

Financial Statement Audit and Agreed Upon Procedure (AUP) Audit

REVISED

SOLICITATION INFORMATION:

Method of Solicitation: Request for Proposal (RFP)
Award Effective Date: TBD
Contract Period of Performance: TBD
Solicitation Number: AAD-20- 070
Solicitation Issue Date: 5/27/20
Offer Due Date: 6/24/20

CONTRACT TO BE ISSUED BY:

Universal Service Administrative Co.
 700 12th Street, NW, Suite 900
 Washington, DC 20005

CONTACT INFORMATION

USAC CONTACT INFORMATION	OFFEROR CONTACT INFORMATION
Sparkle Mixon Sr. Procurement Specialist P: 202-772-4534 E: sparkle.mixon@usac.org	(complete) Name: _____ POC: _____ POC Title: _____ POC Phone: _____ POC Email: _____ Address: _____

OFFEROR SIGNATURE

 Name and Title

 Date

SECTION A: About Us and the Work

I. Overview of the Project

Universal Service Administrative Company (“USAC”) is seeking a collaborative, best-in-class contractor to provide audit services. The Financial Statement Audit involves an audit of the financial position of USAC; the related statements of operations and changes in unrestricted net assets and cash flows; and the accompanying supplementary information, for each calendar year ending December 31st during the term of the contract. The Agreed Upon Procedures (AUP) involves the review of USAC’s operations in accordance with the Federal Communications Commission (FCC) approved USAC AUP Program.

II. Background

Through its administration of the Universal Service Fund (“USF”) programs - High Cost, Lifeline, Rural Health Care, and Schools and Libraries, on behalf of the FCC, USAC works to promote the availability of quality services at just, reasonable and affordable rates and to increase access to advanced telecommunications services throughout the nation. Specifically, the USF programs provide funding for the expansion of telecommunications and broadband access to rural communities and health care facilities, schools and libraries across the country, and low-income households. Through program administration, auditing, and outreach, USAC works with contributors, service providers, and program beneficiaries to achieve the program goals articulated by the FCC for each of the USF programs.

The FCC has reformed the USF to support further investment in and access to evolving broadband infrastructure, making the programs a primary vehicle to support this critical national priority. USAC, as the administrator of the USF, plays a critical role in supporting the ambitious vision to ensure that all citizens in the United States have access to high-speed broadband. The organization has approximately 600 employees. USAC works in close partnership with the FCC and other federal and state partners to support the achievement of the USF program goals.

USAC strives to provide efficient, responsible stewardship of the programs, a key national asset in making important telecommunications and Internet services available to consumers, health care providers, schools, and libraries throughout the United States. The program divisions are supported by additional USAC personnel in Finance, General Counsel, Information Systems, Internal Audit, the Enterprise Program Management Office and Human Resources.

Consistent with FCC rules, USAC does not make policy for or interpret unclear provisions of statutes or the FCC’s rules. Additional information on USF programs can be found at: <http://www.usac.org/about/about/who-we-are/default.aspx>

III. Confidentiality

All bidders/offerors are advised that this RFP and any resultant contract is subject to the terms of the Confidentiality Agreement contained in this RFP as Attachment 5. This Confidentiality Agreement must be executed and submitted along with any bid/proposal for this RFP.

SECTION B: Requirements and Scope of Work

I. TYPE OF CONTRACT

The contract to be awarded to the selected Contractor pursuant to this RFP will be a firm fixed price single-award contract (“Contract”). Contractor’s firm fixed price for the work (total project and all line items) must be included in **Attachment 1** to the Contractor Response to the RFP. The firm fixed price shall include all direct and indirect costs set forth in this Section B, including equipment, product support, supplies, general and administrative expenses, overhead, materials, travel, labor, taxes (including use and sales taxes), shipping, and profit. USAC will not reimburse Contractor for any travel-related expenses.

II. CONTRACT TERM

The initial term of the Contract is one (1) year (the “Initial Term”), with four (4) one-year option periods (each a “Renewal Option”, and together with the Initial Term, the “Contract Term”). The Contract Term shall commence on the Effective Date set forth in the Contract. The Contract Term may be extended or terminated in accordance with the term of the Contract.

III. PLACE OF PERFORMANCE

- A. All required Contract Services, must be performed within the United States at USAC’s headquarters at 700 12th Street NW, Suite 900, Washington, DC 20005 (“USAC Headquarters”), or such other location as USAC may approve in its sole discretion.
- B. A Contract kick-off meeting will be held at USAC Headquarters. Status and other meetings may be held telephonically or in person, at USAC’s discretion. USAC will not reimburse Contractor for any travel related expenses for kick-off, status, and other meetings.
- C. Services requiring work at USAC Headquarters, will include appropriate work space and appropriate access to USAC’s computer network. **NOTE: To access USAC IT Systems, Contractor must sign USAC’s IT Security Rules of Behavior Form and complete mandatory IT Security and Privacy Awareness Online Training. Contractor may be required to complete Role-Based Privacy Act Training if accessing USAC information systems designated as federal system of records (i.e., National Verifier and NLAD).**
- D. Status update meetings and other meetings may be held virtually, except to the extent that USAC or the Contractor requires in-person presence. While attending USAC Headquarters for meetings or to conduct audits, Contractor staff will be considered as visitors. All visitors are required to complete USAC’s Visitor Form, [USAC Visitor Form](#), and wear a badge while on premises. The Contract kick-off meeting and all in-person meetings will be held at USAC Headquarters or other reasonable locations designated by USAC. Contractor may also be

required to attend meetings at the FCC Offices located at 445 12th St SW Washington, DC 20554.

IV. COMPANY PROFILE

USAC is a not-for-profit Delaware corporation, which works under the oversight of the FCC. USAC is not a federal agency, a government corporation, a government-controlled corporation or other establishment in the Executive Branch of the United States Government. USAC is not a contractor to the Federal Government. The Contract awarded as a result of this RFP will not be a subcontract under a federal prime contract. USAC does, however, conduct its procurements in accordance with the terms of a Memorandum of Understanding with the FCC, which requires USAC to adhere to the following provisions from the Code of Federal Regulations: 2 C.F.R. §§ 200.318-321; 200.323; 200.325-326 and App. II to C.F.R. Part 200 (collectively “Procurement Regulations”). Further, USAC’s IT systems that are used to administer the USF programs and USAC vendors that handle and manage USF data must be compliant with FISMA and NIST requirements as applicable to federal agencies.

V. PERFORMANCE REQUIREMENTS

- A. Contractor shall work with the FCC Office of the Managing Director (“FCC OMD”) during contract performance in accordance with the requirements in Part 54 of Title 47 of the Code of Federal Regulations (CFR). Contractor shall, as necessary, consult and provide accounting and rule interpretations to the FCC OMD in connection with the USAC’s annual financial statement audit and Agreed-Upon Procedures (AUP) review of operations.
- B. USAC will provide specialized training to Contractor concerning the universal service support programs and universal service contribution rules, procedures and operations as part of the preliminary steps of the audit. Contractor personnel performing AUP review of operations work are required to attend the training at USAC’s headquarters at no additional cost to USAC. AUP review of operations training will take up to seven consecutive business days and will begin approximately three weeks after the Contract Effective Date. Personnel providing financial statement annual audits only will receive one day of training which will also be held at USAC headquarters in conjunction with the audit kick-off meeting. Contractor is required to provide similar training to all employees who are unable to attend the USAC-provided training session or who are assigned to this Contract after the USAC-provided training session.
- C. Contractor shall perform the AUP review of operations in accordance with the terms herein and the FCC approved USAC AUP Program. See **Attachment 2**¹. Please note that the AUP program outlined in Attachment 2 is not intended to be exhaustive and USAC/FCC reserves the right to modify procedures as appropriate.

¹ In accordance with Commission rules, USAC has submitted Attachment 2, “USAC 2020 Agreed-Upon Procedures Audit” and Attachment 4, “Audit Process and Timetable for 2020 USAC Annual Audit” to the FCC for review and approval. If the FCC makes any such revisions that materially change the obligations of the Contractor with respect to the audit or AUP review, the terms of this Contract may be changed in accordance with Contract section C.4.

- D. Contractor is responsible for preparing, reviewing and indexing working papers supporting the required Deliverables set forth herein. In accordance with Contract requirements and 47 C.F.R. § 54.717, Contractor shall submit to USAC and the FCC OMD, complete soft copies of all draft and final reports prepared and used in Contract performance and allow USAC and FCC staff access to all working papers upon request. The electronic format to be used shall be as specified by USAC, but shall be a standard format such as Word, Excel, electronic working papers, or Adobe PDF. Contractor shall not encrypt or password protect any information, data, documents and files provided on the soft copies.
- E. Attestation Standards. All working papers associated with both the annual financial statement audit and the AUP review of operations shall be prepared in accordance with GAGAS. Contractor shall provide these working papers to the FCC OMD for review in accordance with the FCC OMD's quality control procedures, and shall not be considered final until written approval of the working papers is received from the FCC OMD. Contractor shall provide all working papers to USAC for review by the USAC COTR.

VI. SCOPE OF THE SERVICES AND DELIVERABLES

Contractor shall provide the following Services:

A. Annual Financial Statement Audit Services

1. Contractor shall audit: (1) the financial position of USAC; (2) the related statements of operations and changes in unrestricted net assets and cash flows; and (3) the accompanying supplementary information, for each calendar year ending December 31st during the term of this contract.
2. Contractor shall perform the annual financial statement audit in accordance with the generally accepted auditing standards ("GAAS") established by the American Institute of Certified Public Accountants ("AICPA") and Generally Accepted Government Auditing Standards ("GAGAS") issued by the US Government Accountability Office ("GAO").
3. Upon completion of the annual financial statement audit, contractor shall provide USAC and the FCC OMD an audit report on the financial statements, including a report on internal controls and USAC's compliance with laws and regulations.
4. Audit Program. Contractor shall develop a detailed audit program describing the specific steps to be taken to accomplish the objectives of the annual financial statement audit. The audit program shall provide a detailed schedule of milestones with corresponding due dates for all Deliverables. Contractor shall revise the audit program as required by the FCC OMD, FCC and USAC, and it is Contractor's responsibility to keep the audit program current. The FCC OMD will review and make any needed modifications to the audit program in accordance with 47 C.F.R. § 54.717. See Attachment 3 for a copy of the FCC Rules.

B. AUP Review of Operations

1. During the performance of the Contract, Contractor is expected to meet and communicate frequently with FCC OMD, FCC and USAC staff to discuss project status. See Sections B.5(g)-(h) below. Contractor shall comply with the AUP Program and the requirements in section 54.717 of the Commission's rules during performance of the AUP reviews. See Attachment 3. The draft timetable for the AUP review of operations process is set forth in Attachment 4. Contractor shall be responsible for identifying procedures within the AUP review of operations plan that need revision and making revisions as directed by FCC OMD in coordination with FCC and USAC.
2. Contractor shall perform the AUP review of operations in accordance with the requirements of Generally Accepted Government Auditing Standards ("GAGAS") issued by the US Government Accountability Office ("GAO and Statement on Standards for Attestation Engagements (SSAE) established by the American Institute of Certified Public Accountants ("AICPA").
3. AUP Review of Operations Project Plan ("AUP Project Plan"). Contractor shall develop a detailed AUP Project Plan describing the specific steps to be taken to accomplish the objectives of the AUP review of operations program set forth in Attachment 2. The AUP Project Plan shall provide a detailed schedule of milestones and due dates for all Deliverables. Contractor shall be responsible for performance in accordance with the AUP Project Plan accepted by the FCC OMD and USAC. The AUP Project Plan shall not be revised unless agreed upon by the FCC OMD, USAC and Contractor, and it is the Contractor's responsibility to keep the AUP Project Plan current. The FCC OMD will review and make any needed modifications to the program in accordance with 47 C.F.R. § 54.717(d)

~~a. Provide project management oversight to implement the eighteen (18) month plan.~~

~~b. Conduct the incident response analyses; develop and conduct incident response training programs.~~

~~c. Develop monthly metrics that measure the security program's effectiveness. These metrics will include, at a minimum, a status and trends in each area:~~

~~i. IT System and Business Risks~~

~~ii. Active Vulnerabilities~~

~~iii. Assessment & Authorization~~

~~iv. Contingency Planning~~

~~v. Incident Response~~

~~vi. Information Security Education, training, and awareness~~

C. Deliverables

1. Annual Financial Statement Audit

- a. Contractor shall submit Deliverables to USAC and FCC OMD designated staff, unless Contractor is directed in writing by USAC, FCC OMD, or an FCC OMD staff designee to submit Deliverables only to FCC OMD staff. FCC OMD and USAC staff will review each Deliverable and provide comments to Contractor. Contractor shall respond to and incorporate FCC OMD and USAC comments and proposed revisions and return the revised Deliverables to the FCC OMD and USAC within five business days of receipt. Procedures for the review and approval process are set forth more fully in **Attachment 3**, “Commission Rules for Audit of the Administrator,” and **Attachment 4**, “Audit Process and Timetable for 2020 USAC Annual Audit.” Upon approval of each draft report by the FCC OMD, a final report shall be prepared and delivered to the FCC OMD and USAC in accordance with 47 C.F.R. § 54.717.
- b. All Deliverables related to audit findings, (Notifications of Findings and Recommendations), shall be submitted to the FCC OMD with the components of condition, criteria, cause, effect, and recommendation (if applicable) as defined in GAGAS.
- c. All reports are considered Confidential Information (*see* Section C.XVI) and shall not be released to any party outside of USAC and the FCC OMD without the written permission of USAC or the Director – Financial Audits of the FCC OMD staff. Each report shall be submitted in hard copy and in an electronic format specified in accordance with section B.5(a)(iv) above.
- d. Contractor shall deliver the reports identified herein to the Office of the Managing Director Attention: Managing Director for Audit, 445 12th Street, SW, Washington, DC 20554. Contractor shall submit Deliverables to the USAC COTR at the address set forth in the cover page of the Contract.
- e. Contractor shall provide the annual financial statement audit Deliverables on the following dates for each year during the term of this contract beginning in 2020:

Deliverables	Due Date
<ul style="list-style-type: none"> • Audit Program 	<ul style="list-style-type: none"> • 45 days after Effective Date of the contract or the commencement of option year.
<ul style="list-style-type: none"> • Working Papers 	<ul style="list-style-type: none"> • As required by the FCC OMD.
<ul style="list-style-type: none"> • Notification of Findings and Recommendations 	<ul style="list-style-type: none"> • As required by the FCC OMD.
<ul style="list-style-type: none"> • Draft Audit Report 	<ul style="list-style-type: none"> • April 15th of each Contract year
<ul style="list-style-type: none"> • Final Audit Report 	<ul style="list-style-type: none"> • May 30th of each Contract year.

All annual financial statement audit Deliverables are subject to requirements of 47 CFR § 54.717.

2. AUP Review of Operations

- a. Contractor shall submit Deliverables to USAC and FCC OMD designated staff. FCC OMD and USAC staff will review each deliverable and provide comments to Contractor. Contractor shall incorporate and respond to FCC and USAC revisions and comments and then return the revised Deliverables to the FCC OMD and USAC within five business days of receipt. Procedures for the review and approval process are set forth more fully in **Attachments 2, 3 and 4**.
- b. Any Deliverables related to audit findings, including Notifications of Findings and Recommendations, shall be submitted to the FCC OMD with the components of condition, criteria, cause and effect, as defined in GAGAS.
- c. All reports and other documents prepared or obtained during Contractor's performance of this Contract are the property of USAC and the FCC OMD. Contractor shall not release any such reports or other documents to any party outside of USAC and the FCC without the written permission of USAC or the Director – Financial Audits of the FCC OMD staff.
- d. As co-owner of the reports and documents prepared by Contractor, USAC has the right to use all reports and other documents for any purpose and may distribute the reports and documents (or any portion thereof) to third-parties in its sole discretion. Each report shall be submitted in hard copy and in an electronic format specified in accordance with section B.5(a)(iv) above.
- e. Deliverables, working papers, documents and any other material prepared, obtained or possessed by Contractor as a result of this Contract are confidential, and they shall be marked as “Confidential Information.” Contractor shall not release any Confidential Information to any person or entity outside of USAC and the FCC OMD without the prior written permission of USAC and the Director – Financial Audits of the FCC OMD staff. *See* section C.XVI, for additional requirements relating to confidential information.
- f. Contractor shall deliver the reports identified herein to (1) the Office of the Managing Director Attention: Managing Director for Audit, 445 12th Street, SW, Washington, DC 20554, and (2) the USAC COTR at the address set forth in the Cover Sheet. The FCC OMD will evaluate all draft reports and Contractor shall incorporate FCC revisions. Upon approval of each draft report, a final report shall be prepared and delivered.
- g. Contractor shall submit the AUP review of operations Deliverables set forth in the table below to the FCC and USAC on the following dates for each year during the term of this Contract beginning in 2020:

Deliverables	Due Date
• Audit Program	• 45 days after Effective Date of the contract or the commencement of option year
• Working Papers	• As required by the FCC OMD.
• Notification of Findings and Recommendations	• As required by the FCC OMD.
• Draft AUP Findings	• April 15 th of each Contract year.
• Final AUP Findings	• June 30 th of each Contract year

All AUP review of operations Deliverables are subject to the requirements of 47 C.F.R. § 54.717.

VII. MEETINGS/MANAGEMENT AND KEY PERSONNEL

A. Meetings.

1. Project Kick-Off Meeting.

- a. Within five (5) business days of the Contract start date, the Contractor shall initiate work on this Contract by meeting with key USAC representatives to ensure a common understanding of the requirements, expectations, and ultimate end products for the Financial Statement Audit and AUP Review (the “Project”). Prior to the meeting, the Contractor shall review the background information and materials provided by USAC. At the meeting, the Contractor shall be prepared to discuss the overall understanding of the Project.
- b. Contractor shall begin performance of Financial Statement Audit and AUP Audit Services no later than ten (10) calendar days following the project kick-off meeting. During the project kick-off meeting Contractor and USAC will jointly author a Rules of Engagement for the Project.
- c. Discussions will also include the Scope of Work, Deliverables to be produced, how the efforts will be organized and how the Project will be conducted.

2. Weekly Status Meetings.

- a. Key Personnel must schedule and participate in weekly status meetings and travel to USAC Headquarters in accordance with the requirements of the Contract.
- b. Contractor’s Team Leader(s) shall meet, at a minimum, weekly with the USAC staff at USAC’s corporate offices as requested by USAC’s designated Project

Manager to discuss project status, or at such other location as USAC designates. Contractor shall meet with the designated FCC OMD staff, including the Assistant Inspector General – Audits, the Deputy Inspector General, and the Inspector General, as required by USAC and FCC at their discretion to facilitate completion of the contract requirements. Contractor shall prepare a meeting agenda and provide a milestone schedule detailing Contractor’s progress on each contract requirement per the timetable in Attachment 4.

- c. Contractor shall prepare and send to the USAC Project Manager and designated FCC OMD staff, a weekly report via email in MS Word summarizing: (1) project status to date; (2) project expenditures to date; (3) percentage of completion of the annual financial statement audit to date; (4) percentage of completion of the AUP review to date; and (4) status of performance to date of the annual financial statement audit and AUP review.

3. *Milestone Status Meetings.*

- a. Key Personnel must be prepared to present each Deliverable either in-person or via webcast meeting, as directed by USAC. For revision rounds, the Contractor’s key personnel should be prepared to walk through any editing round questions.
- b. Key Personnel must be prepared to provide interim deliverable updates, as requested by USAC.

B. **Key Personnel.**

Contractor shall provide staffing for the sample labor categories below, or Contractor may propose other labor categories in its proposal submission. Any additional labor categories must include the associated labor hour bill rate for each additional category submitted as well as the experience and qualifications of the personnel to be assigned to that labor category. Contractor shall assign, as Key Personnel, at least one of each of the following:

1. Project Manager. Contractor shall assign a Project Manager whose primary duties will be the oversight and implementation of the annual financial statement audit and AUP Review and who will be responsible for overall contract performance.
2. Team Leader(s). Contractor shall assign a Team Leader(s) whose primary duties will be the oversight and implementation of the annual financial statement audit and AUP Review and who will be responsible for training and supervising project staff.
3. The Project Manager and Team Leader(s) shall be designated as key personnel. USAC will conduct periodic monitoring of the Contractor’s performance and compliance with contract provisions. If any of the Services do not conform to the requirements set forth in the Contract, USAC may require the Contractor to perform the Services again in

conformance with those requirements and at no additional cost to USAC.

4. The Contractor may propose additional labor categories in its proposal submission. Any additional labor categories must include the associated labor hour bill rate for each additional category submitted as well as the experience and qualifications of the personnel to be assigned to that labor category.

SECTION C: USAC Terms and Conditions

I. DEFINITIONS

- A. “Contractor” means the Offeror whose proposal was selected for award of the Contract.
- B. “Data” means recorded information, regardless of form or the media on which it may be recorded, and includes, but is not limited to, technical data and Software.
- C. “Deliverables” means the deliverables, goods, items, products, and material that are to be prepared by Contractor and delivered to USAC as described in the Contract.
- D. “Offeror” means an entity submitting a formal proposal in response to this Solicitation.
- E. “Services” means the services, tasks, functions and responsibilities described in the Contract.
- F. “Software” means computer programs that allow or cause a computer to perform a specific operation or series of operations, together with all modifications to, or enhancements (“derivative works”) thereof.

II. INSPECTION / ACCEPTANCE

Contractor shall only tender for acceptance Services and Deliverables that conform to the requirements of the Contract. USAC will, following Contractor’s tender, inspect or test the Deliverables or Services and:

- (a) Accept the Services and Deliverables; or
- (b) Reject the Services and Deliverables and advise Contractor of the reasons for the rejection.

If rejected, Contractor must repair, correct or replace nonconforming Deliverables or re-perform nonconforming Services, at no increase in Contract price. If repair, correction, replacement or re-performance by Contractor will not cure the defects or is not possible, USAC may terminate for cause under Section C.XI, below, and, in addition to any other remedies, may reduce the Contract price to deduct amounts for the defective work.

Unless specified elsewhere in the Contract, title to items furnished under the Contract shall pass to USAC upon acceptance, regardless of when or where USAC takes possession.

III. ENTIRE CONTRACT / BINDING EFFECT

The contract, including any attachments identified therein constitutes the entire agreement (“Contract”) between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. USAC’s Terms and Conditions have priority and shall take precedence over any other Contract document, including Contractor proposals that may be included as attachments to the Contract. Any waiver of any provision of the Contract will be effective only if in writing and signed by the party granting the waiver. The Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assignees.

IV. CHANGES

The terms of the Contract shall not be modified other than in writing signed by the parties. The parties may bilaterally modify the Contract as needed.

V. INVOICES

- A. *Where to Submit Invoices.* Contractor shall submit invoices through the USAC Coupa Supplier Portal (“CSP”) method or via the Supplier Actionable Notification (“SAN”) method. The CSP method will require Contractor to register and create an account for the CSP. An invitation link to the CSP may be obtained by emailing CoupaHelp@usac.org. The SAN method will require Contractor to invoice USAC directly from the purchase order (“PO”) sent by USAC via email. For the SAN method, the USAC email will contain a notification with action buttons which will allow Contractor to create an invoice, add a comment, and acknowledge the receipt of the PO. For assistance on all Coupa related billing questions, Contractor may email CoupaHelp@usac.org. For assistance on all non-Coupa related billing questions, Contractor may email accounting@usac.org.
- B. *Invoice Submittal Date.* Contractor may submit invoices for payment upon completion and USAC’s acceptance of all of the work associated with a Contract or, if the period of performance of a Contract exceeds sixty (60) days, once every thirty (30) days, with the submission of the first invoice no earlier than thirty (30) days after issuance of the Contract.
- C. *Content of Periodic Invoices.* If periodic invoices are submitted for a Contract, each invoice shall include only Services that have been completed and Deliverables that have been accepted as of the date of invoice submission and that have not been billed in a prior invoice.

VI. PRICE/TAXES

Prices stated on the Contract are firm and shall remain firm until USAC’s acceptance of all Services and Deliverables unless otherwise expressly agreed to in writing by both parties. All prices specified herein include all charges for labeling, packing, packaging, loading, storage, inspection, and insurance. The total firm fixed price for the Services and Deliverables provided under this Contract includes applicable federal, state, or local sales, use, or excise taxes.

VII. PAYMENT / RATES

Contractor shall be paid for Services performed on a fixed-price, service category rate basis using the Universal Service Administrative Co. | Financial Statement and AUP Audit | Request for Proposals

service categories and fixed rates set forth in Attachment 1. USAC will pay invoices submitted in accordance with Section V, above, within thirty (30) calendar days of receipt of invoice, provided the Services and/or Deliverables have been delivered and accepted by USAC. The labor rates are firm and shall remain firm unless agreed to in writing by the parties, or unless Contractor provides a rate reduction or discount thereto. All labor rates specified herein are fully loaded and include all direct and indirect costs and expenses, including applicable federal, state, or local sales, use, or excise taxes, and profit.

VIII. PATENT INDEMNITY

Contractor shall indemnify, hold harmless, and defend USAC and its directors, officers, employees and agents against any and all claims and liability, including attorney's fees and other costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, or misappropriation of, any patent, trademark, or copyright, arising out of or related to Contractor's performance of the Contract.

IX. ASSIGNMENT / SUBCONTRACTING

Contractor shall not assign or subcontract all or any portion of the Contract without obtaining USAC's prior written consent. Consent must be obtained at least thirty (30) days prior to the proposed assignment or subcontracting. USAC may require information and assurances that the proposed assignee or subcontractor has the skills, capacity, qualifications and financial strength to meet all of the obligations under the Contract. An assignment or subcontract shall not release the Contractor of the obligations under the Contract, and the assignee or subcontractor shall be jointly and severally liable with the Contractor. Contractor shall not enter into any subcontract with a company or entity that is debarred, suspended, or proposed for debarment or suspension by any federal executive agency unless there is a compelling reason to do so. Contractor shall review the System for Award Management ("SAM") for suspension or debarment status of proposed subcontractors. See <https://www.sam.gov>.

X. REPORTING

Reports shall be accurate and timely and submitted in accordance with the due dates specified in this Contract. Should Contractor fail to submit reports or correct inaccurate reports, USAC reserves the right to delay payment of invoices until an accurate report is received and accepted.

XI. TERMINATION FOR CONVENIENCE

USAC may terminate the Contract for any reason or no reason upon one (1) day prior written notice to the Contractor. Subject to the terms of the Contract, Contractor shall be paid for all time actually spent performing the Services required by the Contract up to date of termination, plus reasonable charges Contractor can demonstrate to the satisfaction of USAC have resulted directly from the termination.

XII. TERMINATION FOR CAUSE

Upon the expiration of a ten (10) day cure period (during which the defaulting party does not provide a sufficient cure), the non-defaulting party may terminate the Contract issued hereunder, in whole or in part, for cause in the event of the defaulting party's failure to comply with any material term or condition of the Contract, as applicable, or if either party fails to provide the other party, upon request, with adequate assurances of future performance. In the event of termination for cause, the non-defaulting party shall be entitled to any and all rights and remedies provided by law or equity. If it is determined that USAC improperly terminated the Contract for cause, such termination shall be deemed a termination for

convenience. In the event of partial termination, the defaulting party shall continue to perform the portion of the Services not terminated.

XIII. STOP WORK ORDER

USAC may, in its sole discretion, issue a stop work order at any time during the Contract term. Upon receipt of a stop work notice, or upon receipt of a notice of termination (for cause or convenience), unless otherwise directed by USAC in writing, Contractor shall, on the stop work date identified in the stop work or termination notice: (A) stop work, and cause its subcontractors, consultants or agents to stop work, to the extent specified in said notice; and (B) subject to the prior written approval of USAC, transfer title and/or applicable licenses to use, as appropriate, to USAC and deliver to USAC, or as directed by USAC, all materials, Data, work in process, completed work and other USAC Information or material produced in connection with, or acquired for, the work terminated. In the event of a stop work order, all deadlines in the Contract shall be extended on a day for day basis from such date, plus reasonable additional time, as agreed upon between the parties, acting in good faith, to allow Contractor to reconstitute its staff and resume the work.

XIV. LIMITATION OF DAMAGES

Except in cases of gross negligence or willful misconduct, in no event shall USAC be liable for any consequential, special, incidental, indirect or punitive damages arising under or relating to the performance of the Contract and in no event shall USAC's entire cumulative liability, from any causes whatsoever (including indemnification obligations, if any) exceed the amounts paid to Contractor under the Contract. All exclusions or limitations of damages contained in the Contract, including, without limitation, the provisions of this Section C.XIV, shall survive expiration or termination of the Contract.

XV. INDEMNITY

Contractor shall defend, indemnify and hold harmless USAC from and against, any costs, liabilities, damages or expenses (including reasonable attorneys' fees) arising out of or relating to: (1) claims for personal injuries, death or damage to tangible personal or real property to the extent proximately caused by the negligent acts or negligent omissions of Contractor or its employees, agents, consultants, or Subcontractors in connection with this Contract; and (2) claims of any nature whatsoever to the extent caused by the violation of contract terms, negligence, illegal or intentional wrongful acts or omissions of Contractor or its employees, agents, consultants, or Subcontractors in connection with the performance of the Services.

XVI. CONFIDENTIAL INFORMATION

- A. *Confidential Information.* Confidential Information includes, but is not limited to, information, Data, material, or communications in any form or format, whether tangible or intangible, spoken or written (collectively referred to hereafter as "Information"), that contains, reflects, or is derived from or based upon, or is related to:
1. Management, business, procurement or financial Information of either party, the FCC or a USF stakeholder, including proprietary or commercial Information and trade secrets that have not previously been publicly disclosed;
 2. Information regarding USAC's processes and procedures (including, but not limited to,

program operational Information, Information regarding USAC’s administration of its programs, and Information regarding USAC’s processing of applications for program support);

3. Information concerning USAC’s relationships with other vendors or contractors, the FCC, USF Stakeholders and financial institutions;
 4. Information marked to indicate disclosure limitations such as “Confidential Information,” “proprietary,” “privileged,” “not for public disclosure,” “work product,” etc.;
 5. Information compiled, prepared or developed by Contractor in the performance of the Contract; the foregoing shall not include Information that is already lawfully in the possession of the recipient party prior to the receipt of such Information;
 6. Any Information identified as confidential by the disclosing party; and
 7. Personally Identifiable Information (“PII”), any information about an individual that can be used to distinguish or trace an individual’s identity either alone or when combined with other information that is linked or linkable to a specific individual. Examples of PII include name, address, telephone number, date and place of birth, mother’s maiden name, biometric records, etc.
- B. *Non-Disclosure/Use/Irreparable Harm.* It is anticipated that one of the parties (“Disclosing Party”) may disclose, or has disclosed, Confidential Information to the other party (“Recipient”). At all times during the term of the Contract and thereafter, the Recipient shall maintain the confidentiality of all Confidential Information and prevent its unauthorized disclosure, publication, dissemination, destruction, loss, or alteration. Recipient shall only use Confidential Information for a legitimate business purpose of USAC and in the performance of the Contract. Recipient acknowledges that the misappropriation, unauthorized use, or disclosure of Confidential Information would cause irreparable harm to the Disclosing Party and could cause irreparable harm to the integrity of the USF Programs.
- C. *Employee Access to Confidential Information.* Recipient shall not disclose Confidential Information to partners, joint venturers, directors, employees, agents and subcontractors (“sub-Recipient”) unless absolutely necessary for a Recipient’s or sub-Recipient’s performance of the Contract, and if necessary, shall only disclose the Confidential Information necessary for sub-Recipient’s performance of its duties. As a pre-condition to access to Confidential Information, Recipient shall require sub-Recipients, including its employees, subcontractors, and the employees of any subcontractor, to sign a non-disclosure or confidentiality agreement containing terms no less restrictive than those set forth herein. The Disclosing Party may enforce such agreements, if necessary, as a third-party beneficiary.
- D. *Contractor Enforcement of Confidentiality Agreement.* Contractor must report, and describe in detail, any breach or suspected breach of the non-disclosure requirements set forth above to the USAC General Counsel immediately (i.e., within one (1) hour) upon becoming aware of the breach. Contractor will follow-up with the USAC General Counsel and provide information on when and how the breach occurred, who was involved, and what has been done to recover the Information.

- E. *Exclusions.* If requested to disclose Confidential Information by an authorized governmental or judicial body, Recipient must promptly notify the Disclosing Party of the request and to the extent that it may legally do so, Recipient must refrain from disclosure of the Confidential Information until the Disclosing Party has had sufficient time to take any action as it deems appropriate to protect the Confidential Information. In the event Confidential Information of USAC is requested, Recipient must notify USAC, with a copy to USAC's General Counsel, of the request. Neither Contractor nor its subcontractors shall issue any public statement relating to or in any way disclosing any aspect of the Contract without the prior written consent of USAC. Notwithstanding anything herein to the contrary, USAC may, without notice to Contractor, provide the Contract, including Contractor's proposal information, and any information or Data delivered, prepared or developed by Contractor in the performance of the Contract to the FCC or other governmental or judicial body, and may publicly disclose basic information regarding the Contract, e.g., name of Contractor, price, basis for selection, description of Services/Deliverables and any provisions necessary for USAC to justify actions taken with respect to the Contract.

XVII. RETURN OF USAC INFORMATION

- A. "USAC Information" includes Information and Data provided by USAC to Contractor for use in the performance of the Contract, Data that is collected, developed or recorded by Contractor in the performance of the Contract, including without limitation, business and company personnel information, program procedures and program specific information, and Data that is created or derived from such Data. USAC Information is Confidential Information and subject to all requirements in Section C.XVI.
- B. Promptly upon the expiration or termination of the Contract, or such earlier time as USAC may direct, Contractor shall, at the direction of USAC, and at no additional cost to USAC, return or destroy all USAC Information, including all copies thereof, in the possession or under the control of Contractor or its employees or any subcontractors or their employees. Contractor shall not withhold any USAC Information as a means of resolving any dispute. To the extent that there is a dispute between Contractor and USAC, Contractor may make a copy of such USAC Information as is necessary and relevant to resolution of the dispute. Any such copies shall promptly be destroyed upon resolution of the dispute.
- C. USAC Information is provided to Contractor solely for the purpose of rendering the Services, and USAC Information or any part thereof shall not be sold, assigned, leased, or otherwise transferred to any third party by Contractor (except as required to perform the Services or as otherwise authorized in the Contract), commingled with non-USAC Information, or commercially exploited by or on behalf of Contractor, or its employees or agents.

XVIII. INFORMATION SECURITY

Contractor shall establish and maintain safeguards to protect the confidentiality, integrity, and restricted availability of Confidential Information, including any PII, in its possession according to National Institute of Standards and Technology ("NIST"), FISMA requirements, and the Office of Management and Budget ("OMB") requirements. This includes all information that is sent to and received from USAC and USAC Stakeholders. The Contractor and its subcontractors shall ensure that their respective local area networks, servers, and personal computers are secure from unauthorized access from within or outside their respective organizations. The Contractor shall not store or otherwise maintain any USAC

Confidential Information in the Cloud, or back-up and store USAC's Confidential Information without first obtaining USAC's written consent.

XIX. MALICIOUS SOFTWARE

Contractor represents and warrants that it shall use its best efforts to prevent the introduction into USAC's network, software or systems ("USAC IT Systems") of any Software, program, routine, device, or other undisclosed feature that is designed to delete, disable, deactivate, interfere with or otherwise harm USAC's IT Systems or Data, or that is intended to provide unauthorized access or modifications ("Malicious Software"). Contractor agrees that if it introduces, or allows the introduction of Malicious Software into USAC's IT Systems intentionally, negligently or by failure to maintain available safeguards, Contractor must, at no additional cost to USAC, eliminate, or reduce to the greatest extent possible, the effects of the Malicious Software, including restoring Data, and, if the Malicious Software causes a loss of operational efficiency, loss of data or other damages, to mitigate and restore such losses, and to indemnify USAC for any damages.

XX. FISMA PROVISIONS

Contractor shall meet and comply with all USAC IT Security Policies and all applicable USAC, NIST, and FISMA requirements and other Government-wide laws and regulations for the protection and security of information systems and data.

Safeguarding of Covered Contractor Information Systems:

USAC's data security strategy includes the requirement to ensure the security of data protection controls regardless of the location or the party responsible for those controls. Contractor acknowledges that it serves a vital role in achieving this goal. Contractor shall apply the following minimum safeguarding requirements and procedures from NIST SP 800-171 "Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations" to protect covered Contractor information systems and USAC Data. Contractor shall provide USAC with copies of its security policies and procedures to review, upon request. USAC may require a written response that may be an attestation of compliance, a submission of supporting document, or both. If USAC requests a written response, Contractor shall submit an electronic copy of the document(s) confirming compliance within ten (10) calendar days. If there are any requirements that are out of scope or that cannot be complied with, Contractor shall fully explained those requirements with a business justification.

1. Limit information system access to only authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
2. Limit information system access to only the types of transactions and functions that authorized users are permitted to execute.
3. Verify and control/limit connections to and use of external information systems.
4. Control information posted or processed on publicly accessible information systems.
5. Identify information system users, processes acting on behalf of users, or devices.
6. Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
7. Sanitize or destroy information system media containing USAC Information before disposal or release for reuse.
8. Limit physical access to organizational information systems, equipment, and the respective

- operating environments to only authorized individuals.
9. Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
 10. Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
 11. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
 12. Identify, report, and correct information and information system flaws in a timely manner.
 13. Provide protection from malicious code at appropriate locations within organizational information systems.
 14. Update malicious code protection mechanisms when new releases are available.
 15. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

XXI. TECHNOLOGY CONSIDERATIONS

Contractor shall ensure that COTS software or Software as a Service (“SaaS”) software deployed in the cloud or on USAC’s on-premise infrastructure satisfies the following requirements:

- A. The product must be able to utilize USAC’s instance of OKTA’s Identity and Access Management software for user authentication and provisioning. OKTA is a cloud-based Identity and Access Management product used by USAC.
- B. Any USAC data stored in a COTS/SaaS product database must be readily accessed by USAC via standard web services or another standard access mechanism.
- C. The product must be FedRAMP-accredited.

For solicitations and contracts involving the development of custom software, Contractor shall ensure that the custom software developed for USAC:

- A. Implements all required security controls and meets FISMA accreditation guidelines.
- B. Reuses available USAC technology services (microservices, APIs) unless Contractor demonstrates that those services are unable to meet the requirements.
- C. Uses the USAC Technical Stack unless Contractor demonstrates that those components are unable to meet the requirements. Key components of USAC’s Technical Stack include the following:
 - Java / Spring Framework Suite (Language and frameworks)
 - OKTA (Identity and Access Management)
 - Apache Kafka (Messaging)
 - PostgreSQL / PostGIS (Database)
 - Elasticsearch, Logstash, Kibana
 - Atlassian tools (SDLC)
 - Apache Tomcat (Application Servers)

- Red Hat Enterprise Linux (OS)

Further details of USAC's technical stack and service architecture may be provided as appropriate.

XXII. PROPRIETARY RIGHTS

Contractor agrees that all Data, Software, Deliverables, reports or other materials (collectively "Materials") developed or conceived by Contractor and/or documented by Contractor in the performance of the Contract, as well as all modifications and improvements thereto and all other designs, discoveries and inventions, are USAC property and shall be deemed USAC Information pursuant to Section XVII above and works made-for-hire for USAC within the meaning of the copyright laws of the United States. In the event that any of the aforementioned are not considered works made-for-hire for USAC within the meaning of the copyright laws of the United States, Contractor shall and hereby does irrevocably grant, assign, transfer and set over unto USAC in perpetuity all worldwide rights, title and interest of any kind, nature or description it has or may have in the future in and to such materials, and Contractor shall not be entitled to make any use of such materials beyond what may be described in this Contract. Contractor hereby waives, and shall secure waiver from its employees or subcontractors, any moral rights in such assigned materials, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation. Accordingly, USAC shall be the sole and exclusive owner for all purposes for the use, distribution, exhibition, advertising and exploitation of such Materials or any part of them in any way and in all media and by all means throughout the universe in perpetuity.

Contractor shall not, without the prior written permission of the USAC Procurement Office, incorporate in Data delivered under the Contract any Data not first produced in the performance of the Contract unless Contractor: (1) identifies the Data; and (2) grants to USAC, or acquires on USAC's behalf, a non-exclusive, royalty free, world-wide irrevocable license to use the Data.

XXIII. RESPONSIBILITY FOR CONTRACTOR PERSONNEL

Contractor personnel working on USAC premises are required to sign and agree to the terms of a [Visitor Form](#) provided by USAC. Contractor is responsible for any actions of its personnel, including any actions that violate law, are negligent, or that constitute a breach of the Visitor Form and/or the Contract.

Contractor personnel requiring access to USAC IT Systems will be required to sign USAC's IT Security Rules of Behavior Form and complete mandatory IT Security and Privacy Awareness Online Training. Contractor may be required to complete Role-Based Privacy Act Training, at Contractor's own cost, if accessing USAC information systems designated as Federal systems of record.

Security Briefings. Before receiving access to IT resources under the Contract, Contractor personnel must provide security training to its own employees. USAC will review and approve Contractor's security training materials and verify that training certifications and records are provided, if requested during an annual FISMA audit. If Contractor employees will be in USAC offices or have access to USAC IT systems, background checks are required pursuant to NIST. Contractor shall conduct background checks on its employees and provide evidence of the background checks to USAC upon request.

XXIV. RECORD RETENTION

During the term of the Contract and for three (3) years following final payment, Contractor shall

maintain and make available at its offices at all reasonable times, the records, materials, and other evidence relating to the Contract for examination, audit, or reproduction.

XXV. KEY PERSONNEL

USAC may specify which Contractor employees are key personnel under the Contract. Contractor key personnel assigned to the Contract must remain in their respective positions throughout the term of the Contract. USAC may terminate all or a part of the Contract if the Contractor changes the position, role, or time commitment of key personnel, or removes key personnel from the Contract, without USAC's prior written approval. USAC may grant approval for changes in staffing of key personnel if it determines in its sole discretion, that:

- A. changes to, or removal of, key personnel is necessary due to extraordinary circumstances (e.g., a key personnel's illness, death, termination of employment, or absence due to family leave), and
- B. the Contractor has resources (e.g., replacement personnel) with the requisite skills, qualifications and availability to perform the role and duties of the outgoing personnel.

Replacement personnel are considered key personnel and this Section XXV shall apply to their placement on and removal from the Contract.

XXVI. SHIPMENT/DELIVERY

Terms of any shipping are F.O.B. USAC's delivery location unless otherwise noted in the Contract. All goods, products items, materials, etc. purchased hereunder must be packed and packaged to ensure safe delivery in accordance with recognized industry-standard commercial practices. If, in order to comply with the applicable delivery date, Contractor must ship by a more expensive means than that specified in the Contract, Contractor shall bear the increased transportation costs resulting therefrom unless the necessity for such shipment change has been caused by USAC. If any Materials are not delivered by the date specified herein, USAC reserves the right, without liability, to cancel the Contract as to any Materials not yet shipped or tendered, and to purchase substitute Materials and to charge Contractor for any loss incurred. Contractor shall notify USAC in writing promptly of any actual or potential delays (however caused) which may delay the timely performance of this Contract. If Contractor is unable to complete performance at the time specified for delivery hereunder, by reason of causes beyond Contractor's reasonable control, USAC may elect to take delivery of materials in an unfinished state and to pay such proportion of the Contract price as the work then completed bears to the total work hereunder and to terminate this Contract without liability as to the balance of the materials covered hereunder.

XXVII. INSURANCE

At its own expense, Contractor shall maintain sufficient insurance in amounts required by law or appropriate for the industry, whichever is greater, to protect and compensate USAC from all risks and damages/injuries that may arise under the Contract, including as appropriate, public and commercial general liability, personal injury, property damage and employer's liability and worker's compensation insurance. Contractor shall produce evidence of such insurance upon request by USAC. Contractor shall provide written notice thirty (30) days prior to USAC in the event of cancellation of or material change in the policy.

XXVIII. CONFLICTS OF INTEREST

It is essential that any Contractor providing Services or Deliverables in support of USAC's administration of the USF maintain the same neutrality, both in fact and in appearance, and avoid any conflict of interest or even the appearance of a conflict of interest. For example, to the extent that Contractor, or any of its principals, has client, membership, financial and/or any other material affiliation with entities that participate in the federal USF in any respect, there may be actual, potential and/or apparent conflict(s) of interest. Contractor shall promptly notify USAC, with a copy to USAC's General Counsel, in writing of any actual or potential conflicts of interest involving Contractor, or any circumstances that give rise to the appearance of a conflict of interest, and the means by which Contractor proposes to avoid, neutralize, or mitigate such conflicts. Contractor shall also notify USAC of any conflicts Contractor has with USAC vendors. Failure to provide adequate means to avoid, neutralize or mitigate any conflict of interest may be the basis for termination of the Contract. By its execution hereof, Contractor represents and certifies that it has not paid or promised to pay a gratuity, or offered current or future employment or consultancy, to any USAC or government employee in connection with the award. In order to maintain the required neutrality, Contractor must not advocate any policy positions with respect to the USF programs or the USF during the term of the Contract. Neither Contractor nor its subcontractors shall issue any public statement relating to or in any way disclosing any aspect of the Contract without the prior written consent of USAC.

XXIX. INVALIDITY OF ANY PROVISION

It is the intent of the parties that the provisions of the Contract will be enforced to the fullest extent permissible, but that the unenforceability of any provision will not render unenforceable or impair the remainder of the Contract, which will be deemed amended, to delete or modify, as necessary, the invalid or unenforceable provisions. The parties further agree to negotiate replacement provisions for any unenforceable term that are as close as possible to the original term and to change such original term only to the extent necessary to render the same valid and enforceable.

XXX. WAIVER

Any waiver of any provision of this Contract must be in writing and signed by the parties hereto. Any waiver by either party of a breach of any provision of this Contract by the other party shall not operate or be construed as a waiver of any subsequent breach by the other party.

XXXI. SEVERABILITY

The invalidity or unenforceability of any provisions of the Contract shall not affect the validity or enforceability of any other provision of the Contract, which shall remain in full force and effect.

XXXII. CHOICE OF LAW / CONSENT TO JURISDICTION

The Contract shall be governed by and construed in accordance with the laws of the District of Columbia (the term "laws" is to be construed as broadly as possible to include case law, statutes, regulations, orders, etc.) without regard to any otherwise applicable principle of conflicts of laws. Contractor agrees that all actions or proceedings arising in connection with the Contract shall be litigated exclusively in the district and, if applicable, Federal courts located in the District of Columbia ("Courts"). This choice of venue is intended to be mandatory and the parties' waive any right to assert forum non conveniens or similar objection to venue. Each party hereby consents to in personam jurisdiction in the Courts. Contractor

must submit all claims or other disputes to the procurement specialist for informal resolution prior to initiating any action in the Courts and must work with USAC in good faith to resolve any disputed issues. A dispute over payment or performance, whether informal or in the Courts, shall not relieve Contractor of its obligation to continue performance of the Contract and Contractor shall proceed diligently with performance during any dispute over performance or payment.

XXXIII. USAC AND APPLICABLE LAWS

USAC is not a Federal agency, a government corporation, a government controlled corporation or other establishment in the Executive Branch of the United States Government. USAC is not a contractor to the Federal Government and the Contract is not a subcontract under a federal prime contract. USAC conducts its procurements in accordance with the terms of a Memorandum of Understanding with the FCC, which requires USAC and its Contractors to adhere to certain procurement-related provisions of the Code of Federal Regulations, 2 C.F.R. §§ 200.318-321, 200-323, 200.325-326 and App. II to C.F.R. Part 200 (collectively “Procurement Regulations”). Contractor shall comply with the procurement standards and all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under the Contract.

XXXIV. RIGHTS IN THE EVENT OF BANKRUPTCY

All licenses or other rights granted under or pursuant to the Contract are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, or any replacement provision therefore (the “Code”), licenses to rights to “intellectual property” as defined in the Code. The parties agree that USAC, as licensee of such rights under Contractor, shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Contractor under the Code, USAC shall be entitled to retain all of its rights under the Contract and shall not, as a result of such proceedings, forfeit its rights to any Material, license, Software, Data or works made for hire.

XXXV. NON EXCLUSIVITY

Except as may be set forth in the Contract, nothing herein shall be deemed to preclude USAC from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Contractor hereunder or from independently developing or acquiring goods or services that are similar to, or competitive with, the goods or services, as the case may be, contemplated under the Contract.

XXXVI. INDEPENDENT CONTRACTOR

Contractor acknowledges and agrees that it is an independent contractor to USAC and Contractor’s key personnel, employees, representatives, directors, officers, subcontractors and agents are not employees of USAC. USAC will not withhold or contribute to Social Security, workers’ compensation, federal or state income tax, unemployment compensation or other employee benefit programs on behalf of Contractor or Contractor personnel. Contractor shall indemnify and hold USAC harmless against any and all loss, liability, cost and expense (including attorneys’ fees) incurred by USAC as a result of USAC not withholding or making such payments. Neither Contractor nor any of Contractor’s personnel are entitled to participate in any of the employee benefit plans of, or otherwise obtain any employee benefits from, USAC. USAC has no obligation to make any payments to Contractor’s key personnel, employees, representatives, directors, officers, subcontractors and agents. Contractor shall not hold herself/himself

out as an employee of USAC and Contractor has no authority to bind USAC except as expressly permitted hereunder.

XXXVII. TEMPORARY EXTENSION OF SERVICES

USAC may require continued performance of any Contract services within the limits and at the rates specified in the Contract. Except as may be set forth in the Contract, USAC may extend the services more than once, but the total extension of performance hereunder shall not exceed six (6) months. The USAC Procurement representative may exercise an option to extend by written notice to Contractor within ten (10) days prior to expiration of the then current term.

XXXVIII. NOTICES

All notices, consent, approval or other communications required or authorized by the Contract shall be given in writing and shall be:

- (a) personally delivered,
- (b) mailed by registered or certified mail (return receipt requested) postage prepaid,
- (c) sent by overnight delivery service (with a receipt for delivery), or
- (d) sent by electronic mail with a confirmation of receipt returned by recipient's electronic mail server to such party at the following address:

If to USAC:

Vice President of Procurement and Strategic Sourcing

Universal Service Administrative Company

700 12th Street, NW, Suite 900

Washington, DC 20005

Email: To the designated USAC Contract Officer for this procurement, with a copy to usacprocurement@usac.org.

If to Contractor: To the address or email set forth in the Contractor's proposal in response to the Solicitation.

XXXIX. SURVIVAL

All provisions that logically should survive the expiration or termination of the Contract shall remain in full force and effect after expiration or early termination of the term of the Contract. Without limitation, all provisions relating to return of USAC information, confidentiality obligations, proprietary rights, and indemnification obligations shall survive the expiration or termination of the Contract.

XL. EXECUTION / AUTHORITY

The Contract may be executed by the parties hereto on any number of separate counterparts and counterparts taken together shall be deemed to constitute one and the same instrument. A signature sent via facsimile or portable document format ("PDF") shall be as effective as if it was an original signature. Each person signing the Contract represents and warrants that they are duly authorized to sign the Contract on behalf of their respective party and that their signature binds their party to all provisions

hereof.

SECTION D:

Attachments

Attachment List:

- Attachment 1: Bid Sheet
- Attachment 2: USAC 2020 Agreed-Upon Procedures Audit
- Attachment 3: Commission Rules for Audit
- Attachment 4: Audit Process and Timetable for 2020
- Attachment 5: Confidentiality Agreement

SECTION E: Instructions and Evaluation Criteria

I. GENERAL

A. CONTRACT TERMS AND CONDITIONS

The Contract awarded as a result of this RFP will be governed by, and subject to, the requirements, Terms and Conditions set forth in RFP sections A, B, C, and D and any attachments listed in section D (hereafter collectively referred to as the “Terms and Conditions”). Offeror’s submission of a proposal constitutes its agreement to the Terms and Conditions and their precedence over any other terms, requirements, or conditions proposed by Offeror.

The Offeror’s proposal shall identify deviations from, or revisions, exceptions or additional terms (collectively “exceptions”) to the Terms and Conditions, but only if such exceptions are clearly identified in a separate **Attachment B** to Volume II, “Exceptions to RFP Terms.” Proposals that include material exceptions to the Terms and Conditions may be considered unacceptable and render Offeror ineligible for award unless the Offeror withdraws or modifies any unacceptable exceptions prior to USAC’s selection of the successful Offeror for award. USAC will only consider changes or additions to the RFP Terms and conditions that are included in Offeror’s proposal. Exceptions to the Terms and Conditions will only be accepted during proposal submission and will not be reviewed or considered during the time of Contract negotiation. After selection of the awardee, USAC will not consider or negotiate any exceptions to the Terms and Conditions.

B. PERIOD FOR ACCEPTANCE OF OFFERS

The Offeror agrees to hold the fixed service category rates in its offer firm for 120 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

Proposals must:

- Concisely address USAC’s requirements, as set forth in Section B.VIII. Performance Requirements and Scope of Work (Section B and should not contain a significant amount of corporate boilerplate marketing information.
- Be submitted to USAC Procurement Department, no later than 11:00 AM ET on **June 24, 2020** (Proposal Due Date).
- Be submitted in the form of one electronic copy submitted to rfp@usac.org. The subject line for all email communication related to this solicitation should **only** state the Solicitation Number, AAD-20-070, of this RFP.

C. ANTICIPATED PROPOSAL SCHEDULE

DATE	EVENT
5/27/20	RFP Released
6/3/20	Questions Due to USAC by 11:00 AM ET at rfp@usac.org
6/9/20	Answers posted by USAC
6/24/20	Proposal Due to USAC by 11:00 AM ET at rfp@usac.org

To be timely, Offeror's proposal must be received by USAC by the Proposal Due Date at the email address specified above. Any offer, modification, revision, or withdrawal of an offer received at the USAC office designated in the solicitation after the Proposal Due Date and Time is "late" and will not be considered by USAC, unless USAC determines, in its sole discretion, that (1) circumstances beyond the control of Offeror prevented timely submission, (2) consideration of the offer is in the best interest of USAC, or (3) the offer is the only proposal received by USAC.

D. SUBMISSION OF QUESTIONS

USAC will only accept written questions regarding the RFP. All questions must be emailed to rfp@usac.org no later than June 3, 2020 11:00 AM Eastern Time (ET). USAC plans to post all questions and responses under this procurement on our website on June 9, 2020 5:00 PM ET.

E. AMEND, REVISE OR CANCEL RFP

USAC reserves the right to amend, revise or cancel this RFP at any time at the sole discretion of USAC and no legal or other obligations are assumed by USAC by virtue of the issuance of this RFP, including payment of any proposal costs or expenses, or any commitment to procure the services sought herein.

II. CONTRACT AWARD

USAC intends to evaluate offers and make a single award. USAC may reject any or all offers if such action is in the public's or USAC's interest; accept other than the lowest offers; and waive informalities and minor irregularities in offers received.

III. IDENTIFICATION OF CONFIDENTIAL INFORMATION

The proposal shall clearly and conspicuously identify information contained in the proposal that the Offeror contends is Confidential Information. *See* Section C.XVI.

IV. PROPOSAL VOLUMES COVER PAGE

Each volume of Offeror's proposal must contain a cover page. On the cover page, please include:

- The name of the Offeror's organization,
- The Offeror's contact name and title,
- The Offeror's contact information (address, telephone number, email address, website address),
- The Offeror's data universal numbering system ("DUNS") number,
- The date of submittal,
- A statement verifying the proposal is valid for a period of 120 days, and
- The signature of a duly authorized Offeror's representative.

V. PROPOSAL CONTENT

Each proposal shall be comprised of the following four (4) volumes:

A. CORPORATE INFORMATION (VOLUME I)

This volume must include:

1. A cover page, as outlined above.
2. An executive summary summarizing all key features of the proposal, including the identification of any subcontractors and affiliated individuals or firms that will assist the Offeror in performing the Contract.
3. Pricing information should not appear in Volume I.
4. A statement regarding any known conflicts of interest.
 - a. USAC procurements are conducted with complete impartiality and with no preferential treatment. USAC procurements require the highest degree of public trust and an impeccable standard of conduct. Offerors must strictly avoid any conflict of interest or even the appearance of a conflict of interest, unless USAC has otherwise approved an acceptable mitigation plan.
 - b. Offerors must identify any actual or potential conflicts of interest including current USAC vendors involving the Offeror or any proposed subcontractor, or any circumstances that give rise to the appearance of a conflict of interest, and the means by which it proposes to avoid, neutralize, or mitigate such conflicts. Offerors shall identify such conflicts or potential conflicts or appearance issues to USAC and provide detailed information regarding the nature of the conflict. Examples of potential conflicts include, but are not limited to: (1) any ownership, control or other business or contractual relationship(s), including employment relationships, between the Offeror (or proposed subcontractor) and any USF Stakeholder; (2) an Offeror has a direct personal or familial relationship with a USAC or FCC employee;

(3) a former employee of USAC or FCC who had access to confidential procurement-related information works for the Offeror; (4) a USAC or FCC employee receives any type of compensation from the Offeror, or has an agreement to receive such compensation in the future; (5) Offeror has communications with a USAC or FCC employee regarding future employment following the issuance of the RFP for this procurement; (6) any employment or consultation arrangement involving USAC or FCC employees and the Offeror or any proposed subcontractor; and (7) any ownership or control interest in the Offeror or any proposed subcontractor that is held by an FCC or USAC employee. Offerors must also identify any participation by the Offeror, or any proposed subcontractor(s) or personnel associated with the Offeror, in any of the universal service programs. The requirement in this Section E.V.A applies at all times until Contract execution.

- c. Offerors shall propose specific and detailed measures to avoid, neutralize, or mitigate actual, potential and/or apparent conflicts of interest raised by the affiliations and services described above. If USAC determines that Offeror's proposed mitigation plan does not adequately avoid, neutralize or mitigate any actual or potential conflict of interest, or the appearance of a conflict of interest, Offeror will not be eligible for award of a contract.

B. TECHNICAL (VOLUME II)

This volume must include:

1. A cover page, as outlined above.
2. A summary detailing Offeror's experience providing ~~security control assessments in the capacity the services~~ described in Section B of this RFP.
3. An in-depth discussion of Offeror's technical approach to providing the services listed in Section B.VI., along with a clear statement of whether or not the Offeror's performance of the Contract will comply with all requirements, Terms and Conditions set forth in the RFP. Offerors must submit a detailed response to this RFP. The Offeror must clearly state whether it will comply with all requirements and Terms and Conditions set forth in the RFP and provide detailed information about how it will fulfill the requirements of the RFP. Any deviations from, or exceptions to, the requirements or Terms or Conditions contained in this RFP must be clearly identified in an Attachment B to Volume II.

Note: Offers that include material deviations from, or take material exceptions to, RFP requirements, Terms or Conditions will be evaluated as technically unacceptable and will be ineligible for award unless USAC subsequently amends the RFP to modify the requirements or, if discussions will be held, decides to address the deviations/exceptions during discussions and thereby resolves the deviations/exceptions are thereby resolved.

4. Technical proposals that merely repeat the requirements set forth in the RFP and state that Contractor “will perform the statement of work” or similar verbiage will be considered technically unacceptable and will not receive further consideration. USAC is interested only in proposals that demonstrate the Contractor’s expertise in performing engagements of this type as illustrated by the Offeror’s description of how it proposes to perform the requirements set forth in this RFP.
5. Capabilities. Describe Offeror’s capabilities for performing the Contract, including personnel and technical resources and management capabilities. If applicable, describe how subcontractors or partners are used and how rates are determined when using subcontractors. Provide a list of firms, if any, that will be used. Additionally provide information regarding the following:
 - a. Describe the resources your company would use achieve the Contract objectives.
 - b. Describe how your firm has successfully met schedule constraints in performing similar projects.
6. Experience. Describe your firm’s experience with providing the related services as detailed in Section B of this RFP. Provide examples of two or more similar projects to include project scope, size, and complexity, and types of positions with length of assignments. Additionally provide information regarding the following:
 - a. Experience in conducting audits in accordance to GAAS and GAGAS.
 - b. Experience providing audit or related services for operation of telecommunications services or information technology.
 - c. Experience, if any, with state universal service funds or with federal USF contributors or one or more of the Universal Service Support Mechanisms.
7. Key Personnel. Identify by name all key personnel. Describe the technical knowledge and experience of proposed personnel in the requested services with respect to, but not limited to, experience and qualifications including depth of knowledge, expertise and number of years. It is preferred that the bidder provide two (2) clients in which the proposed held a similar position. Indicate any other personnel that will be assigned to USAC and his/her role on the contract. Provide a brief summary of each of these professional staff members’ qualifications to include education and all relevant experience.
 - a. Contractor shall provide the resumes/biographies of **the Key Personnel identified in Section B.VII.B. ~~three (3) sample executive peer advisors~~**

- b. Submit resumes/biographies for all key personnel, as an attachment (**Attachment 2**) to the technical volume, no longer than two (2) pages in length per resume.
- c. If Contractor, at the time of proposal and prior to the award of the Contract, has information that any such key personnel anticipate terminating his or her employment or affiliation with Contractor, Contractor shall identify such personnel and include the expected termination date in the proposal.

C. PAST PERFORMANCE EVALUATION (VOLUME III)

This volume must include:

- 1. A cover page, as outlined above.
- 2. A list of three (3) current or recently completed contracts (no older than 5 years from the date of the solicitation) similar in scope to those required by this solicitation. Each entry on the list **must** contain:
 - a. the client's name;
 - b. the project title;
 - c. the period of performance;
 - d. the Contract number;
 - e. the Contract value;
 - f. a primary point of contact (including the telephone number and email address for each point of contact, if available);
 - g. a back-up point of contact.

If a back-up point of contact is not available, please explain how USAC may contact the client in the event the primary point of contact fails to respond.

- a. For each past performance, provide a description of the relevant performance and the name and telephone number for USAC to contact for past performance information for each project discussed. A past performance description will consist of:
 - (i) an overview of the engagement;
 - (ii) a description of the scope of work performed;
 - (iii) its relevance to this effort;
 - (iv) the results achieved.

This is the time to identify any unique characteristics of the project, problems encountered, and corrective actions taken. Each overview shall not exceed one (1) page.

- b. USAC will attempt to contact past performance references identified in the proposal for confirmation of the information contained in the proposal and/or will transmit a past performance questionnaire to the contacts identified in the Offeror's proposals. Although USAC will follow-up with the contacts, the Offeror, not USAC, is responsible for ensuring that the questionnaire is completed and returned by the specified date in USAC's transmittal. If USAC is unable to reach or obtain a reference for the project, USAC may not consider the Contract in an evaluation of past performance.

D. PRICE (VOLUME IV)

This volume must include:

1. A cover page, as outlined above.
2. Completed pricing information in **Attachment 1: Bid Sheet**.
 - a. The fixed price must be *fully burdened* and must include wages, overhead, general and administrative expenses, taxes and profit.

E. PAGE COUNT LIMITS

Page count, for each Volume including the Cover page, may not exceed the below:

1. Volume I – Corporate Information; may not exceed three (3) pages, including Cover page.
2. Volume II – Technical; may not exceed eight (8) pages including Cover page; however excluding **Attachment 2** (Resumes)
3. Volume III – Past Performance Information; may not exceed four (4) pages, including Cover page.
4. Volume IV – Price; may not exceed two (2) pages, including Cover page.

Any proposals received exceeding the page count, will be considered technically unacceptable and may not receive further consideration.

VI. EVALUATION

A. EVALUATION FACTORS

USAC will award a single contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to USAC, price and other factors considered. The following factors, which are listed in descending order of

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importance, shall be used to compare offers and select the awardee – technical, past performance, and price. When combined, the technical and past performance factors are significantly more important than price.

1. **Technical:** The technical sub-factors listed below in descending order of importance:
 - a. Technical Approach
 - b. Capabilities
 - c. Experience
 - d. Key Personnel

2. **Past Performance:** Past performance information will be evaluated to assess the risks associated with an Offeror's performance of this effort, considering the relevance, how recent the project is (no older than 5 years from the date of the solicitation), and quality of the Offeror's past performance on past or current contracts for the same or similar services. Past performances The Offeror's past performance will be evaluated based on the Offeror's discussion of its past performance for similar efforts, information obtained from past performance references (including detailed references for the Offeror's proposed teaming partner(s) and/or subcontractor(s), as applicable) and information that may be obtained from any other sources (including government databases and contracts listed in the Offeror's proposal that are not identified as references).

3. **Price Evaluation:** USAC will evaluate price based on the firm fixed price, listed in the Bid Sheet. While price is an evaluation factor, USAC may not necessarily award a Contract to the lowest priced Offeror. USAC further recognizes that the size of a company, its name-recognition, geographical offerings and the expertise/experience of staff impacts the price of the service category rates offered by the firms, thus making comparisons of differently situated firms less meaningful. Therefore, when considering rates, USAC will use the rates of similarly situated companies for reasonableness and comparison purposes. Price may become a more important selection factor if the ratings for the non-price factors are the same or very close to the same. In addition to considering the total prices of the Offerors when making the award, USAC will also evaluate whether the proposed prices are realistic (i.e., reasonably sufficient to perform the requirements) and reasonable. Proposals containing prices that are determined to be unrealistic or unreasonable will not be considered for award.

B. DOWN-SELECT PROCESS

USAC may determine that the number of proposals received in response to this RFP are too numerous to efficiently conduct a full evaluation of all evaluation factors prior to establishing a competitive range. In such case, USAC may conduct a down-select process to eliminate Offerors, prior to discussions, from further consideration based on a comparative analysis of Offerors proposals, with primary focus on the price proposal, but USAC may, in its sole discretion, consider other factors such as failure to follow instructions as provided, quality of

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proposal, technical capabilities and past performance. Proposals that include proposed prices that are significantly higher than the median proposed price for all Offerors may be excluded from the competition without evaluation under the other evaluation factors. Proposals that contain prices that are unrealistically low in terms of sufficiency to perform the Contract may also be excluded from the competition.

C. RESPONSIBILITY DETERMINATION

USAC will only award a contract to a responsible Offeror. USAC will make a responsibility determination based on any available information, including information submitted in an Offeror's proposal. In making a responsibility determination, USAC will consider whether:

1. the Offeror has sufficient resources to perform the Contract;
2. the Offeror has a satisfactory record of performance, integrity and business ethics;
3. the Offeror has the accounting systems and internal controls, quality assurance processes and organizational structure and experience necessary to assure that contract work will be properly performed and accurately invoiced;
4. the Offeror has the facilities, technical and personnel resources required to perform the Contract; and
5. The Offeror is not excluded from Government contracting, as listed on the excluded parties list in <https://www.sam.gov>.