

SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	RATING	PAGE OF PAGES 1 116
2. CONTRACT NO. DACW61-02-C-	3. SOLICITATION NO. DACW61-02-R-0003	4. TYPE OF SOLICITATION [] SEALED BID (IFB) [X] NEGOTIATED (RFP)	5. DATE ISSUED 11/15/2001	6. REQUISITION/PURCHASE NO.
7. ISSUED BY CONTRACTING DIVISION WANAMAKER BUILDING , RM 643 100 PENN SQUARE EAST PHILADELPHIA PA 19107-3390		CODE DACW61	8. ADDRESS OFFER TO (If other than Item 7) CONTRACTING DIVISION WANAMAKER BUILDING 100 PENN SQUARE EAST PHILADELPHIA PA 19107-3390	
TEL: FAX:		CODE DACW61		TEL: FAX:

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 2 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 4:00 pm local time 12/14/2001
(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
15A. NAME AND ADDRESS OF OFFEROR		CODE	FACILITY
15B. TELEPHONE NO (Include area code)		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.		17. SIGNATURE	18. OFFER DATE
<input type="checkbox"/>			

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION To be shown on orders issued under this contract	
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(c)()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) See Section G ITEM G-4	
24. ADMINISTERED BY (If other than Item 7)	CODE	25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER (Type or print)		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

SECTION B
SERVICES AND SCHEDULE
(ENGINE-GENERATOR SETS)

B.1.0 Description of Service.

Provide service support for GFE generator set activities during emergency operations. GFE generator sets range in size from 4 kW up to 1MW. 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 Alternatively, CFE (Contractor Furnished Equipment), at the direction of the Government, may be required. 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 January 1, 2002, or date of award-whichever is later, through November 30, 2002.

Line item 0001 and 0002, Preparation and Haul (Transport): One-way distance, in increments of 25 miles up to 100 miles radius, is defined as from where the generator set is loaded onto the contractor's vehicle to where the generator set is removed from the contractor's vehicle and placed into operation. The offeror must take into account when preparing his proposal price for these line items, there return trip (deadheading) of the contractor's vehicle back to where the generator set was originally loaded on the contractor's vehicle. No separate payment will be made to account for the return trip.

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 after demobilization, the Contractor shall 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 government employees. The Contractor 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

Line Item 0009, Furnish, deliver and install fuel. The Government has entered \$50,000.00 in the Schedule for this item. This amount is for award evaluation and funding purposes only. 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. No mark-ups for overhead, profit or any other costs will be allowed.

Line Item 0010, Mobilization and De-mobilization. Mobilization and De-mobilization costs are 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 \$10,000.00 in the Schedule for this item. This amount is for award evaluation and funding purposes only. Payment for this item will be limited to actual costs only. To receive payment, the Contractor must furnish proper invoices. No mark-ups for overhead, profit or any other costs will be allowed. The Government will reimburse reasonable costs of Mobilization and Demobilization up to a maximum of \$10,000 per task order. (This \$10,000 cap on reimbursement supercedes paragraph (a) of the Payment for Mobilization and Demobilization clause of this contract, DFARS 252.236-7004). No mark-ups for overhead, G&A, or profit will be allowed. (See C 3.1, C 6).

Line Item 0011, 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. 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 0012, Incidental Supplies and Services. 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). 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 \$1000.00 per occurrence. Support documentation shall be provided with invoices to support reimbursement. For repairs estimated between \$1000.00 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.

B 2.0 The Government may award up to three (3) contracts against this solicitation to support the U.S. Army Corps of Engineers North Atlantic Division and its' geographic areas of responsibility. 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 states, commonwealth or territory to be covered by each contract:

North Atlantic Division (NAD):

Geographic Areas	Number
Maine, Vermont, New Hampshire, Connecticut, Massachusetts, and Rhode Island	1
New York and New Jersey	2
Pennsylvania, Delaware, Maryland, Virginia, and District of Columbia	3

B 3.0 This solicitation contains one price schedule. In addition to instructions at Section L, offerors are instructed to annotate each area of interest (by area numbers listed at B 2.0 and state(s)/commonwealth(s)/territory) in the space provided at the top of the 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 Massachusetts and New Jersey, two individual proposals and 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 state/commonwealth/territory covered by the contract. Contract award will be made on an 'all or none' basis.

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 North Atlantic Division's area of responsibility. In addition, the Government reserves the right to issue task orders for other areas within a COE Division's military or civil boundaries not specifically covered by one of the three (3) 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 intended to be used for award evaluation purposes. The Contractor shall be prepared to assess power needs, preparation, hauling, installing, preventive maintenance, service, fueling, relocating and recovering of all makes and models of generators with various gasoline and diesel powered engines. 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 North Atlantic Division may issue task orders against any contract awarded under this solicitation. This authority may be delegated to other Contracting Officers.

B 7.0 This solicitation contains numerous wage determinations that, depending upon where the work is performed, will apply to resulting contracts. For proposal preparation purposes only, offerors should use the latest edition of the wage determinations referenced in Section J.

PRICE SCHEDULE

AREA # _____

Item Number 0001: Preparation and Haul (Transport) of
 Government-furnished Generators Sets (see C3.3.and C 3.4)
 (Excluding fuel for generator sets)

0001A One way distance up to 25 miles radius. Sizes as follows:

LINE ITEM	ESTIMATED DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL AMOUNT
0001AA	Up to 10KW	1 EA	\$_____	\$_____
0001AB	11KW to 30KW	1 EA	\$_____	\$_____
0001AC	31KW to 50KW	1 EA	\$_____	\$_____
0001AD	51KW to 75KW	1 EA	\$_____	\$_____
0001AE	76KW to 100KW	1 EA	\$_____	\$_____
0001AF	101KW to 250KW	1 EA	\$_____	\$_____
0001AG	251KW to 500KW	1 EA	\$_____	\$_____

Area # _____

0001B One way distance up to 50 miles radius. Sizes as follows:

LINE ITEM	ESTIMATED DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL AMOUNT
0001BA	Up to 10KW	1 EA	\$_____	\$_____
0001BB	11KW to 30KW	1 EA	\$_____	\$_____
0001BC	31KW to 50KW	1 EA	\$_____	\$_____
0001BD	51KW to 75KW	1 EA	\$_____	\$_____
0001BE	76KW to 100KW	1 EA	\$_____	\$_____
0001BF	101KW to 250KW	1 EA	\$_____	\$_____
0001BG	251KW to 500KW	1 EA	\$_____	\$_____
0001BH	501KW to 1MW	1 EA	\$_____	\$_____

Area # _____

0001C One way distance up to 75 miles radius. Sizes as follows:

LINE ITEM	DESCRIPTION	ESTIMATED UNIT QUANTITY	UNIT PRICE	TOTAL AMOUNT
0001CA	Up to 10KW	1 EA	\$_____	\$_____
0001CB	11KW to 30KW	1 EA	\$_____	\$_____
0001CC	31KW to 50KW	1 EA	\$_____	\$_____
0001CD	51KW to 75KW	1 EA	\$_____	\$_____
0001CE	76KW to 100KW	1 EA	\$_____	\$_____
0001CF	101KW to 250KW	1 EA	\$_____	\$_____
0001CG	251KW to 500KW	1 EA	\$_____	\$_____
0001CH	501KW to 1MW	1 EA	\$_____	\$_____

Area # _____

0001D One way distance up to 100 miles radius. Sizes as follows:

LINE ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	TOTAL AMOUNT
0001DA	Up to 10KW	1 EA	\$_____	\$_____
0001DB	11KW to 30KW	1 EA	\$_____	\$_____
0001DC	31KW to 50KW	1 EA	\$_____	\$_____
0001DD	51KW to 75KW	1 EA	\$_____	\$_____
0001DE	76KW to 100KW	1 EA	\$_____	\$_____
0001DF	101KW to 250KW	1 EA	\$_____	\$_____
0001DG	251KW to 500KW	1 EA	\$_____	\$_____
0001DH	501KW to 1MW	1 EA	\$_____	\$_____

0002 Preparation and Haul (Transport) of Government-furnished Generators Sets GREATER THAN 100 miles radius (see C 3.3.and C3.4) (Excluding fuel for generator sets) (PER MILE) Sizes as follows:

0002AA	Up to 10KW	MI	\$_____	\$_____
0002AB	11KW to 30KW	MI	\$_____	\$_____
0002AC	31KW to 50KW	MI	\$_____	\$_____
0002AD	51KW to 75KW	MI	\$_____	\$_____
0002AE	76KW to 100KW	MI	\$_____	\$_____
0002AF	101KW to 250KW	MI	\$_____	\$_____
0002AG	251KW to 500KW	MI	\$_____	\$_____
0002AH	501KW to 1MW	MI	\$_____	\$_____

Area # _____

0003 Installation of Government-furnished Generator Sets. (See C 3.5) (Enter a per installation price.) Sizes as follows:

LINE ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	TOTAL AMOUNT
0003AA	Up to 10KW	1 EA	\$_____	\$_____
0003AB	11KW to 30KW	1 EA	\$_____	\$_____
0003AC	31KW to 50KW	1 EA	\$_____	\$_____
0003AD	51KW to 75KW	1 EA	\$_____	\$_____
0003AE	76KW to 100KW	1 EA	\$_____	\$_____
0003AF	101KW to 250KW	1 EA	\$_____	\$_____
0003AG	251KW to 500KW	1 EA	\$_____	\$_____
0003AH	501KW to 1MW	1 EA	\$_____	\$_____

0004 Perform Preventive Maintenance on Government-furnished Generator Sets (See C 3.6) (Enter a daily rate)(GEN. QTY X 30 DAYS = EQP DAYS) Sizes as follows:

0004AA	Up to 10KW	750 DY	\$_____	\$_____
0004AB	11KW to 30KW	2250 DY	\$_____	\$_____
0004AC	31KW to 50KW	2250 DY	\$_____	\$_____
0004AD	51KW to 75KW	2700 DY	\$_____	\$_____
0004AE	76KW to 100KW	2250 DY	\$_____	\$_____
0004AF	101KW to 250KW	1200 DY	\$_____	\$_____
0004AG	501KW to 1MW	150 DY	\$_____	\$_____

Area # _____

**0005 Perform Service on Government -furnished Generator Sets. (See C 3.7)
 (Enter a per service rate) Sizes as follows**

LINE ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	TOTAL AMOUNT
:				
0005AA	Up to 10KW	1 EA	\$_____	\$_____
0005AB	11KW to 30KW	1 EA	\$_____	\$_____
0005AC	31KW to 50KW	1 EA	\$_____	\$_____
0005AD	51KW to 75KW	1 EA	\$_____	\$_____
0005AE	76KW to 100KW	1 EA	\$_____	\$_____
0005AF	101KW to 250KW	1 EA	\$_____	\$_____
0005AG	251KW to 500KW	1 EA	\$_____	\$_____
0005AH	501KW to 1MW	1 EA	\$_____	\$_____

**0006 Relocating and Recovering Government -furnished Generator Sets. (See C 3.9)
 (Enter a per removal rate.) Sizes as follows:**

0006AA	Up to 10KW	1 EA	\$_____	\$_____
0006AB	11KW to 30KW	1 EA	\$_____	\$_____
0006AC	31KW to 50KW	1 EA	\$_____	\$_____
0006AD	51KW to 75KW	1 EA	\$_____	\$_____
0006AE	76KW to 100KW	1 EA	\$_____	\$_____
0006AF	101KW to 250KW	1 EA	\$_____	\$_____
0006AG	251KW to 500KW	1 EA	\$_____	\$_____
0006AH	501KW to 1MW	1 EA	\$_____	\$_____

Area # _____

LINE ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	PRICE	TOTAL AMOUNT
0007	Site Assessment (See C 3.2)	HR		\$_____	\$_____
0008	Conferences/Meetings (See C 8)	DY		\$_____	\$_____
0009	Generator Set Fuel, to include delivery and transfer to the generator's tank per year (See B 1.0 and C 3.8)	LS		\$50,000**	\$50,000**
0010	Mobilization and Demobilization (See B 1.0, C 3.1, and C 6)	LS		\$10,000**	\$10,000**
0011	Travel and Per Diem IAW JTR (See B1.0) To be ordered with Clin 8 only	LS		\$XXXXXX	\$XXXXXX
0012	Incidental Supplies and Services (Not to Exceed \$2,500) (See B 1.0 and C 3.7.2)	LS		\$XXXXXX	\$XXXXXX

** Line Items 0009, 0010 - These amounts entered for evaluation and funding purposes only.

Clin 0013, Lease of CFE (Contractor Furnished Equipment). Lease price shall include preparation, haul, install, preventative maintenance, incidental supplies/services, and recovery/return of generator sets to the contractor's inventory (fueling of CFE generators is covered by Clin 0009).

0013AA	Up to 10 Kw	1	DY	\$_____	\$_____
0013AB	11 Kw to 30 Kw	1	DY	\$_____	\$_____
0013AC	31 Kw to 50 Kw	1	DY	\$_____	\$_____
0013AD	51 Kw to 100 Kw	1	DY	\$_____	\$_____
0013AE	101 Kw to 250 Kw	1	DY	\$_____	\$_____
0013AF	251 Kw to 500 Kw	1	DY	\$_____	\$_____
0013AG	500 Kw to 1 Mw	1	DY	\$_____	\$_____
0013AH	Power Station > 1Mw	1	WK	\$_____	\$_____

SECTION C SPECIFICATIONS

EMERGENCY POWER SCOPE OF WORK SECTION C GENERATOR SET ACTIVITIES

C 1.0 General. The work under this contract consists of supporting all generator set activities during emergency operations in a state/territory/commonwealth or region. Generator set activities are defined as assessing power needs, preparation, hauling, installing, preventive maintenance, service, fueling, relocating and recovering Government Furnished Equipment (GFE) (engine-generator sets) and associated fuel systems. If GFE is not available, 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 permits and licenses (ref: FAR 52.236-7). 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, GFE, range in size from 4 kW up to 1MW. The Contractor shall be responsible for providing all labor, transportation, equipment and supervision required to perform 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. 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 not furnished by the Government as part of the initial Bill of Materials (BOM) required for installation of the generator sets; cabling, conductors, conduits, supports, disconnects, terminations, etc. When directed by the Government, the contractor shall be responsible for obtaining all required generator set operating and service manuals not furnished as Government Furnished Material (GFM).

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. Payment shall not be made to the Contractor for work not specifically authorized by the Contracting Officer.

C 1.2.1 Issuance of a task order is 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 The Government's Real Estate representative shall provide the Contractor with two copies of the Government completed Right-of-Entry (ROE) form and the 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 on 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.

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 generator set and Government furnished Bill of Materials received from the Government until such time as the generator set has been placed or installed at a particular location or 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 generator set(s) have been hauled 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 GFE. 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 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 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 hauled or 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 examples, .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. Contractor shall provide their 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 or authorized representative 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 each contract is to provide services in the state/territory/commonwealth or region for which it is written. Each contract will provide for primary response to a given state/territory/commonwealth or region but the Government reserves the right via the Requirements Clause of this solicitation to issue task orders to a Contractor for other areas within a US Army Corps of Engineers (COE) Division's boundary 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 order for a state/territory/commonwealth or region not specifically listed in B.2.0 may be awarded based on price competition among contractors awarded contracts for an affected Division. 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 area 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 Terminations Clause of this contract (reference FAR 52.212-4). 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, 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 Emergency Response and Recovery Office (ERRO) 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 ERRO 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 as well as field crew foreman and supervisors.

C 3.0 Execution of Work.

C 3.1 Mobilization.

The Contractor shall commence mobilization and be ready to provide generator set activities within forty-eight (48) 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 Upon 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 Hauling. 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 federal, state, territory and commonwealth Department of Transportation rules and 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 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 the NEC. 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 megohmmeter 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 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. 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 3.7 Service.

C 3.7.1 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 and state/territory/commonwealth environmental disposal regulations.

C 3.7.2 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 \$500.00. (See B 1.0)

C 3.7.3 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 3.7.4 Upon direction of the Contracting Officer or authorized representative, generators requiring major repairs shall be replaced by a generator in storage and the replaced generator shall be returned to storage.

C 3.7.5 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.

C 3.8 Fueling.

C 3.8.1 Fueling of generator sets is a separate function from preparation, hauling, 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 3.8.2 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 the staging area. At no time shall the generator be allowed to run out of fuel. Only the appropriate fuel and grade 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 can not 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 3.8.3 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 3.8.4 Spilled fuel and contaminated fuel shall be removed promptly and properly disposed of in accordance with local and state/territory/commonwealth 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 be stored at the generator site.

C 3.9 Relocating and Recovering Generator Sets.

C 3.9.1 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 3.9.2 All electricians shall be licensed. 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 NFPA-70, National Electrical Code - the edition in force at the time solicitation is issued - and 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 megohmmeter 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 3.9.3 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 3.9.4 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 3.9.5 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 3.9.6 The Contractor shall provide all equipment and personnel necessary to onload 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 this 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.

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SECTION E
INSPECTION AND ACCEPTANCE

E 1 52.246-4 INSPECTION OF SERVICES--FIXED-PRICE (AUG 1996)

- (a) Definitions. "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 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.

END OF SECTION E

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SECTION F Delivery and Performance

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.

SECTION G Contract Administration Data

CLAUSES INCORPORATED BY FULL TEXT

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.

CONTRACT ADMINISTRATION DATA

G 1 ACCOUNTING AND APPROPRIATION DATA:

To Be Shown on Award

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 COR (Contracting Officer's Representative). Simultaneously, the contractor shall send an original invoice to the above designated payment office. All payment questions should be directed to the COR. The contract number and task order number must be included on all invoices.

G 5 ORDERING INSTRUCTIONS

Authorized Users: Task 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 Officer assigned to issued Task orders under these contracts are hereby appointed as Ordering Officers, pursuant to AFARS 1.602-2-91 (this authority cannot be redelegated). Ordering Officer issuing task 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 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 contracts. 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 contracts, an 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 52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

H 2 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 State law 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 Government in such insurance, shall not be effective for such period as may be prescribed by the laws of the State 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

(a) The Contractor shall comply with the requirements of OSHA 1910.1200, the Hazard Communication Standard.

(b) 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 CONTRACT VALUE

The Requirements portion for the contract period is \$100,000.00. The Requirements portion of this contract contains no minimum order guarantee. The IDIQ portion for the contract period is \$1,000,000.00. Maximum obligation limit shall not exceed \$1,100,000.00, per contract, for the contract period.

H 6 MOBILIZATION OF ADDITIONAL CONTRACTORS

The Government will utilize this contract for all requirements up to \$100,000.00. In the event of disaster responses for emergency power missions estimated in excess of the \$100,000.00, the Government reserves the right to mobilize additional contractors if determined to be necessary in order to meet disaster response mission requirements.

H 7 PERFORMANCE AND PAYMENT BONDS

Read this paragraph in conjunction with the Performance and Payments Bonds-Other Than Construction clause, FAR 52.228-16, in Section I. The penal sum of performance bond will be required for the protection of the government in an amount equal to 100% of the contract price and a payment bond in an amount equal to 40 % of the contract price. Bonds will be required within two workdays of the issuance of the first task order.

H 8 SCOPE AND PURPOSE OF CONTRACT

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

(b) Geographic area. The primary purpose of each contract is to provide services for the areas for which it is written; e.g. the primary purpose of contracts issued by CENAD 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 orders on any contract issued under this solicitation.

SECTION I Contract Clauses

CLAUSES INCORPORATED BY FULL TEXT

52.202-1 Definitions (May 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 for nongovernmental 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 such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services --

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(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;

(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) 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 the kickback. The Contracting Officer may order that 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 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 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 subsection 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.

52.209-6 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.

52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS
(MAY 2001)

- (a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.
- (c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
- (d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement or any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract 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) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (APR 2001) (DEVIATION)

(a) Comptroller General Examination of Record. The Contractor agrees to comply with the provisions of this paragraph (a) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

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

(2) The Contractor shall make available at its offices at all reasonable times, the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(b) The Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components-

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);

(4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996) (; and

(5) 52.222-41, the Service Contract Act As Amended (41 U.S.C. 351, et seq.)
Subcontracts for certain commercial services may be exempt from coverage if they meet the criteria in FAR 22.1103-4(c) or (d) (see DoD class deviation number 2000-O0006.)

52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

- (a)(1) The worker is paid or is in an approved work training program on a voluntary basis;
 - (2) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
 - (4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
- (b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

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 the 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 this 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.

52.222-26 EQUAL OPPORTUNITY (FEB 1999)

(a) 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 subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(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.

52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

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

All employment openings includes 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.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that 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.

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing 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.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, 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 system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system 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, Guam, and the Virgin Islands.

(e) **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 disabled veterans and veterans of the Vietnam era, 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. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and 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 the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam Era.

(f) **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.

(g) **Subcontracts.** The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more 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.

52.222-36 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 DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

(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 disabled veterans and the number of veterans of the Vietnam era 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 that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted 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 during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous 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 count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era 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 that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that

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

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation. (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification

and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor Contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the

Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records. (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act--

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid

and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds

until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Contractor's Certification. (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision-

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES
(MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION

Employee Class	Monetary Wage-Fringe Benefits		
	Norfolk, VA	Philadelphia, PA	
Boston, MA			
Laborers, WG 3	\$10.66	\$13.02	\$11.08
Truck Drivers, medium, WG 7	\$13.43	15.39	14.41
Machinery Maintenance Mechanic, WG 10	\$15.47	17.12	16.52
Forklift Operator, WG 5	\$12.07	14.18	12.94

Electrician, WG 10	\$15.47	17.12	16.52
Electrical Maintenance, WG 5	\$12.07	14.18	12.94

52.222-44 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT-
PRICE ADJUSTMENT (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with--

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

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.

52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

52.227-3 PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or

delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

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.

52.233-3 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.

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://farsite.hill.af.mil/>

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.

252.204-7003 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.

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR
2000)

(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.ccr2000.com>.

252.212-7001 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (APR 2001) (DEVIATION)

In addition to the clauses listed in paragraph (b) of the Contract Terms and Conditions Required to Implement Statutes or Executive Order-Commercial Items (DEVIATION) clause of this contract (FAR 52.212-5), 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).)

252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (MAR 1998)

(a) Definitions.

As used in this clause--

(1) Components means those articles, materials, and supplies directly incorporated into end products.

(2) Domestic end product means--

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind--

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) End product means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) Nonqualifying country end product means an end product that is neither a domestic end product nor a qualifying country end product.

(5) Qualifying country means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(6) Qualifying country component means an item mined, produced, or manufactured in a qualifying country.

(7) Qualifying country end product means--

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined,

produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act--Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS
(DEC 1991)

Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources and U.S. sources from competing for subcontracts under this contract.

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.

**252.232-7009 MANDATORY PAYMENT BY GOVERNMENTWIDE
COMMERCIAL PURCHASE CARD (JUL 2000)**

The Contractor agrees to accept the Governmentwide commercial purchase card as the method of payment for orders or calls valued at or below \$2,500 under this contract or agreement.

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.

SECTION J
LIST OF ATTACHMENTS

Item	Title	Pages
1.	Emergency Power Solicitation Question Format	J-2
2.	Past Performance Format	J-3 through J-4
3.	Service Contract Act Wage Determinations	J-5
4.	List of Government (FEMA) Generators	J-7

**SOLICITATION QUESTIONS
DACW61-02-R-0003**

COMPANY: _____

POINT OF CONTACT: _____

QUESTION ? : ----

REFERENCE: _____

ANSWER (To be completed by Contracting Specialist): _____

Fax Questions to: William A. Bailey, 215- 656-6780

**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: _____

Your Role (Prime, Joint Venture, Subcontractor, etc) and Work your Company Self Performed:

Extent and Type of Work you Subcontracted Out:

Dates of Project: Start: _____ Completed: _____

Your Performance Evaluation by Owner: _____

Were you Terminated or Assessed Liquidated Damages? (if either "Yes", explain)

J-3

J-3, cont.

Past Performance Format, cont.

Page 2

Customer's Point of Contact for Reference (Name):

Company:

Telephone Number of Reference POC:

**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. of Years: With this Firm: _____ With other Firms: _____

Education: Degree(s)/Year/Specialization: _____

Active Registration: No: _____ State: _____ Year: _____

Your Specific Experience and Qualifications Relevant to this Project:

Applicable Service Contract Act Wage Determinations

WAGE DETERMINATION NO: 94-2253 REV (14) AREA: MA.ATTLEBORO (PROVIDNCE, RI)WAGE DETERMINATION NO: 94-2254 REV (10) AREA: MA.ATTLEBORO (PROVIDNCE, RI)WAGE DETERMINATION NO: 94-2255 REV (17) AREA: MA.BOSTONWAGE DETERMINATION NO: 94-2256 REV (15) AREA: MA.BOSTONWAGE DETERMINATION NO: 94-2257 REV (14) AREA: MA.LAWRENCEWAGE DETERMINATION NO: 94-2258 REV (9) AREA: MA.LAWRENCEWAGE DETERMINATION NO: 94-2259 REV (13) AREA: MA.SOUTHEASTERNWAGE DETERMINATION NO: 94-2260 REV (10) AREA: MA.SOUTHEASTERNWAGE DETERMINATION NO: 94-2261 REV (15) AREA: MA.WESTERNWAGE DETERMINATION NO: 94-2262 REV (10) AREA: MA.WESTERNWAGE DETERMINATION NO: 94-2263 REV (15) AREA: MA.WORCESTERWAGE DETERMINATION NO: 94-2264 REV (10) AREA: MA.WORCESTERWAGE DETERMINATION NO: 94-2241 REV (21) AREA: ME.STATEWIDEWAGE DETERMINATION NO: 94-2339 REV (16) AREA: NH.STATEWIDEWAGE DETERMINATION NO: 94-2340 REV (9) AREA: NH.STATEWIDEWAGE DETERMINATION NO: 94-2242 REV (18) AREA: ME.STATEWIDEWAGE DETERMINATION NO: 94-2537 REV (21) AREA: VT.STATEWIDEWAGE DETERMINATION NO: 94-2538 REV (17) AREA: VT.STATEWIDEWAGE DETERMINATION NO: 94-2087 REV (19) AREA: CT.HARTFORDWAGE DETERMINATION NO: 94-2088 REV (17) AREA: CT.HARTFORDWAGE DETERMINATION NO: 94-3023 REV (1) AREA: ,CTWAGE DETERMINATION NO: 94-3024 REV (1) AREA: ,CTWAGE DETERMINATION NO: 94-3027 REV (1) AREA: ,CTWAGE DETERMINATION NO: 94-3028 REV (1) AREA: ,CTWAGE DETERMINATION NO: 94-2367 REV (17) AREA: NY.ALBANYWAGE DETERMINATION NO: 94-2368 REV (12) AREA: NY.ALBANYWAGE DETERMINATION NO: 94-2371 REV (16) AREA: NY.BUFFALOWAGE DETERMINATION NO: 94-2372 REV (13) AREA: NY.BUFFALOWAGE DETERMINATION NO: 94-2373 REV (18) AREA: NY.NASSAUWAGE DETERMINATION NO: 94-2374 REV (14) AREA: NY.NASSAUWAGE DETERMINATION NO: 94-2375 REV (18) AREA: NY.NEW YORK CITYWAGE DETERMINATION NO: 94-2376 REV (14) AREA: NY.NEW YORK CITYWAGE DETERMINATION NO: 94-2377 REV (14) AREA: NY.NORTHERN NEW YORKWAGE DETERMINATION NO: 94-2378 REV (11) AREA: NY.NORTHERN NEW YORKWAGE DETERMINATION NO: 94-2379 REV (17) AREA: NY.POUGHKEEPSIEWAGE DETERMINATION NO: 94-2380 REV (15) AREA: NY.POUGHKEEPSIEWAGE DETERMINATION NO: 94-2381 REV (19) AREA: NY.ROCHESTERWAGE DETERMINATION NO: 94-2382 REV (14) AREA: NY.ROCHESTERWAGE DETERMINATION NO: 94-2383 REV (16) AREA: NY.SYRACUSEWAGE DETERMINATION NO: 94-2384 REV (12) AREA: NY.SYRACUSEWAGE DETERMINATION NO: 94-2097 REV (15) AREA: DE.WILMINGTONWAGE DETERMINATION NO: 94-2098 REV (11) AREA: DE.WILMINGTONWAGE DETERMINATION NO: 94-2095 REV (16) AREA: DE,LOWER EASTERN SHOREWAGE DETERMINATION NO: 94-2096 REV (12) AREA: DE,LOWER EASTERN SHORE

WAGE DETERMINATION NO: 94-2345 REV (14) AREA: NJ,ATLANTIC CITY
WAGE DETERMINATION NO: 94-2346 REV (10) AREA: NJ,ATLANTIC CITY
WAGE DETERMINATION NO: 94-2347 REV (14) AREA: NJ,BERGEN-PASSAIC
WAGE DETERMINATION NO: 94-2348 REV (9) AREA: NJ,BERGEN-PASSAIC
WAGE DETERMINATION NO: 94-2349 REV (17) AREA: NJ,MIDDLESEX
WAGE DETERMINATION NO: 94-2350 REV (14) AREA: NJ,MIDDLESEX
WAGE DETERMINATION NO: 94-2351 REV (16) AREA: NJ,MONMOUTH
WAGE DETERMINATION NO: 94-2352 REV (11) AREA: NJ,MONMOUTH
WAGE DETERMINATION NO: 94-2353 REV (17) AREA: NJ,NEWARK
WAGE DETERMINATION NO: 94-2354 REV (13) AREA: NJ,NEWARK
WAGE DETERMINATION NO: 94-2355 REV (14) AREA: NJ,TRENTON
WAGE DETERMINATION NO: 94-2356 REV (10) AREA: NJ,TRENTON

WAGE DETERMINATION NO: 94-2449 REV (14) AREA: PA,PHILADELPHIA
WAGE DETERMINATION NO: 94-2450 REV (11) AREA: PA,PHILADELPHIA
WAGE DETERMINATION NO: 94-2447 REV (18) AREA: PA,HARRISBURG
WAGE DETERMINATION NO: 94-2448 REV (15) AREA: PA,HARRISBURG
WAGE DETERMINATION NO: 94-2451 REV (20) AREA: PA,PITTSBURGH
WAGE DETERMINATION NO: 94-2452 REV (13) AREA: PA,PITTSBURGH
WAGE DETERMINATION NO: 94-2453 REV (15) AREA: PA,SCRANTON
WAGE DETERMINATION NO: 94-2454 REV (10) AREA: PA,SCRANTON
WAGE DETERMINATION NO: 94-2455 REV (16) AREA: PA,YORK
WAGE DETERMINATION NO: 94-2456 REV (12) AREA: PA,YORK

WAGE DETERMINATION NO: 94-2103 REV (24) AREA: DC,DISTRICT-WIDE
WAGE DETERMINATION NO: 94-2104 REV (17) AREA: DC,DISTRICT-WIDE

WAGE DETERMINATION NO: 94-2247 REV (19) AREA: MD,BALTIMORE
WAGE DETERMINATION NO: 94-2248 REV (17) AREA: MD,BALTIMORE
WAGE DETERMINATION NO: 94-2249 REV (16) AREA: MD,HAGERSTOWN
WAGE DETERMINATION NO: 94-2250 REV (11) AREA: MD,HAGERSTOWN
WAGE DETERMINATION NO: 94-3015 REV (1) AREA: , MD
WAGE DETERMINATION NO: 94-3016 REV (1) AREA: , MD

WAGE DETERMINATION NO: 94-3019 REV (1) AREA: , VA
WAGE DETERMINATION NO: 94-3020 REV (1) AREA: , VA
WAGE DETERMINATION NO: 94-2543 REV (27) AREA: VA,NORFOLK
WAGE DETERMINATION NO: 94-2544 REV (23) AREA: VA,NORFOLK
WAGE DETERMINATION NO: 94-2545 REV (17) AREA: VA,RICHMOND
WAGE DETERMINATION NO: 94-2546 REV (13) AREA: VA,RICHMOND
WAGE DETERMINATION NO: 94-2547 REV (15) AREA: VA,SOUTHWEST VIRGINIA
WAGE DETERMINATION NO: 94-2548 REV (10) AREA: VA,SOUTHWEST VIRGINIA

J-7

Power-Pack		GENERATORS ON HAND					
	KW	TLC-E	FMC	TLC-C	FMC	TLC-W	FMC
	4						
	5						
	7.9						
	9						
	9.6	1	1				
5	10					5	5
	10.9	5	5	5	5		
	11.5	9	9	10	10	5	5
	12	1	1				
	12.5	1	1				
	14						
	15	8	8				
	17	6	6				
	19.2	1	1				
	20	13	13			3	3
	25	16	10			1	1
	27	10	10	2	2		
11	30						
	32	2	2				
	35	15	4	22	22	24	24
	36						
	40	10	8	1	1	1	1
	44						
	45	1	1				
	46						
	48	5	5				
	50	7	6				
	54	2	2				
	55						
17	60	46	42	1	1	4	4
	61						
	62					21	21
	65	2	2				
	68	18	11				
	72	2	2				
	75						
	80	28	8	36	36	18	18
	84						
	85						
	95			2	2		
	96	1	1	4	4		
12	100	23	22	1	1	13	12
5	125	19	12	22	22	12	12
	132						
	145	2	2				
	150						
	155						
	190						
	155						
	200	2	2				
	205						
	240	1	1				
	250						
	275	4	3			2	2
	300	3	2				
	320	2	2				
	350	5	2	4	4	2	2

	355					2	0
	400	2	0	4	4	2	2
	424						
	424.8						
	425						
	450	4	4				
	455	4	2				
	470					1	0
	480						
	500			2	2	1	1
	550						
50	Total	281	213	116	116	117	113
		% FMC	76%	% FMC	100%	% FMC	97%
Total % FMC All Generators				84.9%			

Note: TLC-E is at Ft. Gillem, GA
 TLC-C is in Ft. Worth, TX
 TLC-W is in Moffat, CA

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 --

(1) 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 --

(i) Those prices,

(ii) 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.

52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS--
COMMERCIAL ITEMS (MAY 2001) ALTERNATE I (OCT 2000) & ALTERNATE III
(OCT 2000)

(a) Definitions. As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

"Forced or indentured child labor" means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process of penalties.

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 concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

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 its stock is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

"Women-owned business concern" means a concern which 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 whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) 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 Internal Revenue Service (IRS).

(2) 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.

(3) 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 the Federal Government.

(4) 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-----

(5) Common parent.

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name-----

TIN-----

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it () is, () is not a small business concern.

(2) Veteran-owned small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror

represents as part of its offer that it () is, () is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. (Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.) The offeror represents as part of its offer that it () is, () is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents, for general statistical purposes, that it () is, () is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it () is, () is not a women-owned small business concern.

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) Women-owned business concern (other than small business concern). (Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it () is, a women-owned business concern.

(7) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. (Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.)

(i) (Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).) The offeror represents as part of its offer that it () is, () is not an emerging small business.

(ii) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).) Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees);
or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Average Annual

Number of Employees Gross Revenues

50 or fewer \$1 million or less

51 - 100 \$1,000,001 - \$2 million

101 - 250 \$2,000,001 - \$3.5 million

251 - 500 \$3,500,001 - \$5 million

501 - 750 \$5,000,001 - \$10 million

751 - 1,000 \$10,000,001 - \$17 million

Over 1,000 Over \$17 million

(9) (Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns or FAR 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.)

(i) General. The offeror represents that either--

(A) It () is, () is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, 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); or

(B) It () has, () has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business

concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(7)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. (The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.)

(10) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(2) or (c)(9) of this provision.) (The offeror shall check the category in which its ownership falls):

____ Black American.

____ Hispanic American.

____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

____ Individual/concern, other than one of the preceding.

(11) HUBZone small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents as part of its offer that—

(i) It () is, () is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It () is, () is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. (The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:

_____.) Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Certifications and representations required to implement provisions of Executive Order 11246--

(1) Previous Contracts and Compliance. The offeror represents that--

(i) It () has, () has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the and

(ii) It () has, () has not, filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that--

(i) It () has developed and has on file, () has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It () has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that 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 award of any resultant contract.

(f) Buy American Act--Balance of Payments Program Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act--Balance of Payments Program--Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products

those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line Item No.:-----
Country of Origin:-----

(List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

NAFTA Country or Israeli End Products

Line Item No.:-----
Country of Origin:-----

(List as necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act--North American Free Trade Agreements--Israeli Trade Act--Balance of Payments Program Certificate, Alternate I (Feb 2000). If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

Canadian End Products

Line Item No.:-----

(List as necessary)

(3) Buy American Act--North American Free Trade Agreements--Israeli Trade Act--Balance of Payments Program Certificate, Alternate II (Feb 2000). If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled ``Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program":

Canadian or Israeli End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or

NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products

Line Item No.:-----

Country of Origin:-----

(List as necessary)

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(i) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). The offeror certifies, to the best of its knowledge and belief, that--

(1) The offeror and/or any of its principals () are, () are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) () 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 Federal, state or local government 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 () are, () are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(j) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). (The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).)

(1) Listed end products.

Listed End Product

Listed Countries of Origin

(2) Certification. (If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.)

() (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

() (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

252.225-7000 BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM
CERTIFICATE
(SEP 1999)

(a) Definitions. Domestic end product, qualifying country, qualifying country end product, and qualifying country end product have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) Evaluation. Offers will be evaluated by giving preference to domestic end products and qualifying country end products over nonqualifying country end products.

(c) Certifications. (1) The Offeror certifies that--

(i) Each end product, except those listed in paragraphs (c) (2) or (3) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror certifies that the following end products are qualifying country end products:

Qualifying Country End Products

Line Item Number

Country of Origin

(List only qualifying country end products.)

(3) The Offeror certifies that the following end products are nonqualifying country end products:

Nonqualifying Country End Products

Line Item Number

Country of Origin (If known)

**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 an anticipated 3 contracts, to support geographical locations shown in L 5.1 (see also B 2.0)

L 5 SEALED PROPOSAL ENVELOPES

The envelope containing your offer shall be plainly marked on the lower left hand corner as follows:

Request for Proposal No. DACW61-02-R-0003

Date of Closing: Dec. 14, 2001

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 of which the offerors are interested:

Geographic Area 1 – 1 Contract
Geographic Area 2 – 1 Contract
Geographic Area 3 – 1 Contract

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) Management Plan; (Tab 3) Extent of Subcontracting with Small Businesses; and (Tab 4) 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.

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, Cost.
- i. Failure to show that the products or services offered conform to the 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 and 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 sold 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

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)

L 5.4.4 Extent of Subcontracting with Small Businesses

The resultant contracts will be subject to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The offeror's proposal will be evaluated on their knowledge and understanding of the Stafford Act and how the offeror proposes to provide subcontracting opportunities with firms located in the disaster area. The proposal should demonstrate considerable effort 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, women-owned small business firms, and, where applicable, historically black colleges and universities/minority institutions. The US Army Corps of Engineers recommended subcontracting goals are approximately 61.2% for Small Businesses, 9.1% for Small Disadvantaged Businesses, 5.0 % for Small Woman-owned businesses and 1% for Small Business HUB Zone concerns.

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 emergency 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.

L 7 52.204-6 CONTRACTOR IDENTIFICATION NUMBER--DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (DEC 1996)

(a) Contractor Identification Number, as used in this provision, means "Data Universal Numbering System (DUNS) number," which is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(c) 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 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.
- (d) 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.dbisna.com/dbis/customer/custlist.htm>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@dbisma.com.

L 8 52.204-7001 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (NOV 1995)

- (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 Services Center (DLSC). 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 DLSC; and
 - (3) Notify the Contractor of its assigned CAGE code.
- (c) Do not delay submission of the offer pending receipt of a CAGE code.

L.9 52.215-1 I INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (OCT 1997)--ALTERNATE I (OCT 1997)

- (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.

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) Late proposals and revisions.

(i) Any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers will not be considered unless it is received before award is made and--

(A) It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays ;

(D) It was transmitted through an electronic commerce method authorized by the solicitation and 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

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or (F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as in subparagraphs (c)(3)(i)(A) through (c)(3)(i)(E) of this provision. The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late.

"Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) 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.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c)(3)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(3)(i) of this provision, a late modification or revision 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.

(vii) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. 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 entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) 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 or other notice of an extension of the closing date, 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. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(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.

(1) 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.

(2) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. 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. **THEREFORE, THE OFFEROR'S INITIAL PROPOSAL SHOULD CONTAIN THE OFFEROR'S BEST TERMS FROM A PRICE AND TECHNICAL STANDPOINT.**

(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 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.10 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 subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

L.11 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm fixed price, Requirements Contract, with a maximum ceiling price of \$1,100,000.00, resulting from this solicitation.

L.13 52.233-2 SERVICE OF PROTEST (AUG 1996)

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:

Linda M. Toth
 U.S. Army Engineer District, Philadelphia
 ATTN: CENAP-CT
 100 Penn Square East
 Wanamaker Bldg, Rm 643
 Philadelphia, PA 19107-3390

(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.14 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.**

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 Megawatt per hour. 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.

(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.

(2)(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.

52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm, fixed price contract resulting from this solicitation.

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 proposals 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 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 3 contracts, one (1) for each geographic area shown in Section L.5.1. Each award will be awarded as a whole to one offeror.

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 4.2 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.

NOTE TO OFFERORS: Paragraph (b) above, does not apply to this procurement. There are no option items.

END OF SECTION M