

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF PAGES 1 210
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2. CONTRACT NO. DACA61-03-D-	3. SOLICITATION NO. DACA61-02-R-0004	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED 12 SEP 2002	6. REQUISITION/PURCHASE NO.
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7. ISSUED BY US ARMY ENGINEER DISTRICT, PHILADELPHIA CONTRACTING DIVISION WANAMAKER BUILDING 100 PENN SQUARE EAST PHILADELPHIA PA 19107-3390 CODE DACA61 TEL: 215-656-6932 FAX: 215-656-6780	8. ADDRESS OFFER TO (If other than Item 7) CODE See Item 7 TEL: FAX:
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NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 3 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in block 7 until 1600 local time Oct. 18, 2002
(Hour) (Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME WILLIAM A BAILEY	B. TELEPHONE (Include area code) (NO COLLECT CALLS) 215-656-6932	C. E-MAIL ADDRESS William.A.Bailey@usace.army.mil
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)

14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
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15B. TELEPHONE NO (Include area code)	15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>	17. SIGNATURE	18. OFFER DATE
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AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)() <input type="checkbox"/> 41 U.S.C. 253(e)()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)	ITEM
24. ADMINISTERED BY (If other than Item 7) CODE		25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER (Type or print) TEL: EMAIL:		27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	
		28. AWARD DATE	

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

SECTION B SUPPLIES OR SERVICES AND PRICES

SERVICES AND SCHEDULE

B.1.0 Description of Services

Provide world-wide emergency power support for the U.S. Army Corps of Engineers in support of U. S. Military Contingencies. The Contractor shall provide single source responsibility for all generator set activities. Generator set activities are defined as assessing power needs, preparation, hauling, installing, preventive maintenance, service, fueling, relocating and recovering engine-generator sets and associated fuel systems, including transmission and distribution systems maintenance. Such support may be rendered by use of either CFE (Contractor Furnished Equipment) ranging in size from 100 Kw up to a Power Plant or GFE (Government Furnished Equipment-GFE generator sets range in size from 750 kW up to 1MW). The Contractor shall be responsible for providing all labor, transportation, equipment and supervision and required internal logistical support to perform generator set activities. The period of performance shall be from December 1, 2002, or date of award-whichever is later, through November 30, 2007.

Line item 0001, 0002, 0003, 0004, 0005, 0006: Lease of CFE—Lease price must include preparation, installation, preventative maintenance, service, and incidental supplies for the generators. Note: transportation (delivery and return) of CFE shall be included in Line Item 7, Mobilization and de-mobilization.

Line item 0007: Mobilization and de-mobilization— Mobilization and de-mobilization costs are those costs associated with establishing and disestablishing the Contractor's site of operations (e.g., transporting personnel and equipment, set-up and closing of an office, etc.). The Government has entered \$100,000.00 in the Schedule for this item. This amount is only for award evaluation purposes. Payment for this item will be limited to actual costs. To receive payment, the Contractor must furnish proper invoices. No mark-ups for overhead, profit or any other costs will be allowed (See C 3.1 and C 6). The Government will reimburse reasonable costs of Mobilization and Demobilization up to a maximum of eighty percent per task order (80 %). Offerors may anticipate two types of mobilization and de-mobilization scenarios. The first may be the establishment of a full 'turn key' operation by the contractor, the second may be limited solely to the operation and maintenance of GFE power systems.

Line item 0008: Conferences and Meetings- If a conference, workshop or meeting takes place after a Contractor is mobilized, the Contractor shall participate without additional compensation. If a conference or meeting takes place prior to mobilization or after demobilization, the Contractor shall be required to participate and will be compensated under this CLIN. These meetings may take place at any time during the life of the contract at a location determined by the Government. Per diem and travel expenses shall not exceed the Joint Travel Regulation for U. S. Government employees. The Contractor

Lease of CFE (the offered price shall include preparation, installation, preventative maintenance, service, and incidental supplies costs for contractor furnished equipment) in the following sizes for a minimum performance period of 14 days.

Area 1, Europe, including all the Mediterranean rim countries

Item Number	Quantity	Unit of Purchase	Unit Price	Extended Price
0001AA. 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
0001AB. 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
0001AC. 750 Kw to 1 Mw	2	Each	\$ _____	\$ _____
0001AD. Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 2, Remainder of Africa

0002AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
0002AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
0002AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
0002AD Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 3, Central Asia (includes but not limited to Afghanistan, Uzbekistan, Krygystan, Kahzikstan, Kuwait and Pakistan)

0003AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
0003AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
0003AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
0003AD Power plant over 1 Mw	3	Each	\$ _____	\$ _____

Area 4, Southeast Asia (includes, but not limited, to Thailand and Philipinnes)

0004AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
0004AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
0004AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
0004AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 5, Republic of Korea

0005AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
0005AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
0005AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
0005AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 6, Central America (includes, but not limited to, Mexico, Honduras, Belize, and Panama)

0006AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
0006AB 500 Kw to 750 Kw	2	Each	\$_____	\$_____
0006AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
0006AD Power plant over 1 Mw	1	Each	\$_____	\$_____
0007 Mobilization and de-mobilization (see page B-1)	2	Each	\$100,000.00	\$100,000.00
0008 Conferences and meetings (see page B-1 and C 8)	1	Day	\$_____	\$_____
0009 Travel and Per Diem (see page B-2)	1	Lump Sum	\$100,000.00	\$100,000.00

0010	Incidental Supplies/Services (see page B-2 and Section J. Offeror shall insert the total price of the Addendum on this line item)	1	Lump Sum	\$ _____	\$ _____
0011	Fuel Operations (see page B-2, C 3.7 and C 3.8)	1	Lump Sum	\$100,000.00	\$100,000.00
0012	Power Assessments (see C 3.2)	1	Each	\$ _____	\$ _____

GFE Operations and Maintenance: The following line item numbers apply only to those instances where the contractor will operate and maintain GFE power systems

Preparation and transportation: Round-trip-with a distance up to a 100 mile radius, defined as from where the generator is loaded onto the contractor’s vehicle to where the generator is removed from the contractor’s vehicle and placed either back into service or into storage (see C 3.4).

0013AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
0013AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
0013AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Installation (see C 3.5)

0014AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
0014AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
0014AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Preventative Maintenance (see C 3.6). Price shall be a daily rate (this price is distinguishable from service in that no minor repairs are performed).

0015AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
0015AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
0015AC	Power plant over 1 Mw	1	Day	\$ _____	\$ _____

Service (See C 3.6 .1 and 3.6.2). The price for Service shall be a daily rate for the types of service or repairs as specified and as accomplished by a journeyman electrician.

0016 AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
0016AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
0016AC	Power Plant over 1 Mw	1	Day	\$ _____	\$ _____

Relocating/Recovery of Generators (See C 3.8 and C 6). This is a separate and distinct function from the de-mobilization described for line item 0007.

0017AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
0017AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
0017AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

NOTE: There are four option periods. The line item numbering on the following pages corresponds to each option period. Specifically, all item numbers in the first option period will begin with the number 1 (1001, 1002, etc.). The second option year line item number will begin with the number 2, and so on.

FIRST OPTION PERIOD

Lease of CFE (the offered price shall include preparation, installation, preventative maintenance, service, and incidental supplies costs for contractor furnished equipment) in the following sizes for a minimum performance period of 14 days.

Area 1, Europe, including all the Mediterranean rim countries

Item Number	Quantity	Unit of Purchase	Unit Price	Extended Price
1001AA. 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
1001AB. 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
1001AC. 750 Kw to 1 Mw	2	Each	\$ _____	\$ _____
1001AD. Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 2, Remainder of Africa

1002AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
1002AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
1002AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
1002AD Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 3, Central Asia (includes but not limited to Afghanistan, Uzbekistan, Krygystan, Kahzikstan, Kuwait and Pakistan)

1003AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
1003AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
1003AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
1003AD Power plant over 1 Mw	3	Each	\$ _____	\$ _____

Area 4, Southeast Asia (includes, but not limited, to Thailand and Philipinnes)

1004AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
1004AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
1004AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
1004AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 5, Republic of Korea

1005AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
1005AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
1005AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
1005AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 6, Central America (includes, but not limited to, Mexico, Honduras, Belize, and Panama)

1006AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
1006AB 500 Kw to 750 Kw	2	Each	\$_____	\$_____
1006AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
1006AD Power plant over 1 Mw	1	Each	\$_____	\$_____
1007 Mobilization and de-mobilization (see page B-1)	2	Each	\$100,000.00	\$100,000.00
1008 Conferences and meetings (see page B-1 and C 8)	1	Day	\$_____	\$_____
1009 Travel and Per Diem (see page B-2)	1	Lump Sum	\$100,000.00	\$100,000.00

1010	Incidental Supplies/Services (see page B-2 and Section J. Offeror shall insert the total price of the Addendum on this line item)	1	Lump Sum	\$ _____	\$ _____
1011	Fuel Operations (see page B-2, C 3.7 and C 3.8)	1	Lump Sum	\$100,000.00	\$100,000.00
1012	Power Assessments (see C 3.2)	1	Each	\$ _____	\$ _____

GFE Operations and Maintenance: The following line item numbers apply only to those instances where the contractor will operate and maintain GFE power systems

Preparation and transportation: Round-trip-with a distance up to a 100 mile radius, defined as from where the generator is loaded onto the contractor’s vehicle to where the generator is removed from the contractor’s vehicle and placed either back into service or into storage (see C 3.4).

1013AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
1013AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
1013AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Installation (see C 3.5)

1014AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
1014AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
1014AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Preventative Maintenance (see C 3.6). Price shall be a daily rate (this price is distinguishable from service in that no minor repairs are performed).

1015AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
1015AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
1015AC	Power plant over 1 Mw	1	Day	\$ _____	\$ _____

Service (See C 3.6 .1 and 3.6.2). The price for Service shall be a daily rate for the types of service or repairs as specified and as accomplished by a journeyman electrician.

1016 AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
1016AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
1016AC	Power Plant over 1 Mw	1	Day	\$ _____	\$ _____

Relocating/Recovery of Generators (See C 3.8 and C 6). This is a separate and distinct function from the de-mobilization described for line item 0007.

1017AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
1017AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
1017AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

SECOND OPTION PERIOD

Lease of CFE (the offered price shall include preparation, installation, preventative maintenance, service, and incidental supplies costs for contractor furnished equipment) in the following sizes for a minimum performance period of 14 days.

Area 1, Europe, including all the Mediterranean rim countries

Item Number	Quantity	Unit of Purchase	Unit Price	Extended Price
2001AA. 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
2001AB. 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
2001AC. 750 Kw to 1 Mw	2	Each	\$ _____	\$ _____
2001AD. Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 2, Remainder of Africa

2002AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
2002AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
2002AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
2002AD Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 3, Central Asia (includes but not limited to Afghanistan, Uzbekistan, Krygystan, Kahzikstan, Kuwait and Pakistan)

2003AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
2003AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
2003AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
2003AD Power plant over 1 Mw	3	Each	\$ _____	\$ _____

Area 4, Southeast Asia (includes, but not limited, to Thailand and Philipinnes)

2004AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
2004AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
2004AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
2004AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 5, Republic of Korea

2005AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
2005AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
2005AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
2005AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 6, Central America (includes, but not limited to, Mexico, Honduras, Belize, and Panama)

2006AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
2006AB 500 Kw to 750 Kw	2	Each	\$_____	\$_____
2006AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
2006AD Power plant over 1 Mw	1	Each	\$_____	\$_____
2007 Mobilization and de-mobilization (see page B-1)	2	Each	\$100,000.00	\$100,000.00
2008 Conferences and meetings (see page B-1 and C 8)	1	Day	\$_____	\$_____
2009 Travel and Per Diem (see page B-2)	1	Lump Sum	\$100,000.00	\$100,000.00

2010	Incidental Supplies/Services (see page B-2 and Section J. Offeror shall insert the total price of the Addendum on this line item)	1	Lump Sum	\$ _____	\$ _____
2011	Fuel Operations (see page B-2, C 3.7 and C 3.8)	1	Lump Sum	\$100,000.00	\$100,000.00
2012	Power Assessments (see C 3.2)	1	Each	\$ _____	\$ _____

GFE Operations and Maintenance: The following line item numbers apply only to those instances where the contractor will operate and maintain GFE power systems

Preparation and transportation: Round-trip-with a distance up to a 100 mile radius, defined as from where the generator is loaded onto the contractor’s vehicle to where the generator is removed from the contractor’s vehicle and placed either back into service or into storage (see C 3.4).

2013AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
2013AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
2013AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Installation (see C 3.5)

2014AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
2014AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
2014AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Preventative Maintenance (see C 3.6). Price shall be a daily rate (this price is distinguishable from service in that no minor repairs are performed).

2015AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
2015AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
2015AC	Power plant over 1 Mw	1	Day	\$ _____	\$ _____

Service (See C 3.6 .1 and 3.6.2). The price for Service shall be a daily rate for the types of service or repairs as specified and as accomplished by a journeyman electrician.

2016 AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
2016AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
2016AC	Power Plant over 1 Mw	1	Day	\$ _____	\$ _____

Relocating/Recovery of Generators (See C 3.8 and C 6). This is a separate and distinct function from the de-mobilization described for line item 0007.

2017AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
2017AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
2017AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

THIRD OPTION PERIOD

Lease of CFE (the offered price shall include preparation, installation, preventative maintenance, service, and incidental supplies costs for contractor furnished equipment) in the following sizes for a minimum performance period of 14 days.

Area 1, Europe, including all the Mediterranean rim countries

Item Number	Quantity	Unit of Purchase	Unit Price	Extended Price
3001AA. 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
3001AB. 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
3001AC. 750 Kw to 1 Mw	2	Each	\$ _____	\$ _____
3001AD. Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 2, Remainder of Africa

3002AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
3002AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
3002AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
3002AD Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 3, Central Asia (includes but not limited to Afghanistan, Uzbekistan, Krygystan, Kahzikstan, Kuwait and Pakistan)

3003AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
3003AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
3003AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
3003AD Power plant over 1 Mw	3	Each	\$ _____	\$ _____

Area 4, Southeast Asia (includes, but not limited, to Thailand and Philipinnes)

3004AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
3004AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
3004AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
3004AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 5, Republic of Korea

3005AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
3005AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
3005AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
3005AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 6, Central America (includes, but not limited to, Mexico, Honduras, Belize, and Panama)

3006AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
3006AB 500 Kw to 750 Kw	2	Each	\$_____	\$_____
3006AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
3006AD Power plant over 1 Mw	1	Each	\$_____	\$_____
3007 Mobilization and de-mobilization (see page B-1)	2	Each	\$100,000.00	\$100,000.00
3008 Conferences and meetings (see page B-1 and C 8)	1	Day	\$_____	\$_____
3009 Travel and Per Diem (see page B-2)	1	Lump Sum	\$100,000.00	\$100,000.00

3010	Incidental Supplies/Services (see page B-2 and Section J. Offeror shall insert the total price of the Addendum on this line item)	1	Lump Sum	\$ _____	\$ _____
3011	Fuel Operations (see page B-2, C 3.7 and C 3.8)	1	Lump Sum	\$100,000.00	\$100,000.00
3012	Power Assessments (see C 3.2)	1	Each	\$ _____	\$ _____

GFE Operations and Maintenance: The following line item numbers apply only to those instances where the contractor will operate and maintain GFE power systems

Preparation and transportation: Round-trip-with a distance up to a 100 mile radius, defined as from where the generator is loaded onto the contractor’s vehicle to where the generator is removed from the contractor’s vehicle and placed either back into service or into storage (see C 3.4).

3013AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
3013AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
3013AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Installation (see C 3.5)

3014AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
3014AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
3014AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Preventative Maintenance (see C 3.6). Price shall be a daily rate (this price is distinguishable from service in that no minor repairs are performed).

3015AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
3015AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
3015AC	Power plant over 1 Mw	1	Day	\$ _____	\$ _____

Service (See C 3.6 .1 and 3.6.2). The price for Service shall be a daily rate for the types of service or repairs as specified and as accomplished by a journeyman electrician.

3016 AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
3016AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
3016AC	Power Plant over 1 Mw	1	Day	\$ _____	\$ _____

Relocating/Recovery of Generators (See C 3.8 and C 6). This is a separate and distinct function from the de-mobilization described for line item 0007.

3017AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
3017AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
3017AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

FORTH OPTION PERIOD

Lease of CFE (the offered price shall include preparation, installation, preventative maintenance, service, and incidental supplies costs for contractor furnished equipment) in the following sizes for a minimum performance period of 14 days.

Area 1, Europe, including all the Mediterranean rim countries

Item Number	Quantity	Unit of Purchase	Unit Price	Extended Price
4001AA. 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
4001AB. 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
4001AC. 750 Kw to 1 Mw	2	Each	\$ _____	\$ _____
4001AD. Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 2, Remainder of Africa

4002AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
4002AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
4002AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
4002AD Power plant over 1 Mw	1	Each	\$ _____	\$ _____

Area 3, Central Asia (includes but not limited to Afghanistan, Uzbekistan, Krygystan, Kahzikstan, Kuwait and Pakistan)

4003AA 250 Kw to 500 Kw	2	Each	\$ _____	\$ _____
4003AB 501 Kw to 750 Kw	2	Each	\$ _____	\$ _____
4003AC 751 Kw to 1 Mw	2	Each	\$ _____	\$ _____
4003AD Power plant over 1 Mw	3	Each	\$ _____	\$ _____

Area 4, Southeast Asia (includes, but not limited, to Thailand and Philipinnes)

4004AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
4004AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
4004AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
4004AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 5, Republic of Korea

4005AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
4005AB 501 Kw to 750 Kw	2	Each	\$_____	\$_____
4005AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
4005AD Power plant over 1 Mw	1	Each	\$_____	\$_____

Area 6, Central America (includes, but not limited to, Mexico, Honduras, Belize, and Panama)

4006AA 250 Kw to 500 Kw	2	Each	\$_____	\$_____
4006AB 500 Kw to 750 Kw	2	Each	\$_____	\$_____
4006AC 751 Kw to 1 Mw	2	Each	\$_____	\$_____
4006AD Power plant over 1 Mw	1	Each	\$_____	\$_____
4007 Mobilization and de-mobilization (see page B-1)	2	Each	\$100,000.00	\$100,000.00
4008 Conferences and meetings (see page B-1 and C 8)	1	Day	\$_____	\$_____
4009 Travel and Per Diem (see page B-2)	1	Lump Sum	\$100,000.00	\$100,000.00

4010	Incidental Supplies/Services (see page B-2 and Section J. Offeror shall insert the total price of the Addendum on this line item)	1	Lump Sum	\$ _____	\$ _____
4011	Fuel Operations (see page B-2, C 3.7 and C 3.8)	1	Lump Sum	\$100,000.00	\$100,000.00
4012	Power Assessments (see C 3.2)	1	Each	\$ _____	\$ _____

GFE Operations and Maintenance: The following line item numbers apply only to those instances where the contractor will operate and maintain GFE power systems

Preparation and transportation: Round-trip-with a distance up to a 100 mile radius, defined as from where the generator is loaded onto the contractor’s vehicle to where the generator is removed from the contractor’s vehicle and placed either back into service or into storage (see C 3.4).

4013AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
4013AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
4013AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Installation (see C 3.5)

4014AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
4014AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
4014AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

Preventative Maintenance (see C 3.6). Price shall be a daily rate (this price is distinguishable from service in that no minor repairs are performed).

4015AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
4015AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
4015AC	Power plant over 1 Mw	1	Day	\$ _____	\$ _____

Service (See C 3.6 .1 and 3.6.2). The price for Service shall be a daily rate for the types of service or repairs as specified and as accomplished by a journeyman electrician.

4016 AA	250 Kw to 750 Kw	1	Day	\$ _____	\$ _____
4016AB	751 Kw to 1 Mw	1	Day	\$ _____	\$ _____
4016AC	Power Plant over 1 Mw	1	Day	\$ _____	\$ _____

Relocating/Recovery of Generators (See C 3.8 and C 6). This is a separate and distinct function from the de-mobilization described for line item 0007.

4017AA	250 Kw to 750 Kw	1	Lump Sum	\$ _____	\$ _____
4017AB	751 Kw to 1 Mw	1	Lump Sum	\$ _____	\$ _____
4017AC	Power plant over 1 Mw	1	Lump Sum	\$ _____	\$ _____

shall designate for participation under this line item the Operations Manager or similar key person having intimate knowledge of the operation and contract. No mark-ups for overhead, profit or any other costs will be allowed on per diem expenses.

Line Item 0009: Travel and Per Diem. For each task order, if the Contractor's base of operations is located at least 50 miles from the Contractor's normal place of business and if the Contractor is required to reimburse employees for lodging and meals, the Government will pay reasonable costs not to exceed the daily rate (actual rate when authorized) the Government pays its own employees; provided that Government messing is not otherwise authorized. Invoices for travel and per diem costs must be supported by documentation showing actual costs incurred. No mark-ups for overhead, G&A, or profit will be allowed.

Line Item 0010: Incidental Supplies and Services. This line item is applicable solely to GFE. If directed by the government, the contractor will be reimbursed reasonable costs to purchase generator set operating and service manuals if not provided as Government Furnished Material (GFM) with any GFE. The contractor will be reimbursed reasonable costs required to purchase and install parts such as working hour meters and perform minor repairs. These repairs shall include, but are not limited to: replacement or repair of batteries, plugs, wires, belts, hoses, springs and components of the fuel and oil transfer system and other electrical and generator parts such as circuit cards, relays and control panel parts. Repair parts shall not exceed \$2500.00 U. S. per occurrence. Support documentation shall be provided with invoices to support reimbursement. For repairs estimated between \$1,000.00 and \$2,500.00, the Contractor shall perform repairs at the discretion of the Contracting Officer or authorized representative. A major repair is defined as exceeding \$2,501.00 in parts and labor. The Government may, depending upon the extent of repairs required and the time required to complete the repair and other factors to GFE, elect to negotiate a separate contract for performance of major repairs. The Contractor shall submit a proper invoice for these parts.

Line Item 0011: Fuel Operations (furnish, deliver and install fuel). The Government has entered \$100,000.00 in the Schedule for this item. This amount is only for award evaluation. Payment for this item will be based on the amount of fuel actually used. To receive payment, the Contractor must furnish invoices from the fuel supplier and fueling tickets (See paragraph C 3.3 and C 3.8 of the statement of work). Payment will be limited to actual cost of fuel plus overhead. No other mark-ups will be allowed.

B 2.0 The Government may award up multiple contracts against this solicitation to support the U.S. Army Corps of Engineers in its military contingency missions. Additionally, the Government reserves the right to issue more solicitations and award more contracts for these same services. Offerors are encouraged to submit proposals for all areas of which there is an interest. The following reflects the geographic areas to be supported:

Geographic Areas	Number
Europe, including all the Mediterranean rim countries	1
Remainder of Africa	2
Central Asia (includes, but not limited to, Afghanistan, Uzbekistan, Krygystan, Kahzikstan, Kuwait and Pakistan)	3
Southeast Asia (Thailand, Philipinnes)	4
Republic of Korea	5
Central America (includes, but is not limited, to Mexico, Honduras, Belize, and Panama)	6

B 3.0 This solicitation contains one price schedule. The offeror shall submit a separate proposal with an individual schedule for each area. For example, if an offeror is interested in submitting a proposal for Area 1 and Area 2, two individual proposals and price schedules shall be submitted, one for Area 1 and one for Area 2, each annotated by the area number. Contractors who receive a contract under this solicitation must be capable of performing under all line items within the area covered by the contract. Contract award will be made on an 'all or none' basis per area.

B 4.0 If the Contracting Officer determines it is in the Government's best interest to do so, the Contracting Officer may issue task orders against any contract awarded under this solicitation to perform work anywhere within the U. S. Army Corps of Engineers' area of responsibility. In addition, the Government reserves the right to issue task orders for other areas within USACE's boundaries not specifically covered by a contract (or contracts). Should any task order result in an increase in the Contractor's costs, an equitable adjustment will be made in accordance with the Changes clause.

B 5.0 Because of the uncertainty associated with emergency power requirements, it is impossible for the Government to prepare an accurate estimate of its requirements. The estimates contained at Section B are the best that can be obtained and are only for award evaluation purposes. The Contractor shall be prepared to assess power needs, transport, install, perform preventive maintenance, service, accomplish fueling, and relocate and recover of all makes and models of generators with various gasoline and diesel powered engines. Additionally, the contractor must be capable of assuming transmission and distribution functions from deployed U. S. Army Corps of Engineer, 249th Engineering Battalion personnel. If directed by the Contracting Officer or authorized representative, the Contractor shall be responsible for obtaining any service or repair manuals required to perform the work. The Government has some manuals, which it will provide to the Contractor as Government Furnished Materials (GFM) with the GFE. Any manuals provided to the Contractor must be returned to the Government in essentially the same condition as they were when the Contractor received them, fair wear and tear excepted.

B 6.0 Contracting Officers assigned to the U.S. Army Corps of Engineers may issue task orders against any contract awarded under this solicitation. This authority may be delegated to other Contracting Officers.

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SECTION C SPECIFICATIONS
EMERGENCY POWER: OPERATION AND MAINTENANCE

SCOPE OF WORK

GENERATOR SET ACTIVITIES

C 1.0 General. The work under this contract consists of supporting all generator set activities for emergency power operations in support of military contingencies. Generator set activities are defined as assessing power needs, preparation, transport, installation, preventive maintenance, service, fueling, relocating and recovering engine-generator sets and associated fuel systems, and transmission/distribution system maintenance. As, and when required by the Government, the Contractor shall provide Contractor Furnished Equipment (CFE). Contractor shall provide all support and logistics required to support contractor personnel. The Contractor shall perform generator set activities twenty-four (24) hours a day, seven (7) days a week including all weekends and holidays. The contractor shall be required to be in compliance with all applicable local ordinances, permits and license requirements. The Contractor shall participate in pre- and post-emergency conferences, workshops, meetings and exercises such as Command Post Exercises, After Action Reviews, Lessons Learned Analysis, Planning and Response Team Train Ups as directed by the Government.

C 1.1 Generator sets requirements may range in size up to 1Mw or even Power Stations. The Contractor shall be responsible for providing all labor, transportation, equipment and supervision required in the performance of generator set activities. The Contractor shall be responsible for providing all loading, hauling, and unloading equipment (e.g. cranes, boom trucks, fork lifts, self loaders, flatbed trailers and trucks) necessary for performing the work required by this contract in all types of terrain, during periods of limited visibility and under all weather conditions. The contractor shall make his own investigation of available roads for transportation, load limits for bridges and roads, and other road conditions affecting the transportation of generator sets and equipment to the site. When required, the Contractor shall provide all fuel, fueling equipment and fuel transportation requirements to support generator set activities. The Contractor shall be responsible for providing all hardware as part of his initial Bill of Materials (BOM) required for installation of the generator sets; cabling, conductors, conduits, supports, disconnects, terminations, etc., for both CFE and GFE generators (see Section J for a representative list of the type of BOM used in support of GFE systems).

C 1.2 For generator set activities, each site assessment, preparation, hauling, installing, preventive maintenance, service, fueling, relocating and recovering shall be accomplished at the direction of the Contracting Officer through the issuance of a task order or for Incidental Supplies through a delivery order. Payment shall not be made to the Contractor for work not specifically authorized by the Contracting Officer.

C 1.2.1 For delivery orders, the contractor shall immediately proceed with the order. Issuance of a task order for services shall be considered to be the Notice to Proceed.

- (1) Work shall not commence until acceptable Operation Action Plans and schedules have been submitted and approved.
- (2) While the Contractor is operating under acceptable interim plans, the Contracting Officer may retain funds from progress payments in accordance with the Contract Clause entitled Payments under Fixed-Priced Service Contracts until such time as the Contractor submits acceptable final plans.
- (3) If acceptable final plans are not submitted within a reasonable time, as determined by the Contracting Officer, the Contracting Officer may order the Contractor to stop work until such time as acceptable plans have been submitted and approved. Any such stop work order shall not be considered a suspension of work for an unreasonable period of time under the Contract Clause entitled Suspension of Work and the Contractor shall not be entitled to pay adjustments as a result of the stop work order.

C 1.3 Contractor employees shall carry some form of company identification at all times during the execution of this contract. The Contractor shall provide a name list of all preventive maintenance and service personnel, electricians and Master Electricians, drivers and equipment operators, etc, within twenty-four (24) hours of issuance of each task order. In addition, the Contractor shall identify subcontractor individuals used to comply with the requirements of this contract within twenty-four (24) hours of the issuance of each task order. The Contractor shall provide a copy of licenses and certificates of all personnel involved in this contract upon request from the Contracting Officer or authorized representative.

C 1.4 When applicable, the Government's Real Estate representative shall provide the Contractor with two copies of the Government completed Right-of-Entry (ROE) form and an Environmental Baseline Assessment (EBA). It is the intent of the Government to provide these forms at the staging area. Completed ROE forms shall be in English (ROEs in Spanish are furnished for informational purposes only). The completed ROE shall bear the address of the property and the property owner's signature. Work shall be performed only on property identified in the Government-furnished ROE forms. Contractor shall review both ROE and EBA and report any discrepancies to the Contracting Officer or authorized representative. The Environmental Baseline Assessment shall serve as documentation of the condition of the property designated for generator placement and contractor access prior to installation of a generator set. The Contractor shall be responsible of any and all damage to the designated property that is not documented on the EBA. NOTE: ROE's will not typically be required for work under this contract.

C 1.5 The ROE shall be furnished for the sole purpose of generator set assessment, installation, preventive maintenance, service, relocating and recovery. Contractor personnel shall only enter property identified on the completed Government-furnished ROE form and shall enter property only as permitted by the ROE. The Contractor shall be liable for damages at property locations in which the Government did not supply the Contractor with a ROE. The Contractor shall not make any representations to the

property owner that may mislead the property owner or may lead the property owner to assume that the Contractor has been authorized by the Government to perform other work.

C 1.6 The Contractor shall perform generator set activities at various locations as designated in the task order. The Contractor shall be responsible for, and shall account for, each GFE generator set until such time as the Contractor is relieved of this responsibility in writing by the Government. The Contractor shall maintain at all times an updated inventory of all sites where GFE generator set(s) have been transported as outlined in C.1.9.

C 1.7 All generator sets shall be on-loaded and off-loaded using spreader bars or equivalent. This is a safety measure and prevents unnecessary, costly damage and downtime. At no time shall metal chains be utilized to on-load/off-load generators. In the event of loss or damage to a generator set, the Contractor shall provide immediate, accurate notification and documentation of the incident to the Contracting Officer or authorized representative. If loss or damage occurs as a result of the fault or negligence of the Contractor, the Contractor shall be responsible for repairing or replacing the item(s) in question at no cost to the Government. Any repairs or replacement of the same shall first be coordinated with the Contracting Officer or authorized representative. The standard for determining fault or negligence shall be the same as that for the Default clause of this contract (ref: FAR 52.249-8).

C 1.8 The Government may have installed some generator sets (GFE-Government Furnished Equipment) prior to the Contractor's arrival. As directed by the Contracting Officer or authorized representative, the Contractor shall assume and perform all required generator set activities for these generator sets. Prior to transfer of responsibility for any previously installed generator set(s), the Contractor shall accompany the Contracting Officer or authorized representative to the installation site to verify the condition of the generator, the installation and the site.

C 1.8.1 The Contractor shall ensure the working-hour meter is in proper working order and shall record the meter reading. If the GFE generator is not equipped with a working-hour meter, the Contractor shall install a working-hour meter. For all previously Government-installed generator sets, the Contractor shall, within twenty-four (24) hours of award of a task order, include these generator sets in the daily property inventory reports outlined in C.1.9. (See B.1.0)

C 1.9 The Contractor shall prepare a daily property inventory report for each generator set turned over to the Contractor to perform generator set activities. As a minimum, the property inventory report shall include the site location, owner's name, ROE number, manufacturer's name, model number, bar code, serial number, kW size, voltage output, phase, listing of accessories (specifically indicating whether the generator set has an enclosure), operational status and problems encountered. In addition, the Contractor shall include in the daily property report an 8.5" by 11" size detailed site map of each generator's location. This detailed site map shall include, as a minimum, name and

description of the property (for example, City of Hope Water Treatment Site #2, Tampa Hospital, etc.), a street address or direction and distance from known object and Global Positioning System (GPS) location. The Contractor shall provide his own GPS equipment and shall be proficient in its use prior to mobilization. This report shall be submitted to the Contracting officer or authorized representative no later than 5:00 p.m. each day or at a time designated by contracting officer or authorized representative.

C 1.10 If, through the Contractor's fault or negligence, any damage occurs to existing facilities, equipment, or other real or personal property, the Contractor shall provide immediate, accurate notification and documentation of the incident to the Contracting Officer or authorized representative. The Contractor shall be responsible for repairing or replacing the item(s) in question at no cost to the Government. Any repair or replacement of the same shall first be coordinated with, and approved by, the Contracting Officer or authorized representative.

C 1.11 Within twenty-four (24) hours after receiving notice of contract award, the contractor shall provide to the Contracting Officer and the individuals listed at Section J, a list of key personnel available twenty-four (24) hours a day in the event a requirement for contract performance arises after regular working hours. As a minimum, this list will include their names, day and evening phone numbers (land and cellular, pager number, etc). The standard for responding by voice communications shall be within thirty (30) minutes. After issuance of the initial task order, the Contractor shall maintain a key personnel roster, updating this roster on a daily basis and making it available upon request from the Contracting Officer or authorized representative.

C 1.12 Geographic Area. The primary purpose of the contract is to provide services in the geographic areas shown in the schedule. The contract will provide for primary response to a given area but the Government reserves the right via the Requirements Clause of this solicitation to issue task/delivery orders to a Contractor for other areas within the U. S. Army Corps of Engineers (COE) area of responsibility not specifically listed in B.2.0. However, the Government reserves the right to use any contract in any area based on the circumstances of the emergency. Any task/delivery order for a region not specifically listed in B.2.0 may be awarded based on price competition among contractors awarded contracts for an affected service area. The contractor shall be entitled to an equitable adjustment in accordance with the Changes clause of the contract for any work ordered and performed outside the geographic areas covered by the contract (see Sections B and H, Special Contract Clauses).

C 2.0 Plan of Operation.

C 2.1 The Contractor shall provide in its proposal a tentative Operations Action Plan overview encompassing C.2.1.1 (A through L) describing how they intend to fulfill the requirements of the Scope of Work. The Contractor shall provide a detailed Operations Action Plan overview encompassing C.2.1.1 (A through L) describing how they intend to fulfill the requirements of the Scope of Work within twenty-four (24) hours of notification of contract award or exercise of an option period. In addition, the Contractor

shall provide a mission-specific Operations Action Plan encompassing C.2.1.1 (A through L) detailing their concept of operation within twenty-four (24) hours of issuance of the initial task order. Failure to comply with the above requirements within the time prescribed shall be considered a condition endangering the performance of the contract and may be considered grounds for termination of the contract in accordance with the Default Clause of this contract (reference FAR 52.249-8). The Contractor shall abide by and the Government shall enforce the tentative, detailed and mission-specific Operations Action Plans provided to the Government. The detailed and mission-specific Operations Action Plans shall be approved by the Contracting Officer or authorized representative prior to proceeding with the contract.

C 2.1.1 The Contractor's Operations Action Plans shall include the following Minimum, requirements:

- A. Mobilization Plan (Concept of Operation, time schedule, phasing plan)
- B. Plan for conducting Government directed Assessments (Concept of Operation, qualifications, internal procedures, sample assessment worksheet)
- C. Generator Set Preparation Plan (Concept of Operation, documentation procedures, proposed schedule, internal SOPs)
- D. Plan for Hauling (Concept of Operation, itemized, detailed list of equipment, including quantities and capacities)
- E. Plan for Installation of generator sets (Concept of Operation, proposed schedule, documentation procedures, identification of Master Electricians and Journeyman Electricians, internal SOPs)
- F. Plan for Preventive Maintenance (Concept of Operation, documentation procedures, proposed schedule, internal SOPs)
- G. Plan for Service (Concept of Operation, Response Plan in event of generator malfunction/breakdown, documentation procedures, proposed service schedule, internal SOPs)
- H. Fueling Plan (Concept of Operation, proposed equipment, documentation procedures, proposed schedule, Emergency Spill Response Plan, cleanup procedures, internal SOPs)
- I. Plan for Relocating and Recovering (Concept of Operation, list of qualified individuals to perform this task, detailed list of equipment and capacities, preparation for storage plan)
- J. Demobilization Plan (Concept of Operation, time schedule, phasing plan)
- K. Safety Plan (Written safety plan which addresses each major phase of this SOW, Internal Safety Standard Operation Policies and Procedures, key Safety personnel and their qualifications, training and experience levels, Activity Hazard Analysis (specifically for specialized equipment used in performance of work) for each major phase of work, conformance to Corps of Engineer Safety Plan, EM 385-1-1, demonstrated knowledge of local, state and federal safety requirements)
- L. Quality Control (QC) Plan (Concept of Operation, personnel qualifications, internal procedures). The Contractor shall ensure that operations during periods of limited visibility are specifically addressed in all Action Plans.

C 2.2 Not later than eight (8) hours after award of the initial task order for services, the Contractor shall provide an Operations Manager knowledgeable in all facets of the Contractor's operation to serve as liaison, with no collateral duties, between the Contracting Officer and the Contractor's senior management at the location determined by the Government. The Operations Manager shall be on call twenty-four (24) hours per day, seven (7) days per week and shall be able to immediately contact the Contractor's senior management, via electronic means (fax machine, cell phone and Internet capabilities). This position will not require constant presence of the Operations Manager but the Operations Manager shall be physically capable of responding to the Contracting Officer's representative within thirty (30) minutes of notification. The Contractor is responsible for establishing its own office and providing all related communication and office equipment required to support the Operations Manager. The Operations Manager shall have authority to act on behalf of the company's senior management to make any and all decisions required under the contract and shall have the authority to sign all contractual documents. In areas where English is not the primary language, the Contractor's Operations Manager shall be bilingual in the host country language. It is desirable that field crew foreman and supervisors also be bilingual.

C 3.0 Execution of Work-Services

C 3.1 Mobilization

The Contractor shall commence mobilization and be ready to provide generator set activities not later than seventy-two (72) hours of issuance of the initial task order. All personnel, supplies and equipment required for the initial placement of generator sets of various sizes shall be onsite at a location designated by the Contracting Officer or authorized representative in the initial task order (see C 2.1.1).

C 3.2 Assessments. It is anticipated that the Government representatives shall make the majority of assessments but the Government reserves the right to task the Contractor to perform the same. The purpose of the assessment is to determine generator set requirements. The Contractor shall have trained personnel capable of making power and generator set assessments, to include assessing hook-up requirements. The Government will prioritize the assessment order. After mobilization, Contractor shall be capable of responding within two (2) hours of receiving issuance of a task order to assess power needs. The Contractor shall provide a written assessment worksheet of the power and generator set requirements. The Government shall provide the Contractor with either a Government assessment worksheet or the minimum requirements for the assessment worksheet. The Contractor shall identify multiple generator set sizes on the assessment worksheet in the event the required generator set size is not available to satisfy a particular requirement. The assessment worksheet shall be completed and submitted to the Contracting Officer or authorized representative within six (6) hours after issuance of a task order for the assessment (see C.2.1.1 (b)).

C 3.3 Preparation.

C 3.3.1 At the Government's generator set staging area, the Contractor is responsible for conducting a complete preparatory preventive maintenance check of all components of the generator set and Government furnished Bill of Materials. The Government will prioritize the preparation order. All deficiencies discovered by the Contractor shall be immediately reported to the Contracting Officer or authorized representative. Each generator set shall be given a complete initial preventive maintenance check to include petroleum, oils and lubricants (POL), battery check, working-hour meter check, and coolant check. All fluids shall be filled to their proper levels. The Contractor shall provide fueling capability at the staging area. The Contractor shall inventory all equipment designated as part of a generator set, to include operating manuals (if any), and Bill of Materials (cables, connectors, etc.). The Contractor shall comply with all applicable state/territory/commonwealth and local environmental regulations at the staging area.

C 3.3.2 All generator reconfigurations shall be completed at the staging area. Configurations shall be performed in accordance with manufacturer's specifications.

C 3.3.3 Only upon the direction of the Contracting Officer, or authorized representative, the Contractor shall conduct load bank test at the staging area to determine mission capability. Generator shall be operated a minimum of thirty (30) minutes at 80% load capacity.

C 3.4 Transportation. The Contractor is responsible for providing all equipment and personnel necessary to on-load and offload generator sets and associated fuel systems. The Government will prioritize the hauling order. Contractor shall haul generator sets from any location to any location within the contract's geographic area as designated by the Contracting Officer or authorized representative. The Contractor is responsible for complying with all local laws or regulations. The Contractor shall provide all required roadmaps, atlases, etc. If the Contractor does not install the generator set, the Contractor shall be paid for transporting (hauling) only.

C 3.5 Installation. After mobilization, the Contractor shall be capable of responding within four (4) hours of receiving issuance of a task order to install, relocate, or remove GFE generator sets. The Government will prioritize the installation order. The Contractor shall provide all personnel and equipment to install generator set activities during periods of limited visibility. The Contractor shall comply with all requirements of the most current edition of the US Army Corps of Engineers EM 385-1-1 which is available at: <http://www.hq.usace.army.mil/soh/hqusace.soh.htm> (select the icon for "EM-385-1-1". The contractor shall comply with the latest version that is in effect on the date of the solicitation). See, also, Section H of the solicitation, SAFETY REQUIREMENTS.

C 3.5.1 All electricians shall be licensed. At a minimum, a certified journeyman electrician with three years of experience (minimum), shall make all installations. Connections to load shall be made in accordance with NFPA-70, National Electrical

Code (NEC) - the edition in force at the time solicitation is issued - and all local codes, rules and regulations and generator manufacturer's specifications. The Contractor shall provide all cabling and other accessories necessary for completing the installation. Connections to the load shall be made with conductors capable of handling the load in accordance with manufacture ratings. Utility power conductors shall be disconnected from the main switch at the site prior to installation, to ensure that generator power will not feed into utility lines and that utility power shall not be connected with the generator in operation. The wiring at the site shall be inspected for safe conditions and shall be tested with a megaohmmeter for shorts and grounds. A generator shall not be connected to unsafe wiring. Any wiring deficiencies shall be reported to the contracting officer or authorized representative.

C 3.5.2 The Contractor shall ensure the working-hour meter is in proper working order and shall record the meter reading no later than the time of installation. If the generator is not equipped with a working-hour meter, the Contractor shall install a working-hour meter (see Section B.1.0).

C 3.5.3 The complete installation shall be initially started and tested for operational compliance by a licensed electrician.

C 3.5.4 At the installation location, the Contractor shall furnish, as a minimum, fuel absorption matting which shall be placed under fueled equipment. Matting shall have an impermeable backing to prevent the fuel from contaminating the soil supporting the equipment. In the event matting is unavailable, heavy-duty tarp may be substituted. Heavy-duty tarp shall be reinforced, oil-resistant type that shall be supported to contain any spilled fuel. Spilled fuel shall be removed promptly and properly disposed of as required. Upon completion of this work, the Contractor shall dispose of matting, tarp, spilled and contaminated fuel in accordance with state/territory/commonwealth and local environmental disposal regulations.

C 3.6 Preventive Maintenance/Service. The Contractor shall provide all preventive maintenance necessary for ensuring continuous operation of the generator sets. Contractor shall have qualified personnel trained in power generator maintenance, to include all components of the generator set. Each generator set shall be maintained in accordance with manufacturer's specifications and recommendations. The Contractor shall provide the Contracting Officer or authorized representative a Preventive Maintenance daily schedule. Daily operational checks shall include, but not limited to, checking working-hour meter for operation, checking battery level, checking coolant, checking oil levels, checking fuel levels and filling all fluids to proper levels. In addition, the technician shall conduct a visual inspection of all external components (connections, hoses, belts, cables, etc) for serviceability and excess wear and tear and of the area around the generator set for signs of fluid leakage. Daily check sheets shall be logged and documented showing date checked, hour meter reading and technician's initials. Sheet shall be protected with a rainproof covering furnished by the Contractor. The Contracting Officer or authorized representative shall inspect to ensure proper preventive maintenance procedures are accomplished. All preventive maintenance documentation

shall be furnished to the contracting officer or authorized representative on, at a minimum, a weekly basis, or upon request.

C 3.6.1 Each generator set shall be checked for operational service status based on fuel consumption estimates and frequency of manufacturer's recommended services. Each generator set shall be serviced a minimum of every ten (10) days or as directed by the Contracting Officer or authorized representative if manufacturer's recommended services can not be ascertained. Service shall include changing oil and oil filter(s), fuel filter(s) at manufacturer's recommended interval or as directed by the Contracting Officer or authorized representative. Engine lubrication oil shall be equal to the manufacturer's specified brand and grade for operating under extreme environmental conditions. When oil filter(s) are replaced, date and hour meter reading shall be noted on the filter using a permanent marker. All other fluids shall be maintained in accordance with the generator set manufacturer's recommendations. All fluids and contaminated fuel shall be removed promptly and properly disposed of in accordance with local environmental disposal regulations.

C 3.6.2 The Contractor is responsible for minor maintenance service repairs as a result of normal wear and tear. Minor repair shall be any repair that is external to the generator engine set and parts are estimated less than \$2500.00. (See B 1.0)

C 3.6.3 In the event of a generator malfunction or breakdown, the Contractor shall mobilize for a specific incident within thirty (30) minutes after notification by the Contracting Officer or authorized representative of the problem. The contractor shall immediately notify the Contracting Officer or authorized representative of each malfunction or breakdown the contractor discovers for instructions on how to proceed.

C 3.6.4 At the direction of the Contracting Officer, or an authorized representative, GFE generators requiring major repairs shall be replaced by a CFE generator of equivalent size and the replaced generator returned to Government storage. If a CFE generator requires major repair, it shall be substituted with an equivalent size unit.

C 3.6.5 Service records shall be maintained on all serviced, GFE generator sets. The contractor shall provide to the Contracting Officer or authorized representative no later than the daily reporting time a contractor furnished service ticket for each generator set serviced that day. Minimum information on the service ticket includes brand, model, kW, barcode number, location, list of parts and quantity of fluids used. The contractor shall coordinate all scheduled services with the user and Contracting officer, or authorized representative, and shall notify the Contracting Officer, or authorized representative, of any scheduling conflicts. For operation of all GFE, the Contractor shall furnish weekly run time sheets with the total number of Kw produced and engine hours run.

C 3.7 Fueling operations.

C 3.7.1 Fueling of generator sets is a separate function from the preparation, transport, preventive maintenance and service descriptions. It is a separate contract line item

number (CLIN). Prior to beginning work, the Contractor shall provide to the Government's Environmental Engineer, for review, the Contractor's written Emergency Spill and Response Plan. See C 2.1.1

C 3.7.2 Fueling shall be accomplished in accordance with safety procedures. Generator sets shall be fueled, by the Contractor, on an as-needed basis with initial fueling accomplished at time of installation. At no time shall the generator be allowed to run out of fuel. Only the appropriate fuel and grade of fuel shall be used in accordance with manufacturer's specifications. Generators damaged as a result of running out of fuel or being fueled with the wrong type of fuel shall be the responsibility of the Contractor. Repair or replacement of the generator shall be at the sole expense of the Contractor. The Contractor shall not delegate the fueling responsibility to the user of a generator set. If the Contractor cannot access a site for fueling (i.e. locked gate, access denied by guard, etc.), the Contractor shall immediately contact the Contracting Officer or authorized representative.

C 3.7.3 At each fueling, to include initial fueling at the staging area, the Contractor shall record on a ticket furnished by the Contractor the following information: the manufacturer's name, model, and serial number of the generator; kW size; date; location; reading on working-hour meter; and quantity and type of fuel. A copy of each fueling ticket must be submitted with requests for payment under the fuel line item. The Government shall allow a maximum of .07 gallons of fuel, per kW, per hour.

C 3.7.4 Spilled fuel and contaminated fuel shall be removed promptly and properly disposed of in accordance with local and (or) host country environmental disposal regulations. The Contractor shall be responsible for clean up of all spilled fuel. Apart from the generator set's external fuel tank, fuel shall not normally be stored at the generator site.

C 3.8 Relocating and Recovering Generator Sets.

C 3.8.1 The Contractor shall provide all equipment and personnel required to relocate and recover generator sets. Contractor shall be capable of responding within two (2) hours of receiving issuance of a task order from the Contracting Officer or authorized representative to commence relocation or removal of generator sets. The Government will prioritize the order for relocation and recovery of generator sets. The Contractor shall comply with all requirements of the most current edition at time of contract award of the US Army Corps of Engineers EM 385-1-1

C 3.8.2 A journeyman electrician, with a minimum of three years of experience, shall disconnect all generator sets. Disconnection to load shall be made in accordance with all local codes, rules and regulations. The Contractor shall either remove or tape external (service) wiring to prevent possibility of electrical shock. Utility power conductors shall be reconnected from the main switch at the site.

The wiring at the site shall be inspected for safe conditions and shall be tested with a megaohmmeter for shorts and grounds. A generator shall not be reconnected to unsafe wiring. Any wiring deficiencies shall be reported to the Contracting Officer or authorized representative.

C 3.8.3 When removing a GFE generator set from service, the Contractor shall disconnect it (conductors shall be removed, not cut), clean it, record the reading on the working-hour meter, change the oil, oil and fuel filter(s) if directed by the Contracting Officer or authorized representative), check the battery, check the coolant, and fill all fluids to their proper levels. The generator's exhaust port shall be made weatherproof by means of a securely fastened metallic cap. Wiring, cabling, lugs, connectors and other hardware shall accompany the relocated or recovered generator sets. The Contractor shall either return the GFE generator set to the Government's storage site, or haul and install it at a site designated by the Contracting Officer or authorized representative.

C 3.8.4 Contractor shall be responsible for reconnection to utility service upon removal of each generator set and coordination with the local electrical utility provider through the Contracting Officer or authorized representative. Removals, relocations, and recoveries shall be included in the daily status report. When directed by the Contracting Officer or authorized representative to return a GFE generator set to the government's storage site for temporary storage, the contractor may leave remaining fuel in the day tank.

C 3.8.5 When directed by the contracting officer or authorized representative to return the GFE generator set for permanent storage at the Government's storage site, the Contractor shall first remove all fuel. The Contractor shall pressure wash all generators returned for permanent storage. Prior to permanent storage and in accordance with manufacturer's requirement for long-term storage, generator sets shall be serviced and made ready for future use.

C 3.8.6 The Contractor shall provide all equipment and personnel necessary to on-load and offload generator sets and associated fuel systems during relocating and recovery operations (see C 1.7 and C 3.4).

C 4 Site Remediation. The Contractor shall ensure an installation site is returned to its previous condition as noted on the initial EBA. In addition, the Contractor shall coordinate with the US Army Corps of Engineers Environmental Engineer who shall inspect and notify the Contracting Officer or authorized representative of clearance from an installation site.

C 5 Hazardous, Toxic, and Radiological Waste Disposal. The Contractor shall provide HTRW containment equipment/supplies for use at the generator set staging area and generator set placement sites. Contractor shall be responsible for disposal of all waste materials. The Contractor shall be responsible for the recovery and proper disposal of all used fuels, contaminated fuels, filters, rags, batteries, used oils and filters, and all other materials related to the maintenance and service of the generators and all other hazardous

materials. In addition, the Contractor shall coordinate with the US Army Corps of Engineers Environmental Engineer who shall inspect and notify the Contracting Officer or authorized representative of clearance from the generator set staging area.

C 6 Demobilization. All personnel, supplies and equipment required to recover the generator sets shall complete demobilization no later than forty-eight (48) hours after issuance of the task order (see C.2.1.1).

C 7 Safety. The Contractor shall provide a written Safety Plan which addresses each phase of the SOW. The Contractor shall provide an Activity Hazard Analysis that addresses each phase of the SOW. Contractor shall provide all safety equipment in accordance with OSHA standards to include personnel reflective gear use for use at staging areas and installation sites during periods of limited visibility. The Contractor shall designate a supervisory person to be present on the site, overseeing work at the site. The person may have additional duties as crew foreman. The Contractor shall comply with all requirements of the US Army Corps of Engineers, Safety and Health Requirements Manual, EM 385-1-1, current edition at the time of contract award.

C 8 Conferences/Meetings. The Contractor shall participate in pre- and post-emergency conferences, workshops, meeting and exercises such as Command Post Exercises, After Action Reviews, Lessons Learned Analysis, Planning and Response Team Train Ups etc., (see Section B 1.0).

C 9 Inspection and Acceptance. The Government may inspect the work as the Contractor progresses. However, the Government reserves the right to inspect at a later time. Work will not be accepted and payment will not be made until all generator set activities have been satisfactorily completed.

SECTION D PACKAGING/PACKING AND MARKING

- D-1 MARKING: All delivery orders for BOM (Bill of Materials) supplies shall be marked in accordance with the most current edition of MIL-STD-129, Standard Practice for Military Marking.
- D-2 PACKAGING/PACKING:
- a. CONUS (Continental United States) deliveries: All delivery orders shall be packaged/packed in accordance with normal commercial practice for the commodity acquired.
 - b. OCONUS (Outside Continental United States): All items shall be consolidated and export packaged/packed. Shipments designated for U.S. Military air transportation shall be palletized on “463 L Pallets” in accordance with the most current edition of MIL-STD-147.

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SECTION E - INSPECTION AND ACCEPTANCE

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SECTION E INSPECTION AND ACCEPTANCE

52.246-1 Contractor Inspection Requirements (Apr 1984)

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.

52.246-2 Inspection of Supplies -- Fixed-Price (Aug. 1996)

- (a) *Definition.* "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.
- (c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.
- (d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and

convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; provided, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e)(1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or

(2) terminate the contract for default.

Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i)(1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time --

(i) When Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract; and

(ii) When the supplies will be ready for Government inspection.

(2) The Government's request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and

accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor

(1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or

(2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

52.246-4 INSPECTION OF SERVICES--FIXED-PRICE (AUG 1996)

(a) Definitions. "Services," as used in this clause, includes services performed, workmanship, and material utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service or (2) terminate the contract for default.

252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

Section F - Deliveries or Performance

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52.211-9 DESIRED AND REQUIRED TIME OF DELIVERY (JUN 1997) -
ALTERNATE III (APR 1984)

(a) The Government desires delivery to be made according to the following schedule:

DESIRED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
_____	ALL _____	10 calendar days OCONUS

If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below. However, the offeror's proposed delivery schedule must not extend the delivery period beyond the time for delivery in the Government's required delivery schedule as follows:

REQUIRED DELIVERY SCHEDULE
[Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
_____	ALL _____	12 calendar days OCONUS

Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

OFFEROR'S PROPOSED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

52.247-34 F.O.B. DESTINATION (NOV 1991)

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarded for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall--

- (1)(i) Pack and mark the shipment to comply with contract specifications; or
- (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (2) Prepare and distribute commercial bills of lading;
- (3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
- (5) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (6) Pay and bear all charges to the specified point of delivery.

52.247-52 Clearance and Documentation Requirements -- Shipments to DoD Air or Water Terminal Transshipment Points (Apr 1984)

All shipments to water or air ports for transshipment to overseas destinations are subject to the following requirements unless clearance and documentation requirements have been expressly delegated to the Contractor:

- (a) At least 10 days before shipping cargo to a water port, the Contractor shall obtain an Export Release from the Government transportation office for --
 - (1) Each shipment weighing 10,000 pounds or more; and
 - (2) Each shipment weighing less than 10,000 pounds; if the cargo either --
 - (i) Is classified Top Secret, Secret, or Confidential;
 - (ii) Will require exclusive use of a motor vehicle;
 - (iii) Will occupy full visible capacity of a railway car or motor vehicle;
 - (iv) Is less than a carload or truckload, but will be tendered as a carload or truckload; or
 - (v) Is to be shipped to an ammunition outloading port for water shipment;
 - or
 - (3) Each shipment weighing less than 10,000 pounds if the cargo consists of --
 - (i) Narcotics;
 - (ii) Perishable biological material;
 - (iii) Vehicles to be offered for driveaway service;
 - (iv) Explosives, or other dangerous articles classified as A, B, or C explosives;
 - (v) Poisons, classes A, B, or C; or
 - (vi) Radioactive material, as defined in 49 CFR 170-179.

(b) The Contractor is cautioned not to order railway cars or motor vehicles for loading until an Export Release has been received.

(c) If the Contracting Officer directs delivery within a shorter period than 10 days, the Contractor shall advise the transportation office of the date on which the cargo will be ready for shipment.

(d) At least 5 days before shipping cargo to either a water port or an airport (regardless of the weight, security classification, or the commodity description), the Contractor shall provide the Government transportation office the information shown in paragraph (e) below to permit preparation of a Transportation Control and Movement Document (TCMD).

(e) When applying for the Export Release in paragraph (a) above or when providing information for preparation of the TCMD in accordance with paragraph (d) above, the Contractor shall furnish the --

- (1) Proposed date or dates of shipment;
- (2) Number and type of containers;
- (3) Gross weight and cube of the shipment;
- (4) Number of cars or trucks that will be involved;
- (5) Transportation Control Number(s)(TCN) as required for marking under MIL-STD-129 or Federal Standard 123; and
- (6) Proper shipping name as specified in 46 CFR 146.05 for all items classified as dangerous substances as required for marking under MIL-STD-129.

(f) All movement documents (Government or commercial bills of lading or other delivery documents) shall be annotated by the Contractor with the --

- (1) Transportation Control Number, Consignor Code of activity directing the shipment; i.e., cognizant contract administration office, purchasing office when contract administration has been retained, or a Contractor specifically delegated MILSTAMP responsibilities in the contract, whichever is appropriate, Consignee Code, and Transportation Priority for each shipment unit;
- (2) Export Release Number and valid shipping period, if stated (if expired, the Contractor shall request a renewal); and
- (3) Cubic foot measurement of each shipment unit.

(g) All annotations on the movement documents shall be made in the "Description of Articles" space except, on Government bills of lading the Export Release number and shipping period shall be entered in the space entitled "Route Order/Release No."

(h) The Contractor shall --

- (1) Mail a copy of the commercial bill of lading or other movement document to the transshipment point; and
- (2) Give a copy of the commercial bill of lading or other movement document to the carrier for presentation to the transshipment point with delivery of the shipment.

SECTION G Contract Administration Data

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252.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any post-award conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation subpart 42.5.

CONTRACT ADMINISTRATION DATA

G 1 ACCOUNTING AND APPROPRIATION DATA:

To Be Shown on individual orders issued against the contract.

G 2 CONTRACT ADMINISTRATION:

U.S. Army Engineer District, Philadelphia
Attn: CENAP-CT-C
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

G 3 PAYMENT BY:

U.S. Army Corps of Engineer Finance Center
5722 Integrity Drive
Millington, TX 38054-5005

G 4 INVOICE INSTRUCTIONS:

To better ensure timely payment, the contractor shall provide one copy of each invoice to the COT (Contracting Officer's Technical Representative). Simultaneously, the contractor shall send an original invoice to the above designated payment office. All payment questions should first be directed to the FINANCE CENTER (901-874-8650).

It is critical that the Contract number and Task, or Delivery, Order number be included on all applicable invoices.

G 5 ORDERING INSTRUCTIONS

Authorized Users: Task or delivery orders may be issued by any U. S. Army Corps of Engineers' Contracting Officer within the North Atlantic Division or Contracting Officer assigned to assist in Emergencies for the geographic location specified in the contract(s). All USACE Contracting Officers assigned to issued orders under the contract are hereby appointed as Ordering Officers, pursuant to AFARS 1.602-2-91 (this authority cannot be re-delegated). Ordering Officer issuing task or delivery orders against these contracts will provide their name, phone and fax number and electronic mail address to the contractor.

Task Orders: Ordering Officer are responsible for the completion of any and all administrative or contractual actions for the Task/Delivery orders they have issued.

Services shall be scheduled against these requirements contracts by issuance of a Task Order. Only the Contracting Officer or a USACE Ordering Officer for these contracts has the authority to order supplies/services against these contracts. No other Government employee has such authority. The Ordering Officers do not have authority to change or modify or change any of the terms and conditions of the contract. The contractor is specifically directed to refrain from furnishing supplies/services that have not been ordered by a Contracting Officer or any USACE Ordering Officer. Failure to follow this direction may relieve the Government of liability for payment for unauthorized orders.

PCO (Procuring Contracting Officer): The PCO (or designated successor) is the sole individual authorized to change any of the terms and conditions of the contract, and notwithstanding any provision contained elsewhere in this contract, said authority remains solely with the PCO (or designated successor).

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

a) Definition. "Contracting Officer's Representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

SECTION H SPECIAL CONTRACT REQUIREMENTS

H 1 REQUIRED INSURANCE

(a) The Contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance:
Comprehensive and Employer's Liability Insurance in the amount required by the laws of the country in which the work is to be performed under this contract.
Comprehensive General Liability Insurance in an amount not less than \$500,000 per accident.
Automobile Liability Insurance: \$200,000 per person and \$500,000 per accident for bodily injury liability and \$20,000 property damage liability.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above-required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation, or any material change in the policies adversely affecting the interests of the U. S. Government in such insurance, shall not be effective for such period as may be prescribed by the laws of the Country in which this contract is to be performed and in no event less than 30 days after written notice thereof to the Contracting Officer.

(c) The Contractor agrees to insert the substance of this clause, including this subparagraph (c), in all subcontracts hereunder.

H 3 SAFETY REQUIREMENTS—SERVICE CONTRACT

The Contractor shall comply with the applicable portions of the U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, latest edition in effect at time of solicitation issuance, and all changes and amendments thereto, (for review see web site: <http://www.usace.army.mil>)

(To print document, Adobe Acrobat™ is required for downloading)

H 4 HAZARD COMMUNICATION

General requirements are as follows:

- (1) Provide a written program describing implementation method of the above referenced standard.
- (2) Ensure that Contractor's personnel are informed about health and physical hazards associated with materials to be used.
- (3) Ensure that a hazardous material inventory is available to the Government upon request.
- (4) Ensure proper labeling of hazardous material containers.
- (5) Ensure availability of a Material Safety Data Sheet on site.

H 5 TYPE OF CONTRACT

The U.S. Army Corps of Engineers intends to award firm, fixed price, Requirements contract with four option periods as a result of this solicitation. (See Section L). The Requirements portion for the base year and each of the option periods is \$500,000.00. The Requirements

portion of this contract contains no minimum order guarantee. The IDIQ option for the base year is \$11,000,000.00.

H 6 INDEFINITE DELIVERY-INDEFINITE QUANTITY (IDIQ) OPTION

Exercise of an IDIQ option will be based first on value and then on time, at the discretion of the Contracting Officer. The cumulative total for the base and all option periods shall not exceed \$29,500,000.00. If an IDIQ option is exercised, the Government shall order and the contractor is required to perform/furnish a minimum of \$10,000 of services under this option.

See also Section I clauses entitled “Requirements Contract, IDC Contracts, Ordering Limitations”

H 7 MOBILIZATION OF ADDITIONAL CONTRACTORS

The U.S. Army Corps of Engineers will utilize this contract to supplement its Prime Power Battalion, when necessary, for all requirements up to \$500,000.00. In the event of contingency requirements for emergency power missions estimated in excess of the \$500,000.00, the Corps of Engineers reserves the right to mobilize additional contractors if determined to be necessary in order to meet such mission requirements.

H 8 SCOPE AND PURPOSE OF CONTRACT

(a) Type of emergency. The primary purpose of each contract is to provide temporary power services in support of military contingency responses; however, the Government reserves the right to use the contract to provide services for all types of emergencies, including natural or manmade disasters.

(b) Geographic area. The primary purpose of the contract is to provide services for the areas for which it is written; e.g., the primary purpose of the contract issued by the Philadelphia District is to provide services in the designated geographical areas. However, the Government reserves the right to allow any of the USACE Divisions/Districts to issue task or delivery orders on any contract awarded from this solicitation.

H 9 ORDERING INSTRUCTIONS

Authorized Users: Task Orders or Delivery Orders may be issued by any U.S. Army Corps of Engineers (USACE) Contracting Officer (or other designated Contracting Officers assigned to assist in Emergencies) for the geographic locations specified in this contract. All USACE Contracting Officers assigned to issue Task Orders or Delivery Orders under this contract are hereby appointed as Ordering Officers, pursuant to AFARS 1.602-2-91, this authority cannot be re-delegated. Ordering Officers issuing Task or Delivery Orders against this contract, will provide their name, phone and fax number and electronic mail address to the contractor.

Delivery Orders: Incidental supplies shall be ordered against the contract by a Delivery Order

Task Orders: Services shall be scheduled against this contract by issuance of a Task Order.

Ordering Officers are responsible for the completion of any, and all, administrative/contractual actions for the Task Orders they have issued. The contract maximum order limitation is stated in Section H under the Contract Value paragraph and in Section I. Payment and Performance bonds are required only for a Task Order in accordance with Section H under the Performance and Payment Bonds paragraph.

Only the Procuring Contracting Officer or a USACE Ordering Officer for this contract, has authority to order supplies/services against this contract. No other Government employee, including any appointed Contracting Officer's Representative (COR), has authority to order supplies/services. The Ordering Officer has no authority to change or modify any of the requirements or terms and conditions of this contract. The Contractor is hereby specifically directed to refrain from furnishing supplies/services that have not been ordered by the Contracting Officer or any USACE Ordering Officer for this contract. Failure to follow this direction may relieve the Government of liability for payment for supplies/services that were ordered by unauthorized employees.

Task/Delivery Orders shall contain:

Date and time of issuance of the Order (in local time)

Contract line items and quantity ordered.

Place of performance address.

Date and time for services to be performed.

Contracting/Ordering Officer name, address and telephone number.

Government Point of Contact for place of performance.

Contracting Officer Representative (COR) name and phone number, if applicable.

Name and address of Point of Contact to where invoices are to be submitted.

H 10 PCO (PROCURING CONTRACTING OFFICER)

The PCO is the only person authorized to approve changes to any of the requirements/terms and conditions under this contract, and notwithstanding any provision contained elsewhere in this contract the said authority remains solely with the PCO. In the event the Contractor effects any change at the direction of any person other than the PCO the change will be considered to have been without authority.

U.S. Army Corps of Engineers, Philadelphia District
 100 Penn Square East, Rm 643
 Wanamaker Building
 Philadelphia, PA 19107-3390
 USA

Procuring Contracting Officer: Robert Sharamatew, 215-656-6771
 (Name and Phone No.)

Contract Specialist: Primary-William A. Bailey Alternate-Joseph Bujnowski
 Name and Phone No.) 215-656-6932 215-656-6761

DISTRIBUTION FOR TASK ORDERS, MODIFICATIONS TO TASK ORDERS AND DD350's/DD1057's/DD1594's

	TASK ORDERS/MODIFICATIONS	DD350's/DD1057's & DD1594's
(1) Issuing Office	1 Copy	1 Copy
(2) POC (Name of District)	1 Copy within one working day after action date – fax to (Fax No.) 215-656-6780	1 Copy
(3) (Contractor's Co. Name) (Address Line) (Address Line) (Phone No.) (Fax No.)	1 Copy	

Points of Contact: (Name & Title)
 (Name & Title)
 Email: (Name – e-mail address)

TASK/DELIVERY ORDERS ARE TO BE NUMBERED IN ACCORDANCE WITH THE ARMY ACTIVITY ADDRESS NUMBERS, DFAR APPENDIX G, G-102 PART 2:

(Number) U.S. Army Engineer District, (Name of District)
 Attn: CENAP-CT
 (Address Line)
 (Address Line)

REMITTANCE ADDRESS—SUPPLIES/SERVICES CONTRACT

() Check if remittance address is different from name and address of offeror as shown on Page 1, Block 15A, of Standard Form 33. Enter remittance address below:

NAME AND ADDRESS (Street, County, State, and Zip code):

Area Code and Telephone No. _____

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SECTION I - Contract Clauses

CLAUSES INCORPORATED BY FULL TEXT

52.202-1 DEFINITIONS (DEC 2001)

(a) Agency head or head of the agency means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) Commercial component means any component that is a commercial item.

(c) Commercial item means--

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for--

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if--

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services--

(i) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) Component means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) Nondevelopmental item means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(g) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(h) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This

subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner,

which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the

Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
- (2) Rescind the contract with respect to which--
 - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either--
 - (A) Exchanging the information covered by such subsections for anything of value; or
 - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be--
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

52.204-2 Security Requirements (Aug. 1996)

(a) This clause applies to the extent that this contract involves access to information classified "Confidential," "Secret," or "Top Secret."

(b) The Contractor shall comply with --

(1) The Security Agreement (DD Form 441), including the *National Industrial Security Program Operating Manual* (DoD 5220.22-M); and

(2) Any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause--

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered

material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as--

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as--
 - (i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
 - (ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.
- (b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.
- (c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the

Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN
SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR
PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principles, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 1999)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are

in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General--(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required

by statute or by other clauses of this contract. In addition--

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

52.215-8 ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

52.215-10 Price Reduction for Defective Cost or Pricing Data (Oct 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because --

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which --

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if --

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if --

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid --

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

52.215-12 Subcontractor Cost or Pricing Data (Oct 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either --

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data -- Modifications.

52.215-14 INTEGRITY OF UNIT PRICES (OCT 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j).

52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall--

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997) ALT IV (OCT 1997)

(a) Submission of cost or pricing data is not required.

(b) Provide information described below:

(1) Where offeror does not own the generator sets: the original equipment manufacturers price lists showing rental rates and sample rental agreement

(2) Market or catalog pricelists for offeror's commercial operations

52.216-4 ECONOMIC PRICE ADJUSTMENT--LABOR AND MATERIAL (JAN 1997)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract

performance, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under subparagraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for (i) supplies or services for which the production cost is not affected by such changes, (ii) changes in rates or unit prices other than those shown in the Schedule, or (iii) changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

52.216-18 Ordering (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from date of contract award through 365 calendar days after date of award, including any exercised option(s).

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

52.216-19 -- Order Limitations (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$2,500.00 U.S, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor --

- (1) Any order for a single item in excess of \$29,500,000.00, US
- (2) Any order for a combination of items in excess of \$29,500,000.00 US; or
- (3) A series of orders from the same ordering office within 5 calendar days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 5 calendar days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and

the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source

52.216-21 Requirements (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the expiration of the performance period of the contract.

52.216-22 Indefinite Quantity (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries after the expiration of the performance period of the contract.

NOTE: CLAUSE 52.216-22 APPLIES TO THE OPTION PORTION OF THE CONTRACT

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 calendar days of expiration of the performance period or upon reaching the base year's contract maximum value; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five calendar years or \$29,500,000.00.

52.219-8 -- Utilization of Small Business Concerns (Oct 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in

performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract--

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"-

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer, that--

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern-

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

- (1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

52.222-21 Prohibition of Segregated Facilities (Feb 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.

(b) The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in the contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

NOTE TO OFFERORS: Work outside the United States. Contracts are exempt from the requirements of E.O. 11246 for work performed outside the United States by employees who were not recruited within the United States

52.226-26 Equal Opportunity (Apr 2002)

Notice: The following terms of this clause are waived for this contract: as provided below

(a) *Definition.* "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to --

- (i) Employment;
- (ii) Upgrading;

- (iii) Demotion;
- (iv) Transfer;
- (v) Recruitment or recruitment advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the (OFCCP) for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked

against the Contractor as provided in Executive Order 11246, as amended, in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

52.222-29 NOTIFICATION OF VISA DENIAL (FEB 1999)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM) 2201 C Street NW, Room 7325, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

Notice: Clauses 52.222-35, 52.222-36 and 52.222-37 do not apply to offers from foreign organizations when work is performed outside the United States by employees recruited outside the United States.

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) ALT I (DEC 2001)

(a) *Definitions.* As used in this clause --

"All employment openings" means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

"Executive and top Management" means any employee-

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

"Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

"Positions that will be filled from within the Contractor's organization" means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

"Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who,

with or without reasonable accommodation, can perform the essential functions of such position.

"Special disabled veteran" means-

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability--

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

"Veteran of the Vietnam era" means a person who -

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred-

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed---

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.*

(1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans,

veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- (iii) Rate of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.*

(1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.*

(1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall--

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheel chair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam Era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of

the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

52.222-36 Affirmative Action for Workers With Disabilities (Jun 1998)

(a) *General.*

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as --

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings.*

(1) The Contractor agrees to post employment notices stating --

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on --

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)".

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date--

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due, or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C.4212 to identify themselves to the Contractor. The invitation shall state--

(1) That the information is voluntarily provided;

(2) That the information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if--

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt--

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 2, the Contractor shall--

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

52.225-14 INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

52.226-1 UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

(a) Definitions. As used in this clause:

"Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any "Native"

as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

"Indian organization" means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

"Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitute a not less than 51 percent of the enterprise.

"Indian tribe" means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

"Interested party" means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626-MIB, Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

- (ii) The target cost of a cost-plus-incentive-fee prime contract.
 - (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
 - (iv) The price of a firm-fixed-price prime contract.
- (3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.
- (4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.
- (c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

52.228-3 Workers' Compensation Insurance (Defense Base Act) (Apr 1984)

The Contractor shall

- (a) provide, before commencing performance under this contract, such workers' compensation insurance or security as the Defense Base Act (42 U.S.C. 1651, *et seq.*) requires and
- (b) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act applies, a clause similar to this clause (including this sentence) imposing upon those subcontractors this requirement to comply with the Defense Base Act.

52.229-6 TAXES--FOREIGN FIXED-PRICE CONTRACTS (JAN 1991)

- (a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.
- (b) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

"Tax" and "taxes," as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

"After-imposed tax," as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax," as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such

interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

52.232-1 PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if --

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price

52.232-8 DISCOUNTS FOR PROMPT PAYMENT (FEB 2002)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to--

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

52.232-11 EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer

52.232-17 INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. reproduce, prepare derivative works, distribute copies to the public, and (b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) - ALTERNATE I (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right

under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

52.232-25 PROMPT PAYMENT (FEB 2002)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payment. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) Overpayments. If the Contractor becomes aware of a duplicate payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

NOTE: THE FOLLOWING CLAUSE APPLIES ONLY TO THE DOMESTIC U. S. BANKING SYSTEM. IF EFT PAYMENTS CANNOT BE MADE TO

DOMESTIC U.S. BANKS, SUCH PAYMENTS SHALL BE IN ACCORDANCE WITH PARAGRAPH (A)(2)(1)

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to

use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

52.233-1 DISPUTES. (JUL 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and

belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

52.233-3 PROTEST AFTER AWARD (AUG. 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

52.237-8 RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS. (OCT 1995)

(a) The Federal Acquisition Regulation (FAR), at 31.205-6(g)(3), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the head of the agency, or designee,

grants a waiver pursuant to FAR 37.113-1 before contract award.

(b) In making the determination concerning the granting of a waiver, the head of the agency, or designee, will determine that--

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

52.242-15 STOTP-WORK ORDER (AGU 1989)

a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or

within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if --

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

52.243-1 CHANGES-FIXED PRICE, ALT II (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government, in accordance with the drawings, designs, or specifications.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2002)

(a) Definitions. As used this clause--

"Commercial item", has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract", includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

52.246-2 INSPECTION OF SERVICES-FIXED PRICE (AUG 1996)

(a) *Definition:* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract.

The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may --

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may --

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(2) Terminate the contract for default.

NOTE: THE FOLLOWING CLAUSES APPLIES TO INCIDENTAL SUPPLIES FURNISHED UNDER THIS CONTRACT. SEE CONTRACT LINE ITEM 0012.

52.246-16 RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon --

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) of this section shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this section shall apply.

(d) Under paragraph (b) of this section, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

52.246-17 Warranty of Supplies of a Noncomplex Nature (May 2001)

(a) Definitions. As used in this clause--

"Acceptance" means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Supplies" means the end items furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for 365 calendar days after acceptance by the Government--

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) Remedies available to the Government.

(1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within 45 days after discovery of the defect.

(2) Within a reasonable time after the notice, the Contracting Officer may either --

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer --

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor --

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

52.246-20 WARRANTY OF SERVICES (May 2001)

(a) Definitions.

"Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services, as partial or complete performance of the contract.

(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer

shall give written notice of any defect or nonconformance to the Contractor within 45 calendar days of receipt of notice of such breach. This notice shall state either --

- (1) That the Contractor shall correct or reperform any defective or nonconforming services; or
- (2) That the Government does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

52.246-25 LIMITATION OF LIABILITY--SERVICES (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract, and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of--

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance,

covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier", as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation):

[State reasons]: _____

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

52.248-1 VALUE ENGINEERING (FEB 2000)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) Definitions. "Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include--

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

"Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contracting office" includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and

submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Future unit cost reduction," as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

"Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

"Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

"Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

"Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

"Unit," as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) Government action. (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing rates. If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

(Figures in percent)

	Incentive (Voluntary)		Program Requirement (Mandatory)	
Contract Type	Instant	Concurrent	Instant	Concurrent

	Contract Rate	and Future Contract Rate	Contract Rate	and Future Contract Rate
Fixed-price (includes fixed-price- award-fee; excludes other fixed- price incentive contracts)	(1) 50	(1) 50	(1) 25	25
Incentive (fixed-price or cost) (other than award fee)	(2)	(1) 50	(1) 50	25
Cost- reimburse- ment (includes cost-plus- award-fee; excludes other cost- type incentive Contracts)	(3) 25	(3)	15	15

(1) The Contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP.

(2) Same sharing arrangement as the contract's profit or fee adjustment formula.

(3) The Contracting Officer may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

(g) Calculating net acquisition savings.

(1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) Contract adjustment. The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall--

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts--add to contract price.

(ii) Cost-reimbursement contracts--add to contract fee.

(i) Concurrent and future contract savings.

(1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent

contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subtracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.

(5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(k) Relationship to other incentives. Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value.

In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering clause of contract , shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

- (3) The reasonable costs of settlement of the work terminated, including--
- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- (i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.
- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted--
- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
- (l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

52.249-8 DEFAULT (Fixed-Price Supply and Service) (Apr 1984)

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to --

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding

liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) *Definition.* "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE-CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions. As used in this clause—

(1) “Arising out of a contract with the DoD” means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) “Conviction of fraud or any other felony” means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

(3) “Date of conviction” means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--

(1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;

(2) On the board of directors of any DoD contractor or first-tier subcontractor;

(3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

- (2) Cancellation of the contract at no cost to the Government; or
 - (3) Termination of the contract for default.
- (f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—
- (1) The person involved;
 - (2) The nature of the conviction and resultant sentence or punishment imposed;
 - (3) The reasons for the requested waiver; and
 - (4) An explanation of why a waiver is in the interest of national security.
- (g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.
- (h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

- (a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--
- (1) The Contracting Officer has given prior written approval; or
 - (2) The information is otherwise in the public domain before the date of release.
- (b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.
- (c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

NOTE: THE FOLLOWING CLAUSE APPLIES TO OFFERS FROM FOREIGN FIRMS.

252.204-7001 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (AUG 1999)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code entered must be for that name and address. Enter "CAGE" before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Information Service (DLIS). The Contracting Officer will-

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLIS; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT
(APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

NOTE: THE FOLLOWING CLAUSE DOES NOT APPLY TO FOREIGN FIRMS. FOREIGN FIRMS MUST COMPLY WITH CLAUSE NUMBER 252.204-7001

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION (NOV 2001)

(a) Definitions.

As used in this clause--

(1) Central Contractor Registration (CCR) database means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the

parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr.gov>.

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor

252.204-7005 ORAL ATTESTATION OF SECURITY RESPONSIBILITIES (NOV 2001)

(a) Contractor employees cleared for access to Top Secret (TS), Special Access Program (SAP), or Sensitive Compartmented Information (SCI) shall attest orally that they will conform to the conditions and responsibilities imposed by law or regulation on those granted access. Reading aloud the first paragraph of Standard Form 312, Classified Information Nondisclosure Agreement, in the presence of a person designated by the Contractor for this purpose, and a witness, will satisfy this requirement. Contractor employees currently cleared for access to TS, SAP, or SCI may attest orally to their security responsibilities when being briefed into a new program or during their annual refresher briefing. There is no requirement to retain a separate record of the oral attestation.

(b) If an employee refuses to attest orally to security responsibilities, the Contractor shall deny the employee access to classified information and shall submit a report to the Contractor's security activity. ** SEE CLAUSE 52.204-2 **

252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

252.209-7002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (SEP 1994)

(a) *Definitions.* As used in this provision-

(1) "Effectively owned or controlled" means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror's officers or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) "Entity controlled by a foreign government"-

(i) Means-

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) "Foreign government" includes the state and the government of any country (other than the United States and its possessions and trust territories) as well as any political subdivision, agency, or instrumentality thereof.

(4) "Proscribed information" means-

(i) Top Secret information;

(ii) Communications Security (COMSEC) information, except classified keys used to operate secure telephone units (STU IIIs);

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) *Prohibition on award.* No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) *Disclosure.* The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror's immediate parent, intermediate parents, and

the ultimate parent. Use separate paper as needed, and provide the information in the following format:

Offeror's Point of Contact for Questions about Disclosure

(Name and Phone Number with Country Code, City Code

and Area Code, as applicable)

Name and Address of Offeror

Name and Address of Entity Controlled by a Foreign Government	Description of Interest, Ownership Percentage, and Identification of Foreign Government
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252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

252.215-7000 PRICING ADJUSTMENTS (DEC 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data - Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data - Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

252.216-7003 ECONOMIC PRICE ADJUSTMENT--WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT (JUN 1997)

(a) The Contractor represents that the prices set forth in this contract-

(1) Are based on the wage rate(s) or material price(s) established and controlled by the Government of _____ (*Offeror insert name of host country*); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor's actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor's written request for contract adjustment within 10 days of the change. If the Contractor's request is received later, the effective date shall be the date that the Contracting Officer received the Contractor's request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the government's rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates or prices set by the government named in paragraph (a) of this clause. The Contractor shall make available its books and records that support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

252.222-7002 COMPLIANCE WITH LOCAL LABOR LAWS (OVERSEAS) (JUN 1997)

(a) The Contractor shall comply with all-

(1) Local laws, regulations, and labor union agreements governing work hours; and

(2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

(b) The Contractor indemnifies and holds harmless the United States Government from all claims arising out of the requirements of this clause. This indemnity includes the Contractor's obligation to handle and settle, without cost to the United States Government, any claims or litigation concerning allegations that the Contractor or the United States Government, or both, have not fully complied with local labor laws or regulations relating to the performance of work required by this contract.

(c) Notwithstanding paragraph (b) of this clause, consistent with paragraphs 31.205-15(a) and 31.205-47(d) of the Federal Acquisition Regulation, the Contractor will be reimbursed for the costs of all fines, penalties, and reasonable litigation expenses incurred as a result of compliance with specific contract terms and conditions or written instructions from the Contracting Officer.

252.225-7005 IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (APR 2002)

(a) This clause applies only if the Contractor is--

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(b) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification-

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products--expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services--expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers--expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (b)(3)(i) through (iii) of this clause.

(c) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

252.225-7009 DUTY-FREE ENTRY--QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (AUG 2000)

(a) Definitions. Qualifying country and qualifying country end products have the meaning given in the Buy American Act and Balance of Payments Program clause, Buy American Act--Trade Agreements--Balance of Payments Program clause, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause, or Trade Agreements clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed--

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, or unless supplies were imported into the United States before the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor, before the date of the subcontract, no amount is or will be included in the contract price for duty for--

(1) End items that are qualifying country end products; or

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in the end items to be delivered under this contract, provided that the end items are manufactured in the United States or in a qualifying country.

(d)The Contractor warrants that--

(1) All qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of qualifying country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, shall--

(1) Consign the shipments to the appropriate--

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information--

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv)(A) For direct shipments to a U.S. military installation, the notation:

UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Building 120, Staten Island, New York, 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCM New York, for execution of the duty-free certificate

(v)Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi)Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3605A

(g) Preparation of customs forms. (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCM New York for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry

(h)The contractor agrees--

(1)To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2)To consign the shipment as specified in paragraph (f) of this clause; and

(3)To mark the exterior of all packages as follows:

(i)"UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

(ii)The activity address number of the contract administration office actually administering the prime contract.

(i)The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain--

(1)Prime contractor's name, address, and CAGE code;

- (2) Prime contract number, and delivery order number if applicable;
 - (3) Total dollar value of the prime contract or delivery order;
 - (4) Expiration date of the prime contract or delivery order;
 - (5) Foreign supplier's name and address;
 - (6) Number of the subcontract/purchase order for foreign supplies;
 - (7) Total dollar value of the subcontract for foreign supplies;
 - (8) Expiration date of the subcontract for foreign supplies;
 - (9) List of items purchased;
 - (10) An agreement by the Contractor that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer;
 - (11) The qualifying country; and
 - (12) The scheduled delivery date(s).
- (j) This clause does not apply to purchases of qualifying country supplies in connection with this contract if--
- (1) The qualifying country supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and
 - (2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.
- (k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (Appendix G of the Defense FAR Supplement), and the information required by paragraphs (i)(1), (2), and (3) of this clause will be included in applicable subcontracts.

252.225-7041 CORRESPONDENCE IN ENGLISH (JUNE 1997)

The Contractor shall ensure that all contract correspondence that is addressed to the United States Government is submitted in English or with an English translation.

252.225-7042 AUTHORIZATION TO PERFORM (JUNE 1997)

The Contractor represents that it has been duly authorized to operate and to do business in the country or countries in which this contract is to be performed. The Contractor also represents that it will fully comply with all laws, decrees, labor standards, and regulations of such country or countries, during the performance of this contract.

252.225-7043 ANTITERRORISM/FORCE PROTECTION POLICY FOR DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES (JUN 1998)

(a) Except as provided in paragraph (b) of this clause, the Contractor and its subcontractors, if performing or traveling outside the United States under this contract, shall--

- (1) Affiliate with the Overseas Security Advisory Council, if the Contractor or subcontractor is a U.S. entity;
- (2) Ensure that Contractor and subcontractor personnel who are U.S. nationals and are in-country on a non-transitory basis, register with the U.S. Embassy, and that Contractor and subcontractor personnel who are third country nationals comply with any security related requirements of the Embassy of their nationality;
- (3) Provide, to Contractor and subcontractor personnel, antiterrorism/force protection awareness information commensurate with that which the Department of Defense (DoD) provides to its military and civilian personnel and their families, to the extent such information can be made available prior to travel outside the United States; and
- (4) Obtain and comply with the most current antiterrorism/force protection guidance for Contractor and subcontractor personnel.

(b) The requirements of this clause do not apply to any subcontractor that is--

- (1) A foreign government;
- (2) A representative of a foreign government; or
- (3) A foreign corporation wholly owned by a foreign government.

(c) Information and guidance pertaining to DoD antiterrorism/force protection can be obtained from:

HQDA (DAMO-ODL)/ODCSOP; telephone, DSN 225-8491 or commercial (703) 695-8491

252.229-7000 INVOICES EXCLUSIVE OF TAXES OR DUTIES (JUNE 1997)

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available.

252.229-7001 TAX RELIEF (JUN 1997)

(a) Prices set forth in this contract are exclusive of all taxes and duties from which the United States Government is exempt by virtue of tax agreements between the United States Government and the Contractor's government. The following taxes or duties have been excluded from the contract price:

NAME OF TAX: (Offeror Insert) _____
RATE (PERCENTAGE): (Offeror Insert) _____

(b) The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

(c) When items manufactured to United States Government specifications are being acquired, the Contractor shall identify the materials or components intended to be imported in order to ensure that relief from import duties is obtained. If the Contractor intends to use imported products from inventories on hand, the price of which includes a factor for import duties, the Contractor shall ensure the United States Government's exemption from these taxes. The Contractor may obtain a refund of the import duties from its government or request the duty-free import of an amount of supplies or components corresponding to that used from inventory for this contract.

252.232-7008 ASSIGNMENT OF CLAIMS (OVERSEAS) (JUNE 1997)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and

(3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential" be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

252.233-7001 CHOICE OF LAW (OVERSEAS) (JUNE 1997)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) 80 percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining 20 percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a)(1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of-

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

252.236-7000 MODIFICATION PROPOSALS--PRICE BREAKDOWN (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown-

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for-

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

252.242-7000 POSTAWARD CONFERENCE (DEC 1991)

The Contractor agrees to attend any postaward conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5.

252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND
COMMERCIAL COMPONENTS (DOD) (MAR 2000)

In addition to the clauses listed in paragraph (c) of the Subcontracts for Commercial Items and Commercial Components clause of this contract (Federal Acquisition Regulation 52.244-6), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002)

(a) Definitions. As used in this clause --

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities;

ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if--

(i) This contract is a construction contract; or

(ii) The supplies being transported are--

(A) Noncommercial items; or

(B) Commercial items that--

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted

after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --

- (1) Type, weight, and cube of cargo;
 - (2) Required shipping date;
 - (3) Special handling and discharge requirements;
 - (4) Loading and discharge points;
 - (5) Name of shipper and consignee;
 - (6) Prime contract number; and
 - (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.
- (e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:
- (1) Prime contract number;
 - (2) Name of vessel;
 - (3) Vessel flag of registry;
 - (4) Date of loading;
 - (5) Port of loading;
 - (6) Port of final discharge;
 - (7) Description of commodity;
 - (8) Gross weight in pounds and cubic feet if available;
 - (9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(f) The Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief--

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL	_____	_____

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA
(MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor --

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

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SECTION J LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHEMENTS

Item	Title	Pages
1.	Past Performance Format-Key Personnel	J-2
2.	Past Performance, Specialized Experience	J-3
3.	Emergency Power Solicitation Question Format	J-5
4.	Guide Sample of Contingency BOM (Bill of Materials)	J-6

**PAST PERFORMANCE FORMAT
PROJECT KEY PERSONNEL**

Provide information, listed below, on separate sheets showing qualifications of: Project Manager, Operations Manager, Field Site Supervisor/Superintendent, Chief Electrician, Chief, Quality Control and Safety Manager. Use continuation sheets, if necessary.

Your Name and Title: _____

Name of Your Firm: _____

Your assignment on this Project: _____

No. Years: With this Firm: _____ With other Firms: _____

Education: Degree(s)/Year/Specialization: _____

Active Registration: No: _____ State: _____ Year: _____

Specific Experience and Qualifications Relevant to this Project:

**PAST PERFORMANCE FORMAT
OFFEROR'S SPECIALIZED EXPERIENCE IN EMERGENCY POWER**

Provide the following information to show examples of your experience within the last 6 years with projects of similar type and scope. Use separate sheets as necessary.

Your Firm's Name: _____

Name of Project: _____

Location of Project: _____

Customer: _____

General Scope of Project: _____

Contract Cost (in U. S. Dollars) _____

Your Role (Prime, Joint Venture, Subcontractor, etc) and Work your Company Self Performed: _____

Extent and Type of Work Subcontracted Out: _____

Dates of Project: Start: _____ Completed: _____

Your Performance Evaluation by Owner: _____

Were you Terminated or Assessed Liquidated Damages? (if either "Yes", explain)

Past Performance Format, Specialized Experience: cont.

Customer's Point of Contact for Reference (Name):

Company:

Telephone Number of Reference POC:

**EMERGENCY POWER
SOLICITATION QUESTIONS
DACA61-02-R-0004**

COMPANY: _____

POINT OF CONTACT: _____

QUESTION: _____

REFERENCE: _____

ANSWER (To be completed by Contracting Specialist): _____

Fax Questions to: William A. Bailey, 215- 656-6780 or
E-mail: William.A.Bailey@nap02.usace.army.mil

GUIDE SAMPLE OF CONTINGENCY BOM (Bill of Materials)

The enclosed pages entitled "Section J Addendum" is a representative sample of the types of Incidental Supplies that may be ordered to replenish/support GFE (Government Furnished Equipment) deployed to a contingency area. Offerors should note that where a brand name is listed, the brand name represents the minimum requirement. Should Incidental Supplies be ordered under a resultant contract, no substitution will be permissible without the prior approval of the U. S. Government. The brand name products listed are components for generator sets or transmission and distribution systems that the U. S. Government already possesses and it is not practicable for the Government to make wholesale substitutions of its inventory.

Offerors are required to price the attached pages and to submit the BOM as TAB 6 of Volume II Price Proposal.

	A	B	C	SECT J ADDENDUM	E	F	G	H
1	BOM	INCIDENTAL SUPPLIES	POTENTIAL			NOMINAL	UNIT	EXTENDED
2	ITEM #	DESCRIPTION	SUPPLIER	CATALOG #	UNIT ISSU	QUANTITY	PRICE	PRICE
3	28	Cable, Bare	Various	BARE-CU-SD-2/0-19STR-1000	ROLL	1000'		
4		2/0 AWG		BARE CU, Stranded				
5	29	Wire, Bare	Various	BARE-CU-SD-6-7STR-315S	ROLL	315		
6		#6 CU		BARE CU, Stranded				
7	30	Wire, Bare	Various	BARE-CU-SD-8-7STR-500S	ROLL	500		
8		#8 AWG		BARE CU, Stranded				
9	31	Wire, Bare	Various	BARE-CU-SD-4/0-19STR-1000 ft roll	ROLL	1000'		
10		4/0 AWG		BARE CU, Stranded				
11	32	Dead Break Elbow, 600 Amp	Thomas & Betts	DEAD BREAK ELBOW, 600 Amp	EA	1		
12		500 MCM Cable						
13	33	Ground Rod	Enrico Products	613400	EA	1		
14		3/4" x 10' CU Clad						
15	34	Clamp, Ground Rod	Enrico Products	CP-34	EA	1		
16	35	Cable Cutter	Klein Tools	63060	EA			
17		10" Ratcheting						
18	36	Tape, Insulation	3M	SUPER33PLUS34X66FT	ROLL	10		
19		33+ Jacketing, Black						
20	37	Tape, Coding	3M	35-RED-3/4X66FT	ROLL	5		
21		RED						
22	38	Tape, Coding	3M	35-BLUE-3/4X66FT	ROLL	5		
23		BLUE						
24	39	Tape, Coding	3M	35-WHITE-3/4X66FT	ROLL	5		
25		WHITE						
26	40	Tape, Coding	3M	35-GREEN-3/4X66FT	ROLL	5		
27		GREEN						
28	41	Tape, Coding	3M	35-BROWN-3/4X66FT	ROLL	5		
29		BROWN						
30	42	Tape, Coding	3M	35-YELLOW-3/4X66FT	ROLL	5		
31		YELLOW						
32	43	Tape, Coding	3M	35-ORANGE-3/4X66FT	ROLL	5		
33		ORANGE						
34	44	Tape, Insulation	3M	130C-2X30FT	ROLL	5		
35		130C, 30'						
36	45	Tape, Insulation	3M	70-1X30FT	ROLL	5		
37		70-Self-Fusing, 30'						
38	46	Lockout Device, multiple lock	Panduit Corp.	PSL-1.5A	EA	1		
39	47	Tag, Safety Lockout Primary	Panduit Corp.	PVT-23	PACK	5		
40	48	Tag, Safety Lockout Secondary	Panduit Corp.	PVT-41	PACK	5		
41	49	Sign, Hazardous Area	Panduit Corp.	PRS1014B365	EA	1		
42	50	Sign, Hazardous Area	Panduit Corp.	M2632PSPL	EA	1		
43	51	Sign, Hazardous Area	Panduit Corp.	M9713HPP	EA	1		
44	52	Sign, Hazardous Area	Panduit Corp.	M2565HPP	EA	1		
45	53	Sign, Hazardous Area	Panduit Corp.	PPS0710D77	EA	1		
46	54	Sign, Hazardous Area	Panduit Corp.	PRS1014D73	EA	1		
47	55	Bolt, 1/4" x 1", HEX	Mettalics	HTB2 1/4X1 HEX TAB BOLT	BOX	100		
48	56	Bolt, 1/4" x 2", HEX	Mettalics	HTB4 1/4X2 HEX TAB BOLT	BOX	100		
49	57	Bolt, 3/8" x 1", HEX	Mettalics	HTB45 3/8X1 HEX TAB BOLT	BOX	100		
50	58	Bolt, 3/8" x 2", HEX	Mettalics	HTB24 3/8-16X2 HEX TAB BOLT	BOX	100		
51	59	Bolt, 3/8" x 3", HEX	Mettalics	HTB26 3/8X3 HEX TAB BOLT	BOX	100		
52	60	Bolt, 1/2" x 1", HEX	Mettalics	HTB46 1/2X1 TAP BOLT	BOX	100		
53	61	Bolt, 1/2" x 1", HEX	Mettalics	HTB33 1/2X2 HEX TAB BOLT	BOX	100		
54	62	Bolt, 1/2" x 3", HEX	Mettalics	HTB35 1/2X3 HEX TAB BOLT	BOX	100		
55	63	Washer, Flat, 1/4"	Mettalics	SW73 1/4 FLAT WASH	BOX	100		
56	64	Washer, Flat, 3/8"	Mettalics	SW75 3/8 FLAT WASH	BOX	100		
57	65	Washer, Flat, 1/2"	Mettalics	SW76 1/2 FLAT WASH	BOX	100		
58	66	Washer, Locking, 1/4"	Mettalics	LW172 1/4 LOCK WASH	BOX	100		
59	67	Nut, Hex 1/4"	Mettalics	N163 1/4-20 HEX NUT	BOX	100		
60	68	Nut, Hex 3/8"	Mettalics	N165 3/8-16 HEX NUT	BOX	100		
61	69	Nut, Hex 1/2"	Mettalics	N166 1/2-13 HEX NUT	BOX	100		
62	70	Absorber, Chemical	3M	P-200-17596	BOX	12		
63		CHEM. SORBENT, Mini Boom		CHEM. SORBENT, Mini Boom				
64	71	Absorber, Chemical	3M	C-SKFL31-46287	BOX	1		
65		CHEM. SORBENT FOLDED						
66	72	Absorber, Chemical	3M	M-PD720GG-28994	BOX	100		
67		Diaper, 7-1/2" x 20" x 1/2" pad		7-1/2 X 20-1/2IN PROD PAD				
68	73	Tape, Danger	Klein Tools	3INX1000F RED TAPE	ROLL	1000		
69		RED "DANGER"						
70	74	Tape, Caution	Klein Tools	3INX1000FT YEL TAPE	ROLL	1000		
71		YELLOW, "CAUTION"						
72	75	Eyewash Station, Emergency		EYWASH 1OZ 4T365	PACKAGE	12		
73		Bottle						
74	76	Eyewash Station, Emergency		EYEWASH 1 OZ W/2	PACKAGE	12		
75		Pads		EYE PADS & STRIPS 6AK51				
76	77	Lugs, Mechanical	Burndy Corp.	KA6U 6AWG ALCU 1H TERM LUG	EA	1		
77		#6 AWG ALCU, 1-Hole						
78	78	Lugs, Mechanical	Burndy Corp.	KA26U 2/0 ALCU 1H TERM LUG	EA	1		
79		2/0 AWG ALCU, 1-Hole						
80	79	Lugs, Mechanical	Burndy Corp.	KA31U 350 ALCU 1H TERM LUG	EA	1		
81		350 MCM ALCU, 1-Hole						
82	80	Lugs, Mechanical	Burndy Corp.	KA34U 500 ALCU 1H TERM LUG	EA	1		
83		500 MCM ALCU, 1-Hole						
84	81	Lugs, Mechanical	Burndy Corp.	KA40U 800 ALCU 1H TERM LUG	EA	1		

	A	B	C	SECT J ADDENDUM	E	F	G	H
85		800 MCM ALCU, 1-Hole						
86	82	Lug, Mechanical	Burndy Corp.	K2A31U-2N 350 ALCU 2H TERM	EA	1		
87		350 MCM ALCU, 2-HOLE						
88	83	Lug, Mechanical	Burndy Corp.	K2A36U2N 600 ALCU 2H TERM	EA	1		
89		600 MCM ALCU, 2-Hole						
90	84	Split-bolt, connector	Burndy Corp.	KS20 5STR SPLIT BOLT CONN	EA	1		
91		#6 AWG						
92	85	Split-bolt, connector	Burndy Corp.	KS22 3STR SPLIT BOLT CONN	EA	1		
93		#3 AWG						
94	86	Split-bolt, connector	Burndy Corp.	KS23 2STR SPLIT BOLT CONN	EA	1		
95		#2 AWG						
96	87	Split-bolt, connector	Burndy Corp.	KS25 1/0STR SPLIT BOLT CONN	EA	1		
97		1/0 AWG						
98	88	Split-bolt, connector	Burndy Corp.	KS26 2/0STR SPLIT BOLT CONN	EA	1		
99		2/0 AWG						
100	89	Split-bolt, connector	Burndy Corp.	KS27 3/0STR SPLIT BOLT CONN	EA	1		
101		3/0 AWG						
102	90	Split-bolt, connector	Burndy Corp.	KS29 250MCM SPLIT BOLT CONN	EA	1		
103		250 MCM AWG						
104								
105	91	Split-bolt, connector	Burndy Corp.	KS31 350MCM SPLIT BOLT CONN	EA	1		
106		350 MCM AWG						
107	92	Split-bolt, connector	Burndy Corp.	KS34 500MCM SPLIT BOLT CONN	EA	1		
108		500 MCM AWG						
109	93	Split-bolt, connector	Burndy Corp.	KS39 750MCM SPLIT BOLT CONN	EA	1		
110		750 MCM AWG						
111	94	Split-bolt, connector	Burndy Corp.	KS44 1000MCM SPLIT BOLT CONN	EA	1		
112		1000 MCM AWG						
113	95	Lug, Mechanical	Burndy Corp.	YA28L-2TC38 4/0AWG COP 2H LUG	EA	1		
114		4/0AWG 2-Hole						
115	96	Lug, Mechanical	Burndy Corp.	YA29-2LN 250MCM COP 2H LUG	EA	1		
116		250 MCM 2-Hole						
117	97	Lug, Mechanical	Burndy Corp.	YA31-2LN 350MCM COP 2H LUG	EA	1		
118		350 MCM 2-Hole						
119	98	Lug, Mechanical	Burndy Corp.	YA34-2LN 500MCM COP 2H LUG	EA	1		
120		500 MCM 2-Hole						
121	99	Oxide Inhibitor	IlSCO Corp.	DE-OX-8OZ OXIDE INHIBITOR	EA	1		
122		8 oz. Plastic Bottle						
123	100	Duct Seal	IlSCO Corp.	DS-1 1-LB DUCT SEAL	EA	1		
124		1# Container						
125	101	Hammer, Demolition	Makita	20# Hammer HM 1242C	EA	1		
126	102	Crimper, Dieless	Greenlee	1989, SMALL HYD CRIMPER	EA	1		
127		Dieless crimp tool to 500 MCM, includes pressure test kit, and metal case. 8-1/2 ton max						
128		crimping force, swivel head.						
129	103	Grip, Strain Relief for Cable	Hubbell	73031209	EA	1		
130		cable range .54-.73, thread size 3/4"						
131	104	Grip, Strain Relief for Cable	Hubbell	73031212	EA	1		
132		cable dia range 1.25-1.50 thread size 1-1.2" npt						
133		insulated strain relief grips						
134	105	Grip, Strain Relief for Cable	Hubbell	73031207	EA	1		
135		STRAIN RELIEF GRIP						
136	106	Grip, Strain Relief for Cable	Hubbell	73031213	EA	1		
137		cable range 1.5"-1.7", 2" thread, insulated strain relief						
138	107	Nut, Sealing for Cable Reliefs	Raco Inc.	1202 1/2 STL SEALING LOCKNUT	EA	1		
139								
140	108	Nut, Sealing for Cable Reliefs	Raco Inc.	1203 3/4 STL SEALING LOCKNUT	EA	1		
141	109	Nut, Sealing for Cable Reliefs	Raco Inc.	1204 1-IN STL SEALING	EA	1		
142	110	Nut, Sealing for Cable Reliefs	Raco Inc.	1205 1-1/4 STL SEALING	EA	1		
143	111	Nut, Sealing for Cable Reliefs	Raco Inc.	1206 1-1/2 STL SEALING	EA	1		
144	112	Nut, Sealing for Cable Reliefs	Raco Inc.	1207 2-1/2 STL SEALING	EA	1		
145	113	Lock, Padlock, Lockout/Tagout	Panduit Corp.	PSL-11RED-LS 3-IN RED PADLOCK	EA	1		
146	114	Lockout, Jaw	Panduit Corp.	PSL-1 PANDUIT CORP 1-IN JAW LOCKOUT				
147	115	Lockout, Shackle	Panduit Corp.	PSL-SC PANDUIT CORP CLLR AND RVT PDLCK	EA	1		
148	116	Tag, Lockout ID	Panduit Corp.	PSL-TG1 BRASS PADLOCK ID TAG	EA	1		
149	117	Lock, Steel Padlock	Panduit Corp.	PSL-3BLACK STEEL LOCK	EA	1		
150	118	Lock, Steel Padlock	Panduit Corp.	PSL-3BLUE STEEL LOCK	EA	1		
151	119	Lock, Steel Padlock	Panduit Corp.	PSL-3BLACK-LS STEEL LOCK	EA	1		
152	120	Lock, Steel Padlock	Panduit Corp.	PSL-3BLUE-LS STEEL LOCK	EA	1		
153	121	Tie, Wire	Panduit Corp.	PLT1.5S-C LOCKING TIE	PACKAGE	100		
154	122	Tie, Wire	Panduit Corp.	PLT2S-C LOCKING TIE	PACKAGE	100		
155	123	Tie, Wire	Thomas & Betts	TY523MX 3.62" WEATHER RESIST TIE	PACKAGE	100		
156								
157	124	Tie, Wire	Thomas & Betts	TY524MX 5.50 WEATHER RESIST TIE	PACKAGE	100		
158	125	Tie, Wire	Thomas & Betts	TY525MX 7.31" WEATHER RESIST TIE	PACKAGE	100		
159	126	Tie, Wire	Thomas & Betts	13.4" WEATHER RESIST TIE	PACKAGE	100		
160	127	Tie, Wire	Thomas & Betts	TY529MX 30" WEATHER RESIST TIE	PACKAGE	100		
161	128	Saw, Chainsaw	Stihl	STIHL MS290-18	EA	1		
162		2.8" CUBIC ENGINE, 18" BAR (RESIDENTIAL/OCCA)						
163	129	Saw, Chainsaw	Stihl	MS290-18 inch	EA	1		
164		3.5" CUBIC ENGINE, 18" BAR						
165	130	Saw, Chainsaw	Stihl	M390-18 inch	EA	1		
166		3.9" CUBIC ENGINE, 18" BAR						
167	131	Pressure Washer	Honda	3011HWCOMZ PRESSU	EA	1		
168				11 HP HONDA MOTOR				

	A	B	C	SECT J ADDENDUM	E	F	G	H
169				RE WASHER 3000PSI, 4GPM				
170	132	Plywood, 3/4" CDX	Various	Plywood, 3/4" CDX	EA	1		
171	133	Lumber	Various	2" x 4" x 10'	EA	1		
172	134	Screw, Wood	Various	137617 3" WOOD SCREW 5LB BOX	BOX	1		
173	135	Nail, 12d	Various	193070 12 PENNY NAIL, 5LB BOX	BOX	1		
174	136	Gloves, Work	Fiskars Inc.	88429544 PRO WORK GLOVES MED	EA	1		
175	137	Gloves, Work	Fiskars Inc.	88429546 PRO WORK GLOVES LG	EA	1		
176	138	Gloves, Work	Fiskars Inc.	88429548 PRO WORK GLOVES X LG	EA	1		
177	139	Gloves, Work (THERMAL)	Fiskars Inc.	88439444 INSULATED WORK	EA	1		
178	140	Gloves, Work	Fiskars Inc.	88439446 INSUL TRUE-GRIP GLOVES	EA	1		
179	141	Gloves, Work	Fiskars Inc.	88439448 INSUL TRU-GRIP GLOVES	EA	1		
180	142	Fluid Transfer Pump	Grainger	Pump	EA	1		
181		Power Plant/Dist. Installation						
182	143	Hand-held Megger	Grainger	Megger 1000 VDC	EA	1		
183		Power Plant/Dist. Installation						
184	144	Battery Charger for Lightweight	Grainger	12/24 VDC with Engine Crank	EA	1		
185		Power Plant/Dist. Installation						
186								
187				TOTAL BOM PRICE				

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SECTION K - Representations, Certifications and Other Statements of Offerors

CLAUSES INCORPORATED BY FULL TEXT

52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that --

(b) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to --

(1) Those prices,

(i) The intention to submit an offer, or

(iii) The methods of factors used to calculate the prices offered:

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

(1) Is the person in the offeror's organization responsible for determining the prices offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision

_____ (insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies subparagraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this Certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

52.204-3 Taxpayer Identification (Oct 1998)

(a) *Definitions.*

"Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the IRS. If the resulting contract is subject to the reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

- * TIN: _____.
- * TIN has been applied for.
- * TIN is not required because:
 - * Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
 - * Offeror is an agency or instrumentality of a foreign government;
 - * Offeror is an agency or instrumentality of a Federal Government;
 - Other. State basis. _____

(e) *Type of organization.*

- * Sole proprietorship;
- * Partnership;
- * Corporate entity (not tax-exempt):
- * Corporate entity (tax-exempt):
- * Government entity (Federal, State, or local);
- * Foreign government;
- * International organization per 26 CFR 1.6049-4;
- * Other _____.

(f) *Common Parent.*

* Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

* Name and TIN of common parent:

Name _____

TIN _____

52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS)
(MAY 1999)

(a) Definition. Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it () is a women-owned business concern.

52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Dec 2001)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that --

(i) The Offeror and/or any of its Principals --

(A) Are ___ are not ___ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ___ have not ___, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ___ are not ___ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has ___ has not ___, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

52.222-22 Previous Contracts and Compliance Reports (FEB 1999)

The offeror represents that --

(a) It ___ has, ___ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) It ___ has, ___ has not filed all required compliance reports; and

(d) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards

52.222-25 Affirmative Action Compliance (Apr 1984)

The offeror represents that --

(a) It _____ has developed and has on file, _____ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It _____ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

52.223-13 Certification of Toxic Chemical Release Reporting (Oct 2000)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that --

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: *[Check each block that is applicable.]*

____ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

____ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

____ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

____ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

____ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE
GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary.

The disclosure shall include --

- (1) Identification of each government holding a significant interest; and
- (2) A description of the significant interest held by each government.

252.225-7017 PROHIBITION ON AWARD TO COMPANIES OWNED BY THE PEOPLE'S REPUBLIC OF CHINA (FEB 2000)

- (a) Definition. "People's Republic of China," as used in this provision, means the government of the People's Republic of China, including its political subdivisions, agencies, and instrumentalities.
- (b) Prohibition on award. Section 8120 of the Department of Defense Appropriations Act for fiscal year 1999 (Pub. L. 105-262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277), prohibits the award of a contract under this solicitation to any company in which the Director of Defense Procurement (Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)) has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.
- (c) Representation. By submission of an offer, the offeror represents that the People's Republic of China or the People's Liberation Army of the People's Republic of China does not own more than 50 percent interest in the offeror.

252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

- (a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term supplies is defined in the Transportation of Supplies by Sea clause of this solicitation.
- (b) Representation. The Offeror represents that it:
 - ____ (1) Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.
 - ____ (2) Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.
- (c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

SECTION L INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L 1 PROPOSAL EXPENSES AND PRECONTRACT COSTS

This request for proposal does not commit the government to pay for costs incurred in the preparation and publication of a proposal or for any other costs incurred prior to the execution of a formal contract.

L 2 FORMAL COMMUNICATIONS (PRIOR TO PROPOSAL DUE DATE)

a. Formal communications, such as requests for clarification of the solicitation, shall be submitted in writing, to the address in Block 7 of the SF 33. See J-2, Solicitation Questions for format.

b. Written inquiries will normally be answered via solicitation amendment provided to all prospective Offerors. However, the Government does not guarantee to answer any written inquiries which are received less than twenty (20) days before proposal due date. However, these inquiries may be answered after proposals are received.

L 3 PREAWARD SURVEY

The Government reserves the right to conduct a pre-award survey of any firm under consideration to confirm any part of the information furnished by the offeror, or to require other evidence of managerial, financial, technical, and other capabilities, the positive establishment of which is determined by the Government to be necessary for the successful performance of the contract.

L 4 SUBMITTAL OF OFFERS

This solicitation will result in one or more contracts, to support the geographical locations listed in Section B.

L 5 SEALED PROPOSALS

The offer shall be plainly marked on the lower left hand corner as follows:

Request for Proposal No. DACA61- 02- R- 0004

Date of Closing: Oct. 18, 2002

Time of Closing: 4:00 p.m. local time at geographic location.

Proposal for: Emergency Power: Operations & Maintenance

L 5.1 Proposals shall be submitted and mailed to the address below for the geographic area(s) for which the offerors are interested. Submit Proposal to:

US Army Corps of Engineers, Philadelphia District
Attn: CENAP-CT (William A. Bailey)
Wannamaker Bldg., Rm 643
100 Penn Square East
Philadelphia, PA 19107-3390

L 5.2 PROPOSAL FORMAT AND REQUIREMENTS

L 5.2.1 GENERAL

a. To be considered for selection, the Offeror must submit a complete response to this solicitation using the sequence and format provided herein. The offeror's proposal shall be submitted in two (2) parts; Volume I - Technical Proposal; Volume II - Price Proposal.

b. VOLUME I - Technical Proposal shall be divided into four separate sections, marked by tabular dividers: (Tab 1) Past Performance; (Tab 2) Contractor Furnished Equipment Product Listing/Catalogs, (Tab 3) Management Plan; (Tab 4) Extent of Subcontracting with Small Businesses; and (Tab 5) Location of Offeror Primary Place of Business.

c. VOLUME II – Price Proposal shall be submitted in a separate volume. This volume shall include the following : Section A, SF33 “Solicitation, Offer and Award”; Section B, “Schedule of Prices”; Section K, “Representations, Certifications and Other Statements of Offerors”; Subcontracting Plan and Preaward Information and Section J- Representative BOM Pricing

d. Proposals shall not be permanently bound. All proposals shall be submitted in a loose 3-ring binder, or equivalent. This will facilitate the evaluation process, if any pages need to be substituted later.

e. Proposals are limited to single spaced typewritten pages using 12 characters per linear inch, 11 point proportional font, or equivalent as the minimum size standard for text. Pages containing text shall be 8 ½ inches x 11 inches with margins on each side of at least 1 (one) inch. If both sides of the paper are used, it will be counted as two pages. Fold-out pages, if included, shall fold entirely within the volume and each 8 1/2 inch by 11 inch section of a fold-out shall count as one page.

f. The Offeror shall confine its submission to essential matters, sufficient to define their proposal and provide an adequate basis for evaluation in order to reduce proposal size.

g. The Government will not assume, nor consider anything that is not specifically addressed in the proposals.

h. No proposal price data shall appear in any volume other than Volume II, Price

i. Failure to show that the products or services offered conform to the minimum requirements of the specifications will result in rejection of the proposal.

L 5.2.2 PROPOSAL REVISIONS

For document control purposes, all proposal revisions provided after the initial proposal shall be submitted as page changes with each page identified by revision number and date, as well as the page number. Page changes shall be formatted to allow removal of old pages and insertion of change pages. New/changed information shall be identified by a vertical line (|) in the left margin and/or the redline feature for ease in identifying the change. All new/changed information must be identified by the offeror.

L 5.3 NUMBER OF COPIES OF PROPOSALS

The offeror shall submit one (1) original and three (3) copies of their proposal with any subsequent amendments.

L 5.4 VOLUME I - TECHNICAL PROPOSAL

The Technical Proposal shall be sufficient to enable technical evaluation personnel to make a thorough and complete evaluation and to arrive at a sound determination as to whether the requirements of this solicitation are understood and satisfied. The offeror shall furnish, at a minimum the following information:

EVALUATION AREAS:

L 5.4.1 Past Performance

The Offeror shall provide information in sufficient detail concerning their current and past performance for efforts similar to the Government's requirement proposed in this solicitation. Specifically, the Offeror shall provide a list of all contracts and subcontracts, similar to Government's present requirement, completed during the past six years and currently in progress. The Offeror shall describe in sufficient detail their past performance as it relates to conformance to contract specifications and standards of customer satisfaction, good workmanship and timeliness. Offeror shall provide references for all contracts and subcontracts submitted using the format contained in Section J.

Contracts listed may include those entered into with the Federal Government, agencies of state and local governments and commercial customers. Offerors that are newly formed entities without prior contracts should list contracts and subcontracts previously performed for all key personnel. If a formal performance evaluation is not available for current and past performance efforts, the Offeror shall address how actual performance time compared to contract performance periods. The Offeror shall provide quality awards, certificates, etc which substantiate standards of customer satisfaction, good workmanship and timeliness. The Offeror adequately addresses its history for reasonable and cooperative behavior, commitment to customer satisfaction and timely award and management of subcontracts. Offeror voluntarily provides sufficient information on problems encountered on the contracts and subcontracts identified above and corrective actions taken to resolve those problems. Offeror's safety record on past contracts and subcontracts is sufficiently addressed.

L 5.4.2 Commercial Product Adequacy

The offeror shall provide his/her commercial product catalog and price list for generator sets leased to the public and to be offered as contractor furnished equipment under any resultant award. The depth of an offeror's commercial products will be compared to the Government's inventory.

L 5.4.3 Management Plan (See also Contract Clause 52.222-46 in this Section)

The offeror shall provide a Management Plan that adequately demonstrates and ensures that the proper level of effort is directed toward each aspect of the work as outlined in Operation Action Plans (A through L) as specified in this Section; that the Offeror has at its disposal the organization, personnel and equipment required by the statement of work; and that all the work will be performed as specified. The offeror shall adequately address operations during periods of limited visibility in each Operation Action Plan. The plan shall also demonstrate that the offeror has sufficient in-house knowledge to implement and manage effective jobsite safety and quality control programs. The offeror shall submit an organization plan in the form of an organization chart of the offeror's organization detailing the assignment of functions, duties and responsibilities of major activities of the Offeror (and subcontractor(s), if used). Include a list of names, titles, duties and job descriptions of key personnel (management, technical, quality control and safety). Identify the person(s) who will be the contractor's operations manager, field supervisors and on-site representative(s) responsible for the management of this contract. Furnish evidence of his/her qualifications, a brief description of primary duties, responsibilities and level of authority. Approach and methodology for Operation Action Plans as specified in C.2.1 of the Statement of Work . The Contractor's Operations Action Plans are limited to two pages per plan and shall include as a minimum:

- A. Mobilization Plan (Concept of Operation, time schedule, phasing plan)
- B. Plan for conducting Government directed Assessments (Concept of Operation, qualifications, internal procedures, sample assessment worksheet)

- C. Generator Set Preparation Plan (Concept of Operation, documentation procedures, proposed schedule, internal Standard Operation Procedures SOPs)
- D. Plan for Hauling (Concept of Operation, itemized, detailed list of equipment, including quantities and capacities)
- E. Plan for Installation of Generator Sets (Concept of Operation, proposed schedule, documentation procedures, identification of Master Electricians and Journeyman Electricians, internal SOPs)
- F. Plan for Preventive Maintenance (Concept of Operation, documentation procedures, proposed schedule, internal SOPs)
- G. Plan for Service (Concept of Operation, Response Plan in event of generator malfunction/breakdown, documentation procedures, proposed service schedule, internal SOPs)
- H. Fueling Plan (Concept of Operation, proposed equipment, documentation procedures, proposed schedule, Emergency Spill Response Plan, cleanup procedures, internal SOPs)
- I. Plan for Relocating and Recovering (Concept of Operation, list of qualified individuals to perform this task, detailed list of equipment and capacities, preparation for storage plan)
- J. Demobilization Plan (Concept of Operation, time schedule, phasing plan)
- K. Safety Plan (Written safety plan which addresses each major phase of this SOW, Internal Safety Standard Operation Policies and Procedures, key Safety personnel and their qualifications, training and experience levels, Activity Hazard Analysis (specifically for specialized equipment used in performance of work) for each major phase of work, conformance to Corps of Engineer Safety Plan, EM 385-1-1, demonstrated knowledge of local, state and federal safety requirements).
- L. Quality Control (QC) Plan (Concept of Operation, personnel qualifications, internal procedures)
- M. Compensation Plan-as per clause 52.22-46.

L 5.4.4 Extent of Subcontracting with Small Businesses

The offeror's proposal will be evaluated on how the offeror proposes to provide subcontracting opportunities with firms located in the contingency area. The proposal should demonstrate the effort that will be taken to identify & develop lists of local sources and shall identify the procedures that will be established to identify and award subcontracts to those organizations, firms or individuals residing or doing business primarily in the affected area. The proposal will be evaluated to determine the extent of planned subcontracting with and commitment to with small business firms, small disadvantaged business firms, and any women- owned small business firms

L 5.4.5 Location of Primary Place of Business

The offeror shall address this evaluation factor by providing sufficient evidence of the locations of the main office and all subsidiaries to allow Government evaluators to determine that this requirement has been met or exceeded. The offeror shall also provide information on how their business location(s) provide a unique and advantageous benefit to the Government in the event they are tasked to provide services during contingency operations.

L 6 VOLUME II – PRICE PROPOSAL:

Offerors shall indicate geographic area of interest in the space provided for in Section B, Schedule. Proposal shall be submitted in a separate volume. This volume shall include the following:

- TAB 1: Section A, SF 33 "Solicitation, Offer and Award"
- TAB 2: Section B - "Schedule of Prices"
- TAB 3: Section K - "Representations, Certifications and other Statements of Offerors".
- TAB 4: Subcontracting Plan
- TAB 5: Pre-Award Information. In order to expedite the award of the resulting contract, Offerors are requested to submit pre-award information as follows:
 - (i) A copy of your latest financial statement; and
 - (ii) A bank reference, with point of contact for verification.
- TAB 6: Representative BOM Pricing

L 7 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 99)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address exactly as stated in the offer.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.

(5) Chief executive officer/key manager.

(6) Date the company was started.

(7) Number of people employed by the company.

(8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

NOTE: THE FOLLOWING CLAUSE APPLIES TO ITEMS LISTED IN SECTION J AS BOM (BILL OF MATERIALS)

L 8 52.211-6 BRAND NAME OR EQUAL (Aug 1999)

(a) If an item in this solicitation is identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must-

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by-

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modification the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modification.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an "equal" product, the offeror shall provide the brand name product referenced in the solicitation

L 9 52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

L 10 52.215-1 INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (MAY 2001)

(a) Definitions. As used in this provision--

“Discussions” are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

“In writing or written” means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Proposal modification” is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

“Time”, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals. (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show--

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, or revision, of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications, or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an

amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed-- in whole or in part--for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of--or in connection with-- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award. (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct

discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(b) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

L 12 52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997) Alternate IV (Oct 1997).

(a) Submission of cost or pricing data is not required.

(b) Provide information described below:

- (1) If the offeror does not own the generator sets: the original equipment manufacturers' price lists showing rental rates and a sample rental agreement
- (2) Market or catalog pricelists for the offeror's commercial operations

L 13 52.21601 TYPE OF CONTRACT (APR 1984)

The Government contemplates award the of firm, fixed price Requirements contract(s) with IDIQ options resulting from this solicitation.

L 14 52.216-27 SINGLE OR MULTIPLE AWARDS (OCT 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

L 15 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation (Feb 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

NOTE TO OFFERORS: *Work outside the United States.* Contracts are exempt from the requirements of E.O. 11246 for work performed outside the United States by employees who were not recruited within the United States.

L 16 52.222-46 EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)

(a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

L 17 52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Robert Sharamatew, Contracting Officer
US Army Corps of Engineers, Philadelphia
100 Penn Square East
Wanamaker Building, Rm 643
Philadelphia, PA 19107-3390
USA

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

L 18 52.215-1 Instructions to Offerors -- Competitive Acquisition (May 2001)

(a) *Definitions.* As used in this provision --

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal."

"In writing," "writing," or "written" means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

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"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.*

(1) Unless other methods (*e.g.*, electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages

(i) addressed to the office specified in the solicitation, and
(ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show --

- (i) The solicitation number;
- (ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
- (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;
- (iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and
- (v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Submission, modification, revision, and withdrawal of proposals.*

(i) Offerors are responsible for submitting proposals, and any modification, or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and --

- (1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
 - (2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
 - (3) It is the only proposal received.
- (B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
- (iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
 - (iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
 - (v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.
- (4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.
 - (5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.
 - (6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
 - (7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall --

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed -- in whole or in part -- for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of -- or in connection with -- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:
Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.*

(1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be

conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a price realism analysis is performed, price realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

- (i) The overall evaluated cost or price and technical rating of the successful offeror;
- (ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;
- (iii) A summary of the rationale for award; and
- (iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

L 19 52.215-15 TERMINATION OF DEFINED BENEFIT PENSION PLANS
(OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205- 6(j)(4). The Contractor shall include the substance of this clause in all sub-contracts under this contract that meet the applicability requirement of FAR 15.408(g).

L 20 PARTNERING

Participation in the Partnering process is entirely voluntary and is based upon a mutual commitment between government and industry to work cooperatively as a Team to identify and resolve problems and facilitate contract performance. The primary objective of the process is providing the American taxpayer with the highest quality supplies/services on time and at a reasonable price. Partnering requires the parties to look

beyond the strict bounds of the contract in order to formulate actions that promote their common goals and objectives. It is a relationship that is based upon open and continuous communication, mutual trust and respect, and the replacement of the “us vs. them” mentality of the past with a “win- win” philosophy for the future. Partnering also promotes synergy, creative thinking, pride in performance, and the creation of a shared vision for success. After contract award, the government and the successful offeror will decide whether or not to engage in the Partnering process. The Government and the contractor will each bear their own costs for participation in the partnering relationship, with no change in the contract cost. If the parties elect to partner, any costs associated with that process shall be identified and agreed to after contract award. Participation in such partnering activities may include attendance at coordination meetings and cooperation in other efforts to promote the partnering relationship. Accordingly, offerors shall not include any anticipated costs associated with the implementation of the Partnering process in their proposed cost/price (e.g., cost of hiring a facilitator and conducting the Partnering Workshop). **The establishment of this Partnering arrangement does not affect the legal responsibilities or relationship of the parties and cannot be used to alter, supplement or deviate from the terms of the contract. Any changes to the contract must be executed in writing by the Contracting Officer.**

L 21 52.212-1 INSTRUCTIONS TO OFFERORS--COMMERCIAL ITEMS
(OCT 2000)

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition is

221119 and the size standard is 4 million megawatts per hour in the preceding fiscal year. However the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show--

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3;
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing. *** No product samples are required***

(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers:

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time

(2) specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be

withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) Availability of requirements documents cited in the solicitation. (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407 ((202) 619-8925).

(2) The DOD Index of Specifications and Standards (DODISS) and documents listed in it may be obtained from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094 (telephone (215) 697-2569).

(i) Availability of requirements documents cited in the solicitation. (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--GSA Federal Supply Service Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619-8925, Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the--Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained-

(A) By telephone at (215) 697-2667/2179; or

(B) Through the DoDSSP Internet site at <http://assist.daps.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) Data Universal Numbering System (DUNS) Number. (Applies to offers exceeding \$25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1-800-333-0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 EVALUATION AWARD FACTORS

M 1.1 Responsibility. An offeror shall be determined responsible according to the standards of FAR Part 9 to be eligible for award.

M 2 BASIS FOR AWARD "BEST VALUE EVALUATION"

Award will be made to those offeror(s) whose proposal contain the combination of those criteria described in this document offering the best overall value to the Government, considering all the Technical Factors and whose prices are otherwise determined to be fair and reasonable. The U. S. Government is more concerned with obtaining superior Past Performance, Commercial Product Adequacy/Equivalency, Management Plan, Extent of Subcontracting with Small Businesses, Location of Primary Place of Business features than with making an award at the lowest overall cost to the Government. However, the Government will not make an award at a significantly higher overall cost to the Government to achieve slightly superior Past Performance, Commercial Product Adequacy, Management Plan, Extent of Subcontracting with Small Businesses or Location of Primary Place of Business features.

M 2.1 GOVERNMENT INTENT

It is the intent of the Government, to award a contracts (or contracts) for each geographic area shown in Section B. Each area will be awarded as a whole.

M 2.2 PRICE EVALUATION

When evaluating proposals, the Government will use the quantities listed at Section B, to calculate and evaluate estimated price for each proposal submitted under this solicitation.

M 3 EVALUATION INSTRUCTIONS

M 3.1 Technical qualifications of the offerors will be evaluated based on the information required in Section L. This information must be submitted in sufficient detail to allow evaluation of the proposal. If sufficient material for any item is not received, the offeror's proposal may be considered non-responsive and given no further consideration.

M 3.2 Evaluation Areas of Consideration. Consideration shall be given to the areas below. Evaluation shall be based upon the criteria stated in Section M, requirements stated in Section L, as well as the requirements stated in Section C. All mandatory requirements set forth in the specification must be met. The results of the evaluation shall be based on an integrated assessment of each offeror's proposal using both external and Offeror provided data. The evaluation board will not consider any information or data incorporated by reference or otherwise referred to.

M 4 EVALUATION CRITERIA

M 4.1 Definition of Relative Importance

- Significantly More Important: The criterion is at least twice as great in value than another criterion.
- More Important: The criterion is greater in value than another criterion, but less than twice as great in value.
- Comparatively Equal: The criterion is nearly the same in value as another criterion but not of an equal value.
- Equal: The criterion is of the same value as another criterion

M 4.2 Evaluation Criteria

The following technical factors will be evaluated; Past Performance, Adequacy of Commercial Furnished Equipment/Products, Management Plan, Extent of Subcontracting with Small Businesses, and Location of Primary Place of Business.

M 4.3 Relative Importance of Evaluation Criteria. Past Performance is More Important than the Management Plan. The Adequacy of Commercial Furnished Equipment/Products is More Important than the Management Plan. The Management Plan is More Important than Extent of Subcontracting with Small Businesses. The Extent of Subcontracting with Small Businesses is More Important than Location of Primary Place of Business. These technical factors, when combined, are Significantly More Important than Price.

M 4.4 Evaluation Areas:

M.4.4.1 Past Performance. The Offeror's past performance during the last six years will be evaluated to determine technical capability and level of performance risk to perform the proposed contract. The Government shall evaluate the Offeror's experience with projects of similar scope, size (monetary and level of effort) and nature. The Government shall conduct an evaluation of customer satisfaction, quality of workmanship and timeliness of the Offeror's past performance. The information presented in the Offeror's proposal, together with that from other sources available to the Government, will provide the input for evaluation of this factor.

M 4.4.2 Adequacy of Commercial Furnished Equipment/Products. The Offeror's commercial equipment/product line will be compared by generator size to the existing Government inventory.

M 4.4.3 Management Plan. The Offeror's proposed management plan shall be evaluated to determine understanding of the requirement, technical capability to perform the proposed contract and adequacy of resources proposed to support this requirement. The evaluation shall consider the timeliness, quality or workmanship and completeness of performance and service offered to the Government. The information presented in the

Offeror's proposal, together with that from other sources available to the Government, will provide the input for evaluation of this factor.

M 4.4.4 Extent of Subcontracting with Small Businesses. The Government shall evaluate the extent that the Offeror's proposed goals for subcontracting with small and small disadvantaged businesses are realistic, achievable justifiable and in accordance with the Government's policy to maximize opportunities for this businesses as required by the Stafford Act. In addition, the Government shall evaluate the extent to which these same businesses have been identified for participation as part of the Offeror's team. The information presented in the Offeror's proposal, together with that from other sources available to the Government, will provide the input for evaluation of this factor.

M 4.4.5 Location of Primary Place of Business. The Offeror shall be evaluated on the extent that its primary place of business is located in the state/territory/commonwealth or area where services will be provided. The Offeror shall identify the location of its main office, branch office(s) and all subsidiaries. Offerors whose primary place of business is outside the serviced area for which an offer is submitted will be evaluated based on the amount of business they have done in the serviced area in the last 6 years. The information presented in the Offeror's proposal, together with that from other sources available to the Government, will provide the input for evaluation of this factor.

M 4.4.6 Price. Price will be evaluated to determine completeness and reasonableness of the proposed price(s). Price will be evaluated and is considered as an independent element from the technical evaluation factors. This factor will be reviewed for completeness and reasonableness and evaluated to determine the offeror's understanding of the work and ability to perform the work. Total Price will be reviewed parallel with the technical proposal and award will be made to the overall proposal(s) that are most advantageous to the Government.

CLAUSES INCORPORATED BY FULL TEXT

52.212-2 EVALUATION--COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors, in descending order of importance, shall be used to evaluate offers:

- (i) technical capability of the offeror to meet the Government's requirements (technical capability includes a determination as to the adequacy of an offeror's commercial products equating to the GFE generator sizes)
- (ii) past performance (see FAR 15.304); and
- (iii) price

Technical and past performance, when combined, are more significant than price; however, price remains a significant factor.

(b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.