

LEASING OF GENERAL PURPOSE COMMERCIAL PRODUCTS

**Lease-to-Ownership Plan (LTOP)
Operating Lease Plan**

1. STATEMENT OF GOVERNMENT INTENT

For the purpose of this solicitation, Lease Term is defined as the duration of the lease in months (not to exceed 60 months) as shown on the Ordering Agency's initial delivery order. It is understood by all parties to this contract that this is a leasing arrangement. In that regard, the Government anticipates fulfilling the leasing agreement subject to the availability of appropriated funds and the continued needs of the Ordering Agency. The Ordering Agency, upon issuance of any delivery order intends to use the equipment for the lease term specified in the initial delivery order so long as the needs of the Ordering Agency for the equipment or functionally similar equipment continues to exist and adequate funds are appropriated. Each lease hereunder shall be initiated by a delivery order which shall, either through a statement of work or other attachment specify the equipment being leased, and the terms of the transaction as required in the specific Special Item Number (SIN) description. The lease commencement is the date of acceptance as defined by FAR Subpart 12.4

The first period or initial term of the leasing agreement will be through September 30th of the fiscal year in which the order is placed, or as extended by act of Congress, unless the ordering office has multi-year funding.

Ordering Agencies are advised to follow the guidance provided in Federal Acquisition Regulation (FAR) Subpart 7.4 Equipment Lease or Purchase, and to review the lease terms and conditions prior to ordering and obligating funding for a lease. Ordering Agencies are responsible for the obligation of the funding consistent with fiscal law when entering into any lease arrangement.

2. ORDERING PROCEDURES

- (a) Ordering Agencies are strongly encouraged to conduct a needs assessment prior to the procurement.
- (b) When the Ordering Agency expresses an interest in leasing a product(s), the Ordering Agency will provide the following information to the prospective vendors:
 - (i) Which product(s) is (are) required.
 - (ii) The required delivery date.
 - (iii) The proposed term of the lease.
 - (iv) Where the equipment will be located.
 - (v) Description of the intended use of the equipment.
- (c) The contractor will respond with:
 - (i) Whether the contractor can provide the required equipment.
 - (ii) The monthly payment based on the rate and the initial and residual values of the equipment.
 - (iii) The estimated cost, if any, of applicable State or local taxes.
 - (iv) A confirmation of the availability of the equipment on the required delivery date.
 - (v) Extent of warranty coverage, if any, of the leased products.
 - (vi) Cite the cost of any mandatory maintenance as applicable.
 - (vii) The Termination Ceiling Charges, as applicable. (See Section 13, Early Termination Charges).
- (d) The ordering agency and contractor shall agree upon a termination ceiling charge which is established in accordance with the appropriate formula in Section 13. Early Termination Charges (See FAR Subpart 17.1)
- (e) The Contracting Officer shall insert the agreed upon termination ceiling charge for the first year in the order and modify it for successive years upon availability of funds.

3. ORDERS AND PERIOD OF LEASING ARRANGEMENTS

- (a) **Lease Options:** At a minimum, Ordering Agencies placing orders for equipment under a leasing arrangement must specify on the delivery order the applicable leasing SIN under which the equipment is being leased.
 - (i) Lease to Ownership Plan (LTOP) (Lease/Purchase)
 - (ii) Lease with Option to Own (Operating Lease)
- (b) **Annual Year Funding.** When using annually appropriated funds when placing an order for leasing, the following applies:
 - (i) Any lease executed by the Ordering Agency shall be on the basis that the known requirements exceed the remainder of the fiscal year. Due to funding constraints, however, the Ordering Agency cannot normally commit to a term longer than one fiscal year at the commencement of the lease. To facilitate the exercise of renewal options for future fiscal years, the lease term will be specified in the delivery order. All orders for leasing shall remain in effect through the Government fiscal year (or as extended by Act of Congress), or the planned expiration date of the lease, whichever is earlier, unless the Ordering Agency exercises its rights hereunder to acquire title to the equipment prior to the planned expiration date. Despite the fact that the delivery order will specify the total lease term, orders under the lease shall not be deemed to obligate succeeding fiscal year's funds or to otherwise commit the Ordering Agency to a renewal.

- (ii) All orders for leasing automatically terminate at the end of the Government fiscal year (or as extended by Act of Congress) or the contract term, whichever is earlier. However, Ordering Agencies should notify the contractor in writing thirty (30) calendar days prior to the expiration of such orders as to the Government's intent to renew. Ordering Agencies are instructed to follow the guidelines set forth in Paragraph 14 of this section with regard to termination of lease terms for non-appropriation or agency decisions not to renew. Should Ordering Agencies decide to terminate the lease prior to the expiration of the lease term under any other condition other than those set forth in Paragraph 14, early termination charges shall apply, (See Section 13, Early Termination).
- (c) **Multi-Year Funding Within contract Period:** Where an Ordering Agency's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the Ordering Agency may place a schedule contract order for leasing for a period up to the expiration of its period of appropriation availability, or the expiration of the contract period whichever comes first, notwithstanding the intervening fiscal years.
- (d) In recognition of the types of products on this Schedule and the potential adverse impact to the Government's mission, the Government's quiet and peaceful possession and unrestricted use of the equipment shall not be disturbed in the event the equipment is sold by the Contractor, or in the event of bankruptcy of the contractor, corporate dissolution of the Contractor, or other event, so long as the Government is not in default. The equipment shall remain in the possession of the Government until the expiration of the lease. Any assignment, sale, bankruptcy, or other transfer of the leased equipment 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.
- (e) **Assignment of Claims:** In accordance with GSAR 552.232-23 Assignment of Claims under this contract, the Ordering Agency Contracting Officer may approve the assignment of claim for an order under these leasing Special Item Numbers (SINs) in accordance with FAR 32.803. Contractors cannot prohibit or otherwise limit the Government's ability to setoff lease payments under any lease or assignment of a lease.
- (f) **Government Rights under Lease:** The Government does NOT waive any performance requirements, warranty rights nor other contract or statutory rights, such as the right to set off payments against other Government debt, as a part of the lease. The Government's acceptance of an assignment of a lease, does not waive any of the Government contract provisions.

4. MAINTENANCE AND INSTALLATION

- (a) Maintenance and installation, when applicable, are not included in the lease payments. The Ordering Agency will obtain installation and/or maintenance from the contractor or a designated authorized service provider.
- (b) When installation and/or maintenance are to be performed by the Contractor, the payments, terms and conditions will be as stated in this contract. Maintenance payments and terms and conditions during subsequent renewal periods of this lease will be those of the prevailing GSA Schedule contract in effect.

5. MONTHLY PAYMENTS

- (a) Prior to the placement of an order under this SIN, the Ordering Agency and the contractor must agree on a "base value" for the products to be leased. The base value will be the contract purchase price (less any discounts). For operating leases the residual value is independent of the purchase option price. The residual value will be used in the calculation of the original lease payment.
- (b) To determine the initial lease term payment, the contractor agrees to apply the negotiated lease factor to the agreed upon base value:

Examples: 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.

or

The Contractor's most favored finance rate factor as agreed to during contract negotiations.

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) The purchase option price will be based upon the unamortized principle of the product. The 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. In the event the Government desires, at any time, to acquire title to equipment leased hereunder, the Government may make a one-time lump sum payment.

6. EXPIRATION OF LEASE TERM:

- (a) Upon the expiration of the Lease Term, the Ordering Agency will:
 - (i) Upon 30 day written notice, return the Equipment to the Contractor or -
 - (ii) Purchase the equipment at the fair market value of the equipment or;
 - (iii) Obtain requirements in accordance with FAR 8.4 (Ordering Procedures) by issuing a new request for quote.

Note: Customers are advised to see paragraph 15-18 for additional lease expiration provisions.

7. ADDITIONS

For the purpose of this solicitation the definition of an addition is defined as follows:

Additions: The addition of accessories features or other enhancements available for lease under this contract to an existing model (base unit) already installed. Additions shall not change the functionality of the installed equipment.

- (a) The ordering agency may require the contractor to modify existing leased equipment through order modifications, provided the modifications are customarily offered by the contractor for the equipment leased. The price of the modification will be mutually agreed upon by the ordering agency and the contractor. The ordering agency may pay for the modification at full price upon acceptance, or the modification price may be leased coterminous with the initial lease term. The contract lease interest rate in effect at the time of order of the modification will be used to calculate the monthly payment applicable to the modification. For Operating leases a residual value should be negotiated for the modification.

For example:

Lease to ownership

Price of the modification - \$1,000

Months remaining on the equipment lease - 19

Current contract lease factor at the time of the modification - 0.045 for 24 month lease, the term closest to remainder of lease.

Interest equivalent (i) for lease factor is 0.625% per month $[rate(N,-pmt,Price)/rate(24,-0.045,1)]$

Modification Payment \$55.98 $[PMT(i,N,P)/PMT(.625\%,19,1000)]$

- (b) The Ordering Agency may affix or install any accessory, addition, equipment or device on the equipment ("additions") provided that such additions:
- (i) can be removed without causing material damage to the equipment;
 - (ii) do not reduce the value of the equipment; 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.
- (c) 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 equipment, and restore the equipment to its original configuration.
- (d) Any additions, which are not removable, will become the contractor's property (lien free).
- (e) Payment may be modified based on the schedule price adjusted to reflect the actual period until the end of the lease term.
- (f) Should the Ordering Agency elect to replace equipment under the lease, a new FAR 8.4 competition is required. This does not preclude substitution for failure to perform. Ordering Agencies are advised that when making the decision to conduct a new competition, consideration must be given to the early termination of existing equipment and/or the financial considerations involved with the rollover of existing equipment should the current contractor prevail. Ordering Agencies are strongly advised to perform a cost benefit analysis in accordance with their agency procedures and policies with regard to rollovers.

8. RISK OF LOSS OR DAMAGE

The Government is relieved from all risk of loss or damage to the equipment during periods of transportation, installation, and during the entire time the equipment 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 equipment during relocation unless the Contractor shall undertake such relocation.

9. WARRANTY

In accordance with Clause 552.246-73 under this contract, the contractor's warranty, as stated in the contractor's GSA Authorized Price List, is applicable to the lease.

10. EQUIPMENT PERFORMANCE

- (a) The equipment supplied must be in operational or repairable condition throughout the term of the lease.
- (i) Operational condition means the equipment is performing as intended, all accessories are operating as intended and in all respects the equipment is performing up to the standards in the manufacturer's specifications.
 - (ii) Repairable condition means that the equipment can be repaired by a qualified technician within the terms of the maintenance agreement. Additionally, all required replacement parts are available and the equipment down time does not exceed that specified in the maintenance agreement.
- (b) After a thirty (30) day notice and cure period, if the equipment continues to fail to be operational or repairable as defined above, the Ordering Agency may take those remedies available to it under either the contractor warranty provisions or default clause set forth in FAR 52.212-4(m). Such recourse will not be the basis for increasing the monthly payment or extending the term of the lease.
- (c) Maintenance and Support:

Preventive Maintenance: The contractor shall provide preventive maintenance at least equal to the commercial practice. Intervals between scheduled maintenance services shall be no greater than those provided to commercial customers for the same products.

Response to Service Calls: At minimum, during normal working hours (as specified by the using activity), Monday through Friday (excluding holidays observed by the Government), the contractor shall respond to verbal or written requests for service calls. The contractor shall repair the products within either nine (9) working hours or sixteen (16) working hours (as specified by the User Activity) after the verbal or written request for the service call. However, for products identified as critical, the contractor shall respond to verbal requests for service calls and shall repair the products within four (4) working hours. Products designated critical will be identified by the ordering activity in the order and shall not exceed 5% of the total number of products on the order. The contractor's response time on a service call starts, when authorized personnel of an ordering activity place a verbal request to the contractor for a service call or a written request is received by the contractor requesting a service call, whichever is earlier.

Contractors are required to submit a contingency plan to maintain full and proper operation of products and to avoid extended delays for repair or replacement of products.

Repair and Maintenance Service: Offerors shall submit and include in their pricelist's, a list of Names, addresses, and phone number(s) of authorized representatives, responsible to the contractor, who may be contacted by ordering activities for repair and maintenance of products. Only those authorized representatives listed may render maintenance service, unless the list is subsequently modified by mutual agreement between the contractor and the Contracting Officer, to add or terminate authorized representatives. Contractor shall notify ordering activities of any changes to authorized repair and maintenance representatives.

11. TITLE

During the Lease Term, the equipment shall always remain the property of the contractor. The Government shall have no right or interest in the equipment except as provided in this leasing agreement and shall hold the equipment subject and subordinate to the rights of the contractor.

12. STATE AND LOCAL TAXES (52.229-1):

Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption.

See FAR clauses 52.229-1 State and Local Taxes; 52.229-3 Federal, State, and Local Taxes, which are incorporated by reference.

13. EARLY TERMINATION CHARGES

Equipment leased under this agreement may be terminated at any time during a Government fiscal year by the Ordering Agency's Contracting Office responsible for the delivery order in accordance with FAR 52.212-4, paragraph (l) *Termination for the Ordering Activity's Convenience*.

The Termination Ceiling Charge is a limit on the amount that a contractor may claim from the Ordering Agency on the termination for convenience of a lease or failure to renew a lease prior to the end of the lease term for reasons other than those set forth in section 14, Termination for Non-Appropriation. Termination ceiling charges will apply for each year of the lease term (See FAR 17.1). The Ordering Agency and contractor shall establish a Termination Ceiling amount. The Contracting Officer shall insert the Termination Ceiling Charge for amount of the first year in the order and modify it for successive years upon availability of funds.

No claim will be accepted for future costs: supplies, maintenance, usage charges or interest expense beyond the date of cancellation. In accordance with the bona fide needs rule, all termination charges must reasonably represent the value the Ordering Agency received for the work performed at cancellation based upon the shorter lease term. No termination cost will be associated with the expiration of the lease term.

Formula 1: FOR Lease To Own (LTOP)

Termination Fee = $\text{pmt}(i,n,P) * n - \text{sum of PMT} - \text{FMV}$

"P" = Schedule Price of equipment at time of order, inclusive of Ordering Agency negotiated price reductions should be considered.

"PMT" = Actual Monthly Payment paid on order to termination

"i" = Monthly Interest Rate applicable to the order

"n" = number of months from order to termination

"pmt" = Monthly payment corrected to actual lease term"

"FMV" = Fair Market Value of equipment if returned at termination. Unit price adjustments, residual or FMV values used to calculate operating leases, should not be considered

Formula 2: For Operating leases

Termination Fee = $\text{PV}(i, n, \text{-PMT})$

"PV"= Present Value

"i" = Interest rate per month, equal to the interest rate applicable to the calculation of the payment on the delivery order

"n"= Number of months remaining from termination date to the end of the lease term

"PMT" = Current monthly payment amount of the original payments through end of the lease

14. TERMINATION FOR NON-APPROPRIATION

The Ordering Agency 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 Agency. Therefore, it is unlikely that leases entered under the Lease to Own, Operating Lease, and all other equipment will be terminated prior to the full lease term. Nevertheless, the Ordering Agency's Contracting Officer may terminate or not renew leases at the end of any initial base period or renewal period under this paragraph if (a) it no longer has a bona fide need the equipment or functionally similar equipment; or (b) there is a continuing need, but adequate funds have not been appropriated to the ordering agency in an amount sufficient to continue to make the lease payments. If this occurs, the Ordering Agency will promptly notify the contractor and the equipment lease will be cancelled at the end of the last fiscal year for which funds were appropriated. The determination of the availability of funds is made solely by the Government.

15. LEASE EXTENSIONS

Extension of the present lease term is not permitted. Future requirements shall be procured in accordance with FAR 8.4, FSS Ordering Procedures.

16. LEASE EXPIRATIONS –LEASE TO OWN

Title to equipment installed automatically transfers to the Government upon conclusion of the Lease Term Agreement.

17. LEASE EXPIRATIONS –OPERATING LEASE AND ALL OTHER EQUIPMENT

Extension of the present lease term is not permitted. Future requirements shall be procured in accordance with FAR 8.4 covering Ordering Procedures.

Unless notified by the Ordering Agency that the Government intends to exercise its option to purchase the equipment, the equipment, upon the expiration of the lease term, will be removed by the contractor at the earliest practicable time. The Ordering Agency is responsible for removal charges. Unless specified under the schedule contract, removal charges will be administered outside the scope of the contract.

The equipment shall be in the same condition as when delivered, with the exception of ordinary wear and tear. The contractor shall conduct a timely inspection of the returned products and within thirty (30) days of the return, assert a claim if the condition of the equipment exceeds normal wear and tear.

In the event the Ordering Agency desires, at any time, to acquire title to equipment leased hereunder, the price will be mutually agreed upon by the parties.

18. RETURN OF EQUIPMENT

The Government will provide written instructions for the removal of the equipment. The Ordering Agency is required to provide serial numbers and exact location of equipment for pick up.

Upon receipt of this notice the contractor shall remove the equipment within thirty (30) days or a mutually agreed date and time. The Ordering Agency is responsible for removal charges. Unless specified under the schedule contract, removal charges will be administered outside the scope of the contract.

The equipment shall be in the same condition as when delivered, with the exception of ordinary wear and tear. The contractor shall conduct a timely inspection of the returned products and within thirty (30) days of the return, assert a claim if the condition of the equipment exceeds normal wear and tear.

Equipment not removed by the contractor within thirty (30) days of the date of notification by the Order Agency shall be considered as abandoned and subject to such disposal as the Government may deem appropriate.