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CHAPTER 2. SPECIAL ITEM 132-3: LEASING

TERMS AND CONDITIONS

Terms And Conditions Applicable To Leasing Of General Purpose Commercial Information Technology Products (Special Item Number 132-3).

Note: Under SIN 132-3 Leasing of Products, there are two sets of terms and conditions. Option 1 does not contain a cancellation clause and all leases automatically expire on September 30th or sooner. Option 2 contains a cancellation clause, in which the fee must be in accordance with applicable legal principles. You may offer either option or both options.

LEASE TYPES

The Government will consider proposals for the following lease types:

- a. Lease to Ownership,
- b. Lease with Option to Own, and
- c. Step Lease.

Orders for leased products must specify the leasing type.

OPTION 1

1. STATEMENT

- a. It is understood by all parties to this contract that orders issued under this SIN shall constitute a lease arrangement. Unless the Ordering Office intends to obligate other than annual appropriations to fund the lease, the base period of the lease is from the date of the product acceptance through September 30 of the fiscal year in which the order is placed.
- b. Agencies are advised to follow the guidance provided in Federal Acquisition Regulation (FAR) Subpart 7.4 Product Lease or Purchase and OMB Circular A-11. Agencies are responsible for the obligation of funding consistent with all applicable legal principles when entering into any lease arrangement.

2. FUNDING AND PERIODS OF LEASING ARRANGEMENTS

a. Annual Funding. When annually appropriated funds are cited on an order for leasing, the following applies:

1. The base period of an order for any lease executed by the Government shall be for the duration of the fiscal year. All Government renewal options under the lease shall be specified in the delivery order. All orders for leasing shall remain in effect through September 30 of the fiscal year or the planned expiration date of the lease, whichever is earlier, unless the Government exercises its rights hereunder to acquire title to the product prior to the planned expiration date or unless the Government exercise its right to terminate under FAR 52.212-4. Orders under the lease shall not be deemed to obligate succeeding fiscal year's funds or to otherwise commit the Government to a renewal.
2. All orders for leasing shall automatically terminate on September 30, unless the Ordering Office notifies the Contractor in writing thirty (30) calendar days prior to the expiration of such orders of the Government's intent to renew. Such notice to renew shall not bind the Government. The Government has the option to renew each year at the original rate in effect at the time the order is placed. This rate applies for the duration of the order. If the Government exercises its option to renew, the renewal order, shall be issued within 15 days after funds become available for obligation by the ordering office, or as specified in the initial order. No termination fees shall apply if the Government does not exercise an option.

b. Crossing Fiscal Years Within Contract Period. Where an Ordering Office has specific authority to cross fiscal years with annual appropriations, the Ordering Office may place an order under this option to lease product for a period up to the expiration of its period of appropriation availability, or twelve months, whichever occurs later, notwithstanding the intervening fiscal years.

3. DISCONTINUANCE AND TERMINATION

Notwithstanding any other provision relating to this SIN, the Ordering Office may terminate products leased under this agreement, at any time during a fiscal year in accordance with the termination provisions contained in FAR 52.212-4. (l) Termination for the Government's convenience, or (m) Termination for cause. Additionally, no termination for cost or fees shall be charged for non-renewal of an option.

OPTION 2

To the extent an Offeror wishes to propose alternative lease terms and conditions that provide for lower discounts/prices based on the ordering office's stated intent to fulfill the projected term of a lease including option years, while at the same time including separate charges for early end of the lease, the following terms apply. These terms address the timing and extent of the Government's financial obligation including any potential charges for early end of the lease.

1. LEASING PRICE LIST NOTICE

Contractors must include the following notice in their contract price list for SIN 132-3:

“The ordering office is responsible for the obligation of funds consistent with applicable law. Agencies are advised to review the lease terms and conditions contained in this price list prior to ordering and obligating funding for a lease.”

2. STATEMENT OF GOVERNMENT INTENT

a. The Government and the Contractor understand that a delivery order issued pursuant to this SIN is a lease arrangement and contemplates the use of the product for the term of the lease specified in such delivery order (the “Lease Term”). In that regard, the Ordering Agency, as lessee, understands that the lease provisions contained herein and the rate established for the delivery order are premised on the Ordering Agency's intent to fulfill that agreement, including acquiring products for the period of time specified in the order. Each lease hereunder shall be initiated by a delivery order which shall, either through a statement of work or other attachment, specify the product being leased, and the required terms of the transaction.

b. Each ordering office placing a delivery order under the terms of this option intends to exercise each renewal option and to extend the lease until completion of the Lease Term so long as the need of the ordering office for the product or functionally similar product continues to exist and funds are appropriated. Contractor may request information from the ordering office concerning the essential use of the products.

3. LEASE TERM

a. The date on which the ordering office accepts the products is the Commencement Date of the lease. For acceptance to occur, the products must operate in accordance with the product's published specifications and statement of work. Acceptance shall be in accordance with the terms of the contract or as otherwise negotiated by the ordering office and the Contractor.

b. Any lease is executed by the Ordering Office on the basis that the known requirement for such product exceeds the initial base period of the delivery order, which is typically 12 months, or for the remainder of the fiscal year. Pursuant to FAR 32.703-3(b), delivery orders with options to renew that are funded by annual (fiscal year) appropriations may provide for initial base periods and option periods that cross fiscal years as long as the initial base period or each option period does not exceed a 12 month period. Defense agencies must also consider DOD FAR supplement (DFAR) 232.703-3(b) in determining whether to use cross fiscal year funding. This cross fiscal year authority does not apply to multi-year leases.

c. The total Lease Term will be specified in each delivery order, including any relevant renewal options of the Government. All delivery orders, whether for the initial base period or renewal period, shall remain in effect through September 30 of the fiscal year (unless extended by statute), through any earlier expiration date specified in the delivery order, or until the Government exercises its rights hereunder to acquire title to the product prior to such expiration date. The ordering office, at its discretion, may exercise each option to extend the term of the lease through the lease term. Renewal delivery orders shall not be issued for less than all of the product and/or software set forth in the original delivery order. Delivery orders under this SIN

shall not be deemed to obligate succeeding fiscal year funds. The ordering office shall provide the Contractor with written notice of exercise of each renewal option as soon as practicable. Notice requirements may be negotiated on an order-by-order basis.

d. Where an ordering office's specific appropriation or procurement authority provides for contracting beyond the fiscal year period, the ordering office may place a delivery order for a period up to the expiration of the Lease Term, or to the expiration of the period of availability of the multi-year appropriation, or whatever is appropriate under the applicable circumstance.

4. LEASE TERMINATION

a. The Ordering Agency must elect the Lease Term of the relevant delivery order. The Contractor (and assignee, if any) will rely on the Government's representation of its intent to fulfill the full Lease Term to determine the monthly lease payments calculated herein.

i. The Government may terminate or not renew leases under this option at no cost, pursuant to a Termination for Non-Appropriation as defined herein (see paragraph (c) below). In any other event, the ordering office's contracting officer may either terminate the relevant delivery order for cause or Termination for Convenience in accordance with FAR 52.212-4 paragraphs (l) and (m).

ii. The Termination for Convenience at the end of a fiscal year allows for separate charges for the early end of the lease (see paragraph (d) below). In the event of termination for the convenience of the Government, the Government may be liable only up to the amount beyond the order's Termination Ceiling. Any termination charges calculated under the Termination for Convenience clause must be determined or identified in the delivery order or in the lease agreement.

b. **Termination for Convenience of the Government:** Leases entered into under this option may not be terminated except by the ordering office's contracting office responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions-Commercial Items, paragraph (l), *Termination for Convenience of the Government*. The costs charged to the Government as the result of any Termination for Convenience of the Government must be reasonable and may not exceed the sum of the fiscal year's payment obligations less payments made to date of termination plus the Termination Ceiling

c. **Termination for Non-Appropriation:** The ordering office reasonably believes that the bona fide need will exist for the entire Lease Term and corresponding funds in an amount sufficient to make all payment for the lease Term will be available to the ordering office. Therefore, it is unlikely that leases entered into under this option will terminate prior to the full Lease Term. Nevertheless, the ordering office's contracting officer may terminate or not renew leases at the end of any initial base period or option period under this paragraph if (a) it no longer has a bona fide need for the product or functionally similar product; or (b) there is a continuing need, but adequate funds have not been made available to the ordering office in an amount sufficient to continue to make the lease payments. If this occurs, the Government will promptly notify the Contractor, and the product lease will be terminated at the end of the last fiscal year for which funds were appropriated. Substantiation to support a termination for non-appropriation shall be provided to the Contractor upon request.

- d. Termination Charges: At the initiation of the lease, termination ceilings will be established for each year of the lease term. The termination ceiling is a limit on the amount that a Contractor may be paid by the Government on the Termination for Convenience of a lease. No claim will be accepted for future costs: supplies, maintenance, usage charges or interest expense beyond the date of termination. In accordance with the bona fide needs rule, all termination charges must reasonably represent the value the Government received for the work performed based upon the shorter lease term. No Termination for Convenience costs will be associated with the expiration of the lease term.
- e. At the order level, the ordering office may, consistent with legal principles, negotiate lower monthly payments or rates based upon appropriate changes to the termination conditions in this section.

LEASE PROVISIONS COMMON TO ALL TYPES OF LEASE AGREEMENTS

The following terms and conditions are applicable to any lease awarded under this contract regardless of type or option.

1. ORDERING PROCEDURES

- a. When an Ordering Office expresses an interest in leasing a product(s), the Ordering Office will provide the following information to the prospective Contractor:
- i. Which product(s) is (are) required.
 - ii. The required delivery date.
 - iii. The proposed lease plan and term of the lease.
 - iv. Where the product will be located.
 - v. Description of the intended use of the product.
 - vi. Source and type of appropriations to be used
- b. The Contractor will respond with:
- i. Whether the Contractor can provide the required product.
 - ii. The estimated residual value of the product (Lease with Option to Own and Step Lease only).
 - iii. The monthly payment based on the rate.
 - iv. The estimated cost, if any, of applicable State or local taxes. State and local personal property taxes are to be estimated as separate line items in accordance with FAR 52.229-1, which may be identified and added to the monthly lease payment.
 - v. A confirmation of the availability of the product on the required delivery date.
 - vi. Extent of warranty coverage, if any, of the leased products.
 - vii. The length of time the quote is valid.

c. The Ordering Office may issue a delivery order to the Contractor based on the information set forth in the Contractor's quote. In the event that the Ordering Office does not issued a delivery order within the validity period stated in the Contractor's quote letter, the quote shall expire.

2. ASSIGNMENT OF CLAIMS

GSAR 552.232-23, Assignment of Claims, is incorporated herein by reference as part of these lease provisions. The Ordering Office's contracting officer will acknowledge the assignment of claim for a lease in accordance with FAR 32.804-5. The extent of the assignee's protection is in accordance with FAR 32.804. Any setoff provision must be in accordance with FAR 32.803.

3. PEACEFUL POSSESSION AND UNRESTRICTED USE

In recognition of the types of products available for lease and the potential adverse impact to the Government's mission, the Government's quiet and peaceful possession and unrestricted use of the product shall not be disturbed in the event the product is sold by the Contractor, or in the event of bankruptcy of the Contractor, corporate dissolution of the Contractor, or other event. The product shall remain in the possession of the Government until the expiration of the lease. Any assignment, sale, bankruptcy, or other transfer of the leased product by the Contractor will not relieve the Contractor of its obligations to the Government, and will not change the Government's duties or increase the burdens or risks imposed on the Government.

4. COMMENCEMENT OF LEASE

The date on which the Ordering Office accepts the products is the Commencement Date of the lease. Acceptance is as defined elsewhere in the contract, or as further specified in the order.

5. INSTALLATION AND MAINTENANCE

a. Installation and Maintenance, when applicable, normally are not included in the charge for leasing. The Contractor may require the Government to obtain installation and maintenance services from a qualified source. The Government may obtain installation and/or maintenance on the open market, from the Contractor's schedule contract, or from other sources. The Government may also perform installation and/or maintenance in house, if qualified resources exist. In any event, it is the responsibility of the Government to ensure that maintenance is in effect for the Lease term for all products leased.

b. When installation and/or maintenance are ordered under this schedule to be performed by the Contractor, the payments, terms and conditions as stated in this contract apply. The rates and terms and conditions in effect at the time the order is issued shall apply during any subsequent renewal period of the lease. The maintenance rates and terms and conditions may be added to the lease payments with mutual agreement of the parties.

6. MONTHLY PAYMENTS

a. Prior to the placement of an order under this Special Item Number, the Ordering Office and the Contractor must agree on a “base value” for the products to be leased. For Lease to Ownership (Capital Lease) the base value will be the contract purchase price (less any discounts). For Lease with Option to Own (Operating Lease), the base value will be the contract purchase price (less any discounts), less a mutually agreed upon residual value (pre-stated purchase option price at the conclusion of the lease) for the products. The residual value will be used in the calculation of the original lease payment, lease extension payments, and the purchase option price.

b. To determine the initial lease term payment, the Contractor agrees to apply the negotiated lease factor to the agreed upon base value: "5.25% plus current comparable term Treasury Constant Maturities as published in the Federal Reserve Statistical Release H.15." For Example: Lease factor one (1) percent over the rate for the three year (or other term) Treasury Bill (T-bill) at the most current U. S. Treasury auction.

The lease payment may be calculated by using a programmed business calculator or by using “rate” functions provided in commercial computer spreadsheets (e.g., Lotus 1-2-3, Excel).

c. For any lease extension, the extension lease payment will be based on the original residual value, in lieu of the purchase price. The Ordering Office and the Contractor shall agree on a new residual value based on the estimated fair market price at the end of the extension. The formula to determine the lease payment will be that in 6.b. above.

d. The purchase option price will be the fair market value of the product or payment will be based upon the unamortized principle, as shown on the payment schedule as of the last payment prior to date of transfer of ownership, whichever is less.

Note: At the order level, ordering office may elect to obtain a lower rate for the lease by setting the purchase option price as either, the fair market value of the product or unamortized principle. The methodology for determining lump sum payments may be identified in the pricelist.

e. The point in time when monthly rates are established is subject to negotiation and evaluation at the order level.

In the event the Government desires, at any time, to acquire title to product leased hereunder, the Government may make a one-time lump sum payment.

7. LEASE END/DISCONTINUANCE OPTIONS

a. Upon the expiration of the Lease Term, Termination for Convenience, or Termination for Non-Appropriation, the Government will return the Product to the Contractor unless the Government by 30 days written notice elects either:

- i. to purchase the product for the residual value of the product, or
- ii. to extend the term of the Lease, as mutually agreed. To compute the lease payment, the residual value from the preceding lease shall be the initial value of the leased product. A new residual value shall be negotiated for the extended lease and new lease payments shall be computed.

- b. Relocation - The Government may relocate products to another location within the Government with prior written notice. No other transfer, including sublease, is permitted. Government shall not assign, transfer or otherwise dispose of any products, or any interest therein, or create or suffer any levy, lien or encumbrance then except those created for the benefit of Contractor or its assigns.
- c. Returns:
- i. Within fourteen (14) days after the date of expiration, non-renewal or termination of a lease, the Government shall, at its own risk and expense, have the products packed for shipment in accordance with manufacturer's specifications and return the products to Contractor at the location specified by Contractor in the continental US, in the same condition as when delivered, ordinary wear and tear excepted. Any expenses necessary to return the products to good working order shall be at Government's expense.
 - ii. The Contractor shall conduct a timely inspection of the returned products and within 45 days of the return, assert a claim if the condition of the product exceeds normal wear and tear.
 - iii. Product will be returned in accordance with the terms of the contract and in accordance with Contractor instruction.
 - iv. With respect to software, the Government shall state in writing to the Contractor that it has:
 1. Deleted or disabled all files and copies of the software from the equipment on which it was installed;
 2. Returned all software documentation, training manuals, and physical media on which the software was delivered; and
 3. Has no ability to use the returned software.

8. UPGRADES AND ADDITIONS

- a. The Government may affix or install any accessory, addition, upgrade, product or device on the product ("additions") provided that such additions:
- i. Can be removed without causing material damage to the product;
 - ii. Do not reduce the value of the product; and
 - iii. Are obtained from or approved by the Contractor, and are not subject to the interest of any third party other than the Contractor.
- b. Any other additions may not be installed without the Contractor's prior written consent. At the end of the lease term, the Government shall remove any additions which:
- i. Were not leased from the Contractor, and
 - ii. Are readily removable without causing material damage or impairment of the intended function, use, or value of the product, and restore the product to its original configuration.
- c. Any additions that are not so removable will become the Contractor's property (lien free).
- d. Leases of additions and upgrades must be co-terminus with that of the product.

9. RISK OF LOSS OR DAMAGE

The Government is relieved from all risk of loss or damage to the product during periods of transportation, installation, and during the entire time the product is in possession of the Government, except when loss or damage is due to the fault or negligence of the Government. The Government shall assume risk of loss or damage to the product during relocation, (i.e., moving the product from one Government location to another Government location), unless the Contractor shall undertake such relocation.

Insurance

The Government shall be responsible for loss or damage to the Equipment and to carry primary property damage insurance covering the Equipment naming Lessor and any assignee as an additional insured as their interest may appear. Upon the Commencement Date and up to the time the Equipment is received by Lessor at its designated return location, the Government shall keep the Equipment insured, at its expense, against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof. All such insurance shall be in commercially reasonable form and manner and from an insurer acceptable to Lessor, and shall name Lessor and any assignee as loss payee as their interest may appear. The Government shall furnish to Lessor, upon request, evidence that such insurance coverage is in effect. The occurrence of such loss or damage shall not relieve the Government of any obligations hereunder. If there is loss or damage to, or theft of, Equipment, the Government will immediately notify Lessor and within five Business Days of such occurrence, either: a) repair or replace the Equipment at Government's expense, passing to Lessor full legal and beneficial title to any replacement equipment or replacement parts, free of all liens and encumbrances of any kind, provided such replacement equipment is acceptable to Lessor, or b) pay an amount equal to (i) any and all lease payments and other amounts, in each case, due or to become due under this Agreement with respect to such Equipment, plus (ii) the Equipment's purchase price in accordance with the End of Lease Purchase Option if specified on the Schedule or, if such End of Lease Purchase Option is not specified on the Schedule, then the end of Term fair market value for such Equipment. Thereafter the portion of the Lease with respect to such Equipment shall be terminated and the Government shall owe no further lease payments with respect to such Equipment.

10. TITLE

During the lease term, product shall always remain the property of the Contractor. The Government shall have no property right or interest in the product except as provided in this leasing agreement and shall hold the product subject and subordinate to the rights of the Contractor. Software and software licenses shall be deemed personal property. The Government shall have no right or interest in the software and related documentation except as provided in the license and the lease. Upon the Commencement Date of the Lease Term, the Government shall have an encumbered license to use the software for the Lease Term. The Government's encumbered license rights in the software will be subject to the same rights as provided to a purchaser of a license under the terms of this contract except that the Government will not have an unencumbered, paid-up license until it has made all lease payments for the full Lease Term in the case of an Lease To Ownership or has otherwise paid the applicable purchase option price.

11. TAXES

The lease payments, purchase option prices, and interest rates identified herein exclude all state and local taxes levied on or measured by the contract or sales price of the product furnished hereunder. The Government will be invoiced for any such taxes as Contractor receives such tax notices or assessments from the applicable local taxing authority. Pursuant to the provisions of FAR 52.229-1, State and Local Taxes, the Government agrees to pay tax or provide evidence necessary to support an exemption from the tax.

Note: For each individual order, the Contractor may propose additional terms and conditions (regarding SIN 132-3) for billings, payments, and/or invoices, as long as they are consistent with terms and conditions specified elsewhere.

12. OPTION TO PURCHASE EQUIPMENT (FEB 1995) (FAR 52.207-5)

- a. The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.
- b. Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.
- c. The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.
- d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be “continuous rental”.

