

PART I – SCHEDULE

SECTION H – SPECIAL CONTRACT REQUIREMENTS

H.1 SUBCONTRACTING RESTRICTION

- (a) Except as specifically stated in this contract (see Section I, Subcontracts FAR 52.244-2) or approved in writing in advance by the CO, the Contractor shall not subcontract any CSO services under this contract. It is contemplated that approval will be given for subcontracting certain phases of the work when, in the opinion of the USMS, such subcontracting will not adversely affect the quality of delivery of services nor the difficulty or cost of inspection and testing. All requests for approval to subcontract must be submitted in writing to the CO for consideration and approval.

- (b) Consistent with FAR requirements, this RFP requires the submission of a small business subcontracting plan that will be evaluated as part of the selection process. Applicable USMS subcontracting goals are provided in Section L.8. In establishing plans and setting goals, offerors shall consider the restrictions in this provision as the controlling requirement. Accordingly, subcontracting plans may identify needs other than CSO services (e.g., indirect corporate requirements) and appropriate strategies to acquire direct portions of CSO work requirements if and when authorized by the USMS CO.

H.2 INDEMNIFICATION

- (a) Hold Harmless and Indemnification Agreement: The Contractor shall save and hold harmless and indemnify the Government against any and all liability claims and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any Contractor property or property owned by a third party occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation, or performance of work under the terms of this contract, resulting in whole or in part from the acts or omissions of the Contractor, any subcontractor, or any employee, agent, or representative of the Contractor or subcontractor.

- (b) Government's Right of Recovery: Nothing in the above paragraphs shall be considered to preclude the Government from receiving the benefits of any insurance the Contractor may carry which provides for the indemnification of any loss or destruction of, or damage to property in the custody and care of the Contractor, where such loss, destruction or damage is to Government

property. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss, destruction of, or damage to Government property, and upon request of the CO shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instructions of assignment in favor of the Government, in obtaining recovery.

H.3 INSURANCE COVERAGE

- (a) The Contractor must acquire and maintain at its expense during the entire contract performance period adequate insurance. Insurance coverage must, at minimum, provide the following:
 - (1) \$100,000 per incident minimum Workman's Compensation and Employee's Liability Insurance.
 - (2) General public liability insurance covering all duties, services, and work to be performed under this contract. The insurance provides limits of liability for bodily injury not less than \$2,000,000 per person and \$5,000,000 for each occurrence, and property damage limits of liability of not less than \$200,000 for each accident. The general liability policy must name the "The United States of America, action by and through the Department of Justice," as an additional insured with respect to operations performed under this contract.
 - (3) Automobile Liability Insurance written on the comprehensive form of policy of \$1,000,000 per person and \$5,000,000 per occurrence for bodily injury, and \$200,000 per occurrence for property damage.
- (b) Each liability policy must include the following provision: "It is a condition of this policy that the company shall furnish written notice to the Department of Justice, in care of the issuing office, 30 days in advance of any reduction in or cancellation of this policy."
- (c) Insurance is to be effective throughout the term of the contract. Upon request, the Contractor shall provide to the CO evidence of requirement insurance, certified true copies of liability policies and manually countersigned endorsements of any changes thereto. Renewal policies must be furnished no less than five days prior to the expiration of current policies.

H.4 LICENSES

The Contractor shall secure and maintain in a current status all required licenses and permits applicable to the lawful functioning within the locations listed in Section B, Supplies or Services and Prices / Costs. In doing so, the Contractor shall furnish evidence to the CO of a company license (state and/or local) authorizing the company to provide guard service within that state and/or locality, or evidence of application for same, within 14 days after request by the CO.

H.5 SPECIAL STANDARDS OF RESPONSIBILITY ANNUAL REVIEW

The Contractor shall provide current certified financial statements of its most recent fiscal year and updates to the key personnel no later than March 31st of each contract period. The financial statements/personnel updates shall consist of the same information established in the Special Standards of Responsibility clause in Section L.7 at the time of contract award.

H.6 NOTIFICATION OF ADVERSE AND POTENTIAL ADVERSE CLAIMS AGAINST COMPANY

In addition to the disclosures required in FAR 52.209-5(b), *Certification Regarding Responsibility Matters*, which requires notification in the event the Contractor or any Principal is debarred, or is indicted or convicted of certain crimes, or is delinquent in payment of taxes, the Contractor shall be required to notify the USMS CO of any potential claim, or the commencement of any proceeding against the Contractor, any parent business and affiliates (business is defined in the broadest manner possible to include partnerships, limited liability corporations, professional corporations, associations, and any business related entities) and if the Contractor is a wholly owned subsidiary of another entity, and such claims against that entity, that could have a material adverse effect on the business of the Contractor or the Contractor's ability to perform under this contract. Notice shall be given in writing within ten (10) days after the Contractor obtains knowledge of such potential claim or proceeding. Such claims and proceedings requiring notification shall include, but are not limited to, those under any applicable labor law, bankruptcy law, state and federal tax law, and for breach of contract, fraud, embezzlement, defalcation, intentional tort, or default on any financial obligation. The Contractor shall also be required to give notice of any threatened cancellation of any required insurance policy. Notification of such claims and proceedings shall not be the sole basis for contract termination, but may be considered in determining responsibility of the Contractor.

H.7 KEY PERSONNEL

- (a) “Key Personnel” for the purpose of this contract are principals and supervisory personnel.
- A principal is defined as an officer, director, owner, partner, managing member or any person having a primary management role within the business entity.
 - Supervisory personnel are considered to be Contract Managers and District Supervisors.
- (b) The Government may request background investigations on all Key Personnel prior to award of the contract and prior to the exercise of any option period, at its discretion. Background investigations shall include but are not limited to credit checks and National Agency Check with Inquiries (NACI) – which includes a systems and fingerprint check. All required forms and information needed to initiate background investigations for Key Personnel shall be submitted to the Chief, OCS on request. Investigations will be initiated via the e-QIP portal and completed by the Office of Personnel Management.
- (c) The Contractor shall notify the CO of all Key Personnel for the contract and any change to the Key Personnel during the performance of the contract. The Contractor shall not make a diversion or substitution of these personnel without the written consent of the CO. The following shall be completed at time of award:
- (1) During the first 90 days of performance, no substitution of Key Personnel, Principals, or Supervisory Personnel will be allowed unless the substitution is necessitated by illness, death or termination of employment. In any of these events, the Contractor shall notify the CO within 72 hours of knowledge by the Contractor and provide the information required in the following paragraph. After the initial 90-day period, all proposed substitutions must be submitted in writing within 72 hours to the CO for approval.
 - (2) All requests for substitutions of supervisory personnel must provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the CO.

The qualifications of any proposed substitutes must meet or exceed the contract requirements. The CO will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions.

- (3) Changes in key personnel and/or a change in control of the company shall also require a notification to the CO within 72 hours of knowledge by the Contractor. The Contractor shall furnish sufficient information on the succeeding Principal to allow the USMS to perform the background investigation set forth in paragraph (b) above.
- (4) All supervisory key personnel shall fully understand and comply with the requirements of the SOW. Supervisory key personnel shall perform in a knowledgeable and professional manner demonstrating through their actions and behaviors a commitment to meeting the requirements of the contract. Supervisory key personnel shall perform their responsibilities required under H.8(f) Performance Standard Violations (PSVs), completely and properly.

H.8 REMOVAL OF CSOs AND OTHER CONTRACTOR PERSONNEL FOR VIOLATIONS OF THE CSO PERFORMANCE STANDARDS

- (a) The Contractor shall be responsible for providing employees that meet the qualifications and requirements established under the contract. Any employee provided by the Contractor that fails to meet the CSO performance standards set forth in Section C, may be removed from performing services for the Government under this contract upon written request of the CO.
- (b) The USMS reserves the right at all times to determine the suitability of any Contractor employee to serve as a CSO. Decisions rendered under any dispute resolution process, including assisted settlement, negotiation, consultation, mediation, mini trials, arbitration or any other process available to the contractor and its employees shall not be binding upon the USMS. Any decision to continue a Contractor employee in a CSO capacity will be made solely by the OCS on a case-by-case basis in accordance with the requirement to safeguard the Federal judicial process, the Judiciary, citizens, and property as per policies and directives governing OCS operations.
- (c) Any employee provided by the Contractor that the CO asserts has failed to meet the performance requirements set forth in Section C, *Description/Specifications/Statement of Work*, may be removed from performing services under this contract. The USMS reserves the right to temporarily remove a CSO under investigation for an alleged serious

performance standard violation or criminal charge from performing under the contract. The individual's firearm and credential must be returned to the USMS until the alleged incident is resolved. A determination by the Contractor that an employee's performance can be corrected by discipline and/or other measures and continue to meet the terms of the contract shall be made in writing to the CO. The CO and OCS shall make the final determination of suitability.

- (d) If requested by the CO or a designated representative, the Contractor shall provide a written explanation to the CO, providing the facts and argument regarding the proposed removal of an individual. In the event that the CO or designated representative has requested the removal, a written response from the individual subject to the removal, if any, and a written statement of the Contractor's position on the removal of an individual must be forwarded to the OCS, through the CO, within 15 days of the initial removal notice for a final decision.
- (e) Notwithstanding the requirements of Paragraph (b), above, any employee provided by the Contractor that engages in actions such as misuse of weapons or credential that have been provided, removal of assigned weapons or credential from the courthouse/site, improper activity related to a jury, or engages in criminal conduct, whether on or off-duty, or any other activity that affects the integrity of the judicial process or is likely to compromise the security of the courts, shall be removed from performing services for the Government under this contract, and shall not be reassigned to this contract without the concurrence of the CO. The Contractor shall notify its employees of this requirement and shall post this requirement in a conspicuous location.
- (f) The DS and/or CM shall independently conduct prompt and thorough internal investigations of reported allegations, or other evidence, to determine the facts, and report all PSVs to the COR without hesitation or unnecessary delay, to include those matters handled and resolved internally.
- (g) The CO will forward to the COR, responsible for overseeing contractor performance in the district, copies of all correspondence to the Contractor pertaining to Performance Standard Violations.
- (h) These procedures do not apply to situations where a CSO is removed for failure to meet the contract's medical and/or physical qualification standards and/or firearms qualifications.

H.9 PROCEDURES FOR ADDRESSING COURT SECURITY OFFICER (CSO) MISCONDUCT OR FAILURE TO PERFORM

The Contractor shall report an alleged misconduct or failure to perform to the COR immediately. Failure to report performance violations to the Government may result in liquidated damages. Alleged misconduct and/or performance violations will be processed as follows:

- (a) Upon receipt of notification of an alleged misconduct and/or performance violation, the CO will request the Contractor to investigate the alleged action. The Contractor shall investigate the alleged action and report the results of the investigation to the CO within five (5) business days of notification. The results of the investigation shall include all investigative supporting documents, and the Contractor's recommendation for disciplinary action.
- (b) Based on a thorough review of the data provided by the Contractor's investigation and the information provided by USMS, if the Government does not agree with the proposed disciplinary action the Government may request the Contractor to reconsider its proposed remedy and submit its response to the CO within two (2) business days of the date of the notification letter.

H.10 FACILITY SURVEY PRIOR TO ASSUMING/COMMENCING CONTRACT PERFORMANCE

After the award, but prior to performance, the Contractor shall coordinate a facility survey with the COR for purposes of familiarizing each Contractor personnel with the CSO post assignment records and the Judicial Security Plan designed specifically for that facility. A facility survey must also be performed on the first day of duty for each Contractor personnel hired after implementation of the contract.

H.11 DEPARTMENT OF JUSTICE DEADLY FORCE POLICY

The Contractor shall ensure that its employees fully comprehend and comply with Section J.4(A), *List of Attachments, Department of Justice Deadly Force Policy*.

H.12 NOTICE REGARDING BLOOD BORNE/AIR BORNE PATHOGENS EXPOSURE

- (a) The Contractor is hereby provided notice that there is risk of occupational exposure to potentially infectious materials for their employees under this

contract. It is the Contractor's responsibility to inform its employees of this risk.

- (b) The Contractor shall formally document the acknowledgment of its employees that they have been made aware of the associated risks and that the Contractor is responsible for ensuring that they take self-protective measures whenever they are subject to such exposure.
- (c) The Contractor shall ensure that its employees are made aware that they should not be handling prisoners or accessing cellblock areas on a routine basis as this is not a requirement of the contract and puts the employee at a high level of risk of infection.
- (d) Any cost to the Contractor associated with their compliance to this portion of the contract is the responsibility of the Contractor.

H.13 LIABILITY FOR START-UP COSTS

- (a) Start-Up Cost - The Government will only be liable for actual start-up costs incurred by the Contractor. If the Contractor does not provide a **complete uniform** as stated in Section C to a CSO during a contract performance period, the Government will not be liable to reimburse the Contractor for uniform start-up costs.
- (b) The Government will not reimburse the Contractor for start-up costs associated with hiring individuals in excess of the number of personnel required for the CSO positions authorized in Section B, Supplies or Services and Prices/Costs, or subsequent positions authorized by the CO.
- (c) Additionally, the Government will not be liable for start-up costs caused by turnover of Contractor employees or when previously approved CSOs fail either preliminary or background investigations, except those specific cases set forth in the Statement of Work C.7, *Turnover*.
- (d) Medical Qualification – This is only for the annual physical. The USMS does NOT reimburse the vendor for supplemental visits.