



CITY OF NORTH PORT PROCUREMENT FORM COMPETITIVE EXEMPTIONS



☒ **Single Purchase** (For current FY) ☐ **Change Order** ☐ **Amendment**

☐ **Blanket Purchase** (Ongoing purchases for current FY)

DEPARTMENT/DIVISION General Services/IT

NAME OF REQUESTOR Vicki Edwards

Sections 2-403 of the City of North Port Procurement Code states that certain procurements shall not be subject to competitive requirements in the judgment of the Procurement Official.

A. Please describe all products and/or services to be procured under this exemption: _____
Tegile T4200 Flash Array

B. Vendor Information

Vendor Name: BlueAlly Technology Solutions, LLC

Address: 2160 Kigston Court, Ste D
Marietta, GA 30067

Contact: Brian Tennant Phone: 770-933-4788 Email: btennant@blueally.com

Will the Vendor accept Visa Card/E-Payables for this transaction: ☒ yes ☐ no

Is there an additional fee charged for credit card payments? ☒ yes ☐ no

- If yes, complete and attach the Visa Purchase Request Form, if applicable.

C. Briefly explain why it is in the best interest of the City to exempt this procurement from competition:
(If additional space is needed, please attached separate memo)

The City has standardized our SAN inventory by using Tegile products and
have our maintenance with this company.

D. Please provide the amount of the purchase for this product or service: \$ 128,965.06

Account # 001-0710-516-64-00 Project # IT17SE

Account # _____ Project # _____

Please provide the estimated fiscal year expenditure for this product or service: \$ 128,965.06



CITY OF NORTH PORT PROCUREMENT FORM COMPETITIVE EXEMPTIONS



E. Please select one of the following:

- ☒ **Piggyback** (Departments may utilize another municipality, county, or other governmental agency contract). The requesting department must provide the following documentation: copy of the solicitation and addendum, tabsheet/price-sheet, vendor submittal, entity approval (either stated in the solicitation or letter from vendor) agenda approval and contract as back-up documentation. Purchasing may request additional information if needed.

Name of Entity: Promark Technology, Inc. Contract Number: GS-35F-303DA
Start Date: 05/04/2016 End Date: 05/03/2021

Is a fee required to utilize this contract? ☐ Yes ☒ No If yes, how much? _____

☐ Vendor-Paid ☐ City-Paid

- ☐ **State of Florida Contract:** The requesting department must provide the following documentation: copy of the tab sheet/price sheet, agenda approval and contract ***Further price negotiations may be conducted with state-awarded vendor per F.S. 287.056(2)***

Number : _____ Name/Category: _____

Start Date: _____ End Date: _____

- ☐ **Florida Sheriff's Association Bid:** The requesting department must provide the following documentation: copy of the tab sheet/price sheet, agenda approval and contract

Number : _____ Name/Category: _____

Start Date: _____ End Date: _____

- ☐ **Joint Cooperative:** The requesting department must provide the following documentation: copy of the solicitation and addendum, tab sheet/price sheet, vendor submittal, agenda approval and contract

Lead Entity: _____ Contract Number: _____

Start Date: _____ End Date: _____

- ☐ **Code Exemption* (Specify):** _____

*For list of exemptions, see page 3



CITY OF NORTH PORT PROCUREMENT FORM COMPETITIVE EXEMPTIONS



Sec. 2-403. - Exemptions.

- (a) (2) Procurement contracts between the city and nonprofit organizations, other governments or other public entities.
- (3) Procurement of:
- a. Dues and memberships in trade and professional organizations.
 - b. Subscriptions for periodicals, books, maps or training videos.
 - c. Real property, real estate brokering, or appraising.
 - d. Abstract of titles for real property; title insurance.
 - e. Works of art for public display or artistic services.
 - f. Advertising.
 - g. Medical, dental and other medically related services performed by a health care professional.
 - h. Room or board for social service clients.
 - i. Room and board for employees on city business.
 - j. Funeral related services.
 - k. Water, sewer, electrical, cable television or other utility services.
 - l. Personnel, including but not limited to part-time or temporary services.
 - m. Academic program reviews or lectures by individuals.
 - n. Auditing services and financial services.
 - o. Legal services.
 - p. Social services.
 - q. Lobbying services.
 - r. Goods, materials and equipment whose cost has been incorporated as part of a competitively bid project.

☐ Other Exemption (not specified by code): _____

(If additional space is needed, please attach separate memo)

Requesting Department Director's Signature: [Signature] Date: 12/29/16

Procurement Manager's Approval: _____ Date: _____

Finance Director's Approval (If applicable): _____ Date: _____

City Manager's Approval (If applicable): _____ Date: _____

Commission Meeting Date (if applicable): _____

Vendor Tracking:

YTD Dept Exp. (Inclusive): \$ _____

To be completed by Purchasing:

YTD City Wide Exp. (Inclusive): \$ _____



Premark
TECHNOLOGY

Authorized Federal Supply Schedule Pricelist

**AUTHORIZED INFORMATION TECHNOLOGY SCHEDULE PRICELIST
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY
EQUIPMENT, SOFTWARE AND SERVICES**

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu-driven database system. The INTERNET address for GSA Advantage!® is: GSAAAdvantage.gov.

FSC Group Class: 70
FSC Class/Product Code: 7010, 7025, J070, 7030, D304

Contractor:
Promark Technology, Inc.
10900 Pump House Road
Suite B
Annapolis Junction, MD 20701
(240) 280-8030
www.promarktech.com

Contract Number: GS-35F-303DA

Period Covered by Contract: May 4, 2016 through May 3, 2021

**General Services Administration
Federal Acquisition Service**

Pricelist current through Modification #128 dated November 22, 2016

Products and ordering information in this Authorized Information Technology Schedule Pricelist are also available on the GSA Advantage! System (<http://www.gsaaadvantage.gov>).

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CUSTOMER INFORMATION

1a. TABLE OF AWARDED SPECIAL ITEM NUMBERS (SINs)

SIN	Description
132-8	Purchase of Equipment
132-12	Equipment Maintenance
132-32	Term Software Licenses
132-33	Perpetual Software Licenses
132-34	Software Maintenance
132-50	Training Courses
132-52	Electronic Commerce (EC) Services

1b. LOWEST PRICED MODEL NUMBER AND PRICE FOR EACH SIN

SIN	Description
132-8	See Pricing on GSA Advantage!
132-12	
132-32	
132-33	
132-34	
132-50	
132-52	

1c. HOURLY RATES

Professional Services (SIN 132-51) labor categories are not available under the scope of this contract.

2. MAXIMUM ORDER

The Maximum Order (MO) for the following Special Item Numbers (SINs) is:

SIN	MO
132-8	\$500,000
132-12	\$500,000
132-32	\$500,000
132-33	\$500,000
132-34	\$500,000
132-50	\$25,000
132-52	\$500,000

3. MINIMUM ORDER

The minimum dollar of orders to be issued is \$100.00.

4. GEOGRAPHIC COVERAGE

The Geographic Scope of Contract will be domestic delivery.

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

5. POINT(S) OF PRODUCTION

Promark Technology, Inc.
10900 Pump House Road
Suite B
Annapolis Junction, MD 20701

For a full listing of Points of Production for a specific Manufacturer product, which varies per Manufacturer and part, please see Country of Origin information by Manufacturer part number at: www.gsa.gov/advantage.

6. DISCOUNT FROM LIST PRICES

All prices shown herein are Net GSA prices (basic discounts deducted) unless otherwise indicated.

7. QUANTITY DISCOUNT

None unless otherwise specified in the pricelist

8. PROMPT PAYMENT TERMS

0% - Net 30 days from receipt of invoice or date of acceptance, whichever is later.

9. GOVERNMENT PURCHASE CARDS

- a. Accepted at or below the micro-purchase threshold.
- b. Accepted above the micro-purchase threshold.

10. FOREIGN ITEMS

None.

11a. TIME OF DELIVERY

SIN	Delivery Time
132-8	The Contractor shall deliver to destination within 14-60 calendar days after receipt of order (ARO), as negotiated between Contractor and the Ordering Activity, or unless set forth otherwise on the Schedule Contract Pricelist or Attachment A appended hereto and incorporated herein.
132-12	
132-32	
132-33	
132-34	
132-50	
132-52	

11b. EXPEDITED DELIVERY

Quicker delivery times than those set forth in the Schedule Contract Pricelist are available from the Contractor based on the availability of product inventory. Improved delivery times in the number of days after receipt of an order (ARO) if available, are as negotiated between the Ordering Activity and Contractor or its Authorized Dealers.

11c. OVERNIGHT AND 2-DAY DELIVERY

Unless otherwise specified by Manufacturer in the Schedule Contract Pricelist, when Ordering Activities require overnight or 2-day delivery, ordering activities are encouraged to contact the Contractor for the purpose of obtaining accelerated delivery. Overnight and 2-day delivery times are subject to the availability of product inventory.

11d. URGENT REQUIREMENTS

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an Ordering Activity, Ordering Activities are encouraged, if time permits, to contact Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the Ordering Activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

12. FOB POINT

Destination.

13a. ORDERING ADDRESS

Promark Technology, Inc.
10900 Pump House Road
Suite B
Annapolis Junction, MD 20701

Or

See Authorized Dealers Listing for Ordering Address and Contact Information at www.promarktech.com or contact Contractor.

13b. ORDERING PROCEDURES

Ordering Activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- (1) FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- (2) FAR 8.405-2 Ordering procedures for services requiring a statement of work.

14. PAYMENT ADDRESS

Promark Technology, Inc.
10900 Pump House Road
Suite B
Annapolis Junction, MD 20701

Or

See Authorized Dealers Listing for Ordering Address and Contact Information at www.promarktech.com or contact Contractor.

15. WARRANTY PROVISION

Warranty is addressed in the SIN specific terms that follow as well as the terms in Attachment A.

16. EXPORT PACKING CHARGES

Not applicable under the scope of this contract.

17. TERMS AND CONDITIONS OF GOVERNMENT PURCHASE CARD ACCEPTANCE

Not applicable under the scope of this contract.

18. TERMS AND CONDITIONS OF RENTAL, MAINTENANCE, AND REPAIR

Rental and repair is not applicable under the scope of this contract. Maintenance is addressed in the SIN specific terms that follow as well as the terms in Attachment A.

19. TERMS AND CONDITIONS OF INSTALLATION

Installation and other related support services, if available for a specific manufacturer or product is addressed in the SIN specific terms that follow as well as the terms in Attachment A.

20. TERMS AND CONDITIONS OF REPAIR PARTS INDICATING DATE OF PARTS PRICE LISTS AND ANY DISCOUNTS FROM LIST PRICES

Not applicable under the scope of this contract.

20a. TERMS AND CONDITIONS FOR ANY OTHER SERVICES

Other services, if available for a specific manufacturer or product is addressed in the SIN specific terms that follow as well as the terms in Attachment A.

21. LIST OF SERVICE AND DISTRIBUTION POINTS

For current information on Authorized Service and Distribution points by Manufacturer contact the Contractor.

22. LIST OF PARTICIPATING DEALERS

See Authorized Dealers Listing for Ordering Address and Contact Information at www.promarktech.com or contact Contractor.

23. PREVENTIVE MAINTENANCE

Not applicable under the scope of this contract.

24a. SPECIAL ATTRIBUTES SUCH AS ENVIRONMENTAL ATTRIBUTES (e.g. recycled content, energy efficiency, and/or reduced pollutants)

Not applicable under the scope of this contract.

24b. Section 508 Compliance for EIT

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at www.promarktech.com. The EIT standard can be found at www.Section508.gov/.

25. DUNS NUMBER

The Contractor's DUNS Number is 074839986.

26. NOTIFICATION REGARDING REGISTRATION IN SYSTEM FOR AWARD MANAGEMENT (SAM) DATABASE

The Contractor registration is valid.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF GENERAL PURPOSE COMMERCIAL INFORMATION
TECHNOLOGY NEW EQUIPMENT (SPECIAL ITEM NUMBER 132-8)**

1. MATERIAL AND WORKMANSHIP

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

2. ORDER

Written orders, EDI orders (GSA Advantage and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order. For credit card orders and BPAs, telephone orders are permissible.

3. TRANSPORTATION OF EQUIPMENT

FOB DESTINATION. Prices cover equipment delivery to destination, for any location within the geographic scope of this contract.

4. INSTALLATION AND TECHNICAL SERVICES

- a. **INSTALLATION.** When the equipment provided under this contract is not normally self-installable, the Contractor's technical personnel shall be available to the Ordering Activity, at the Ordering Activity's location, to install the equipment and to train Ordering Activity personnel in the use and maintenance of the equipment. The charges, if any, for such services are listed by Manufacturer in the price schedule.
- b. **INSTALLATION, DEINSTALLATION, REINSTALLATION.** The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies. Ordering Activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the Ordering Activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8 or SIN 132-9.
- c. **OPERATING AND MAINTENANCE MANUALS.** The Contractor shall furnish the Ordering Activity with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased. For Documentation only available on-line, Contractor or its Manufacturer shall provide Ordering Activity access to such Documentation.

5. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Ordering Activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The Ordering Activity may require repair or replacement of nonconforming equipment at no increase in contract price. The Ordering Activity must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

6. WARRANTY

- a. Unless specified otherwise in this contract, the warranties extended to the Ordering Activity for Equipment, Documentation, and the exclusions and disclaimers applicable to such warranties, shall be as set forth on Attachment A to this schedule pricelist (Contractor Supplemental Pricelist Information and Incorporated Terms). Such warranties, exclusions and disclaimers follow the applicable Manufacturer's standard commercial warranties, exclusions and disclaimers but are provided to the Ordering Activity by the Contractor.
- b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- c. **LIMITATION OF LIABILITY.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Ordering Activity for consequential damages resulting from any defect or deficiencies in accepted items.
- d. Inspection and repair of defective Equipment under this warranty may be performed, at the option of the Contractor, at a service facility/plant authorized by the Contractor. The Ordering Activity may not return defective Equipment to the Contractor, the Manufacturer or its authorized service provider for repair or replacement without prior consultation and instruction.

7. PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the Ordering Activity will be charged will be the ordering activity purchase price in effect at the time of order placement.

8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

9. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an Ordering Activity determines that Information Technology equipment will be replaced, the Ordering Activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).

10. GLOSSARY OF DEFINITIONS

- a. "Documentation" shall mean Manufacturer's then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.
- b. "Equipment" shall mean the computer hardware identified on the Schedule Contract Pricelist to this schedule pricelist.

TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE, REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS FOR GOVERNMENT OWNED GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT, RADIO/TELEPHONE EQUIPMENT, (AFTER EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY PROVISIONS) AND FOR LEASED EQUIPMENT (SPECIAL ITEM NUMBER 132-12)

1. SERVICE AREAS

- a. The types/levels of maintenance, geographic scope of availability, and applicable rates vary by Manufacturer and are generally set forth in an applicable Manufacturer's Maintenance Services Policy. If any additional charge is to apply because of distance from the Contractor's service locations, the mileage rate or other distance factors shall be negotiated at the Task Order level.
- b. When repair services cannot be performed at the Ordering Activity installation site, the repair services will be performed at the Contractor's, Manufacturer's or authorized service provider's plant(s).

2. MAINTENANCE ORDER

- a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.
- b. The Contractor shall honor orders for Maintenance Services for the duration of the contract period or a lesser period of time, for the Equipment shown in the schedule pricelist. Maintenance Services shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of Equipment. Orders for Maintenance Services shall not extend beyond the end of the contract period.
- c. Maintenance Services may be discontinued by the Ordering Activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the Ordering Activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.
- d. ANNUAL FUNDING. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.
- e. CROSS-YEAR FUNDING WITHIN CONTRACT PERIOD. Where an Ordering Activity's specific appropriation authority provides for funds in excess of a 12 month, fiscal year period, the Ordering Activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- f. Ordering Activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of Maintenance Services, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

3. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS

Repair service and repair parts/spare parts orders are not available under the scope of this schedule contract.

4. LOSS OR DAMAGE

- a. When the Contractor, through the Manufacturer, or its authorized service provider removes equipment to its establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the Equipment is removed from the Ordering Activity installation, until the equipment is returned to such installation.

- b. When Equipment is returned by Ordering Activity to the Contractor through the Manufacturer's or its authorized service provider's facility for repairs, the Ordering Activity shall be responsible for any loss or damage to the Equipment being returned by the Ordering Activity for repair. Contractor shall only be responsible for any loss or damage while the Equipment is at the Contractor's or its Manufacturer's or authorized service provider's facility and until it is returned to the Ordering Activity's location.

5. SCOPE

- a. In exchange for the applicable fees, the Contractor, through the Manufacturer or its authorized service provider shall provide Maintenance Services for all Equipment listed herein, as requested by the Ordering Activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the Equipment types/models within the scope of this Information Technology Schedule.
- b. Equipment placed under Maintenance Service shall be in good operating condition.
 - (1) In order to determine that the Equipment is in good operating condition, the Equipment shall be subject to inspection by the Contractor through the Manufacturer or its authorized service provider without charge to the Ordering Activity.
 - (2) Costs of any repairs performed for the purpose of placing the Equipment in good operating condition shall be borne by the Contractor, provided the Equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.
 - (3) If the Equipment was not under the Contractor's responsibility, the costs necessary to place the Equipment in proper operating condition shall be borne by the Ordering Activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).
 - (4) Contractor shall have no obligation to provide Maintenance Services for Equipment that has been modified by Ordering Activity, is in disrepair or subject to any other exclusions as set out in Manufacturer's Maintenance Services Policy.

6. RESPONSIBILITIES OF THE ORDERING ACTIVITY

- a. Ordering Activity personnel shall not perform maintenance or attempt repairs to Equipment while such Equipment is under the purview of a maintenance order, unless agreed to by the Contractor. The Ordering Activity will follow Contractor's designated procedures when returning Equipment to Contractor's, Manufacturer's or its authorized service provider's facility for repairs.
- b. Subject to security regulations, the Ordering Activity shall permit access to the Equipment, which is to be maintained or repaired by Contractor, Manufacturer or its authorized service provider.
- c. If the Ordering Activity desires a factory authorized/certified service personnel then this should be clearly stated in the task or delivery order.

7. RESPONSIBILITIES OF THE CONTRACTOR

- a. For Equipment not covered by a maintenance contract or warranty, the Contractor, through the Manufacturer's or its authorized service provider's repair service personnel shall complete repairs as soon as reasonably possible after notification by the Ordering Activity that service is required.
- b. If the Ordering Activity task or delivery order specifies factory authorized/certified service personnel then the Contractor is obligated to provide such factory authorized/certified service personnel for the Equipment to be repaired or serviced, unless otherwise agreed to in advance between the Ordering Activity and the Contractor.

8. MAINTENANCE RATE PROVISIONS

- a. For Equipment under monthly Maintenance Services, the Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the Equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the Ordering Activity.
- b. REGULAR HOURS. The basic monthly rate for each make and model of Equipment shall entitle the Ordering Activity to the Maintenance Services as set forth in the applicable Manufacturer's Maintenance Services Policy.

- c. AFTER HOURS. Should the Ordering Activity require that maintenance be performed outside of Regular Hours, charges for such maintenance, if any, will be specified in the pricelist or in the applicable Manufacturer's Maintenance Services Policy. Periods of less than one hour will be prorated to the nearest quarter hour.
- d. TRAVEL AND TRANSPORTATION. If any charge is to apply, over and above the regular maintenance rates, because of the distance between the Ordering Activity location and the Contractor's service area, the charge will be negotiated at the Task Order level.
- e. QUANTITY DISCOUNTS. Quantity discounts from listed Maintenance Services rates for multiple Equipment owned and/or leased by an Ordering Activity are not provided under this schedule contract unless otherwise specified by a Manufacturer in the pricelist.

9. REPAIR SERVICE RATE PROVISIONS

Repair service rate fees and provisions for Equipment not under monthly Maintenance Services are not available under the scope of this schedule contract.

10. REPAIR PARTS/SPARE PARTS RATE PROVISIONS

Repair parts/spare parts rate provisions after the expiration of the guarantee/warranty provisions are not available under the scope of this schedule contract.

11. GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS

Guarantee/warranty-repair parts/spare parts after the expiration of the guarantee/warranty provisions are not available under the scope of this schedule contract.

12. INVOICES AND PAYMENTS

Invoices for Maintenance Services shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

Payment for Maintenance Services of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day.

13. GLOSSARY OF DEFINITIONS

- a. "Documentation" shall mean Manufacturer's then current help guides, specifications and operating manuals issued by Manufacturer and made generally available by Manufacturer for the Equipment whether on-line or in hard copy.
- b. "Maintenance Services" shall mean the services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer's then current Maintenance Services Policy.
- c. "Maintenance Services Policy" shall mean the commercial terms describing a Manufacturer's standard maintenance and support offerings, policies and procedures for its Equipment, a copy of which is set forth in Attachment A to this schedule pricelist.
- d. "Equipment" shall mean the computer hardware identified on the Schedule Contract Pricelist to this schedule pricelist.

TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE AS A SERVICE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. INSPECTION/ACCEPTANCE

The Contractor shall only deliver those items ordered that substantially conform to the requirements of this contract and the Software's Documentation. Therefore, items delivered shall be deemed accepted upon delivery. The Ordering Activity reserves the right to inspect or test any Software that has been delivered. The Ordering Activity may require repair or replacement of nonconforming Software at no increase in contract price. The Ordering Activity must exercise its post-acceptance rights (1) within the warranty period as set forth below; and (2) before any substantial change occurs in the condition of the Software, unless the change is due to the defect in the Software.

2. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, the warranties extended to the Ordering Activity for Software, Documentation, and the exclusions and disclaimers applicable to such warranties, shall be as set forth on Attachment A to this schedule pricelist (Contractor Supplemental Pricelist Information and Incorporated Terms). Such warranties, exclusions and disclaimers follow the applicable Manufacturer's standard commercial warranties, exclusions and disclaimers but are provided to the Ordering Activity by the Contractor.
- b. **LIMITATION OF LIABILITY.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

3. TECHNICAL SERVICES

A hot line technical support number for the purpose of providing user assistance and guidance to the Ordering Activity in the implementation of the Software may be provided as part of the Manufacturer's Maintenance Services.

4. SOFTWARE MAINTENANCE

- a. Software maintenance as it is defined:
 1. **SOFTWARE MAINTENANCE AS A PRODUCT (SIN 132-32 or SIN 13233).** Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self-diagnostics. Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service. Software Maintenance as a product is billed at the time of purchase.
 2. **SOFTWARE MAINTENANCE AS A SERVICE (SIN 132-34).** Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324. Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.
- b. If purchased by Ordering Activity, Contractor, through the applicable Manufacturer, shall provide Maintenance Services for the Software pursuant to the applicable Manufacturer's then current Maintenance Services Policy. Fees or rates for such Maintenance Services are set forth in the Schedule Contract Pricelist.
- c. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324) for Maintenance as a Service. **PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.**

5. PERIODS OF TERM LICENSES (SIN 132-32) AND MAINTENANCE (SIN 132-34)

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Term licenses and/or maintenance may be discontinued by the Ordering Activity on thirty (30) calendar day's written notice to the Contractor.
- c. ANNUAL FUNDING. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriations shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.
- d. CROSS-YEAR FUNDING WITHIN CONTRACT PERIOD. Where an Ordering Activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the Ordering Activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- e. Ordering Activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

6. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

Conversion from term licenses to perpetual licenses for any or all Software is not available under the scope of this contract. Outside the scope of this contract, the Ordering Activity may contact the Manufacturer directly to discuss the permissibility, costs and operation of such conversion(s). Contractor agrees to reasonably assist Ordering Activity in this regard.

7. TERM LICENSE CESSATION

If a term Software license granted hereunder terminates for any reason, Ordering Activity shall (i) cease using the applicable Software, Documentation, and related Confidential Information, and (ii) certify to Contractor within thirty (30) days after termination that Ordering Activity has destroyed, or has returned to Contractor or its Manufacturer the Software, Documentation, related Confidential Information of Contractor and all copies thereof, whether or not modified or merged into other materials.

8. UTILIZATION LIMITATIONS - (SIN 132-32, SIN 132-33, AND SIN 132-34)

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the Ordering Activity, commercial computer Software and related Documentation shall be subject to the following:
 - (1) Title to and ownership of the Software and Documentation shall remain with the Contractor or its Manufacturer or licensors, unless otherwise specified. Contractor and its Manufacturers reserve all rights in and to the Software and Documentation not expressly granted to Ordering Activity herein.
 - (2) United States Government Legends. The Software, Documentation and any other technical data provided hereunder is commercial in nature and developed solely at private expense. The Software is delivered as "Commercial Computer Software" as defined in DFARS 252.227-7014 (June 1995) or as a "Commercial Item" as defined in FAR 2.101(a) and as such is provided with only such rights as are provided in Manufacturer's standard commercial license for the Software. Technical data is provided with limited rights only as provided in DFAR 252.2277015 (Nov. 1995) or FAR 52.227-14 (June 1987), whichever is applicable.

Contractor grants Ordering Activity only those utilization rights (and reserves the same utilization limitations) as specified in the applicable Manufacturer's commercial license terms, a description of which is set forth on Attachment A to this schedule pricelist and incorporated herein.

Notwithstanding the forgoing, Contractor acknowledges and agrees that Ordering Activity shall have the minimum restricted rights as set forth in b(4) below.

- (3) Except as is provided in paragraph 8.b(2) above, the Ordering Activity shall not provide or otherwise make available the Software or Documentation, or any portion thereof, in any form, to any third party without the

prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the Ordering Activity who have the Ordering Activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed Software and Documentation only in accordance with these restrictions. This provision does not limit the right of the Ordering activity to use Software, Documentation, or information therein, which the Ordering Activity may already have or obtains without restrictions.

- (4) The Ordering Activity shall have the right to use the computer Software and Documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the Ordering Activity has the right to transfer the Software to another site if the Ordering Activity site for which it is acquired is deemed to be unsafe for Ordering Activity personnel; to use the computer Software and Documentation with a backup computer when the primary computer is inoperative; and to copy computer Software for safekeeping (archive) or backup purposes; to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
- (5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.
- (6) The Software and Documentation hereunder is offered by the Contractor under licenses customarily provided to the public. The Contractor does not furnish technical information related to commercial computer Software (or commercial computer software Documentation) that is not customarily provided to the public. Further, the Contractor does not relinquish rights to use, modify, reproduce, release, perform, display, or disclose commercial computer Software (or commercial computer Software Documentation) except as mutually agreed to by the parties. See 48 CFR 12.212.
- (7) **NONDISCLOSURE.** Ordering Activity may have access to information that is confidential to Contractor or its Manufacturers ("Confidential Information"). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Contractor's Confidential Information shall include, but not be limited to, the Software, Documentation, all materials provided to Ordering Activity in the course of performing Maintenance Services hereunder, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and the terms and pricing hereunder, regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that Contractor is obligated to treat as confidential. Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, if Ordering Activity recommends to Contractor additional features, functionality, or performance or if Contractor retains generalized information hereunder that Contractor or its Manufacturer subsequently incorporates into its product or service offerings, then with respect to such recommendations and information, Ordering Activity hereby (a) grants Contractor a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such recommendations and such information into such offerings, and (b) acknowledges that all right and title to such offerings incorporating such recommendations and information shall be the sole and exclusive property of Contractor or its Manufacturer and all such recommendations and information shall be free from any confidentiality restrictions that might otherwise be imposed upon Contractor pursuant to this section. Further, this section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority. Ordering Activity shall not disclose the results of any performance tests of the Software to any third party without Contractor's prior written approval. Ordering Activity agrees to hold Confidential Information in confidence and to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of these Terms and Conditions.
- (8) **VERIFICATION.** At Contractor's written request, but not more frequently than annually, Ordering Activity shall furnish Contractor with a document signed by Ordering Activity's authorized representative verifying that the Software is being used pursuant to the provisions of this contract. To the extent permitted by and subject to an Ordering Activity's security requirements (including, but not limited to, use of cleared personnel, badging and other requirements). Contractor reserves the right to audit Ordering Activity's use of the Software no more than once annually at Contractor's expense. Contractor shall schedule any audit at

least thirty (30) days in advance. Any such audits shall be conducted during regular business hours at Ordering Activity's facilities and shall not unreasonably interfere with Ordering Activity's business.

- (9) **INTELLECTUAL PROPERTY INFRINGEMENT.** If a third party makes a claim against Ordering Activity that the Software directly infringes any patent, copyright, or trademark or misappropriates any trade secret ("IP Claim"); Contractor will (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; provided that: (i) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (ii) Ordering Activity provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of the Software if the infringement would have been avoided by the use of a current unaltered release of the Software, (b) the modification of the Software, (c) the use of the Software other than in accordance with the Documentation or this contract, or (d) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible. If the Software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (a) replace or modify the Software to be non-infringing, or (b) obtain for Ordering Activity a license to continue using the Software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the Program license for the infringing Software and refund the license fees paid for the Software upon return of the Software by Ordering Activity. This section states Contractor's entire liability and Ordering Activity's exclusive remedy for any claim of infringement.
- (10) **DELIVERY.** All Software and Documentation provided by Contractor hereunder shall be deemed to be delivered by Contractor: 1) Upon physical delivery, or 2) Once the Software is made available to Ordering Activity via electronic download by provision of a license key, link to a website, FTP site or similar site from which the Ordering Activity can electronically download or otherwise access the Software and Documentation.

9. SOFTWARE CONVERSIONS - (SIN 132-32 AND SIN 132-33)

Conversion from one version of the Software to another such as the result of a change in operating system, or from one computer system to another is not available under the scope of the contract. Outside the scope of this contract, the Ordering Activity may contact the Manufacturer directly to discuss the permissibility, costs and operation of such conversion(s). Contractor agrees to reasonably assist Ordering Activity in this regard.

10. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

For information concerning supported hardware or compatibility requirements the Ordering Activity is advised to contact the Contractor or the applicable Manufacturer.

11. RIGHT-TO-COPY PRICING

Right-to-copy license pricing is not available under the scope of this contract unless specifically specified in the pricelist. The Ordering Activity must contact the Manufacturer directly to discuss the applicability and associated costs of right-to-copy pricing.

12. GLOSSARY OF DEFINITIONS

- a. "Documentation" shall mean Manufacturer's then current help guides, and manuals issued by Manufacturer and made generally available by Manufacturer for the Software whether online or in hard copy. Documentation shall include any updated Documentation that Manufacturer provides with any updates.

- b. "Maintenance Services" shall mean the Software maintenance and support services provided by Contractor through an applicable Manufacturer under this contract in accordance with the Manufacturer's then current Maintenance Services Policy.
- c. "Maintenance Services Policy" shall mean the commercial terms describing a Manufacturer's standard Software maintenance and support offerings, policies and procedures, a copy of which is located on Attachment A to this schedule pricelist.
- d. "Software" shall mean (i) the version of the computer program identified on the Schedule Contract Pricelist and (ii) updates to such programs.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF TRAINING COURSES FOR GENERAL PURPOSE
COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE
(SPECIAL ITEM NUMBER 132-50)**

1. SCOPE

- a. The Contractor through the Manufacturer shall provide training courses normally available to commercial customers, which will permit Ordering Activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's or Manufacturer's facility and/or at the Ordering Activity's location, as agreed to by the Contractor and the Ordering Activity.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

3. TIME OF DELIVERY

The Contractor or its Manufacturer shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the Ordering Activity.

4. CANCELLATION AND RESCHEDULING

- a. Terms and conditions governing a Manufacturer's cancellation and rescheduling policies are as set forth in the price file description or, if provided, applicable Manufacturer's Training Catalog.
- b. The Ordering Activity reserves the right to substitute one student for another up to the first day of class.
- c. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the Ordering Activity, Contractor must notify the Ordering Activity at least seventy-two (72) hours before the scheduled training date.

5. FOLLOW-UP SUPPORT

Follow-up support to training courses is not available under the scope of this schedule contract unless expressly set forth in an applicable Manufacturer's Training Catalog and, in that case, follow-up support shall be provided as stated therein.

6. PRICE FOR TRAINING

The price that the Ordering Activity will be charged will be the Ordering Activity training price in effect at the time of order placement.

7. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after Ordering Activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

8. FORMAT AND CONTENT OF TRAINING

- a. The Contractor or its Manufacturer shall provide the Training Materials normally provided with course offerings. Unless stated otherwise in the price file description or, if provided, the applicable Manufacturer's Training Catalog, such documentation will become the property of the student upon completion of the training class, provided, however, Contractor and or its Manufacturer shall retain all right, title and interest to the intellectual property rights contained therein (e.g., copyrights) and provided further, however, that such Training Materials shall be considered the Confidential Information of Manufacturer and subject to the non-disclosure provisions set forth above in the terms applicable to SINs 132-32, 132-33 and 132-34 .
- b. For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.
- c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.
- d. The Training Catalog shall provide most of the following information for each training course offered:
 - (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
 - (2) The length of the course;
 - (3) Mandatory and desirable prerequisites for student enrollment;
 - (4) The minimum and maximum number of students per class;
 - (5) The locations where the course is offered;
 - (6) Class schedules; and
 - (7) Price (per student, per class (if applicable)).
- e. For those courses conducted at the Ordering Activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- f. For Online Training Courses, a copy of all training material must be available for electronic download by the students.

9. "NO CHARGE" TRAINING

"No charge" training is not available under the scope of this schedule contract.

10. GLOSSARY OF DEFINITIONS

- a. "Training Materials" shall mean the, manuals, handbooks, texts, handouts, etc. normally provided with course offerings.
- b. "Training Catalog" shall mean the document setting out a description of the training services and courses offered along with the related policies and procedures in regard to such training.

**TERMS AND CONDITIONS APPLICABLE TO ELECTRONIC COMMERCE AND SUBSCRIPTION SERVICES
(SPECIAL ITEM 132-52)**

1. SCOPE

- a. The prices, terms and conditions stated under Special Item Number 132-52 Electronic Commerce (EC) Services apply exclusively to EC Services within the scope of this Information Technology Schedule.
- b. The Contractor, through Service Provider, shall provide services at a location, as agreed to by the Contractor and the Ordering Activity.

2. ELECTRONIC COMMERCE CAPACITY AND COVERAGE

The Ordering Activity shall specify the capacity and coverage required as part of the initial requirement.

3. INFORMATION ASSURANCE

- a. The Ordering Activity is responsible for ensuring to the maximum extent practicable that each requirement issued is in compliance with the Federal Information Security Management Act (FISMA)
- b. The Ordering Activity shall assign an impact level (per Federal Information Processing Standards Publication 199 & 200 (FIPS 199, "Standards for Security Categorization of Federal Information and Information Systems") (FIPS 200, "Minimum Security Requirements for Federal Information and Information Systems") prior to issuing the initial statement of work. Evaluations shall consider the extent to which each proposed service accommodates the necessary security controls based upon the assigned impact level. The Contractor awarded SIN 132-52 is capable of meeting at least the minimum security requirements assigned against a low-impact information system (per FIPS 200).
- c. The Ordering Activity reserves the right to independently evaluate, audit, and verify the FISMA compliance for any proposed or awarded Electronic Commerce services. All FISMA certification, accreditation, and evaluation activities are the responsibility of the Ordering Activity.

4. DELIVERY SCHEDULE

The Ordering Activity shall specify the delivery schedule as part of the initial requirement. The Delivery Schedule options are found in Customer Information for Ordering Activities applicable to all Special Item Numbers, paragraph 11a (Delivery Schedule).

5. INTEROPERABILITY

When an Ordering Activity requires interoperability, this requirement shall be included as part of the initial requirement. Interfaces may be identified as interoperable on the basis of participation in a sponsored program acceptable to the Ordering Activity. Any such access or interoperability with teleports/gateways and provisioning of enterprise service access will be defined in the individual requirement.

6. PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)

- a. Performance incentives may be agreed upon between the Contractor and the Ordering Activity on individual fixed price orders or Blanket Purchase Agreements under this contract.
- b. The Ordering Activity must establish a maximum performance incentive price for the services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the Contractor to specified targets. To the maximum extent practicable, Ordering Activities shall consider establishing incentives where performance is critical to the Ordering Activity's mission and incentives are likely to motivate the Contractor. Incentives shall be based on objectively measurable tasks.

7. ORDER

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering electronic services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all electronic services and deliveries shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

8. PERFORMANCE OF ELECTRONIC SERVICES

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the Ordering Activity.
- b. The Ordering Activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- c. Any Contractor travel required in the performance of EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

9. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either- i) Cancel the stop-work order; or ii) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-
- c. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- d. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.
- e. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

10. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

11. RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the Ordering Activity shall permit Contractor access to all facilities necessary to perform the requisite EC Services.

12. RIGHTS IN DATA

The Contractor shall comply FAR 52.227-14 RIGHTS IN DATA – GENERAL and with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

13. ACCEPTANCE TESTING

If requested by the ordering activity the Contractor shall provide acceptance test plans and procedures for ordering activity approval. The Contractor shall perform acceptance testing of the systems for ordering activity approval in accordance with the approved test procedures.

14. WARRANTY

- a. Unless specified otherwise in this contract, the warranties extended to the Ordering Activity for EC Services, Documentation, and the exclusions and disclaimers applicable to such warranties, shall be as set forth on Attachment A to this schedule pricelist (Contractor Supplemental Pricelist Information and Incorporated Terms). Such warranties, exclusions and disclaimers follow the applicable Manufacturer's standard commercial warranties, exclusions and disclaimers but are provided to the Ordering Activity by the Contractor.
- b. **LIMITATION OF LIABILITY.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.
- c. Inspection and repair of defective Equipment under this warranty may be performed, at the option of the Contractor, at a service facility/plant authorized by the Contractor. The Ordering Activity may not return defective Equipment to the Contractor, the Manufacturer or its authorized service provider for repair or replacement without prior consultation and instruction.

15. MANAGEMENT AND OPERATIONS PRICING

The Contractor shall provide management and operations pricing on a uniform basis. All management and operations requirements for which pricing elements are not specified shall be provided as part of the basic service.

16. TRAINING

In accordance with the applicable Manufacturer's standard commercial practices, the Contractor shall provide commercial installation, operation, maintenance, and engineering interface training on the system. If there is a separate charge, such charges are set forth in Attachment A or are identified on the Schedule Contract Pricelist to this schedule pricelist.

17. MONTHLY REPORTS

In accordance with the applicable Manufacturer's standard commercial practices, and if applicable, the Contractor may furnish the ordering activity/user with a monthly summary ordering activity report.

18. ELECTRONIC COMMERCE SERVICE PLAN

In accordance with the applicable Manufacturer's standard commercial practices, EC Service Plan descriptions, eligibility requirements, any additional usage guidelines/charges or additional available discounts are set forth in Attachment A or are identified on the Schedule Contract Pricelist to this schedule pricelist.

19. INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the Ordering Activity in accordance with the guidelines set forth in the FAR.

20. INDEPENDENT CONTRACTOR

All EC Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the Ordering Activity.

21. INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for EC services. Progress payments may be authorized by the Ordering Activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

22. GLOSSARY OF DEFINITIONS

- a. "Service Provider" shall mean a provider of the Electronic Commerce Services offered to Contractor through a letter of supply to be sold to Ordering Activities under this contract.
- b. "Statement of Work" shall mean the mutually agreed upon document between Contractor and Ordering Activity setting forth the description of services to be performed including milestones, any specifications and evaluation criteria.

MANUFACTURER LISTING

See Attachment A to view Contractor Supplemental Pricelist Information and Terms by Manufacturer.

Manufacturer Name	
AppDynamics	Nexsan
Arcserve	NetIQ
Casio	Nimble Storage
Cisco	Novell
Dell	Overland
Dell Software Group	Panasonic
Exagrid	Pivot3
Fujitsu	Quantum
HP	RES Software
JABRA	Roland
Juniper	Scale Computing
Kodak	Targus
Lenovo	Tegile
Lexmark	Unidesk
LG	Varonis
Microsoft Surface	Veeam
NCS Tech	Veritas
	VMWare

ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

Contact Promark or Download at www.promarktech.com/GSACContract/ContractInfo.html

PRICELIST

The pricelist is available on GSA Advantage! or
Download at www.promarktech.com/GSAContract/ContractInfo.html