



| 19.<br>ITEM NO. | 20.<br>SCHEDULE OF SUPPLIES/SERVICES   | 21.<br>QUANTITY | 22.<br>UNIT | 23.<br>UNIT PRICE | 24.<br>AMOUNT |
|-----------------|--|-----------------|-------------|-------------------|---------------|
| 0001            | <ul style="list-style-type: none"> <li>Option Period 1: January 03, 2024 to April 02, 2024</li> <li>Option Period 2: April 03, 2024 to July 02, 2024</li> <li>Option Period 3: July 03, 2024 to October 02, 2024</li> <li>Option Period 4: October 03, 2024 to January 02, 2025</li> </ul> <p>Attachments:</p> <p>1) Statement of Work</p> <p>2) Terms and Conditions Clauses</p> <p>3) Labor Rates</p> <p>Period of Performance: 01/26/2023 to 01/02/2025</p> <p>BASE: Legal Services - Labor<br/>Time-and-Materials (T&amp;M)<br/>Not-To-Exceed (NTE): (b)(4)</p> <p>Accounting Info:<br/>NONE023-000 1A 10-00-00-000<br/>01-01-0100-00-00-00-00 GE-OE-25 14 000000<br/>Funded: (b)(4)</p> |                 |             |                   | (b)(4)        |
| 0002            | <p>BASE: Legal Services - Other Direct Costs<br/>Time-and-Materials (T&amp;M)<br/>Not-To-Exceed (NTE): (b)(4)</p> <p>Continued ...</p>   |                 |             |                   | (b)(4)        |

32a. QUANTITY IN COLUMN 21 HAS BEEN

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

|  |           |   |
|--|-----------|---|
| 32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE | 32c. DATE | 32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE |
|--|-----------|---|

|  |   |
|--|---|
| 32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE | 32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE |
|  | 32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE           |

|  |                    |                                 |  |                  |
|--|--------------------|---------------------------------|--|------------------|
| 33. SHIP NUMBER<br><input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL | 34. VOUCHER NUMBER | 35. AMOUNT VERIFIED CORRECT FOR | 36. PAYMENT<br><input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL | 37. CHECK NUMBER |
|--|--------------------|---------------------------------|--|------------------|

|                        |                        |             |
|------------------------|------------------------|-------------|
| 38. S/R ACCOUNT NUMBER | 39. S/R VOUCHER NUMBER | 40. PAID BY |
|------------------------|------------------------|-------------|

|   |                                   |                                      |
|---|-----------------------------------|--------------------------------------|
| 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                |

**CONTINUATION SHEET**

REFERENCE NO. OF DOCUMENT BEING CONTINUED

70RDAD23C00000002

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NAME OF OFFEROR OR CONTRACTOR  
 DEBEVOISE PLIMPTON LLP

| ITEM NO.<br>(A) | SUPPLIES/SERVICES<br>(B)   | QUANTITY<br>(C) | UNIT<br>(D) | UNIT PRICE<br>(E) | AMOUNT<br>(F) |
|-----------------|--|-----------------|-------------|-------------------|---------------|
|                 | Accounting Info:<br>NONE023-000 1A 10-00-00-000<br>01-01-0100-00-00-00-00 GE-OE-25 14 000000<br>Funded: (b)(4)   |                 |             |                   |               |
| 1001            | OPTION PERIOD 1: Legal Services - Labor (Optional)<br>Time-and-Materials (T&M)<br>Not-To-Exceed (NTE): (b)(4)<br>Amount: (b)(4) (Option Line Item)                 |                 |             |                   | 0.00          |
| 1002            | OPTION PERIOD 1: Legal Services - Other Direct<br>Costs (Optional)<br>Time-and-Materials (T&M)<br>Not-To-Exceed (NTE): (b)(4)<br>Amount: (b)(4) (Option Line Item) |                 |             |                   | 0.00          |
| 2001            | OPTION PERIOD 2: Legal Services - Labor (Optional)<br>Time-and-Materials (T&M)<br>Not-To-Exceed (NTE): (b)(4)<br>Amount: (b)(4) (Option Line Item)                 |                 |             |                   | 0.00          |
|                 | Accounting Info:<br>Funded: \$0.00   |                 |             |                   |               |
| 2002            | OPTION PERIOD 2: Legal Services - Other Direct<br>Costs (Optional)<br>Time-and-Materials (T&M)<br>Not-To-Exceed (NTE): (b)(4)<br>Amount: (b)(4) (Option Line Item) |                 |             |                   | 0.00          |
|                 | Accounting Info:<br>Funded: \$0.00   |                 |             |                   |               |
| 3001            | OPTION PERIOD 3: Legal Services - Labor (Optional)<br>Time-and-Materials (T&M)<br>Not-To-Exceed (NTE): (b)(4)<br>Amount: (b)(4) (Option Line Item)                 |                 |             |                   | 0.00          |
| 3002            | OPTION PERIOD 3: Legal Services - Other Direct<br>Costs (Optional)<br>Time-and-Materials (T&M)<br>Not-To-Exceed (NTE): (b)(4)<br>Amount: (b)(4) (Option Line Item) |                 |             |                   | 0.00          |
|                 | Continued ...  |                 |             |                   |               |

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

70RDAD23C00000002

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NAME OF OFFEROR OR CONTRACTOR

DEBEVOISE PLIMPTON LLP

| ITEM NO.<br>(A) | SUPPLIES/SERVICES<br>(B)  | QUANTITY<br>(C) | UNIT<br>(D) | UNIT PRICE<br>(E) | AMOUNT<br>(F) |
|-----------------|---|-----------------|-------------|-------------------|---------------|
| 4001            | OPTION PERIOD 4: Legal Services - Labor (Optional)<br>Time-and-Materials (T&M)<br>Not-To-Exceed (NTE): (b)(4)<br>Amount: (b)(4) (Option Line Item)  |                 |             |                   | 0.00          |
| 4002            | OPTION PERIOD 4: Legal Services - Other Direct<br>Costs (Optional)<br>Time-and-Materials (T&M)<br>Not-To-Exceed (NTE): (b)(4)<br>Amount: (b)(4) (Option Line Item)<br>Contracting Officer (CO):<br>(b)(6)<br>Contracting Specialist<br>(b)(6)<br>Contracting Officer's Representative (COR)<br>(b)(6)<br>The fees will not exceed (b)(4) over a two<br>year period from the date that services commence.<br>For the contracted effort, the Contractor will<br>be responsible for performing the work described<br>in this DHS Contract and any fees that exceed<br>(b)(4) will not be the responsibility of the<br>Department of Homeland Security.<br>The total amount of award: (b)(4) The<br>obligation for this award is shown in box 26. |                 |             |                   | 0.00          |

## STATEMENT OF WORK

**1.0 Background:** The Department of Homeland Security (DHS), Office of the Secretary and Office of General Counsel (OGC) require legal representation and legal advice regarding possible consideration in the House of Representatives of articles of impeachment and a possible trial in the Senate if the House votes to impeach the Secretary. Representation of DHS and its officials will be in their official capacities as DHS employees. DHS may require expert assistance concerning the constitutional, legal, and historical framework and historical precedent applicable to impeachment of a cabinet official and advocating DHS's interests to Congress. DHS may determine that private counsel will represent DHS employees in their individual capacities on a case-by-case basis, such as when governmental counsel is prohibited by a congressional committee to provide representation during oversight activities. *See e.g.* 117<sup>th</sup> Congress, House of Representatives, Rules of the Committee on Oversight and Government Reform, Rule 15(e) – Deposition Authority. DHS may also require individual capacity representation should impeachment proceedings commence in the House and if an impeachment trial occurs in the Senate.

Given the unique nature of this situation, the Department has an interest in protecting DHS equities, including protection of any Executive Branch confidentiality interests, assisting DHS officials in providing accurate and complete information, providing traditional legal support to a DHS official subject to Congressional inquiry, and to advise DHS employees on the permissible scope of questioning. It is expected that the scope of Congressional inquiry will include the Secretary and his official actions as head of the Department and his senior role in support of U.S. national security matters. The Department requires private counsel in this matter to ensure that the Department's interest in the deliberative process and other executive branch and Departmental equities are protected. The scope of Secretarial representation will focus on counseling and assistance in the Department's efforts to respond to, any potential impeachment efforts, outreach and preparatory work, appearance and participation in any oversight hearings in the House of Representatives, any noticed depositions, any impeachment proceedings in the House and Senate, and any requirements that follow from the House or Senate proceedings.

### 2.0 Tasks:

#### 2.1 Congressional Outreach and Preparatory Advice on Oversight and Impeachment Processes and Proceedings

2.1.1 Counsel may provide expert advice on the impeachment process, related congressional investigative practices, laws impacting the process, and impeachment proceedings within the House of Representatives.

2.1.2. Counsel may provide expert advice on legal strategies and courses of action relating to potential or actual impeachment.

2.1.3. Counsel may engage House members and their staff to respond to questions, provide additional information, and to articulate DHS's position on the subject matter of any

impeachment inquiry, including House activities that could culminate in a vote to impeach the Secretary or other DHS officials.

2.1.4. Counsel may assist OGC with preparatory work and to advise the Secretary and DHS officials on any related oversight process and proceedings. Counsel shall review DHS documentation and material in coordination with OGC and advise DHS officials on appropriate legal strategies and possible courses of action.

2.1.5. Counsel may assist OGC to prepare and advise the Secretary and DHS officials before any such proceedings are initiated. Such preparatory work may include assistance with witness preparation, outreach activities, analysis of separation of powers and other constitutional limits on Congressional oversight, and discussion and development of possible strategies in agency procedures and conduct during the oversight process.

2.1.6. In the event that Committee rules prevent OGC, as agency counsel, from representing the Secretary or other DHS officials in any relevant deposition or proceeding, or from being present at any such proceeding, DHS may determine that Counsel represent the Secretary and other DHS officials in their personal capacity.

## **2.2 House Oversight Representational Activities Related to Impeachment**

2.2.1 Counsel may provide expert legal advice to DHS and OGC during any potential impeachment proceeding, as well as related proceedings that may precede impeachment proceedings. As part of counsel's legal advice and guidance, counsel may review all relevant material and advise any DHS official called to testify in an interview, deposition, or hearing of the witness's legal rights and obligations, in coordination with OGC. All preparation for the proceedings must be completed prior to the date of any scheduled hearings.

2.2.2. Counsel may provide expert legal advice to DHS and OGC and assist in the preparation of relevant briefings with Congressional Members and staff.

2.2.3. Counsel may provide DHS and OGC legal advice and expertise to assist DHS officials in addressing relevant Congressional subpoenas for DHS documents, information, and testimony. Counsel shall not disclose any DHS information or material without approval from OGC.

2.2.4. Counsel may provide DHS and OGC legal advice and expertise to prepare DHS officials prior to any relevant interviews, depositions, or testimony during any relevant proceeding.

2.2.5. Counsel may provide DHS and OGC legal advice and expertise in representing DHS officials at any required depositions or at any hearing, meeting, or event that requires the DHS official's testimony or statement during the relevant proceedings.

2.2.6. Counsel may develop legal strategies for use during the proceedings to assist OGC in protecting DHS's interests.

2.2.7. As directed by OGC, Counsel may attend all relevant proceedings (if applicable), as scheduled, and participate fully in the proceeding.

2.2.8. In the event that Committee rules prevent OGC, as agency counsel, from representing the Secretary or other DHS officials in any relevant deposition or proceeding, or from being present at any such proceeding, DHS may determine that Counsel represent the Secretary and other DHS officials in their personal capacity. Such services would be considered personal services.

### **2.3 Senate Impeachment Representational Activities**

2.3.1. Counsel may provide expert legal advice to DHS and OGC during impeachment proceedings in the Senate. As part of counsel's legal advice and guidance, counsel shall review all relevant material and advise the witness of their legal rights and obligations, in coordination with OGC. All preparation for the impeachment proceedings must be completed prior to the date of any scheduled impeachment trial.

2.3.2. Counsel may assist DHS and OGC in representing the Secretary and other DHS officials in the impeachment trial. Counsel shall not disclose any DHS information or material without approval from OGC.

2.3.3. Counsel may provide expert legal advice to DHS and OGC and assist DHS in the preparation of briefings with Congressional Members and staff.

2.3.4. Counsel may assist DHS and OGC in providing legal advice to and preparing the Secretary and other DHS officials prior to any interviews, required depositions, or testimony during the impeachment process.

2.3.5. Counsel may provide expert legal advice to assist DHS and OGC in representing the Secretary and other DHS officials at any required depositions or at any hearing, meeting, or event that requires their testimony or statement during the impeachment process.

2.3.6. Counsel may provide DHS and OGC legal advice and expertise to develop legal strategies and possible courses of action on representing DHS's interest.

2.3.7. Counsel may assist DHS and OGC in identifying and presenting evidence at the impeachment trial and assist OGC in representing the Secretary and other DHS officials during the trial.

2.3.8. Counsel may attend all impeachment proceedings, as scheduled, and participate fully in the proceeding as directed by OGC.

2.3.9. In the event that Senate rules prevent OGC, as agency counsel, from representing the Secretary or other DHS officials in any deposition or proceeding, or from being present at any such proceeding, DHS may determine that counsel shall represent the Secretary and other DHS officials in their personal capacity. Such services would be considered personal services.

## 2.4 OGC Direction

Counsel shall at all times report to and comply with the direction of OGC, on behalf of DHS. Nothing herein shall alter or diminish OGC's authority.

**3.0. Experience Required:** Counsel should have extensive experience and knowledge in the Congressional oversight process, especially the House of Representatives impeachment process, and Senate impeachment trials. Such experience shall also include advising federal agencies on matters subject to Congressional oversight. Further, counsel should have knowledge and experience with the Government's privileges and the process by which Federal Agencies and Oversight Committees in Congress engage to address information requests from the Congressional Committees.

**4.0. Place of Performance:** Counsel may perform services at its own offices, at a DHS location in Washington, D.C., or at other locations at which relevant activities may take place. Counsel may be required to accompany the Secretary and other DHS officials to depositions, interviews, meetings, and hearings arising out of any relevant proceeding. Locations will be within the Washington, D.C. area. Local travel costs will not be reimbursed.

**5.0. Period of Performance:** Base period - January 26, 2023 – January 2, 2024, with four three-month option periods (January 3, 2024 – April 2, 2024; April 3, 2024 – July 2, 2024; July 3 – October 2, 2024; and October 3, 2024 – January 2, 2025).

**6.0. Government Furnished Equipment/Information:** DHS may provide access to government information and data related to the scope of the oversight and impeachment proceedings. Access to DHS-related information may include, but is not limited to, sensitive information, for official use only (FOUO), and law enforcement sensitive information. Alternatively, DHS may provide the documents in paper form.

**7.0. Deliverables:** Counsel may be expected to conduct legal research and provide written legal advice, briefs, participate in depositions and prepare transcripts. Counsel shall provide drafts for review and provide final copies of all written material to OGC electronically in the format submitted to Congress or as requested by OGC.

|   | <b>Deliverable</b>   | <b>Frequency</b>  | <b>Format</b>                 |
|---|--|---|-------------------------------|
| 1 | Contractor Monthly Report (detailing work performed, hours spent per labor category, and total labor costs expended) | Every first of the month following contract award (covers the previous month) | Electronic; Excel spreadsheet |
| 2 | Briefs, Motions, Research Papers, and Other Documents submitted for consideration                                    | As required   | Electronic                    |
| 3 | DHS 11000-6 signed by each employee working on this requirement  | As required   | Electronic                    |



**8.0 Security Requirements:** No security clearance is required for this effort. While counsel shall represent the Secretary and other DHS officials during the relevant proceedings, the documentation that will be provided for review as part of this contract, and the subject of the deposition, are Agency records. As a result, counsel shall sign DHS Form 11000-6, Non-Disclosure Agreement (NDA), retain a copy of each signed DHS Form 11000-6 signed by its employees, and provide copies of each signed DHS Form 11000-6 to the Contracting Officer prior to receipt of any DHS information and ensure that adequate security controls are in place to safeguard Agency information.

**8.1. Contractor Personnel:**

**Qualified Personnel**

The Contractor shall provide qualified personnel to perform all requirements specified in this SOW.

**Key Personnel**

Before replacing any individual designated as Key by the Government, the Contractor shall notify the Contracting Officer no less than 15 business days in advance, submit written justification for replacement, and provide the name and qualifications of any proposed substitute(s). All proposed substitutes shall possess qualifications equal to or superior to those of the Key person being replaced, unless otherwise approved by the Contracting Officer. The Contractor shall not replace Key Contractor personnel without approval from the Contracting Officer. The following Contractor personnel are designated as Key for this requirement:

NONE

**Continuity of Support**

The Contractor shall ensure that the contractually required level of support for this requirement is maintained at all times. The Contractor shall ensure that all contract support personnel are present for all hours of the workday. If for any reason the Contractor staffing levels are not maintained due to vacation, leave, appointments, etc., and replacement personnel will not be provided, the Contractor shall provide e-mail notification to the Contracting Officer's Representative (COR) prior to employee absence. Otherwise, the Contractor shall provide a fully qualified replacement.

**Employee Identification**

Contractor employees visiting Government facilities shall wear an identification badge that, at a minimum, displays the Contractor name, the employee's photo, name, clearance-level and badge expiration date. Visiting Contractor employees shall comply with all Government escort rules and requirements. All Contractor employees shall identify themselves as Contractors when their

status is not readily apparent and display all identification and visitor badges in plain view above the waist at all times.

Contractor employees working on-site at Government facilities shall wear a Government issued identification badge. All Contractor employees shall identify themselves as Contractors when their status is not readily apparent (in meetings, when answering Government telephones, in e-mail messages, etc.) and display the Government issued badge in plain view above the waist at all times.

### **Employee Conduct**

Contractor's employees shall comply with all applicable Government regulations, policies and procedures (e.g., fire, safety, sanitation, environmental protection, security, "off limits" areas, wearing of parts of DHS uniforms, and possession of weapons), as communicated by the Government to such employees, when visiting or working at Government facilities. The Contractor shall ensure Contractor employees present a professional appearance at all times and that their conduct shall not reflect discredit on the United States or the Department of Homeland Security.

### **Removing Employees for Misconduct or Security Reasons**

The Government may, at its sole discretion (via the Contracting Officer), direct the Contractor to remove any Contractor employee from DHS facilities for misconduct or security reasons. Removal does not relieve the Contractor of the responsibility to continue providing the services required under the contract. The Contracting Officer will provide the Contractor with a written explanation to support any request to remove an employee.

## **8.2. Other Application Conditions**

### **Security**

Contractor access to controlled unclassified information, sensitive but unclassified information, or For Official Use Only information may be required under this SOW. The Government shall, to the extent reasonably practicable, provide Contractor notice that it is disclosing such information to Contractor prior to granting Contractor's employees with access to such information. Contractor employees shall safeguard this information against unauthorized disclosure or dissemination.

### **Requests for Exception to U.S. Citizenship Requirement**

Special procedures apply for exception to the requirement that persons accessing DHS systems be U.S. citizens. Under normal circumstances, only U.S. citizens are allowed access to DHS systems and networks; but there is a need at times to grant access to foreign nationals. Access for foreign nationals is normally a long-term commitment, and exceptions to citizenship requirements are treated differently from security policy waivers. Exceptions to the U.S. citizenship requirement should be requested by completing a Foreign National Visitor Access

Request, DHS Form 11052-1, which is available online or through the DHS Office of the Chief Security Officer (OCSO). Components who have access may file their request via the Foreign National Vetting Management System (FNVMS), a part of the DHS OCSO Integrated Security Management System's (ISMS). For further information regarding the citizenship exception process, contact the DHS OCSO.

### **DHS Sensitive Systems Policy Directive 4300A**

DHS Sensitive Systems Policy Directive 4300A applies to all DHS employees, contractors, detailees, others working on behalf of DHS, and users of DHS information systems that collect, generate, process, store, display, transmit, or receive DHS information unless an approved waiver has been granted.

### **8.3. Post-Award Instructions Regarding Security Requirements for Contracts/Orders**

The procedures outlined below shall be followed for the DHS Security Office to process background investigations and suitability determinations, to the extent required, in a timely and efficient manner.

- Carefully read the security clauses in the Order. Compliance with the security clauses in the contract is not optional.
- Where relevant, Contractor employees (to include applicants, temporaries, part-time and replacement employees) under the contract, requiring access to sensitive information, shall undergo a position sensitivity analysis based on the duties each individual will perform on the contract. The results of the position sensitivity analysis shall identify the appropriate background investigation to be conducted. All background investigations will be processed through the DHS Security Office. Prospective Contractor employees shall submit the following completed forms to the DHS Security Office. The Standard Form 85P will be completed electronically, through the Office of Personnel Management's e-QIP SYSTEM. The completed forms must be given to the DHS Security Office no less than thirty (30) days before the start date of the contract or thirty (30) days prior to access to sensitive information of any employees, whether a replacement, addition, subcontractor employee, or vendor:
  - a. Standard Form 85P, "Questionnaire for Public Trust Positions"
  - b. FD Form 258, "Fingerprint Card" (2 copies)
  - c. DHS Form 11000-6 "Conditional Access To Sensitive But Unclassified Information Non-Disclosure Agreement"
  - d. DHS Form 11000-9, "Disclosure and Authorization Pertaining to Consumer Report Pursuant to the Fair Credit Reporting Act"
- Only complete packages will be accepted by the DHS Security Office. Specific instructions on submission of packages will be provided upon award of the contract.
- DHS may, as it deems appropriate, authorize and grant a favorable entry on duty (EOD) decision based on preliminary suitability checks. The favorable EOD decision would allow the employees to commence work temporarily prior to the completion of the full

investigation. The granting of a favorable EOD decision shall not be considered as assurance that a full employment suitability authorization will follow. A favorable EOD decision or a full employment suitability determination shall in no way prevent, preclude, or bar DHS from withdrawing or terminating access to government facilities or information, at any time during the term of the contract. No employee of the Contractor shall be allowed unescorted access to a Government facility without a favorable EOD decision or suitability determination by the Security Office. No employee of the Contractor shall be allowed to EOD and/or access sensitive information or systems without a favorable EOD decision or suitability determination.

- Limited access to Government buildings is allowable prior to the EOD decision if the Contractor is escorted by a Government employee. This limited access is to allow Contractors to attend briefings and non-recurring meetings in order to begin transition work.
- The DHS Security Office shall be notified of all terminations /resignations within five (5) days of occurrence. The Contractor shall return to the Contracting Officer Technical Representative (COR) all DHS issued identification cards and building passes that have either expired or have been collected from terminated employees. If an identification card or building pass is not available to be returned, a report shall be submitted to the COR, referencing the pass or card number, name of individual to who it was issued and the last known location and disposition of the pass or card.
- When sensitive Government information is processed on Department telecommunications and automated information systems, the Contractor shall provide for the administrative control of sensitive data being processed. Contractor personnel must have favorably adjudicated background investigations commensurate with the defined sensitivity level. Contractors who fail to comply with Department security policy are subject to having their access to Department IT systems and facilities terminated, whether or not the failure results in criminal prosecution. Any person who improperly discloses sensitive information is subject to criminal and civil penalties and sanctions under a variety of laws (e.g., Privacy Act).
- Failure to follow these instructions may delay the completion of suitability determinations and background checks. Note that any delays in this process that are not caused by the government do not relieve a contractor from performing under the terms of the contract.
- Your POC at the Security Office is:  
DHS OCSO/PSD Security Customer Service Center  
Telephone: (202) 447-5010  
E-mailbox: [officeofsecurity@dhs.gov](mailto:officeofsecurity@dhs.gov)

## 9.0. Media Inquiries

All media inquiries must be referred to the Office of Public Affairs. Contractor employees are not permitted to communicate with the media about this requirement or any work conducted under this requirement without prior approval from the Office of Public Affairs. This includes media inquiries from a reporter with whom you have an established relationship, or any reporter who contacts you for an "off the record" conversation.

When contacted by a member of the media, during and after office hours, or on weekends, please refer that reporter to the Office of Public Affairs at (b)(6)

(b)(6)

This policy must be followed regardless of the means in which the reporter communicates with you (e.g., email, social media, LinkedIn), or the type of media they represent, including television networks, print newspapers, wire services, trade publications, blogs or a newsletter.

This policy extends to interview requests. Public Affairs will consult with you to determine if an interview is in the Department's best interest, and will then set up and staff the interview if the request is approved. Public Affairs will handle all communications with the interview requester.

If you have suggestions for a potential news item deserving of media attention, or if you have questions about a news story and its inaccuracies, please contact the Office of Public Affairs at the number or email mentioned above.

Following these protocols will ensure that we are answering press inquiries in the proper manner and providing the public with accurate information. We very much appreciate your cooperation and look forward to working with you.

#### **10.0 Travel and Other Direct Costs**

Contractor travel may be required to support this requirement. All travel required by the Government outside the local commuting area(s) will be reimbursed to the Contractor in accordance with the Federal Travel Regulations. The Contractor shall be responsible for obtaining COR approval (electronic mail is acceptable) for all reimbursable travel in advance of each travel event.

Additionally, Other Direct Costs (ODC) purchases are anticipated under this contract which include, but are not limited to: Expert Witnesses, Copying Services and Research. The Contractor shall be responsible for obtaining written COR approval (electronic mail is acceptable) prior to any purchase under the Other Direct Costs CLIN.

#### **11.0 Invoice Submission Instructions**

Invoices shall be prepared per FAR 52.212-4(g) "Commercial Terms and Conditions – Commercial Items. In addition to invoice preparation as required by the FAR, the Contractor's invoice shall include the following information:

- A. Contractor Invoice
  - 1) Cover sheet identifying DHS;
  - 2) Task Order Number;
  - 3) Modification Number, if any;

ATTACHMENT I: Statement of Work

- 4) DUNS Number;
  - 5) Month services provided
  - 6) Contract Line Item Number (CLIN) and Accounting Classifications
  - 7) CLIN and description for each billed item.
  - 8) Any additional backup information as required by this contract.
  - 9) ATTN: DHS/MGMT/OGC
- B. The contractor shall submit invoices monthly.
- C. CLIN and description for each billed item.
- D. Any additional backup information as required by this contract.
- E. The Contractor shall submit the invoice electronically to the address below:

E-mail: InvoiceMGT.Consolidation@ice.dhs.gov

- F. Simultaneously provide an electronic copy of the invoice to the following individuals at the addresses below:

E-mail: Contract Officer - [REDACTED] **(b)(6)**

Contract Specialist - [REDACTED] **(b)(6)**

Contracting Officer Representative (COR) - [REDACTED] **(b)(6)**

The contractor shall submit invoices to the email addresses above. Additionally, the contractor shall prepare and submit a sufficient and procurement regulatory compliant invoice and receiving report for technical certification of inspection/acceptance of services and approval for payment. The contractor shall attach back up information to the invoices and receiving reports substantiating all costs for services performed. The receiving agency's written or electronic acceptance by the COR and date of acceptance shall be included as part of the backup documentation.

If the invoice is submitted without all required back up documentation, the invoice shall be rejected. The Government reserves the right to have all invoices and backup documentation reviewed by the Contracting Officer prior to payment approval.

## CLAUSES, TERMS & CONDITIONS

### FAR 52.204-13 System for Award Management Maintenance (OCT 2018)

(a) Definitions. As used in this clause—

*Electronic Funds Transfer (EFT) indicator* means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

*Registered in the System for Award Management (SAM)* means that—

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into SAM;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

*System for Award Management (SAM)* means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

*Unique entity identifier* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain

registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d) (1) (i) If a Contractor has legally changed its business name or "doing business as" 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 in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in SAM;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

(End of clause)

**FAR 52.212-4 Contract Terms and Conditions – Commercial Products and Commercial Services (DEC 2022) (ALT I- NOV 2021)**

(a) Inspection/Acceptance. (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.



(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [Insert portion of labor rate attributable to profit.]

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may-

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to-

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(b) Assignment. The 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 in accordance with the Assignment of Claims Act ( 31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the 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. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. 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 a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. (1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause-

(i) Payments. (1) Work performed. The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) Hourly rate.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) Materials.

(A) If the Contractor furnishes materials that meet the definition of a commercial product at FAR 2.101, the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the-

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor-

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall-

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) Other Costs. Unless listed below, other direct and indirect costs will not be reimbursed.

(1) Other Direct Costs. The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: Non-local Travel, Expert Witnesses, Copying Services and Research.

(2) Indirect Costs (Material Handling, Subcontract Administration, etc.). The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price \$0

(2) Total cost. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor

shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) Ceiling price. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) Access to records. At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment-

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost-

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) Overpayments/Underpayments. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a

duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected 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.

(6)(i) All amounts that become payable by the Contractor to the Government 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 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if-

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) 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.

(vi) 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 the Contractor;
- (B) The date of issuance of a Government check to the 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 the Contractor.
- (vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.
- (viii) Upon receipt and approval of the invoice designated by the Contractor as the "completion invoice" and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.
- (7) Release of claims. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.
- (i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.
- (ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.
- (iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.
- (8) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.
- (9) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.
- (10) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity,

fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer 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 Contracting Officer of the cessation of such occurrence.

(g) Invoice. (1) The 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 the Contractor;

(ii) Invoice date and number;

(iii) Contract number, 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 Government 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). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(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 the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ( 31 U.S.C.3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including 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 the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.- (1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act ( 31 U.S.C.3903) and prompt payment regulations at 5 CFR Part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) 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.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected 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.

(6) Interest. (i) All amounts that become payable by the Contractor to the Government 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 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) 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) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if-

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or



(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) 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.

(vi) 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 the Contractor;

(B) The date of issuance of a Government check to the 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 the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(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 the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government 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 the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the 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, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government 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 the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The 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. The Contractor agrees to comply with 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. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 4701 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

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

- (1) The Standard 1449 and schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) Other documents, exhibits, and attachments.
- (8) The specification.

(t) [Reserved]

(u) Unauthorized Obligations. (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

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

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

**FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items. (OCT 2022)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) 52.233-3, Protest After Award (AUG 1996) ( 31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 ( 19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[*Contracting Officer check as appropriate.*]

X (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (NOV 2021) ( 41 U.S.C. 4704 and 10 U.S.C. 2402).

   (2) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) ( 41 U.S.C. 3509).

   (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

X (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) ( 31 U.S.C. 6101 note).

   (5) [Reserved].

X (6) 52.204-14, Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

   (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

   (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) ( 31 U.S.C. 6101 note).

   (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ( 41 U.S.C. 2313).

   (10) [Reserved].

   (11) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) ( 15 U.S.C. 657a).

   (12) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) ( 15 U.S.C. 657a).

   (13) [Reserved]

\_\_ (14)

(i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2020) ( 15 U.S.C. 644).

\_\_ (ii) Alternate I (MAR 2020) of 52.219-6.

\_\_ (15)

(i) 52.219-7, Notice of Partial Small Business Set-Aside (NOV 2020) ( 15 U.S.C. 644).

\_\_ (ii) Alternate I (MAR 2020) of 52.219-7.

\_\_ (16) 52.219-8, Utilization of Small Business Concerns (OCT 2022) ( 15 U.S.C. 637(d)(2) and (3)).

\_\_ (17)

(i) 52.219-9, Small Business Subcontracting Plan (OCT 2022) ( 15 U.S.C. 637(d)(4)).

\_\_ (ii) Alternate I (NOV 2016) of 52.219-9.

\_\_ (iii) Alternate II (NOV 2016) of 52.219-9.

\_\_ (iv) Alternate III (JUN 2020) of 52.219-9.

\_\_ (v) Alternate IV (SEP 2021) of 52.219-9.

\_\_ (18)

(i) 52.219-13, Notice of Set-Aside of Orders (MAR 2020) ( 15 U.S.C. 644(r)).

\_\_ (ii) Alternate I (MAR 2020) of 52.219-13.

\_\_ (19) 52.219-14, Limitations on Subcontracting (OCT 2022) ( 15 U.S.C. 637s).

\_\_ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (SEP 2021) ( 15 U.S.C. 637(d)(4)(F)(i)).

\_\_ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022) ( 15 U.S.C. 657f).

\_\_ (22)

(i) 52.219-28, Post Award Small Business Program Rerepresentation (OCT 2022) ( 15 U.S.C. 632(a)(2)).

\_\_ (ii) Alternate I (MAR 2020) of 52.219-28.

\_\_\_ (23) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022) ( 15 U.S.C. 637(m)).

\_\_\_ (24) 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) ( 15 U.S.C. 637(m)).

\_\_\_ (25) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) ( 15 U.S.C. 644(r)).

\_\_\_ (26) 52.219-33, Nonmanufacturer Rule (SEP 2021) ( 15U.S.C. 637(a)(17)).

\_X\_ (27) 52.222-3, Convict Labor (JUN 2003) (E.O.11755).

\_X\_ (28) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (JAN 2022) (E.O.13126).

\_X\_ (29) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

\_X\_ (30) (i) 52.222-26, Equal Opportunity (SEP 2016) (E.O.11246).

\_\_\_ (ii) Alternate I (FEB 1999) of 52.222-26.

\_X\_ (31) (i) 52.222-35, Equal Opportunity for Veterans (JUN 2020) ( 38 U.S.C. 4212).

\_\_\_ (ii) Alternate I (JUL 2014) of 52.222-35.

\_X\_ (32) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) ( 29 U.S.C. 793).

\_\_\_ (ii) Alternate I (JUL 2014) of 52.222-36.

\_X\_ (33) 52.222-37, Employment Reports on Veterans (JUN 2020) ( 38 U.S.C. 4212).

\_X\_ (34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

\_X\_ (35) (i) 52.222-50, Combating Trafficking in Persons (NOV 2021) ( 22 U.S.C. chapter 78 and E.O. 13627).

\_\_\_ (ii) Alternate I (MAR 2015) of 52.222-50 ( 22 U.S.C. chapter 78 and E.O. 13627).

\_X\_ (36) 52.222-54, Employment Eligibility Verification (MAY 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

\_\_\_ (37) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA– Designated Items (May 2008) ( 42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_\_ (ii) Alternate I (MAY 2008) of 52.223-9 ( 42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_\_ (38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

\_\_\_ (39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

\_\_\_ (40) (i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (OCT 2015) of 52.223-13.

\_\_\_ (41) (i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (Jun2014) of 52.223-14.

\_\_\_ (42) 52.223-15, Energy Efficiency in Energy-Consuming Products (MAY 2020) ( 42 U.S.C. 8259b).

\_\_\_ (43) (i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

\_\_\_ (ii) Alternate I (JUN 2014) of 52.223-16.

\_\_\_X\_\_\_ (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

\_\_\_ (45) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

\_\_\_ (46) 52.223-21, Foams (Jun2016) (E.O. 13693).

\_\_\_ (47) (i) 52.224-3 Privacy Training (JAN 2017) (5 U.S.C. 552 a).

\_\_\_ (ii) Alternate I (JAN 2017) of 52.224-3.

\_\_\_ (48) (i) 52.225-1, Buy American-Supplies (OCT 2022) ( 41 U.S.C. chapter 83).

\_\_\_ (ii) Alternate I (OCT 2022) of 52.225-1.

\_\_\_ (49) (i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (OCT 2022) ( 41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

\_\_\_ (ii) Alternate I (JAN 2021) of 52.225-3.

\_\_\_ (iii) Alternate II (JAN 2021) of 52.225-3.

\_\_\_ (iv) Alternate III (JAN 2021) of 52.225-3.

\_\_\_ (v) Alternate IV (Oct 2022) of 52.225-3.

\_\_\_ (50) 52.225-5, Trade Agreements (OCT 2019) ( 19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

\_\_\_X\_\_\_ (51) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302Note).

\_\_\_ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ( 42 U.S.C. 5150).

\_\_\_ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ( 42 U.S.C. 5150).

\_\_\_ (55) 52.229-12, Tax on Certain Foreign Procurements (FEB 2021).

\_\_\_ (56) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) ( 41 U.S.C. 4505, 10 U.S.C. 2307(f)).

\_\_\_ (57) 52.232-30, Installment Payments for Commercial Products and Commercial Services (NOV 2021) ( 41 U.S.C. 4505, 10 U.S.C. 2307(f)).

\_\_\_X\_\_\_ (58) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (OCT2018) ( 31 U.S.C. 3332).

\_\_\_ (59) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ( 31 U.S.C. 3332).

\_\_\_ (60) 52.232-36, Payment by Third Party (MAY 2014) ( 31 U.S.C. 3332).

\_\_\_X\_\_\_ (61) 52.239-1, Privacy or Security Safeguards (AUG 1996) ( 5 U.S.C. 552a).

\_\_\_ (62) 52.242-5, Payments to Small Business Subcontractors (JAN 2017) ( 15 U.S.C. 637(d)(13)).

\_\_\_ (63)

(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ( 46 U.S.C. 55305 and 10 U.S.C. 2631).



\_\_ (ii) Alternate I (APR 2003) of 52.247-64.

\_\_ (iii) Alternate II (NOV 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]

\_\_ X (1) 52.222-41, Service Contract Labor Standards (AUG 2018) ( 41 U.S.C. chapter67).

\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) ( 29 U.S.C. 206 and 41 U.S.C. chapter 67).

\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ( 29U.S.C.206 and 41 U.S.C. chapter 67).

\_\_ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ( 41 U.S.C. chapter 67).

\_\_ (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ( 41 U.S.C. chapter 67).

\_\_ (7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

\_\_ (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

\_\_ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( 42 U.S.C. 1792).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(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 the Contractor's directly pertinent records involving transactions related to this contract.

(2) The 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 the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1), in a subcontract for commercial products or commercial services. 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 (NOV 2021) ( 41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (OCT 2022) ( 15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(vii) 52.222-26, Equal Opportunity (SEP 2015) (E.O.11246).

(viii) 52.222-35, Equal Opportunity for Veterans (JUN 2020) ( 38 U.S.C. 4212).

(ix) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) ( 29 U.S.C. 793).

(x) 52.222-37, Employment Reports on Veterans (JUN 2020) ( 38 U.S.C. 4212).

(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xii) 52.222-41, Service Contract Labor Standards (AUG 2018) ( 41 U.S.C. chapter 67).

(xiii)

(A) 52.222-50, Combating Trafficking in Persons (NOV 2021) ( 22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate I (MAR 2015) of 52.222-50 ( 22 U.S.C. chapter 78 and E.O. 13627).

(xiv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ( 41 U.S.C. chapter 67).

(xv) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ( 41 U.S.C. chapter 67).

(xvi) 52.222-54, Employment Eligibility Verification (MAY 2022) (E.O. 12989).

(xvii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(xviii) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

(xix)

(A) 52.224-3, Privacy Training (Jan 2017) ( 5 U.S.C. 552a).

(B) Alternate I (JAN 2017) of 52.224-3.

(xx) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xxi) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) ( 42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ( 46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

**52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (DEVIATION 20-05)**

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

"Covered article" means any hardware, software, or service that

- (1) Is developed or provided by a covered entity;
- (2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or
- (3) Contains components using any hardware or software developed in whole or in part by a covered entity.

"Covered entity" means

- (1) Kaspersky Lab;
- (2) Any successor entity to Kaspersky Lab;
- (3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (4) Any entity of which Kaspersky Lab has a majority ownership.

(b) *Prohibition.* Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from

- (1) Providing any covered article that the Government will use on or after October 1, 2018; and
- (2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) *Reporting requirement.*

(1) In the event the Contractor identifies covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report, in writing, via email, to the Contracting Officer, Contracting Officer's Representative, and the Enterprise Security Operations Center (SOC) at NDAA Incidents@hq.dhs.gov, with required information in the body of the email. In the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Enterprise SOC, Contracting Officer for the indefinite delivery contract and the Contracting

Officer(s) and Contracting Officer's Representative(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph ( c )(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: the contract number; the order number( s ), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(c) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph ( d ), in all subcontracts, including subcontracts for the acquisition of commercial items.

(End of clause)

## **52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (DEVIATION 20-05) (DEC 2020)**

(a) *Definitions*. As used in this clause — “Backhaul” means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

“Covered foreign country” means The People’s Republic of China.

“Covered telecommunications equipment or services” means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

“Critical technology” means–

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

“Interconnection arrangements” means arrangements governing the physical connection of two or more networks to allow the use of another’s network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

“Reasonable inquiry” means an inquiry designed to uncover any information in the entity’s possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

“Roaming” means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

“Substantial or essential component” means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph

(c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause in writing via email to the Contracting Officer, Contracting Officer's Representative, and the Enterprise Security Operations Center (SOC) at NDAA\_Incidents@hq.dhs.gov, with required information in the body of the email. In the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Enterprise SOC, Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) and Contracting Officer's Representative(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment

manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

**FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within the term on the contract provided the Government gives the Contractor a preliminary written notice of its intent to extend at least fourteen (14) days before the contract expires. The preliminary notice does not commit the Government to an extension.

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

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed twenty four (24) months.

(End of clause)

**HSAR 3052.204-71 Contractor Employee Access (SEP 2012)**

(a) *Sensitive Information*, as used in this Chapter, means any information, the loss, misuse, disclosure, or unauthorized access to or modification of which could adversely affect the national or homeland security interest, or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(2) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.



(b) "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's employees shall be fingerprinted, or subject to other investigations as required. All Contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the Contractor to prohibit individuals from working on the contract if the government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those Contractor employees authorized access to sensitive information, the Contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

**HSAR 3052.205-70 Advertisements, Publicizing Awards, and Releases ALTERNATE I (SEP 2012)**

If a contract involves sensitive or classified information, designate the paragraph in the base clause as (a) and add the following paragraph (b) to the clause:

(b) All advertisements, releases, announcements, or other publication regarding this contract or the agency programs and projects covered under it, or the results or conclusions made pursuant to performance, must be approved by the Contracting Officer. Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity, release, or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(End of clause)

**HSAR 3052.215-70 Key personnel or facilities. (DEC 2003)**

(a) The personnel or facilities specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.

The Key Personnel or Facilities under this Contract:

None

**HSAR 3052.242-72 Contracting Officer's Representative (DEC 2003)**

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Representative (COR) to perform functions under the contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the Contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COR under the contract.

(b) The Contracting Officer cannot authorize the COR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

(End of clause)

**SAFEGUARDING OF SENSITIVE INFORMATION (MAR 2015)**

(a) Applicability. This clause applies to the Contractor, its subcontractors, and Contractor employees (hereafter referred to collectively as "Contractor"). The Contractor shall insert the substance of this clause in all subcontracts.

(b) Definitions. As used in this clause—

"Personally Identifiable Information (PII)" means information that can be used to distinguish or trace an individual's identity, such as name, social security number, or biometric records, either alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-personally identifiable information can become personally identifiable information

whenever additional information is made publicly available—in any medium and from any source—that, combined with other available information, could be used to identify an individual.

PII is a subset of sensitive information. Examples of PII include, but are not limited to: name, date of birth, mailing address, telephone number, Social Security number (SSN), email address, zip code, account numbers, certificate/license numbers, vehicle identifiers including license plates, uniform resource locators (URLs), static Internet protocol addresses, biometric identifiers such as fingerprint, voiceprint, iris scan, photographic facial images, or any other unique identifying number or characteristic, and any information where it is reasonably foreseeable that the information will be linked with other information to identify the individual.

“Sensitive Information” is defined in HSAR clause 3052.204-71, Contractor Employee Access, as any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of Title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, “Policies and Procedures of Safeguarding and Control of SSI,” as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as “For Official Use Only,” which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person’s privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated “sensitive” or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

“Sensitive Information Incident” is an incident that includes the known, potential, or suspected exposure, loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or unauthorized access or attempted access of any Government system, Contractor system, or sensitive information.

“Sensitive Personally Identifiable Information (SPII)” is a subset of PII, which if lost, compromised or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Some forms of PII are sensitive as stand-alone elements. Examples of such PII include: Social Security numbers (SSN), driver’s license or state identification number, Alien Registration Numbers (A-number), financial account number, and biometric identifiers such as

fingerprint, voiceprint, or iris scan. Additional examples include any groupings of information that contain an individual's name or other unique identifier plus one or more of the following elements:

- (1) Truncated SSN (such as last 4 digits)
- (2) Date of birth (month, day, and year)
- (3) Citizenship or immigration status
- (4) Ethnic or religious affiliation
- (5) Sexual orientation
- (6) Criminal History
- (7) Medical Information
- (8) System authentication information such as mother's maiden name, account passwords or personal identification numbers (PIN)

Other PII may be "sensitive" depending on its context, such as a list of employees and their performance ratings or an unlisted home address or phone number. In contrast, a business card or public telephone directory of agency employees contains PII but is not sensitive.

(c) Authorities. The Contractor shall follow all current versions of Government policies and guidance, to the extent relevant to Contractor and its provision of services to the Government, as identified below and accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>, or available upon request from the Contracting Officer:

- (1) DHS Management Directive 11042.1 Safeguarding Sensitive But Unclassified (for Official Use Only) Information
- (2) DHS 4300A Sensitive Systems Policy Directive
- (3) DHS Handbook for Safeguarding Sensitive Personally Identifiable Information
- (4) DHS Instruction Handbook 121-01-007 Department of Homeland Security Personnel Suitability and Security Program
- (5) DHS Privacy Incident Handling Guidance
- (6) Federal Information Processing Standard (FIPS) 140-2 Security Requirements for Cryptographic Modules accessible at <http://csrc.nist.gov/groups/STM/cmvp/standards.html>
- (7) National Institute of Standards and Technology (NIST) Special Publication 800-53 Security and Privacy Controls for Federal Information Systems and Organizations accessible at <http://csrc.nist.gov/publications/PubsSPs.html>

(d) Handling of Sensitive Information. Contractor compliance with this clause, as well as the policies and procedures described below, is required.

(1) Department of Homeland Security (DHS) policies and procedures on Contractor personnel security requirements are set forth in various Management Directives (MDs), Directives, and Instructions. MD 11042.1, Safeguarding Sensitive but Unclassified (For Official Use Only) Information describes how Contractors must handle sensitive but unclassified information. DHS uses the term "FOR OFFICIAL

USE ONLY” to identify sensitive but unclassified information that is not otherwise categorized by statute or regulation. Examples of sensitive information that are categorized by statute or regulation are PCII, SSI, etc. DHS Sensitive Systems Policy Directive 4300A Version 13.1, July 27, 2017 provide the policies and procedures on security for Information Technology (IT) resources. The DHS Handbook for Safeguarding Sensitive Personally Identifiable Information provides guidelines to help safeguard SPII in both paper and electronic form. DHS Instruction Handbook 121-01-007 Department of Homeland Security Personnel Suitability and Security Program establishes procedures, program responsibilities, minimum standards, and reporting protocols for the DHS Personnel Suitability and Security Program.

(2) The Contractor shall not use or redistribute any sensitive information processed, stored, and/or transmitted by the Contractor except as specified in the contract.

(3) All Contractor employees with access to sensitive information shall execute DHS Form 11000-6, Department of Homeland Security Non-Disclosure Agreement (NDA), as a condition of access to such information. The Contractor shall maintain signed copies of the NDA for all employees as a record of compliance. The Contractor shall provide copies of the signed NDA to the Contracting Officer’s Representative (COR) no later than two (2) days after execution of the form.

(4) The Contractor’s invoicing, billing, and other recordkeeping systems maintained to support financial or other administrative functions shall not maintain SPII. It is acceptable to maintain in these systems the names, titles and contact information for the COR or other Government personnel associated with the administration of the contract, as needed.

(e) Security Review. The Government may elect to conduct random periodic reviews to ensure that the security requirements contained in this contract are being implemented and enforced. The Contractor shall afford DHS, the Office of the Inspector General, and other Government organizations access to the Contractor’s facilities, installations, operations, documentation, databases and personnel used in the performance of this contract. The Contractor shall, through the Contracting Officer and COR, contact the Headquarters or Component CIO, or designee, to coordinate and participate in review and inspection activity by Government organizations external to the DHS. Access shall be provided, to the extent reasonably necessary, for the Government to carry out a program of inspection, investigation, and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of Government data or the function of computer systems used in performance of this contract and to preserve evidence of computer crime.

(f) Sensitive Information Incident Reporting Requirements.

(1) All known or suspected sensitive information incidents shall be reported to the Headquarters or Component Security Operations Center (SOC) within one hour of discovery in accordance with 4300A Sensitive Systems Handbook Incident Response and Reporting requirements. When notifying the Headquarters or Component SOC, the Contractor shall also notify the Contracting Officer, COR, Headquarters or Component Privacy Officer, and US-CERT using the contact information identified in the contract. If the incident is reported by phone or the Contracting Officer’s email address is not immediately available, the Contractor shall contact the Contracting Officer immediately after reporting the incident to the Headquarters or Component SOC. The Contractor shall not include any sensitive information in the subject or body of any e-mail. To transmit sensitive information, the Contractor shall use FIPS 140-2 Security Requirements for Cryptographic Modules compliant encryption methods to protect sensitive information in attachments to email. Passwords shall not be communicated in the same email as the attachment. A sensitive information incident shall not, by itself, be interpreted as evidence

that the Contractor has failed to provide adequate information security safeguards for sensitive information or has otherwise failed to meet the requirements of the contract.

(2) If a sensitive information incident involves PII or SPII, in addition to the reporting requirements in 4300A Sensitive Systems Handbook Incident Response and Reporting, Contractors shall also provide as many of the following data elements that are available at the time the incident is reported, with any remaining data elements provided within 24 hours of submission of the initial incident report:

- (i) Data Universal Numbering System (DUNS);
- (ii) Contract numbers affected unless all contracts by the company are affected;
- (iii) Facility CAGE code if the location of the event is different than the prime contractor location;
- (iv) Point of contact (POC) if different than the POC recorded in the System for Award Management (address, position, telephone, email);
- (v) Contracting Officer POC (address, telephone, email);
- (vi) Contract clearance level;
- (vii) Name of subcontractor and CAGE code if this was an incident on a subcontractor network;
- (viii) Government programs, platforms or systems involved;
- (ix) Location(s) of incident;
- (x) Date and time the incident was discovered;
- (xi) Server names where sensitive information resided at the time of the incident, both at the Contractor and subcontractor level;
- (xii) Description of the Government PII and/or SPII contained within the system;
- (xiii) Number of people potentially affected, and the estimate or actual number of records exposed and/or contained within the system; and
- (xiv) Any additional information relevant to the incident.

(g) Sensitive Information Incident Response Requirements.

(1) All determinations related to sensitive information incidents, including response activities, notifications to affected individuals and/or Federal agencies, and related services (e.g., credit monitoring) will be made in writing by the Contracting Officer in consultation with the Headquarters or Component CIO and Headquarters or Component Privacy Officer.

(2) The Contractor shall provide full access and cooperation for all activities determined by the Government to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid resolution of sensitive information incidents.

(3) Incident response activities determined to be required by the Government may include, but are not limited to, the following:

- (i) Inspections,
- (ii) Investigations,
- (iii) Forensic reviews, and
- (iv) Data analyses and processing.

(4) The Government, at its sole discretion, may obtain the assistance from other Federal agencies and/or third-party firms to aid in incident response activities.

(h) Additional PII and/or SPII Notification Requirements.

(1) The Contractor shall have in place procedures and the capability to notify any individual whose PII resided in the Contractor IT system at the time of the sensitive information incident not later than 5

business days after being directed to notify individuals, unless otherwise approved by the Contracting Officer. The method and content of any notification by the Contractor shall be coordinated with, and subject to prior written approval by the Contracting Officer, in consultation with the Headquarters or Component Privacy Officer, utilizing the DHS Privacy Incident Handling Guidance. The Contractor shall not proceed with notification unless the Contracting Officer, in consultation with the Headquarters or Component Privacy Officer, has determined in writing that notification is appropriate.

(2) Subject to Government analysis of the incident and the terms of its instructions to the Contractor regarding any resulting notification, the notification method may consist of letters to affected individuals sent by first class mail, electronic means, or general public notice, as approved by the Government. Notification may require the Contractor's use of address verification and/or address location services. At a minimum, the notification shall include:

- (i) A brief description of the incident;
- (ii) A description of the types of PII and SPII involved;
- (iii) A statement as to whether the PII or SPII was encrypted or protected by other means;
- (iv) Steps individuals may take to protect themselves;
- (v) What the Contractor and/or the Government are doing to investigate the incident, to mitigate the incident, and to protect against any future incidents; and
- (vi) Information identifying who individuals may contact for additional information.

(i) Credit Monitoring Requirements. In the event that a sensitive information incident involves PII or SPII, the Contractor may be required to, as directed by the Contracting Officer:

(1) Provide notification to affected individuals as described above; and/or  
(2) Provide credit monitoring services to individuals whose data was under the control of the Contractor or resided in the Contractor IT system at the time of the sensitive information incident for a period beginning the date of the incident and extending not less than 18 months from the date the individual is notified. Credit monitoring services shall be provided from a company with which the Contractor has no affiliation. At a minimum, credit monitoring services shall include:

- (i) Triple credit bureau monitoring;
  - (ii) Daily customer service;
  - (iii) Alerts provided to the individual for changes and fraud; and
  - (iv) Assistance to the individual with enrollment in the services and the use of fraud alerts; and/or
- (3) Establish a dedicated call center. Call center services shall include:
- (i) A dedicated telephone number to contact customer service within a fixed period;
  - (ii) Information necessary for registrants/enrollees to access credit reports and credit scores;
  - (iii) Weekly reports on call center volume, issue escalation (i.e., those calls that cannot be handled by call center staff and must be resolved by call center management or DHS, as appropriate), and other key metrics;
  - (iv) Escalation of calls that cannot be handled by call center staff to call center management or DHS, as appropriate;
  - (v) Customized FAQs, approved in writing by the Contracting Officer in coordination with the Headquarters or Component Chief Privacy Officer; and
  - (vi) Information for registrants to contact customer service representatives and fraud resolution representatives for credit monitoring assistance.

(j) Attestation of Destruction of Government and Government-Activity-Related Files and Information. As part of contract closeout, the Contractor shall submit an attestation to the COR and the Contracting Officer that information was destroyed as required under the contract.

### **INFORMATION TECHNOLOGY SECURITY AND PRIVACY TRAINING (MAR 2015)**

(a) *Applicability.* This clause applies to the Contractor, its subcontractors, and Contractor employees (hereafter referred to collectively as “Contractor”). The Contractor shall insert the substance of this clause in all subcontracts.

(b) *Security Training Requirements.*

(1) All users of Federal information systems are required by Title 5, Code of Federal Regulations, Part 930.301, Subpart C, as amended, to be exposed to security awareness materials annually or whenever system security changes occur, or when the user’s responsibilities change. The Department of Homeland Security (DHS) requires that Contractor employees take an annual Information Technology Security Awareness Training course before accessing sensitive information under the contract. Unless otherwise specified, the training shall be completed within thirty (30) days of contract award and be completed on an annual basis thereafter not later than October 31<sup>st</sup> of each year. Any new Contractor employees assigned to the contract shall complete the training before accessing sensitive information under the contract. The training is accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>. The Contractor shall maintain copies of training certificates for all Contractor and subcontractor employees as a record of compliance. Unless otherwise specified, initial training certificates for each Contractor and subcontractor employee shall be provided to the Contracting Officer’s Representative (COR) not later than thirty (30) days after contract award. Subsequent training certificates to satisfy the annual training requirement shall be submitted to the COR via e-mail notification not later than October 31<sup>st</sup> of each year. The e-mail notification shall state the required training has been completed for all Contractor and subcontractor employees.

(2) The DHS Rules of Behavior apply to every DHS employee, Contractor and subcontractor that will have access to DHS systems and sensitive information. The DHS Rules of Behavior shall be signed before accessing DHS systems and sensitive information. The DHS Rules of Behavior is a document that informs users of their responsibilities when accessing DHS systems and holds users accountable for actions taken while accessing DHS systems and using DHS Information Technology resources capable of inputting, storing, processing, outputting, and/or transmitting sensitive information. The DHS Rules of Behavior is accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>. Unless otherwise specified, the DHS Rules of Behavior shall be signed within thirty (30) days of contract award. Any new Contractor employees assigned to the contract shall also sign the DHS Rules of Behavior before accessing DHS systems and sensitive information. The Contractor shall maintain signed copies of the DHS Rules of Behavior for all Contractor and subcontractor employees as a record of compliance. Unless otherwise specified, the Contractor shall e-mail copies of the signed DHS Rules of Behavior to the



COR not later than thirty (30) days after contract award for each employee. The DHS Rules of Behavior will be reviewed annually and the COR will provide notification when a review is required.

(c) *Privacy Training Requirements.* All Contractor and subcontractor employees that will have access to Personally Identifiable Information (PII) and/or Sensitive PII (SPII) are required to take *Privacy at DHS: Protecting Personal Information* before accessing PII and/or SPII. The training is accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>. Training shall be completed within thirty (30) days of contract award and be completed on an annual basis thereafter not later than October 31<sup>st</sup> of each year. Any new Contractor employees assigned to the contract shall also complete the training before accessing PII and/or SPII. The Contractor shall maintain copies of training certificates for all Contractor and subcontractor employees as a record of compliance. Initial training certificates for each Contractor and subcontractor employee shall be provided to the COR not later than thirty (30) days after contract award. Subsequent training certificates to satisfy the annual training requirement shall be submitted to the COR via e-mail notification not later than October 31<sup>st</sup> of each year. The e-mail notification shall state the required training has been completed for all Contractor and subcontractor employees.

(End of clause)

| Labor Category       | Base Period   | Option Period 1 | Option Period 2 | Option Period 3 | Option Period 4 |
|----------------------|---------------|-----------------|-----------------|-----------------|-----------------|
| Lawyer               | <b>(b)(4)</b> |                 |                 |                 |                 |
| Legal Assistant      |               |                 |                 |                 |                 |
| Knowledge Management |               |                 |                 |                 |                 |

**JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN  
COMPETITION  
41 U.S.C. 3304(a)(2)**

Pursuant to the requirements of the Competition in Contracting Act (CICA) as implemented by the Federal Acquisition Regulation (FAR) Subpart 6.3 and in accordance with the requirements of FAR 6.302-2, the use of the statutory authority under FAR Subpart 6.3 is justified by the following facts and rationale required under FAR 6.303-2:

1. **Agency and Contracting Activity.** The Department of Homeland Security, Office of Procurement Operations, awarded a sole source expert and consultant services contract for legal services under the authority of 6 U.S.C. 392 and 5 U.S.C. 3109.
  
2. **Nature and/or Description of the Action being Approved.** DHS awarded a sole source contract to Debevoise & Plimpton LLP, 801 Pennsylvania Ave NW, Washington, DC 20004 for expert and consultant legal services. Debevoise & Plimpton (Debevoise) is the only law firm that has the necessary experience to provide the legal services to DHS for advice and representation relating to potential impeachment proceedings. The effort was awarded on a Time and Material (T&M) basis.

The total value of the contract (including options) is as shown below:

| Period                | Total         |
|-----------------------|---------------|
| Base Year 12 mo.      | \$1,500,000   |
| Option Period 1 3 mo. | <b>(b)(4)</b> |
| Option Period 2 3 mo. |               |
| Option Period 3 3 mo. |               |
| Option Period 4 3 mo. |               |
| Total                 |               |

The costs are primarily labor costs associated with this requirement and contain a Not-to-Exceed Other Direct Cost (ODC) amount of **(b)(4)** over the life of the contract. This is a new requirement. There have been no previous acquisitions for this service.

**3. Description of Supplies/Services.**

The requirement is to provide expert and consultant legal services for advice and representation relating to potential impeachment proceedings in the United States Congress. Such services are necessary as the agency lacks the requisite resources, experience and knowledge to represent the Secretary and other DHS officials in potential impeachment

proceedings. These services are required on an urgent and compelling basis as the Congressional session began on January 3, 2023, and such services are required as soon after that date as possible to assist DHS to prepare OGC, the Secretary, and other DHS officials on impeachment processes and procedures, including related Congressional oversight, prior to the official start of any impeachment proceeding in the House or Senate, as well as to counsel and represent the Department on proceedings that may serve as predicates to impeachment proceedings. Also, Congressional rules may prevent OGC from representing the Secretary and DHS officials at depositions or other hearings, and the contractor may be required to fulfill that representational role and represent the Secretary and DHS officials in their personal capacity, if appropriate.

**4. Identification of Statutory Authority Permitting Other Than Full and Open Competition.**

The statutory authority permitting other than full and open competition is 41 U.S.C. 3304 (a)(2) implemented by the FAR Subpart 6.302-2 entitled “Unusual and compelling urgency.”

**5. Demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.**

The Agency requires expert and consultant services from a law firm that has extensive experience and knowledge in the impeachment process and related activities. As such, the law firm must also have experience advising federal agencies on matters subject to Congressional oversight. Specifically, the Agency requires a law firm that can provide DHS OGC with advice on not only the process involved in impeachment proceedings, but also Congressional oversight proceedings that may lead to impeachment proceedings in the House, and an impeachment trial in the Senate. The law firm must understand the unique needs and authorities of each committee and staff that may be involved in an investigation that could lead to an impeachment process for a Cabinet member so the Department can provide responsive timely information. The firm must provide this support to assist DHS OGC in defending the Department and avoiding potential impeachment proceedings, a vote to impeach, or a Senate impeachment trial of the Secretary or other DHS officials. Experience in these areas limits the pool of potential sources greatly as very few law firms and individuals have experience working with both political parties in Congress on relevant issues, in particular issues related to national security, immigration and border security, and terrorism – issues important to DHS. Even more limiting is that very few attorneys have worked on any impeachment proceedings in the last 25 years in any capacity, making the pool of potential sources even smaller.

Impeachment of a Cabinet Secretary is highly unusual, and has not been effected since 1876. The Department faces highly unusual, if not unique, circumstances as House committees initiate impeachment-related oversight. A House Member has already introduced Articles of Impeachment related to the official policy of the Executive Branch, not the personal conduct

of the Secretary. Other such articles are expected to be introduced in the coming weeks. Multiple hearings and other events in which Members called for impeachment of the Secretary have also occurred. Debevoise is the only firm that will meet the Agency's needs in these unique circumstances. Debevoise is the only law firm to have provided advice and counsel to the House Representatives in an impeachment in the last 24 years. It is also the only law firm that includes attorneys that have both defended and prosecuted an impeachment trial and have represented elements of both the Democratic and Republican political parties in an impeachment. Individuals within the law firm also have worked on the most recent federal impeachment proceedings. Moreover, Debevoise's attorneys have had previous experience working for federal agencies on issues that will almost certainly serve as the central subjects of debate during any impeachment proceedings, including immigration and border security issues in particular, as well as national security and terrorism. Debevoise also has experience working with Congress, on a bi-partisan basis, and extensive trial litigation experience. The combination of this experience is not found in any of the law firms surveyed.

While other potential sources were reviewed, none of the sources reviewed have the unique skills and experience that Debevoise possesses. Debevoise, as a firm, has recent experience participating in an impeachment proceeding and so do members within the firm. Debevoise understands the impeachment proceedings on a macro- and micro-level, as a result of its experience that no other firm possesses. This experience will be invaluable to OGC as it advises the Secretary and other DHS officials on oversight and other matters that could lead to impeachment proceedings in the House and Senate. This firm is the only firm that can provide DHS OGC with the necessary skillset upfront, for the reasons set forth above.

If award was not made to Debevoise, there is a high risk that an award to another firm would lead to work product that is inferior to the product that Debevoise would produce. This risk may harm the Department and lead to inadequate preparation prior to the commencement of any proceedings, potentially lead to an inadequate defense of the Secretary and DHS officials on impeachment matters, and pose unnecessary risk to the Department by failing to secure the necessary skills and experience required for this rare and unique event.

These unique services are required on an expedited basis because the new Congressional session began on January 3. November's election results gave Republicans a majority in the House. House Republicans have stated in the media that they intend to pursue articles of impeachment against the Secretary during the current Congressional session. A Representative has already filed a resolution in the House calling for the impeachment of the Secretary. Impeaching Alejandro Nicholas Mayorkas, Secretary of Homeland Security, for high crimes and misdemeanors, H.Res. 8, 118<sup>th</sup> Cong. § 1 (2023). Other such resolutions are anticipated. Multiple hearings and other events in which Members called for impeachment of the Secretary have also occurred. It is imperative that DHS OGC obtain these legal services as quickly as possible to ensure there is sufficient time to prepare and advise the Secretary and DHS officials on strategy and procedure. Delay in an award for these services would

delay and impede DHS's ability to work with Members of Congress ahead of time to demonstrate that impeachment is not warranted or prudent, work with legal counsel on potential strategies and plans, and begin preparation work with the Secretary and DHS officials to effectively respond to Congressional inquiries.

**6. Description of Efforts Made to Ensure that Offers are Solicited from as Many Potential Sources as is Practicable.**

No announcement of the requirement was made as FAR 5.202(a)(2) provides an exception for actions made under FAR 6.302-2. The Government determined that there would be insufficient time for DHS OGC or DHS's senior officials to work with contracted legal counsel on the necessary services for this requirement should DHS be required to synopsise the requirement ahead of award in accordance with FAR 5.203. DHS conducted market research to determine if other sources were available that could provide the necessary requirements on an expedited basis. DHS met with firms to discuss their experience and qualifications. Given the unique nature of the services needed and the expedited timeframe to ensure an award was in place prior to the start of any impeachment proceeding to ensure the necessary resources were in place to provide advice and counsel to the Secretary and DHS officials, a competition was impracticable. As explained within this justification and documented in the market research report, DHS determined that only one source could provide the services necessary on an unusual and compelling urgency basis.

**7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable.**

The Contracting Officer determined that the pricing was fair and reasonable prior to award based on a review of price lists obtained during the market research phase from several law firms in the Washington DC area. The Contracting Officer reviewed these lists and developed an average hourly rate for various labor categories and used this average to compare against Debevoise's proposed price and against the independent government cost estimate.

**8. Description of Market Research.**

Given that House Republicans indicated that should they gain a majority in the House in the November elections, it would begin impeachment proceedings against the Secretary, DHS began market research at the end of October in anticipation. Market research was conducted between October-December 2022 to identify law firms in the Washington, DC area that have significant trial litigation experience—working on issues that may come up relating to a potential impeachment proceeding including immigration, border security, national security, and terrorism; working with Members of Congress in both political parties on different issues, but in particular working on issues that may affect DHS; and recent experience working on impeachment proceedings from all sides.

Firms were identified based on knowledge of the industry from senior officials within DHS. DHS officials met with each firm to better ascertain the firm's experience and capabilities in each of the identified areas described in the paragraph above. Based on those discussions, it was determined that only Debevoise had the requisite experience and knowledge that met the Agency's requirements.

**9. Any Other Facts Supporting the Use of Other Than Full and Open Competition.**

The Rules of Professional Conduct contemplate that a client has the right to select counsel of his/her choice. *See e.g.*, ABA Formal Op. 99-414 (Sept. 8, 1999) (citing Rule 1.16). As part of this contractual requirement counsel may be required to represent the Secretary and other DHS officials in their personal capacity, the Secretary's recommendation to award to the law firm that can best provide the legal services needed to represent him and other DHS officials during possible impeachment proceedings has been taken into consideration. Independent market research and assessment of Debevoise and other law firms were conducted to ensure that awarding a sole source contract to Debevoise under other than full and open competition represented the best decision for DHS, as a federal agency, and for the Secretary and other DHS officials that may be impeached.

**10. A Listing of the Sources, if Any That Expressed, in Writing, an Interest in the Acquisition.**

None

**11. A Statement of the Actions, if Any, the Agency May Take to Remove or Overcome Any Barriers to Competition Before Any Subsequent Acquisition for Supplies or Services Required.**

These services may only be required in this instance. Impeachment proceedings of Cabinet Secretaries by Congress are exceedingly rare. Should such requirement occur again in the future, DHS will conduct new market research to determine if its needs and the market have changed.

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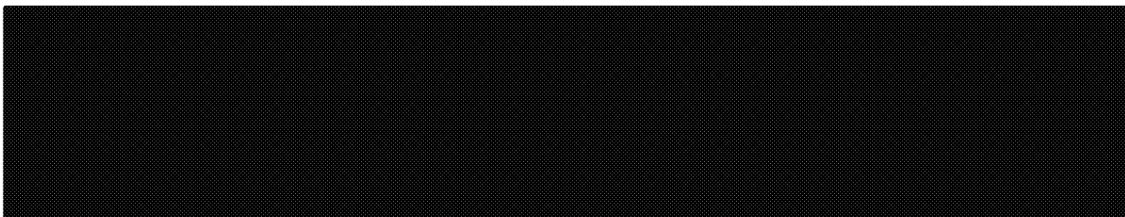
12. Contracting Officer's Certification. I certify that the data supporting the recommended use of other than full and open competition is accurate and complete to the best of my knowledge and belief.

**(b)(6)**

2/15/23

\_\_\_\_\_  
Date

13. Technical/Requirements Personnel Certification. I certify this requirement meets the Government's minimum need and that the supporting data, which forms a basis for this justification, is complete and accurate.



APPROVAL:

**(b)(6)**

Procuring Activity Advocate for Competition

\_\_\_\_\_

Date