

6 Invoices and Payments.

6.1 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.

6.2 Invoice.

The contractor shall utilize AAS's electronic Assisted Services Shared Information SysTem (ASSIST) to submit invoices. The contractor shall manually enter CLIN charges into TOS in the ASSIST Portal. Summary charges on invoices shall match the charges listed in TOS for all CLINs. The contractor shall submit invoices electronically by logging onto the following link (requires Internet Explorer to access the link):

<https://portal.fas.gsa.gov>

Log in using your assigned ID and password, navigate to the order against which you want to invoice, click the Invoices and Acceptance Reports link in the left navigator, and then click the Create New Invoice button. The AASBS Help Desk should be contacted for support at 877-472-4877 (toll free) or by email at AASBS.helpdesk@gsa.gov. By utilizing this method, no paper copy of the invoice shall be submitted to GSA AAS or the GSA Finance Center. However, the COR may require the contractor to submit a written "hardcopy" invoice with the client's certification prior to invoice payment. A paper copy of the invoice is required for a credit.

An invoice must include—

- Name and address of the Contractor;
- Invoice date and number;
- Contract number, line item number and, if applicable, the order number;
- Description, quantity, unit of measure, unit price and extended price of the items delivered;
- Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- Name and address of official to whom payment is to be sent;
- Name, title, and phone number of person to notify in event of defective invoice; and
- Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- Electronic funds transfer (EFT) banking information.

The contractor must submit a final invoice within 30 calendar days after contract completion. No further charges are to be billed following the final invoice submission. With the submission of a final invoice, a completed and signed Release of Claims (GSA Form 1142) shall be provided to the CO.

6.3 Payments.

6.3.1 General.

The Government shall pay the Contractor 30 days after the service period, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

Unless otherwise specified in this contract, the Government will make payment on partial deliveries accepted by the Government if either:

- The amount due on the deliveries warrants it.
- The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

6.3.2 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—

- Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
 - Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
 - Affected contract number and delivery order number, if applicable;
 - Affected line item or subline item, if applicable; and Contractor point of contact.
- Provide a copy of the remittance and supporting documentation to the Contracting Officer.

6.3.3 Interest on Debt due to Government by Contractor.

- 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 fixed by the Secretary until the amount is paid.
- The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

- *Final decisions.* The Contracting Officer will issue a final decision if—
 - The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;
 - 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
 - The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer.
- 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.
- Amounts shall be due at the earliest of the following dates:
 - The date fixed under this contract.
 - The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—
 - The date on which the designated office receives payment from the Contractor;
 - 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
 - The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

6.4 Additional Payment Terms.

To be inserted at award.

7 Other Terms and Conditions.

7.1 SAM Registration.

Successful offerors not already registered in the SAM will be required to register in the SAM prior to award of any contract. Information regarding SAM registration is available at <https://sam.gov>. See the following Quick Start Guide for specific guidance on registering in the SAM:

https://www.sam.gov/sam/transcript/Quick_Guide_for_Contract_Registrations.pdf. To remain registered in the SAM database 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 the SAM database to ensure it is current, accurate and complete.

The Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims. Assignees shall be separately registered in the SAM database.

7.2 Intellectual Property.

- To be inserted at award.

7.3 Security of GSA Information Systems.

If this contract involves physical or electronic access to or use of GSA information systems, contractor shall ensure compliance with applicable requirements of GSA IT Security Procedural Guide 09-48.

7.4 Incident Reporting

Any breach of personally identifiable information (PII) must be reported in accordance with GSA Order CIO 9297.2, GSA Information Breach Notification Policy.

7.5 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:

- Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

7.6 Taxes.

The contract price includes all applicable Federal, State, and local taxes and duties.

7.7 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.

7.8 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.

7.9 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.

7.10 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.

7.11 Order of Precedence.

Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

1. The schedule of supplies/services.
2. The Assignments, Disputes, Payments, Invoice, Other Compliances, Unauthorized Obligations, and Commercial Supplier Agreements – Unenforceable Clauses sections of this contract.
3. Addenda to this solicitation or contract, including any commercial supplier agreements as amended by the Commercial Supplier Agreements - Unenforceable Clauses section of this contract.
4. Solicitation provisions if this is a solicitation.
5. Other documents, exhibits, and attachments.
6. The specification.

7.12 Unauthorized Obligations.

7.12.1 Except as stated in Section 7.12.2, when any supply or service acquired under this contract is subject to any commercial supplier agreement that includes any language, provision, or clause requiring the Government to pay any future fees, penalties, interest, legal costs or 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:

- Any such language, provision, or clause is unenforceable against the Government.
- 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 commercial supplier agreement. If the commercial supplier 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.
- Any such language, provision, or clause is deemed to be stricken from the commercial supplier agreement.

7.12.2 Section 7.12.1 does not apply to indemnification or any other payment by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

7.13 Commercial Supplier Agreements – Unenforceable Clauses.

When any supply or service acquired under this contract is subject to a commercial supplier agreement, the following language shall be deemed incorporated into the commercial supplier agreement. As used herein, “this agreement” means the commercial supplier agreement:

- Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the U.S. Government, the following shall apply:
 - Applicability. This agreement is a part of a contract between the commercial supplier and the U.S. Government for the acquisition of the supply or service that necessitates a license or other similar legal instrument.
 - End user. This agreement shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.
 - Law and disputes. This agreement is governed by Federal law.
 - Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.
 - Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

- Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.
- Continued performance. The supplier or licensor shall not unilaterally revoke, terminate or suspend any rights granted to the Government except as allowed by this contract. If the supplier or licensor believes the ordering activity to be in breach of the agreement, it shall pursue its rights under applicable Federal statute while continuing performance as set forth below in this section.
- Arbitration; equitable or injunctive relief. In the event of a claim or dispute arising under or relating to this agreement, a binding arbitration shall not be used unless specifically authorized by agency guidance, and equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute.
- Updating terms.
 - After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as:
 - Terms that change Government rights or obligations;
 - Terms that increase Government prices;
 - Terms that decrease overall level of service; or
 - Terms do limit any other Government right addressed elsewhere in this contract.
 - For revisions that will materially change the terms of the contract, the revised commercial supplier agreement must be incorporated into the contract using a bilateral modification.
 - Any agreement terms or conditions unilaterally revised subsequent to award that are inconsistent with any material term or provision of this contract shall not be enforceable against the Government, and the Government shall not be deemed to have consented to them.
- No automatic renewals. If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative approval.
- Indemnification. Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right

to represent the United States in any such action, in accordance with 28 U.S.C. 516.

- Audits. Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:
 - Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.
 - This charge, if disputed by the ordering activity, will be resolved through the Disputes section of this contract.
 - Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.
- Taxes or surcharges. Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.
- Non-assignment. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval.
- Confidential information. If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price list, as applicable, shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.
- If any language, provision, or clause of this agreement conflicts or is inconsistent with Section 7.13, the language and provisions of paragraph Section 7.13 shall prevail to the extent of such inconsistency.

7.14 Incorporation by Reference.

Any Contractor representations and certifications completed electronically via the

System for Award Management (SAM) are incorporated by reference into the contract.

7.15 Changes.

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

7.16 Termination for the Government's Convenience.

7.16.1 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.

7.16.2 Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination.

7.16.3 This section 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 which reasonably could have been avoided.

7.17 Termination for Cause.

7.17.1 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.

7.17.2 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.

7.18 Classified Information.

If the contract involves classified information, the Contractor shall comply with the Security Agreement (DD Form 441), including the National Industrial Security Program Operating Manual (DoD 5220.22-M) and any revisions to that manual, notice of which has been furnished to the Contractor.

7.19 Disputes.

(a) This contract is subject to 41 U.S.C chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C chapter 71, all disputes arising under or relating to this contract shall be resolved under this section.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C chapter 71. The submission may be converted to a claim under 41 U.S.C chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for

ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

7.20 Definitions.

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- The solicitation, or amended solicitation, provides a different definition; or
- The contracting parties agree to a different definition.

7.21 Additional Terms or Conditions.

To be inserted at award.