



# GSA Commercial Solutions Opening (CSO) Solicitation Template

Color coding of this template is as follows:

**Black** - Language derives from GSAM part 571, Section 880 of FY 2017 NDAA and as amended through Section 7227 of FY 2023 NDAA, and/or standardized best practices language developed for GSA's CSO Solicitation template.

**Blue** - GSA Guidance for completing each Section (*in italics*). This is for reference and should be deleted when the section is completed.

**Orange** - Sample language that may be tailored.

**Green** - Placeholder text that needs to be filled in (e.g., number references marked with an "X").

## Instructions

*This template shall be used and tailored for each procurement in accordance with GSAM Part 571 and the CSO Guide. As detailed in the CSO guide, the goal of the CSO pilot program is to implement a competitive solicitation methodology outside the normal Federal Acquisition Regulation (FAR) procurement methods to provide a streamlined approach for acquiring new innovative commercial solutions. Consult with the Office of the General Counsel if you have any questions about which terms and conditions in this template can be tailored.*

## Controlled Unclassified Information (CUI) Marking Instructions

- a. *The minimum required CUI markings for this document are as follows:*
  1. *CUI Banner Marking centered in the header on every page as **BOLD CAPITALIZED TEXT**.*
  2. *"Controlled by" information at the bottom of the cover page.*
2. *The entire document must be marked even if there is CUI only on one page, and markings must be the same on each page.*
3. *Ensure the Office of the General Counsel (OGC) concurs with the CUI markings.*
4. *Please review the marking guidance on General Services Administration (GSA) InSite to confirm the default markings are correct for your acquisition. For additional information on CUI markings, review the GSA CUI Marking Manual.*

***REMOVE THESE INSTRUCTIONS PAGES WHEN COMPLETE.***



**General Services Administration (GSA)  
Commercial Solutions Opening (CSO)  
Solicitation**

for

***Insert nature of Requirement***

in support of:

***Insert Client's Organization Name***

Issued to:

***(Insert Contractor)***

Issued by:

U.S General Services Administration (GSA)

**Federal Acquisition Service (FAS) or Public Buildings Service (PBS) (Choose one)**

***(Insert FAS or PBS portfolio)***

***(Insert Appropriate Date of Solicitation Release)***

**Controlled by:** ***(insert GSA Contracting Officer's email address) (When you begin drafting your document, add appropriate CUI markings. Remove all CUI markings prior to releasing to industry as the information is only controlled until released publicly.)***



## 1 General Information

### 1.1 Background

#### 1.1.1 Authority

This is a procurement action using the Commercial Solutions Opening (CSO) procedures authorized by section 880 of the 2017 National Defense Authorization Act (NDAA) and as amended by section 7227 of the FY23 NDAA. This procurement is subject to the limitations outlined in the General Services Acquisition Manual (GSAM) Part 571 and the associated CSO Guide. Using CSO procedures, this procurement is to competitively procure innovative commercial products and commercial services to include innovative technologies and solutions using the commercial solutions opening.

#### 1.1.2 CSO Pilot Program Benefits

GSA developed this program to be implemented outside the normal Federal Acquisition Regulations (FAR) requirements to engage traditional and non-traditional Government contractors, including start-up companies. This pilot program is intended to promote competition with a streamlined approach to acquire innovative commercial products and commercial services. This pilot program offers the following benefits:

- a. Streamlined solicitation requiring only minimal corporate and technical information.
- b. Fast track vendor selection timelines.
- c. Simplified contract administration procedures and requirements.
- d. Preference for the vendor retaining core intellectual property.

### 1.2 North American Industry Classification System (NAICS)

The North American Industry Classification System (NAICS) code for this solicitation is *(insert NAICS code, title, number of employees, and/or dollar value)*.

## 2 Project Description

*Clearly describe the innovative commercial products or commercial services being procured in accordance with the Section 880 of the FY17NDAA/Section 7227 of the FY23 NDAA.*

*The (Customer Organization) seeks to procure/adopt/accelerate (choose one) the adoption of (Insert the Name of Technology (e.g., artificial intelligence)) to (provide reason).*

### 2.1 Project Objectives

*Clearly detail the objectives to be accomplished through the acquisition. It is recommended to state the objectives as a problem statement, and not as a detailed statement of work. This section should state relevant characteristics and attributes of a solution (innovative commercial product or service) that would be minimally required to be considered for award, as well as desired characteristics that would be beneficial to the Government.*



The *(insert the name of the customer)* is seeking innovative commercial solutions to *(insert the name of the technology/services/capability gap to be solved)* to accomplish the following objectives: *(Describe how the commercial product/service will solve the objective and insert objectives in a bulleted format.)*

## 2.2 Current Environment (Optional)

*This section is optional for this solicitation template. If not applicable, remove this section.*

*Insert the technical or functional environment that the requirement will operate. Examples are provided below:*

- a. Technical description (hardware, software, network, communication).*
- b. Include any diagrams, design, and level of responsibility for the offerors (sometimes networks interface with other organizations).*
- c. Design, development, documentation, specifications, system architecture requirements, and other pertinent standards with the website if possible.*
- d. Reference to technical documents.*
- e. Existing technical challenges, issues, or inefficiencies.*

## 3 General Information - Solution Brief Submission

*The CSO award process includes the submission requirements included within this section.*

The Government intends to make an award using a two-phase process. Phase I will require the offeror to submit a solution brief in accordance with the requirements pursuant to this Section. Phase I may, at the agency's discretion, also require the offeror to participate in an oral solution brief and/or submit additional information regarding its solution brief. Phase II will require the offeror to submit a final contract solution. This Section addresses the requirements of Phase I. Section X.X is specific to Phase II, the Final Contract Solution.

**The offeror is expected to examine this entire solicitation document. Failure to do so will be at the offeror's own risk.**

**Solution briefs shall set forth full, accurate, and complete information regarding the commercial product/service as required by this solicitation package. The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001.**

### 3.1 Submission Requirements

Written solution briefs as described in Section 3.2 shall be received *(select a method such as "in the following e-mail box" or "via the Google Form linked here")* by *(include date and time)* at *(include email address or URL)*. Any solution briefs submitted after this date and time will not be reviewed.

Oral presentations, or other written information may be requested, at the Government's discretion, to supplement the written solution brief before potential award. Any oral presentations will be coordinated with the offeror and may be conducted by videoconference or in-person.



## 3.2 Written Solution Brief Requirements

### 3.2.1 Content of Solution Brief

The written solution brief shall address the following questions: *(Example questions are provided below and **should be tailored** for each solicitation.)*

- a. Describe your technology and its relevance to the project description outlined in Section 2.
- b. In what ways is the commercial product/service innovative? Please explain using technical language rather than marketing or sales-type language.
- c. What level of outside investment has your company received? From whom; Government, private?
- d. What Intellectual Property (IP) does your company plan to use or create? How does your company anticipate the rights to that IP?
- e. Describe your company – How old is it? Where is it located (foreign or domestic ownership)? (e.g., multiple locations, sales/Research & Development (R&D) in U.S. and other countries)? Number of employees?
- f. If applicable, describe any other commercial or Federal contracts/subcontracts awarded to your company that are related to the proposed solutions/objectives of Section 2.
- g. Describe the management team – What are their roles? What is their background and history (e.g., previous startups, roles in public service, previous federal involvement, etc.)?

### 3.2.2 Proprietary Markings

Offerors shall mark any pages of written solution briefs that contain business plans, technical information, pricing or other business sensitive information as proprietary information, which the Government agrees to safeguard.

To ensure that sensitive data is appropriately marked, the offeror must include the following sentences on the cover page: "This solution brief includes data that shall not be disclosed outside the Government, except to non-Government personnel for evaluation purposes, and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this submission. If, however, an agreement is awarded to this Company as a result of - or in connection with -- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent agreed upon by both parties in the resulting agreement. The data subject to this restriction are contained in sheets *(insert numbers or other identification of sheets)*.

Exceptions: The requirements of this Section will not apply to any information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to Government prior to its receipt from offeror; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortuous act; or (iv) can be shown by documentation to have been developed by Government without reference to any Confidential Information.



If the Government becomes legally obligated to disclose Confidential Information by any other governmental entity with jurisdiction over it, the Government will give the offeror prompt written notice to allow the offeror to seek a protective order or other appropriate remedy. Such notice must include, without limitation, identification of the information to be so disclosed and a copy of the order. The Government will disclose only such information as is legally required and will use its reasonable best efforts to obtain confidential treatment for any Confidential Information that is so disclosed.

Each restricted data sheet shall be marked as follows: "Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this solution brief." A failure to properly mark each sheet with the disclaimer statement shall result in the Government not being held to the non-disclosure obligation.

## **4 Phase I Evaluation of Solution Briefs**

### **4.1 General**

Both the written solution brief and supplemental information, if applicable, will be evaluated against the solicitation criteria. Each solution brief submitted will be evaluated against the evaluation criteria separately and not evaluated against other solution briefs. More than one solution brief may be accepted from different offerors.

The Government reserves the right to request oral presentations, product demonstrations, or additional written information, if applicable, from one or more offerors will supplement the solution brief.

### **4.2 Phase I Evaluation Process**

#### Written Solution Briefs

The Government will evaluate written solution briefs through a peer review evaluation process. The peer review evaluation process will include scientific, technological or other subject matter experts within the U.S. Government who will evaluate solution briefs submitted against the specified selection criteria. The solution briefs may or may not be evaluated against each other. More than one solution brief may be accepted by different offerors.

#### Solution Brief Oral Presentation/Other Supplemental Information

At the Government's discretion, Phase I of the evaluation may also include the invitation of one or more offerors to participate in an oral presentation after submission of the solution brief, and/or invite one or more offerors to submit additional information to supplement the solution brief. The Government will notify the offeror upon award if additional information in the form of a solution brief oral presentation, or solution brief supplemental information is required to assist the Government's evaluation.

The Government will notify the offeror if its solution brief was not selected for award.

*The use of Oral Presentations or the need to receive Other Supplemental Information is required to be clearly detailed in the solicitation. This additional step in the evaluation process can be used as a down selection tool and/or allow the Government to gain further detail,*



*clarification, and understanding on the proposed solution outlined in the initial Written Solution Brief prior to selection of a proposed awardee.*

### **4.3 Phase I Evaluation Criteria**

The Government will evaluate the company's solution brief and/or the oral presentation/other supplemental information, if requested, based on the criteria listed below: *(Example evaluation criteria are provided below and should be tailored for each solicitation.)*

- a. **Criterion I:** Description of how the technology/solution is innovative. Responsiveness and relevance of the solution brief to the project. Potential of the innovative technology/solution for meeting the project objectives provided in the solicitation will be assessed. Also, the approach of the Written Solution Brief will be assessed.
- b. **Criterion II:** Transition Approach. An assessment will be made regarding how the proposed technology/solution will be transitioned to an operational user (e.g., commercialized or used by GSA or GSA client). The assessment will determine the likelihood that the offeror will be able to successfully implement a technology and/or solutions that can be transitioned effectively to the user community (of the innovative technology/solution).
- c. **Criterion III:** Offeror's Capabilities and Related Experience. The Offeror's prior experience (both Government and non-government) in similar efforts will be assessed to determine if the offeror clearly demonstrates an ability to deliver commercial products and commercial services that meet the proposed technical performance requirements. The assessment for this criterion will include evaluating any corporate viability requirements specified in the solicitation.

### **4.4 Phase I Solution Brief Evaluation and Notification to Offerors**

Solution briefs will be evaluated in accordance with the evaluation criteria stated in Section 4.2 of this solicitation. After evaluating the Offerors' written solution briefs, GSA will notify the Offerors:

- a. If their Written Solution Brief is being considered and if a Solution Brief Oral Presentation is required/other supplemental information is requested to supplement the written solution brief, or
- b. If their Written Solution Brief is not being considered.
- c. If the Offerors are invited to participate in the Phase II submission.

## **5 Phase II Final Contract Solution - Submission**

### **5.1 General**

After an evaluation of the offeror's Written Solution Brief, in accordance with Section 4, if invited to participate in Phase II, the offeror shall submit a Final Contract Solution. The Offerors may discuss ideas and details of the Final Contract Solution, to the extent determined practicable by the Contracting Officer (*CO to insert allowable ideas and details here*), with the Government prior to submission. Each Final Contract Solution submitted shall consist of three sections:



- a. Section 1: The Commercial Solution
- b. Section 2: Price Information

The cost of preparing Phase II proposals is not considered a direct charge to any resulting CSO award or any other contract. Final Contract Solution preparation costs are not recoverable.

## 5.2 The Commercial Solution

The Offeror must submit the Commercial Solution as part of the Final Contract Solution that shall include the following: *(Tailor to the needs of the requirement.)*

1. Detailed Commercial Solution Being Provided

*Describe the background and objectives of the proposed innovative technology/solution. Include the nature and extent of the anticipated results. Propose a period of performance for the work. Discuss any risks and proposed mitigation strategy to address the risks. Include ancillary and operational issues such as certifications, algorithms, and any engineering/software development methodologies to be used. Identify the type of support, if any, the Offeror requests of the Government in general such as facilities, equipment, data, and information or materials.*

2. Requirements Associated with the Project

*Describe the requirements associated with the project. This should include the nature and extent of the anticipated results. Discuss any potential risks and proposed mitigation strategy to address the risks. Include ancillary and operational issues such as certifications, algorithms, and any engineering/software development methodologies to be used. Identify the type of support, if any, the Offeror requests of the Government in general such as facilities, equipment, data, and information or materials.*

3. Deliverables

*Describe the deliverables associated with the project including the type, frequency, and any other information to fulfill the project requirements.*

4. Project Schedule

*Provide a detailed project schedule that outlines the various phases of work to be accomplished within the proposed period of performance.*

5. Terms and Conditions

*Provide a detailed list of the terms and conditions applicable to the Final Contract Solution being provided.*

6. Proprietary Information

*The proposal shall identify any proprietary information or associated intellectual property proposed within the Final Contract Solution. The proposal should discuss data rights associated with each of them.*

7. Assumptions

*Provide detail on any assumptions upon which the Final Contract Solutions is based (e.g., key roles, etc.).*





The Offeror's Final Contract Solution shall also include any Government-provided invoice requirements and terms and conditions that will remain as part of the final contract award. *(Invoice requirements and terms and conditions are provided further below in this template. These invoice requirements and terms and conditions should be provided as part of the solicitation.)*

### **5.3 Price Information**

The offeror shall submit the total price to complete the Final Contract Solution and shall provide any other data or supporting information, including any assumptions upon which the price is based that the parties agree is necessary for the determination of a fair and reasonable price. The pricing is subject to the applicable limitations for CSO.

*If payments are required based on progress of the project, a milestone schedule shall be included which clearly indicates the completion of the priced tasks and/or priced deliverables that are required to meet each milestone.*

*For Firm-Fixed-Price agreements, the milestone schedule will serve as a payment schedule for any subsequent award.*

### **5.4 Phase II Final Contract Solution Negotiation**

During the Phase II evaluation, the Government may require further negotiations with the offeror. Negotiations will be coordinated with the offeror and may require the offeror to resubmit a revised Final Contract Solution.

## **6 Evaluation Panel**

For evaluation purposes, for both Phase I and II, the Government will use an evaluation panel consisting of members from the Peer Review Advisory Group.<sup>1</sup> The evaluation panel will consist of U.S. Government employees. The Peer Review Advisory Group will be used to evaluate the Written Solution Briefs, including Solution Brief Oral Presentation/Other Supplemental Information, and the Final Contract Solution submitted in response to this solicitation.

## **7 Award Notification**

The Award Notifications to the Offeror will be in writing and provided to the offeror by the Contracting Officer.

## **8 Request for Technical Feedback**

An Offeror not selected for an award may request technical feedback regarding the review of their solution brief within 3 business days of notification of non-selection.

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<sup>1</sup> Peer Reviews are a process where scientific, technological, or other subject matter experts within the U.S. Government evaluate solution briefs submitted against specified selection criteria (see GSAM 571.103).



## **9 Protests To GSA**

An offeror may file a protest to the agency in accordance with the procedures in GSAM 533.103.



Attachment X *(Enter Attachment Number)*

**INVOICE REQUIREMENTS AND OTHER TERMS AND CONDITIONS**

**X.1 Invoices and Payments**

**X.1.1 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 Government-wide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

**X.2 Invoice**

*The contract award must be shared with GSA Finance point of contact for recording and obligation. Depending on your GSA service, this may be accomplished through the system of award (e.g., ASSIST). Follow your internal procedures. **Tailor the invoice instructions to the awardee with the appropriate system requirements.***

An invoice shall include—

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

The contractor shall submit a final invoice within 60 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 Claim (GSA Form 1142) shall be provided to the CO.



### **X.3 Payments**

#### **X.3.1 General**

The Government shall pay the Contractor 30 days after the service period which is defined as the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. *(If a payment schedule is used, provide the details here.)*

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

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

#### **X.3.2 Overpayments**

If the Government or 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—

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

#### **X.3.3 Interest on Debt due to Government by Contractor**

- a. All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the due date until paid unless paid within 30 days before the due date. The interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which applies to the payment due date and the rate applicable for each six-month period fixed by the Secretary until the amount is paid.
- b. The Government may issue a demand for payment to the Government or Contractor upon finding a debt is due under the contract.
- c. *Final decisions.* The Contracting Officer will issue a final decision if—
  1. The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days (*insert additional guidance; e.g., 30 days after the payment due date*);
  2. The Contractor fails to settle a debt previously asserted by the Contracting Officer within the timeline specified in the demand for payment unless the



amounts were not repaid because the Contractor has requested arranging an installment payment agreement; or

3. The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer.
- d. If a demand for payment was previously issued for the debt, the reissued demand for payment shall have the same date as the previously issued demand.
- e. Amounts shall be due at the earliest of the following dates:
  1. The date of the demand for payment.
  2. The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- f. Interest shall begin tolling on the due date asserted in the demand for payment and ending on—
  1. The date on which the designated office receives payment from the Contractor;
  2. The date of issuance of a Government payment to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
  3. The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

#### **X.4 Additional Payment Terms**

- a. *To the extent a partial payment schedule will be required, insert the schedule for deliveries and payment.*
- b. *Insert any additional payment terms, including the number of payments and payment schedule.*

#### **X.5 Other Terms and Conditions**

##### **X.5.1 SAM Registration**

Successful companies not already registered in the SAM will be required to register in the SAM prior to contract award. Information regarding SAM registration is available at <https://sam.gov>. 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 and through subsequent updates, as needed, its information in the SAM database to ensure it is current, accurate and complete.

The Contractor is responsible for the duration of contract performance and through final payment 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 Contract has provided in the SAM database. 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.



### **X.5.2 Intellectual Property**

- a. Insert appropriate Intellectual Property (IP) requirements that protects the company's rights in the IP it currently owns and allows the Government to use information created under the contract for Government purposes.*
- b. When appropriate, provide the contractor the IP rights for new adaptations of existing commercial products and commercial services.*
- c. Example language can be borrowed from the FAR Part 27 when applicable. However, it should not be word-for-word from FAR Part 27.*
- d. Consult with the Office of General Council as needed.*

### **X.5.3 Security of GSA Information Systems**

If this contract involves physical or electronic access to or use of GSA information systems, the contractor shall ensure compliance with applicable requirements of GSA IT Security Procedural Guide 09-48 and IT Policy Requirements Guide 12-2018.

### **X.5.4 Incident Reporting**

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

### **X.5.5 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:

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

### **X.5.6 Taxes**

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

### **X.7 Title**

Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance of the deliverables, regardless of when or where the Government takes physical possession.

### **X.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. The Contractor warrants that the items will, at the time of delivery, conform in all material respects to the contract specifications.



### **X.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. The Contract shall provide proof of insurance and name the Government as the additional insured.

### **X.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.

### **X.11 Order of Precedence**

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

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

### **X.12 Unauthorized Obligations**

**X.12.1** Except as stated in Section X.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:

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



**X.12.2** Section X.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.

### **X.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:

- a. 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:
  1. **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.
  2. **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.
  3. **Law and disputes.** This agreement is governed by Federal law.
    - i. Any language purporting to be subject to 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.
    - ii. Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.
    - iii. 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.
  4. **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.
  5. **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.
  6. **Updating terms.**
    - i. After award, the contractor shall contact the Contracting Officer to notify if a revision to the commercial supplier agreement terms is needed, both material and non-material changes.





- ii. For revisions that will materially change the terms of the contract, the revised commercial supplier agreement shall be incorporated into the contract using a bilateral modification.
  - iii. 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.
7. No automatic renewals. All licenses or services tied to periodic payments provided under this agreement (e.g., annual software maintenance or annual lease term) shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative approval.
8. 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.
9. 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:
  - i. Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice shall comply with the proper invoicing requirements specified in the underlying Government contract or order.
  - ii. This charge, if disputed by the ordering activity, will be resolved through the Disputes section of this contract.
  - iii. Any audit requested by the contractor will be performed at the contractor's expense, without reimbursement by the Government.
10. 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, shall be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.
11. Non-assignment. This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval.
12. 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.

- b. 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.

#### **X.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.

#### **X.15 Changes**

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

#### **X.16 Termination for the Government's Convenience**

**X.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 direct all of its suppliers and subcontractors to cease work.

- a. 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.
- b. 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.

#### **X.17 Termination for Cause**

- a. The Government may terminate this contract, or any part hereof, for cause in the event of any default, of not adhering to the terms and conditions of the contract, 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.
- b. 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.



### **X.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.

### **X.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 disputes 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 shall, 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 shall, 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.

#### **X.20 Definitions**

Although CSO is not governed by the FAR, 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—

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

#### **X.21 Additional Terms or Conditions**

- a. *If the project involves sensitive information (e.g., sensitive but unclassified information), identify any applicable requirements.*
- b. *Accounting Systems*
- c. *Audits*