's E-rate Program procedures, with a focus on application and invoice processing. This examination shall include an assessment of USAC's internal control procedures, including, but not limited to, Program Integrity Assurance ("PIA") review, selective review, special compliance review, CIPA compliance review, the E-rate invoice review process (including the new process to randomly sample invoices that supplements the Payment Quality Assurance program), and all other relevant processing and review procedures. To the extent feasible, Contractor shall quantify the costs of the discrete parts of USAC review processes (e.g. PIA and Quality Assurance) in determining whether the administration of the E-rate program is cost effective.
- (3) Consider the effectiveness of USAC's E-rate Program procedures in detecting the most significant problems identified in recent E-rate audits, including ineligible services, ineligible entities or locations, competitive bidding violations, insufficient recordkeeping by applicants/beneficiaries, and invoicing errors. Contractor may obtain these audits from USAC or the FCC.
- (4) Evaluate GAO's statement that "[t]he E-rate program's internal control structure is a product of accretion and is not clearly targeted to reasonably and effectively address programmatic risks." GAO 2010 E-rate Report at 30. Explain with specificity whether, and to what extent, the risk assessment supports GAO's conclusion. Provide specific recommendations of ways that USAC can improve its allocation of resources to render its administration of the E-rate program more cost-effective and better able to achieve the dual program goals of providing affordable access to eligible services for educational purposes at discounted rates while also protecting against waste, fraud and abuse.
- (5) Review the discussion of eligible equipment and cost-allocation percentages contained in the GAO 2010 E-rate Report (p. 22). Provide recommendations to address the issues that GAO has raised concerning the process for handling these complex determinations. For example, address whether PIA reviewers should have special technical backgrounds to review eligible equipment determinations, and, if so, explain what backgrounds might be appropriate. Evaluate whether and how the cost-allocation process – which is used to determine the amount of funding for which a particular service or product is eligible – might be streamlined.
- (6) Provide specific recommendations on how the application review process might be streamlined if the review demonstrates that it is too burdensome or costly (see GAO 2010 E-rate Report at 12).

- (7) Review the framework for controls that allows USAC to periodically check the accuracy of USAC's automated invoice review process.
- (8) Evaluate whether the current USAC random audit process could be modified to make it more effective and efficient and also whether audits of service providers, rather than just applicants, should be conducted. As part of this evaluation, Contractor shall assess whether the audit program should focus more on specific types of applications (by size or by service sought), or otherwise target specific categories of applicants, service providers, or applications.
- (9) Evaluate whether audit findings are effectively used to assess and modify USAC's internal administrative controls. In doing so, Contractor shall examine USAC's implementation of the FCC's directive to develop a systematic approach to assessing internal controls that considers and reflects the results of beneficiary audits.
- (10) Review the 2009 through 2011 fraud risk assessments conducted by USAC for the FCC, and confer with those who conducted them, to obtain more specific support for the conclusion that 20 of 24 control measures evaluated were directed at low or very low risks. (See GAO 2010 E-rate Report at 20). Propose recommendations to design more cost-effective cost control measures that would target higher risks.
- (11) Assess the effectiveness and efficiency of USAC's organizational structure and management practices (including those of its contractor Solix, the subcontractor Vangent, and any other contractors that may be used from time to time). Consistent with the 1999 GAO Internal Control Report, such an assessment shall take into account (among other factors) the following: management practices; hiring criteria; employee training; lines of reporting; supervision processes; delegation of operating activities; and the additional control activities described at pp. 13-15 of the Report.
- (12) In assessing USAC organization structure and management practices (see above), evaluate USAC's management and oversight of its contractors and any subcontractors, with particular attention to Solix and Vangent. This shall include an evaluation of the sufficiency of USAC's oversight of such entities; whether adequate safeguards exist to protect against conflicts of interest; whether there is continuity in the workforce of Solix, Vangent, and any other contractors or subcontractors; whether there are sufficient data checks; and such other oversight procedures as described in the 1999 GAO Internal Control Report.
- (13) Evaluate control activities for specific information systems, as described in the 1999 GAO Internal Control Report (at 16-18). At a minimum, the risk assessment shall evaluate whether the computer systems USAC has adopted for inputting and processing applications and invoices is both reliable and

sufficiently flexible to incorporate E-rate Program changes promptly and efficiently. Specifically, the risk assessment shall review and assess the problems experienced by beneficiaries attempting to use the automated system to file applications (such as occurred during the application period for funding year 2011). The risk assessment shall also evaluate the feasibility of adding more online or automated processes. In addition, computer backup systems and recovery systems shall be evaluated.

- (14) Evaluate the reliability of USAC administration of the FCC E-rate program policy, including implementation and the timeliness of implementation of FCC rules, orders and other official guidance, and assess whether and how USAC reporting of information to the FCC and coordination with the FCC could be improved. Evaluate the sufficiency of the procedures and practices employed by USAC and the FCC to ensure that any policies and procedures implemented by USAC (including interpretive statements on its website or practices utilized in its procedures) have been sufficiently coordinated with and approved by the Commission.
- (15) Evaluate the training provided to USAC's employees and its subcontractors, and whether it is sufficient to ensure they are providing the correct information to applicants and service providers.
- (16) Evaluate whether the information provided by USAC employees (and its subcontractors) to applicants and service providers is accurate and timely.

(f) Required Services/Deliverables

Contractor shall provide the following services/deliverables:

- (1) Work shall commence no later than ten (10) business days following the Effective Date of the Contract. Due dates for all other deliverables herein are based on calendar days.
- (2) Contractor shall submit a detailed project plan that addresses the requirements set forth in this Section B to USAC and FCC for USAC's approval within 60 days of the Effective Date, unless USAC and the FCC concur in a later date. Before developing its plan, Contractor shall meet with staff of USAC and the FCC to obtain detailed information about the E-rate Program and such other input as may be relevant to formulation of the project plan. Contractor may not begin fieldwork until USAC has approved the project plan. The project plan shall describe all tasks to be undertaken and completed by Contractor through presentation of the final report. Contractor shall use Microsoft Project as its planning and presentation tool. Contractor may request USAC approval for changes to tasks and/or start/finish dates for tasks in the project plan. USAC will determine whether such changes are appropriate. Contractor will be expected to adhere to the project plan throughout the term of the contract.

- (3) Fieldwork associated with the risk assessment shall be completed no later than six months after the Effective Date, or by such other date set forth in the project plan approved under subsection (f)(2).
- (4) During the performance of the engagement, Contractor (as well as its agents and employees) shall meet and communicate frequently with USAC and the FCC to discuss project status. Status meetings shall be held at the discretion of USAC, but at least once every two weeks unless Contractor is notified of a different schedule by USAC. Meetings may be held telephonically at the discretion of USAC. At each meeting, a written status report shall be provided to USAC and the FCC, covering the period since the last meeting that includes a description of tasks accomplished since the last meeting and any challenges experienced by Contractor in performing its duties, including alternative strategies for accomplishing its tasks, as appropriate. Contractor shall also provide an update to the Microsoft Project plan during such meetings. The update shall reflect the most current status for project plan tasks in the “% Complete” and “Status” fields of the project plan.
- (5) At the completion of its fieldwork, the Contractor shall submit to USAC and the FCC a written representation of completion of all fieldwork. See Section D, Attachment 1. Contractor’s submission shall also include copies of all working papers, including interview summaries, notes taken and other documents associated with the project. The working papers shall be provided to USAC and the FCC on electronic media. Handwritten notes may be scanned and provided in PDF format, without password or other types of protection.
- (6) Contractor shall submit to USAC (with a copy to the FCC) a written, draft final report no later than 60 days following completion of fieldwork, or at such other date specified in the project plan approved under subsection (f)(2). The draft final report shall fulfill the requirements set forth below for the final report in section (g) below. After receiving comments on the draft report from USAC and the FCC, Contractor shall make such revisions to the report as it considers appropriate. The final report shall contain Appendices with Contractor’s responses to any substantive comments received from USAC and the FCC.
- (7) Contractor’s final written report (the “Final Report”) shall be provided to USAC (with a copy to the FCC) no later than 30 days after its receipt of comments from USAC and the FCC, or at such other date as may be established by the project plan. The final report shall be submitted in Microsoft Word (unprotected) and PDF formats. The written report shall satisfy the requirements of section (g).
- (8) Except to the extent stated otherwise in this section, each written deliverable shall be submitted in hard copy and electronically in Microsoft Office format,

unprotected. Contractor shall submit all reports in a form and on media reasonably acceptable to USAC. Contractor shall provide all deliverables to:

Universal Service Administrative Company
Attention: Richard Belden
Chief Operating Officer
2000 L Street, N.W., Suite 200
Washington, D.C. 20036
rbelden@usac.org

Courtesy copies shall also be provided to the FCC, addressed to:

Gina Spade
Office of the Managing Director, Financial Operations
Federal Communications Commission
1118 Rankin Drive
Lawrence, KS 66049

Copies to:

Thomas Buckley
Office of the Managing Director, Financial Operations
Federal Communications Commission
445 12th Street SW,
Washington, DC 20554

and

Lisa Hone
Telecommunications Access Policy Division Wireline Competition
Bureau Federal Communications Commission
445 12th Street SW,
Washington, DC 20554

(g) Final Report

- (1) The Final Report shall contain at a minimum: (1) an assessment of all matters reviewed by Contractor, including those items required to be evaluated under section (e) above; (2) a full description of any risks ascertained during Contractor's review, with identification of the source of the risks and the potential impact of those risks on the E-rate Program (including an evaluation of how those risks affect the specific program goals and a quantification of the risks, to the extent feasible); (3) an evaluation of the likelihood of the risk's occurrence; (4) recommendations for controls to mitigate and manage these risks, including suggested actions to be considered by the FCC and USAC;

and (5) a description of the significance of each risk and a ranking of the risks (with an explanation of the basis for the rankings).

- (2) To the extent feasible, the report shall include an estimate of the costs for implementing each of the recommendations for mitigating or managing the risks. The Final Report shall also describe in detail the methodology used by Contractor for its risk assessment, and contain recommendations for a framework and methodology that USAC can utilize in conducting future risk assessments. The Final Report shall also recommend procedures that will allow USAC to periodically check for risks in those areas identified as existing or potential problem areas, including a framework for controls to evaluate the accuracy of USAC's automated invoice review process (as required under section (e) above). The format and content of draft and final reports must be reasonably acceptable to USAC.
- (3) The report shall be structured so that it contains, at a minimum, the following elements:
 - i. Executive summary.
 - ii. Assessment methodology description (including how risks were identified).
 - iii. Risk Discussion (containing at a minimum the information required by section (e) above).
 - iv. Risk Matrices:
 - (A) Risk ratings matrix containing for each risk, the risk likelihood rating, risk impact (e.g. high, medium or low), and overall risk rating.
 - (B) Identification of controls or other changes recommended to mitigate or manage the risk identified.
 - (C) Criteria used in determining the overall risk ratings, and
 - (D) Description of the process used in determining the overall risk ratings.
 - v. Recommendations to modify or otherwise mitigate or manage the risks identified in the Final Report. These recommendations shall reflect the two FCC program goals identified in subsection (e)(4) above, and identify the resources needed to implement the recommended changes (e.g., any data requirements, financial resources, personnel, procedural changes, internal controls or possibly regulatory changes).

- vi. Supporting documentation demonstrating the basis supporting each finding, conclusion and recommendation in the Final Report, together with a citation to supporting work papers (and attachment of copies thereof).
 - vii. Appendices with Contractor's responses to any substantive comments received from USAC and the FCC after their review of the draft final report.
- (4) Contractor shall present the Final Report to USAC management and FCC staff at the Final Meeting on a date and at a time mutually agreed to by both parties to the contract, but no later than 10 days after submission of the Final Report. The purpose of the Final Meeting is to ensure that USAC and the FCC understand[s] the findings, conclusions, and recommendations of the Contractor's risk assessment, as set forth in the Final Report, especially those recommendations to mitigate risks associated with USAC's administration of the E-rate program.

SECTION C – CONTRACT CLAUSES

1. Contract Terms and Conditions—Commercial Items, 48 C.F.R. (FAR) § 52.212-4 (Feb 2012) (Deviation) (Tailored as indicated)

(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 the USAC of the cessation of such occurrence.

(g) *Invoice (Tailored)*

- (1) Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include:
 - i. Name and address of Contractor;
 - ii. Invoice date and number;
 - iii. Contract number, contract line item number and, if applicable, the order number;
 - iv. Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - v. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on a USAC bill of lading;
 - vi. Terms of any discount for prompt payment offered;
 - 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; and
 - 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)48..

(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)48

(2) Contractor may submit invoices for payment in accordance with the Invoice Schedule set forth in Section D, Attachment 1.

(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 Contractor for invoice numbers 1-3 on the Invoice Schedule set forth in Section D Attachment 1 are contract financing payments. USAC will make contract financing payments to Contractor in accordance with Section C.3(b)45. 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, status meetings, Contractor's weekly and monthly status reports (see Section B.1(f)(4)), and submitted deliverables. Contractor's financial condition as of the date of Contract award has been determined by USAC to be adequate security for contract financing payments under this paragraph, 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 the Contractor's financial condition changes and is found by the Contracting Officer to no longer provide adequate security. Contract financing payments shall be liquidated in full upon USAC's acceptance of the Final Report required under section B.1(g).

(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)48 (FAR § 52.232-34, Payment by Electronic Funds Transfer – Other than Central Contractor Registration).
- (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 subline 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.* USAC reserves the right to terminate this contract, 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 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.* USAC may terminate this contract, or any part hereof, for cause in the event of any default by Contractor, or if Contractor fails to comply with any contract 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 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 and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this Contract. 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(k);
 - iii. damages incurred by USAC arising from the Contractor's default, in whole or part, which are recoverable under section C.2(i)(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 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) *Central Contractor Registration (CCR)*

- (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 CCR database, and for any liability resulting from USAC's reliance on inaccurate or incomplete data. To remain registered in the CCR 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 CCR database to ensure it is current, accurate and complete. Updating information in the CCR

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 (i) change the name in the CCR database; (ii) comply with the requirements of FAR Subpart 42.12; and (iii) 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) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR 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)48(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 CCR record to reflect an assignee for the purpose of assignment of claims (*see* section C.1(b)). Assignees shall be separately registered in the CCR database. Information provided to Contractor’s CCR 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)48(d) (“Suspension of Payment”) of this Contract.
- (4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via CCR accessed through <https://www.acquisition.gov> or by calling 1-888-227-2423 or 269-961-5757.

2. Addendum to Contract Terms and Conditions—Commercial Items, FAR § 52.212-4 (Feb 2012) (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 (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 7.a. of the Solicitation/Contract/Order for Commercial Items (Section A).
- (4) "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.
- (5) "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.
- (6) "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.
- (7) "Effective Date" means the date set forth in block 3, entitled "Award/Effective Date," of the Solicitation/Contract/Order for Commercial Items sheet that is the cover of this Contract.
- (8) "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.
- (9) "Including" shall mean including without limitation. This term is as defined, whether or not capitalized in this Contract
- (10) "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.
- (11) "Offeror" means a person or entity submitting a proposal in response to an RFP.

- (12) "Party" and "Parties" shall be USAC and Contractor .
- (13) "Services" means the services, functions and responsibilities described in this Contract as they may be supplemented, enhanced, modified or replaced.
- (14) "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.
- (15) "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.
- (16) "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.
- (17) "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.
- (18) "Telecommunications Services Provider" means a provider of Telecommunications Services.
- (19) "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.
- (20) "USAC Confidential Information" has the meaning set forth in Section D, Attachment 3 of this Contract.
- (21) "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" is and includes USAC's Confidential Information.

(22) "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.

(23) "Work Made for Hire" has the meaning set forth in 17 U.S.C. § 101.

(b) *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).

(c) *Information Security*

Contractor shall establish and maintain safeguards to protect the confidentiality, integrity, and restricted availability 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 Subcontracts shall ensure that their respective local area networks, servers, and personal computers are secure from unauthorized access from within or outside their respective organizations.

(d) *Qualifications, Retention and Replacement of Contractor Personnel; Key Personnel*

(1) Contractor shall at all times assign an adequate number of personnel to perform the Services. The personnel Contractor assigns to perform the Contract shall be fully trained and qualified for the Services they are to perform before they begin performing such Services, except as otherwise set forth herein.

(2) In the event USAC determines in good faith that the continued assignment of a Contractor or Subcontractor(s) 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 ten 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 any part of the Services and shall replace that person with another person of comparable competency and qualifications. Notwithstanding the foregoing, in the event USAC determines there exists a potential for imminent harm to the programs or to USAC, or

USAC's employees, Contractor or Subcontractor shall remove the employee immediately upon request by USAC.

- (3) Key personnel identified in the Contract shall not be removed from the contract effort, or otherwise replaced, without a compelling reason (e.g., health, departure from company) or unless USAC requires their replacement. Any proposed changes to key personnel must be submitted in writing to the Contracting Officer for approval prior to the removal or replacement of key personnel.

(e) *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 3 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(e) 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.

(f) *Proprietary Rights and Software*

- (1) Notwithstanding any provision in this Contract that states otherwise, Contractor hereby assigns to USAC the copyrights in all tangible materials created by Contractor in connection with this engagement, including, but not limited to, any reports, notes, or other deliverable. Contractor agrees to execute any additional documents which may be necessary to vest ownership of all such copyrights in USAC.

- (2) Ownership of USAC Information. All USAC Information becomes upon its creation, and remains, the exclusive property of USAC.
- (3) Ownership of USAC Software. All USAC Software shall be the exclusive property of USAC.
- (4) Exclusion of Contractor Data and Software. Contractor shall not, without the prior written consent of the Contracting Officer, incorporate in any Data or Software delivered under this contract, any Data or Software not first produced in the performance of this Contract. Contractor represents and warrants that no Contractor Software, Subcontractor Software or Third Party Software shall be incorporated in any USAC Software, USAC web sites, USAC databases or other USAC materials unless Contractor first obtains and grants to USAC and all others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such Software to reproduce, prepare derivative works, and perform and display publicly by and on behalf of USAC..
- (5) 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.
- (6) 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.
- (7) Disabling Code. Contractor shall not introduce into any Software operating in USAC's computer environment, or permit to be invoked, any Disabling Code.
- (8) 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.
- (9) 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 section C.2.(e) 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.

(g) *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(k).
- (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 One Million Dollars (\$1,000,000) combined single limit, or the equivalent, as respects Bodily and Personal Injury and Property Damage in any one occurrence/Three Million Dollars (\$3,000,000) aggregate
 - b) Contractual Liability Insurance to include coverage for the liabilities assumed under section C.2(k) in an amount not less than One 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.(k).

(iii) Professional Liability Insurance

Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two 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, or other insurance necessary for its own protection. In no event will USAC be responsible for maintaining any of the foregoing insurance coverage.

(h) *Actions on Termination*

- (1) This subsection C.2.(h) 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.

(i) *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 cause, 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.

(j) *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
Jay Beard Contracting Officer Universal Service Administrative Company 2000 L Street, NW Suite 200 Washington, DC 20035 (202) 776-0200 jbeard@usac.org	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 dcaozzi@usac.org</p>	<p>With a copy to:</p>
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- (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.

(k) *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.

(l) *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.

(m) *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.

(n) *Independent Contractor*

Contractor acknowledges and agrees that it is an independent contractor to USAC and Contractor's key 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 key personnel, employees, representatives, directors, officers, subcontractors and agents.

(o) *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.

(p) *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.

(q) *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.

(r) *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.

(s) *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.

(t) *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. 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

¹ See 47 C.F.R. §§ 54.703, 54.702(c)-(d).

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.

- (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, and the means by which it proposes to avoid, neutralize, or mitigate such conflicts. Contractor shall report such conflicts or potential conflicts to USAC and FCC OIG 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 that participate, in the universal service programs or contribute to the USF (the percentages shall be calculated as of the date of the Contractor's notification or for the twelve-month period 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 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(t), including this flow down requirement, in all subcontracts and consultant agreements.

(u) *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.

3. FAR § 52.212-5, Contract Terms and Conditions Required to Implement Statutes and Executive Orders (Mar 2012) (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. [Reserved]
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 (Dec 2010) (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 section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.
 - (B) The Federal Government suspends or debar 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 Excluded Parties List System). The notice must include the following:
 - (1) The name of the subcontractor.
 - (2) Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.
 - (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 (Feb 2012) (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 Central Contractor Registration database via <https://www.acquisition.gov>.

8. FAR § 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (May 2011) (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) (if the offeror elects to waive the preference, it shall so indicate in its offer).

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) 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. [Reserved]

13. [Reserved]

14. FAR § 52.219-8, Utilization of Small Business Concerns (Jan 2011) (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 CCR 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 Central Contractor Registration (CCR) 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. [Reserved]

16. [Reserved]

17. [Reserved]

18. [Reserved]

19. [Reserved]

20. [Reserved]

21. [Reserved]

22. [Reserved]

23. FAR § 52.219-28, Post Award Small Business Program Rerepresentation (Apr 2009) (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 FAR § [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 Contractor represented that it was a small business concern prior to award of this contract, Contractor shall re-represent 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) Contractor shall re-represent its size status in accordance with the size standard in effect at the time of this re-representation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/services/contractingopportunities/sizestandardsttopics/>.
- (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, Contractor shall make the re-representation required by paragraph (B) of this clause by validating or updating all its representations in the Online Representations and Certifications Application (ORCA) and its data in the Central Contractor Registration, as necessary, to ensure that they reflect Contractor's current status. 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 Contractor represented that it was other than a small business concern prior to award of this contract, Contractor may, but is not required to, take the actions required by paragraphs (E) or (G) of this clause.

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

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:

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) 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:

i. The worker is paid or is in an approved work training program on a voluntary basis;

ii. Representatives of local union central bodies or similar labor union organizations have been consulted;

iii. 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;

- iv. 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
- v. 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.

(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.

- (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)(3) 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/regs/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 (Jan 2009) (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 section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), 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, 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, 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, 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, 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 this contract (see section C.1(i)(2)), 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.

(E) 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. FAR § 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999) (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 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 Electronic Payments Network 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 Electronic Payments Network 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.

49. [Reserved]

50. [Reserved]

51. [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) [Reserved]

- (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. 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).
 - 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. 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).
 - ix. FAR § 52.222-50, Combating Trafficking in Persons (Feb 2009) (Deviation).
 - x. 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov 2007) (41 U.S.C. 351, et seq.).
 - xi. 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb 2009) (41 U.S.C. 351, et seq.).
 - xii. FAR § 52.222-54, Employment Eligibility Verification (Jan 2009) (Deviation).
 - xiii. 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
 - xiv. 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (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

List of Attachments

Attachment 1 – Invoice Schedule

Attachment 2 -- USAC Visitor Form

Attachment 3 -- USAC Confidentiality Agreement

SECTION E – SOLICITATION PROVISIONS

1. Instructions To Offerors—Commercial Items, FAR § 52.212-1 (Feb 2012) **(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 Solicitation/Contract/Order for Commercial Items (Section A), 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 Solicitation/Contract/Order for Commercial Items (Section A), 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 award.* USAC intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, USAC reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. USAC may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.
- (h) *Multiple awards.* USAC may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. USAC reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.
- (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 CCR 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) *Central Contractor Registration.* 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 CCR 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 CCR 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 CCR database accessed through <https://www.acquisition.gov> or by calling 1-888-227-2423 or 269-961-5757.

- (l) [Reserved]

2. Addendum To Instruction to Offerors

- (a) *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 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 may 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.

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

- (b) *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.”

(c) *Proposal Schedule*

Schedule	Event
October 22, 2012	Deadline for submitting written questions to USAC at rfp@usac.org .
November 5, 2012	USAC’s response to written questions.
November 19, 2012	Proposals due to USAC by 12:00pm EST.

(d) *Proposal Format*

Proposals shall be presented in four separate volumes:

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

Offerors shall address in their proposals each of the items set forth below. Responses to each item must include a cross-reference to the solicitation provision associated with each item.

(e) *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 60 days, and signature of a duly authorized offeror representative.

(1) Corporate Information (Volume I)

- i. **Executive Summary.** This section shall summarize all key features of the proposal. A list of any deviations and exceptions from the requirements contained in this RFP shall be identified in the Executive Summary. Pricing information shall not appear in the Executive Summary.
- ii. **Confidentiality and Information Security.** Offerors must explain how they will meet their obligation to safeguard USAC Confidential Information as set forth in section C.2(e) and section D, Attachment 3. Offerors must explain in detail how they will establish and maintain safeguards to protect the confidentiality, integrity, and restricted availability of USAC Confidential Information in their possession as required by section C.2.(c). Confidentiality Agreements (section D, attachment 3) must be signed by Contract personnel upon notification of award.
- iii. **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 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 USF maintain the same neutrality, both in fact and in appearance.

Offerors shall identify any actual or potential conflicts of interest involving the Offeror, and the means by which it proposes to avoid, neutralize, or mitigate such conflicts. Offerors shall identify such conflicts or potential conflicts 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 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 revenues received from, and Offeror'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 preceding the date of the Offeror's proposal, 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. Offerors must also identify

¹ See 47 C.F.R. §§ 54.703, 54.702(c)-(d).

any participation by the Offeror or the Offeror's proposed key personnel in any of the federal Universal Service Support Mechanisms. These programs are identified 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 the actual or potential conflicts, Offeror will not be eligible for award of a contract.

- iv. The Contractor must refrain from advocating policy positions with respect to federal universal service matters (*see* section C.2.(t)(5)). If your organization has advocated policy positions on universal service in the past 12 months, or if it anticipates doing so in the future, discuss how it will comply with this contractual requirement.
- v. **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.
- vi. **Representations and Certifications.** Offerors shall include completed copies of all representations and certifications required by sections E.4 and E.5.
- vii. Offerors must also include a signed copy of Section A, the Solicitation/Contract/Order for Commercial Items.

(2) Technical (Volume II)

- i. **Technical Approach.** Offerors must submit a detailed response to this RFP. The offeror must clearly state whether it will comply with the stated requirements and provide detailed information about how it will fulfill the

requirements of the RFP. Technical proposals that merely repeat the requirements set forth in the RFP and state that Offeror “will perform the statement of work” or similar verbiage will be considered technically unacceptable and will not receive further consideration. USAC is interested only in proposals that demonstrate the Offeror’s expertise in performing engagements of this type as illustrated by the Offeror’s description of how it proposes to perform the requirements set forth in this RFP.

Note: Offerors should have the capability, expertise, and staffing to perform the entire requirement without utilization of subcontractors.

- ii. Key Personnel. All non-administrative personnel who will be performing work on the contract will be designated as key personnel (see section C.2(d)(3)). Identify by name all proposed key personnel. For each of these individuals, provide a resume (not to exceed two pages) that includes their educational background, job and related experience, a list of specific efforts they have supported, and references. Include their experience, if any, in performing complex risk assessments in accordance with GAO standards and OMB regulations.

(3) Experience (Volume III)

The proposal shall contain a concise description of the principal business of the Offeror and should discuss the Offeror’s capabilities for performing this Contract, including personnel resources and project management capabilities. Additionally information regarding Offeror’s capability should include the following:

- i. Describe your firm’s experience in performing complex risk assessment, including specifically in performing or assessing the quality of internal controls in accordance with the 1999 GAO Internal Control Report, the August 2001 GAO Evaluation Tool, and OMB Circular A-123 (as more specifically described in the first paragraph of Section A)(collectively the “Government Control Standards”). Provide samples of clients involved and identify when the work was performed.
- ii. List all matters in the last three (3) years where your firm has performed risk assessments in accordance with all the Government Control Standards, or with any one of the three standards referenced in paragraph (3)(i) above. Describe work performed and the methodology for compliance with such standards.
- iii. Describe your firm’s experience in analyzing complex operational procedures and/or manuals.
- iv. Describe your firm’s experience with statistical sampling.

(4) Past Performance Information (Volume IV)

- i. Contractor shall include in Volume IV a list of at least three current or recently completed contracts for the same or similar services as 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.
- ii. Contractor shall provide descriptions of the relevant performance on each of the identified contracts. A past performance description will consist of an overview of the engagement, a description of the scope of work performed, its relevance to this effort, and the results achieved. Contractors shall also provide information on unique characteristics of the project, problems encountered and corrective actions taken. The past performance description shall also list the key personnel 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.
- iii. If the Contractor intends to rely on the past performance of proposed key personnel performing major or critical aspects of this requirement, then the past performance information required by the preceding two paragraphs shall be included for these contracts.

(5) Price Proposal (Volume V)

- i. Offerors shall complete the pricing information in sections 12, 23 and 24 of the Solicitation/Order Contract for Commercial Items (Section A) and submit the completed form with this proposal. When developing proposed pricing, Offerors that are GSA Schedule holders are strongly encouraged to base their firm-fixed price proposals on prices that are equal to, or better than, the prices in their GSA Schedule contracts.
- ii. Proposed firm-fixed prices must be sufficient to achieve the objectives and deliverables set forth in the Schedule (Section A, Item 20) and the Addendum thereto (Section B), and must include all direct and indirect costs, including travel for field work and onsite meetings, and profit.
- iii. Offerors shall indicate any discounts being offered in their proposals.
- iv. Because USAC intends to make award on the basis of initial proposals, Offerors are strongly encouraged to propose their best price in their price proposals.

3. Evaluation

(a) *Selection Factors.* USAC will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to USAC, price and other factors considered. The following factors, which are listed in descending order of importance, shall be used to evaluate offers:

- (1) Technical.
- (2) Experience
- (3) Past performance.
- (4) Price.

(b) *Notice of Award/Acceptance.* A written notice of award or acceptance of an offer, mailed or otherwise furnished to the 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.

(c) *Post-Award Requests for Information by Unsuccessful Offerors*

Upon written request by an unsuccessful offeror, the contracting officer will provide the following information:

- (1) The number of offerors solicited;
- (2) The number of proposals received;
- (3) The name and address of each offeror receiving an award;
- (4) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and
- (5) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (4) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(d) *Responsibility Information*

USAC will make a responsibility determination based on information available in FAPIIS, CCR and other data services, as well as information submitted in an Offeror's proposal, including whether:

- (1) the Offeror 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; and
- (4) the Offeror has the facilities, technical and personnel resources required to perform the contract.

4. Offeror Representations and Certifications—Commercial Items, FAR § 52.212-3 (Mar 2012) (Deviation)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically via <https://www.acquisition.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA 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:
 - i. To restrict the free flow of unbiased information in Iran; or
 - ii. 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:
 - 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 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 Online Representations and Certifications Application (ORCA) website.
- (2) The offeror has completed the annual representations and certifications electronically via the ORCA website accessed through <https://www.acquisition.gov>. After reviewing the ORCA 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 ORCA.]

- (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:
 - iii. 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
 - iv. (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 in reference to the WOSB concern or concerns that are participating in the joint venture. [*The offeror shall enter the name or names of the WOSB concern or concerns that are participating in the joint venture: _____.*] Each WOSB concern 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:

- i. It ___ is, ___ is not an EDWOSB 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)(7)(i) of this provision is accurate in reference to the EDWOSB concern or concerns that are participating in the joint venture. The offeror shall enter the name or names of the EDWOSB concern or concerns 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:

- i. 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
- ii. 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:

- i. It ___ has, ___ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and
- ii. It ___ has, ___ has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* The offeror represents that:

- i. 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
- ii. 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.
 - (A) 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.
 - (B) 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.

(C) 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.

(D) 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:

- i. 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;
- ii. 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
- iii. 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:

- i. 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;
- ii. 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));
- iii. 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
- iv. 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:

- i. 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

- ii. 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 a central contractor registration database to be eligible for award.)

- (1) All offerors must submit the information required in paragraphs (1)(2) through (1)(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) *Sanctioned Activities Relating to Iran*

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

(2) *Representation and Certification.* 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 or at the direction of, the government of Iran; and
- 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.

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if:

- i. This solicitation includes a trade agreements certification (*e.g.*, 52.212–3(g) or a comparable agency provision); and

- ii. The offeror has certified that all the offered products to be supplied are designated country end products.

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:

- i. Cost or pricing data (as defined in FAR § 2.101).
- ii. Indirect costs and direct labor rates.
- iii. Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.
- iv. Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation.
- v. 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:

- i. Bid prices submitted in response to a USAC invitation for bids, or lists of those bid prices before bid opening.
- ii. Proposed costs or prices submitted in response to a USAC solicitation, or lists of those proposed costs or prices.
- iii. Source selection plans.
- iv. Technical evaluation plans.
- v. Technical evaluations of proposals.

- vi. Cost or price evaluations of proposals.
- vii. Competitive range determinations.
- viii. Rankings of bids, proposals, or competitors.
- ix. Reports and evaluations of source selection panels, boards, or advisory councils.
- x. 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 (Feb 2012)
(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)

- i. 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:
- ii. 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)(ii)(A), (3)(ii)(B), or (3)(ii)(C) of this provision.
- iii. If the offeror has been involved in the last five years in any of the occurrences listed in (3)(ii) 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)(ii)(A) through (3)(ii)(D) of this provision in FAPIIS as required through maintaining an active registration in the Central Contractor Registration database via <https://www.acquisition.gov> (see section C.1(t)).

(e) 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.

ATTACHMENT 1
Invoice Schedule

The Contractor shall submit invoices in accordance with the schedule and amounts specified below, upon USAC's receipt or acceptance of specified requirements or deliverables in Section B, as stated below.

Invoice No.	Description	Contract Section	Percentage of Total Firm-Fixed-Price	Amount
1	USAC Acceptance of Project Plan.	B.1(f)(2)	10%	
2	USAC Receipt of Contractor's Written Representation of Completion of Field Work.	B.1(f)(5)	40%	
3	USAC Acceptance of Draft Final Report.	B.1(f)(6)	20%	
4	USAC Acceptance of Final Report.	B.1(f)(7)	30%	

ATTACHMENT 2
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 3

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-SL-2012-10-08, Risk Assessment of Schools and Libraries Support Mechanism 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.