

SP0600-00-R-0021
EL SALVADOR PC&S
INCORPORATED BY REFERENCE CLAUSES

FAR/DFARS CLAUSES

II.03-1 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (MAY 1999)

(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's right to be paid amounts due as a result of performance of this contract, may be assigned 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).

(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 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 of 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 item 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 purposes of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the date on which an EFT was 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 thereof, 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 and conditions 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 purposes. 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 whistle blower 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; Invoices; 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) Standard Form 1449;
- (8) Other documents, exhibits, and attachments; and
- (9) The specification.

(FAR 52.212-4)

II.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE

ORDERS - COMMERCIAL ITEMS (MAY 1999)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755); and
- (2) 52.233-3, Protest After Award (31 U.S.C. 3553).

(b) The Contractor agrees to comply with the FAR clauses in this paragraph (b), which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer shall check as appropriate.)

52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

52.219-3, Notice of Total HUBZone Small Business Set-Aside (Jan 1999).

52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994). Alt I. Alt II.

52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637(d)(2) and (3)).

52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).

52.219-14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer). Alt I.

52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

52.219-26, Small Disadvantaged Business Participation Program - Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

52.222-21, Prohibition of Segregated Facilities (Feb 1999).

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

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

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

52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

- 52.225-3, Buy American Act - Supplies (41 U.S.C 10).
- 52.225-9, Buy American Act - Trade Agreements Act - Balance of Payments Program (41.U.S.C. 10, 19 U.S.C. 2501-2582).
- 52.225-18, European Union Sanction for End Products (E.O. 12849).
- 52.225-19, European Union Sanction for Services (E.O. 12849).
- 52.225-21, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program (41 U.S.C. 10, Pub. L. 103-187). Alt I.
- 52.232-33, Payment by Electronic Funds Transfer -- Central Contractor Registration (31 U.S.C. 3332).
- 52.232-34, Payment by Electronic Funds Transfer -- Other than Central Contractor Registration (31 U.S.C. 3332).
- 52.232-36, Payment by Third Party (31 U.S.C. 3332).
- 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
- 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

(c) The Contractor agrees to comply with FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer check as appropriate)

- 52.222-41, Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).
- 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).
- 52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).
- 52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).
- 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 et seq.).

(d) **COMPTROLLER GENERAL EXAMINATION OF RECORD.** The Contractor agrees to comply with the provisions of this paragraph (d) 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 and 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 type and 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.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by any addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components:

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

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

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

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

(FAR 52.212-5)

II.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (SEP 1999)

(a) The Contractor agrees to comply with the Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.247-7023, Transportation of Supplies by Sea, which is included in this contract by reference to implement 10 U.S.C. 2631.

(b) The Contractor agrees to comply with any clause that is checked on the following list of DFARS clauses which, if checked, is included in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components.

- | | | | |
|--------|--------------------------|--------------|--|
| | <input type="checkbox"/> | 252.205-7000 | Provision of Information to Cooperative Agreement Holders, 10 U.S.C. 2416 |
| | <input type="checkbox"/> | 252.206-7000 | Domestic Source Restriction, 10 U.S.C. 2304 |
| Plan | <input type="checkbox"/> | 252.219-7003 | Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting (DoD Contracts), 15 U.S.C. 637 |
| 10582 | <input type="checkbox"/> | 252.225-7001 | Buy American Act and Balance of Payments Program, 41 U.S.C. 10a-10-d, E.O. |
| U.S.C. | <input type="checkbox"/> | 252.225-7007 | Buy American Act -Trade Agreements Act - Balance of Payments Program, 41 10a-10d, 19 U.S.C. 2501-2518, and 19 U.S.C. 3301 note |
| | <input type="checkbox"/> | 252.225-7012 | Preference for Certain Domestic Commodities |
| | <input type="checkbox"/> | 252.225-7014 | Preference for Domestic Specialty Metals. - 10 U.S.C. 2341 note |
| | <input type="checkbox"/> | 252.225-7015 | Preference for Domestic Hand or Measuring Tools. - 10 U.S.C. 2241 note |
| | <input type="checkbox"/> | 252.225-7021 | Trade Agreements, 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note |
| | <input type="checkbox"/> | 252.225-7027 | Restriction on Contingent Fees for Foreign Military Sales, 22 U.S.C. 2779 |
| | <input type="checkbox"/> | 252.225-7028 | Exclusionary Policies and Practices of Foreign Governments, 22 U.S.C. 2755 |
| | <input type="checkbox"/> | 252.225-7029 | Preference for United States or Canadian Air Circuit Breakers, 10 U.S.C. 2534(a)93) |

Balance	<input type="checkbox"/>	252.225-7036	Buy American Act - North American Free Trade Agreement Implementation Act - of Payments Program (<input type="checkbox"/> Alt I), 41 U.S.C. 10a-10d and 19 U.S.C. 3301 note
	<input type="checkbox"/>	252.227-7015	Technical Data Commercial Items, 10 U.S.C. 2320
	<input type="checkbox"/>	252.227-7037	Validation of Restrictive Markings on Technical Data, 10 U.S.C. 2321
	<input type="checkbox"/>	252.243-7002	Requests for Equitable Adjustment, 10 U.S.C. 2410
	<input type="checkbox"/>	252.247-7024	Notification of Transportation of Supplies by Sea, 10 U.S.C. 2631

(c) In addition to the clauses listed in paragraph (b) of the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS clause of this contract, the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under the contract.

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

(DFARS 252.212-7001)

128.21 TAXES - FOREIGN FIXED-PRICE CONTRACTS (JAN 1991)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) **Contract date**, as used in this clause, means the date set for bid opening or, if this is a negotiated contact or a modification, the effective date of this contact or modification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(FAR 52.229-6)

128.21 TAXES - FOREIGN FIXED-PRICE CONTRACTS (JAN 1991)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) **Contract date**, as used in this clause, means the date set for bid opening or, if this is a negotiated contact or a modification, the effective date of this contact or modification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(FAR 52.229-6)

I33 INTEREST (JUN 1996)

(a) Except as otherwise provided in this contract under a PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA clause or a COST ACCOUNTING STANDARDS clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
- (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(FAR 52.232-17)

I84 REQUIREMENTS (OCT 1995)

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

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

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

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

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

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; PROVIDED, that the Contractor shall not be required to make any deliveries under this contract after 30 days after the ordering period expires.

(FAR 52.216-21)

I115 CONTRACTOR RESPONSIBILITY FOR RETURNING UNDELIVERED FREIGHT (APR 1984)

(a) When, through no fault of the Contractor, a shipment cannot be delivered, the Contractor shall contact the shipper for disposition instructions. If the shipment is ordered returned to the origin point, the charges assessed for the return trip shall be the same as the charges assessed for the outbound trip. The shipper shall maintain a record of the goods that, through no fault of the Contractor, could not be delivered and are returned to the shipper. If, at a future date, the returned goods are determined to be related to a claim against the Contractor, the claim will be adjusted accordingly.

(b) When, through the fault of the Contractor, a shipment cannot be delivered, the Contractor shall return the shipment to the origin point at no charge to the Government. Any charges incurred for redelivery, which are in excess of the charges that would have been incurred under this contract, shall be for the Contractor's account in accordance with the DEFAULT clause of the contract.

(FAR 52.247-16)

L2.05-5 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (PC&S) (DESC AUG 1999)

(a) **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).

(b) **MASTER SOLICITATION.**

(1) This solicitation is [], is not [x] a master solicitation for the _____ Purchase Program. If this is a master solicitation, it will contain the terms and conditions for this solicitation and for future supplemental solicitations in the program year. Each supplemental solicitation will incorporate by reference the same terms and conditions as this master solicitation, except as specifically stated in that supplemental solicitation. The identical terms and conditions will not be repeated. (Therefore, if this is a master solicitation, it should be retained for the duration of the program.) However, each supplemental solicitation will be considered a separate and individual solicitation.

(2) The initial opening/closing date for the solicitation is __December 20, 1999_____. Subsequent openings/closings for future requirements will be on an as-required basis starting with the first supplemental solicitation and thereafter until the end of the program ordering period as stated in the solicitation.

(c) **SUBMISSION, MODIFICATION, REVISION, AND WITHDRAWAL OF OFFERS.**

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, signed and dated offers and modifications thereto 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 at or before the exact time specified in this solicitation. Offerors using commercial carriers should ensure that the offer is marked on the outermost wrapper with the information in subdivisions (i) and (ii) above. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation.

(2) The first page of the offer must show--
(i) The solicitation number;
(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
(iii) Include name, title, and signature of person authorized to sign the offer. Offers 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.
(iv) 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;
(v) Terms of any express warranty;
(vi) Price and any discount terms; and
(vii) A completed copy of the representations and certifications in the Offeror Submission Package.

(3) **IFBs ONLY.**

(i) Facsimile bids _____ authorized for this solicitation.
(ii) **EVALUATION - Net Payment Terms.** Offers under an IFB that include net payment terms less than 30 days will be determined nonresponsive.
(iii) Prices shall be offered on an economic price adjustment basis only. Firm prices will be nonresponsive and will be rejected.
(iv) The prices set forth on the Price Data Sheet in the block marked "Bid Price" will be a per gallon price. These prices shall not exceed six digits to the right of the decimal (e.g., \$1.030454).

(4) **RFPs ONLY.**

(i) 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 that reject the terms and conditions of the solicitation may be excluded from consideration.
(ii) 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

(d) **STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE AND SMALL BUSINESS SIZE STANDARD.** The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern that submits an offer in its own name, but which proposes to furnish an item that it did not itself manufacture, is 500 employees.

(e) **PERIOD FOR ACCEPTANCE OF OFFERS.** The offeror agrees to hold the prices in its offer firm for 120 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(f) **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.

(g) **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.

(h) **LATE OFFERS.**

(1) **FOR IFBs.** See the LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS provision in Addendum 1.

(2) **FOR RFPs.**

(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;

(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.

(iii) 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, offeror 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 FACSIMILE PROPOSALS provision. 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 ____3:00 p.m., local time for the designated Government office.

(i) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(j) Proposals submitted in response to this solicitation shall be in English and in U.S. dollars unless otherwise permitted by the solicitation.

(k) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(l) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(m) **CONTRACT AWARD.**

(1) **RFPs ONLY (not applicable to IFBs).**

(i) While the Government intends to evaluate offers and award a contract without discussions, it reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

(ii) 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.

(iii) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(2) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation will be most advantageous to the Government, cost or price and other factors (including subfactors) specified elsewhere in this solicitation, considered.

(3) The Government may reject any or all offers if such action is in the Government's interest.

(4) The Government may waive informalities and minor irregularities in offers received.

(5) The Government may accept any item or group of items of a proposal, unless the offeror qualifies the proposal by specific limitations. Unless otherwise provided in the Schedule, proposals 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.

(6) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time specified in the offer shall result in a binding contract without further action by either party.

(7) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(n) **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
470 L'ENFANT PLAZA, SW, SUITE 8100
WASHINGTON, DC 20407
TELEPHONE: (202) 619-8925
FAX: (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 address in (i) above. 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) 697-2179
FAX: (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) 697-2179; or

(B) Through the DoDSSP Internet site at <http://www.dodssp.dla.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(o) **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.

(FAR 52.212-1, **tailored**/DESC 52.212-9F20)

**K1.01-9 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (ALT D)
(JUN 1999/OCT 1998)**

(a) **DEFINITIONS.** As used in this provision--

(1) **Emerging small business** means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

(2) **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.

(3) **Women-owned small business concern** means a small business concern--

(i) 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

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

(4) **Women-owned business concern** means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of 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. 6050M).** (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 U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.

- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of a Federal, state, or local government;
- Other. State basis. _____

(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) 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.

(3) 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)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) 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 woman-owned business concern.

(5) 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.

(6) 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)). The offeror represents as follows:

(A) The 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) The 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:)

<u>NUMBER of EMPLOYEES</u>	<u>AVERAGE ANNUAL GROSS REVENUES</u>
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51 - 100	<input type="checkbox"/> \$1,000,001 - \$2 million
<input type="checkbox"/> 101 - 250	<input type="checkbox"/> \$2,000,001 - \$3.5 million
<input type="checkbox"/> 251 - 500	<input type="checkbox"/> \$3,500,001 - \$5 million
<input type="checkbox"/> 501 - 750	<input type="checkbox"/> \$5,000,001 - \$10 million
<input type="checkbox"/> 751 - 1,000	<input type="checkbox"/> \$10,000,001 - \$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(7) (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 is listed, on the date of this representation, on the register of small disadvantaged business concerns maintained by the Small Business Administration, 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 VENTURE 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:

_____.

(8) (Complete if the offeror represented itself as disadvantaged in paragraph (b)(2) 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 origin 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.

(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 to the EQUAL OPPORTUNITY clause of this solicitation; 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 - TRADE AGREEMENTS - BALANCE OF PAYMENTS PROGRAM CERTIFICATE. (Applies only if DFARS clause 252.225-7007, TRADE AGREEMENTS ACT, is incorporated by reference in this solicitation.)

(1) The offeror certifies that--

(i) Each end product, except the end products listed in subparagraph (2) below, is a domestic end product (as defined in the BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM clause of this solicitation); 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 must identify and certify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies qualify as "U.S.-made end products" but do not meet the definition of "domestic end product":

(Insert line item no.)

(ii) The offeror certifies that the following supplies are qualifying country end products:

(Insert line item no.)

(Insert country of origin)

(iii) The offeror certifies that the following supplies are qualify as designated country end products:

(Insert line item no.)

(Insert country of origin)

(iv) The offeror certifies that the following supplies qualify as Caribbean Basin country end products:

(Insert line item no.)

(Insert country of origin)

(v) The offeror certifies that the following supplies qualify as NAFTA country end products:

(Insert line item no.)

(Insert country of origin)

(vi) The offeror certifies that the following supplies are other nondesignated country end products:

(Insert line item no.)

(Insert country of origin)

(LIST AS NECESSARY)

(3) Offers will be evaluated by giving preference to U.S.-made end products, qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products.

(g) BUY AMERICAN ACT - NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) IMPLEMENTATION ACT - BALANCE OF PAYMENTS PROGRAM CERTIFICATE. (Applies only if DFARS clause 252.225-7036, NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) IMPLEMENTATION ACT, clause is incorporated by reference in this solicitation.)

(1) The offeror certifies that--

(i) Each end product, except the end products listed in subparagraph (2) below, is a domestic end product (as defined in the BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM clause of this solicitation); 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 must identify and certify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies qualify as "U.S.-made end products," but do not meet the definition of "domestic end products":

(Insert line item number)

(ii) The offeror certifies that the following supplies are qualifying country (except Canada) end products:

(Insert line item number)

(Insert country of origin)

(iii) The offeror certifies that the following supplies qualify as NAFTA country end products:

(Insert line item number)

(Insert country of origin)

(iv) The offeror certifies that the following supplies are other non-NAFTA country end products:

(Insert line item number)

(Insert country of origin)

(LIST AS NECESSARY)

(3) Offers will be evaluated by giving preference to U.S.-made end products, qualifying country end products, or NAFTA country end products over other end products.

(h) 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.

(FAR 52.212-3/Alt I)

DESC CLAUSES

B19.37 ECONOMIC PRICE ADJUSTMENT - MARKET PRICE (PC&S/BUNKERS) (CENTRAL AMERICA)

(DESC JUL 1999)

(a) **WARRANTIES.** The Contractor warrants that--

- (1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and
- (2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.

(b) **DEFINITIONS.** As used throughout this clause, the term--

- (1) **Award price** means the unit price set forth opposite the item in the Schedule.
- (2) **Market price** means the prices published by the El Salvadoran Government in the official Government publication, Acuerdo/Decredo, and is the price with which the award price is to fluctuate. The market price should be the published price for the same or similar product as the item being purchased.

(i) **Base market price** means the price that will provide the basis for subsequent price adjustments. The base market prices are listed by item in column V of the Table below.

(ii) **Adjusting market price** means the market price in effect on the date of delivery and that will be used to determine the change in market price as defined in (c)(2) below.

(3) **Date of delivery** means--

(i) **FOR TANKER OR BARGE DELIVERIES.**

(A) **F.O.B. ORIGIN.** The date and time vessel commences loading.

(B) **F.O.B. DESTINATION.** The date and time vessel commences discharging.

(ii) **FOR ALL OTHER TYPES OF DELIVERIES.** The date product is received on a truck-by-truck basis.

(c) **ADJUSTMENTS.**

(1) **NOTIFICATION.** The Contractor shall notify the Contracting Officer, Defense Energy Support Center, of any change in the market price. This notice must be received at DESC within 15 calendar days from the date thereof. If publication occurs after the effective date of the change, and the Contractor notifies the Contracting Officer within 15 calendar days, the price changes shall be retroactive from the date of publication to the effective date of the change, except that retroactivity shall not exceed 60 days from the date of publication.

(2) Subject to the provisions of this clause, the prices payable hereunder shall be determined by adding to the award price the same number of cents, or fraction thereof, that the adjusting market price increases or decreases, as measured in U.S. dollars, per like unit of measure, subsequent to the date on which the base market price is established (see column V of the Table). In order to calculate the price change authorized under this clause, the adjusting market price must reflect the current exchange rate between U.S. dollars and Salvadoran colones, in effect on the date of the change.

(3) **CALCULATIONS.**

(i) When there is a change in the market price published in the Acuerdo/Decreto, to calculate the new unit price, first find the change in the Acuerdo/Decreto market prices by subtracting the base market price from the new market price (both in Colones). Then add this difference (in Colones) to the award price (in Colones) to obtain the new unit price. Finally, convert this price to U.S. dollars by dividing the resultant figure by the applicable exchange rate in effect at the time of the change.

(ii) All arithmetical calculations, including the final adjusted market and unit prices, shall be rounded to four decimal places.

(4) **NOTIFICATIONS.** Any resultant price changes shall be provided via notification through contract modifications and/or postings to the DESC web page under the heading **Doing Business with DESC** in accordance with the following:

(i) **DECREASES.** If the Contractor fails to notify the Contracting Officer of any decrease in market price within the allotted 15-day period, such decrease shall apply to all deliveries made on or after the effective date of such decrease. However, if any overpayment is made to the Contractor as a result of the Contractor's failure to give timely notice to the Contracting Officer of any decrease in the established price, the Contractor shall be charged interest on such overpayment from the date of the overpayment to the date of reimbursement by the Contractor for the overpayment in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract.

(ii) **INCREASES.** Any increase in unit price as a result of an increase in market price shall apply to all deliveries made on or after the date of receipt by the Contracting Officer of written notification from the Contractor of such increase in accordance with (c)(1) above. However, no notification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase has been verified by the Contracting Officer.

(5) **FAILURE TO DELIVER.** Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract, or is the result of an allocation made in accordance with the terms of the ALLOCATION clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(6) **UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENT.** The Contractor agrees that the total increase in any contract unit price pursuant to these economic price adjustment provisions shall not exceed 60 percent of the award price in any applicable program year (whether a single year or a multiyear program), except as provided hereafter.

(i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with appropriate explanation and documentation as required by the Contracting Officer.

(ii) If an actual increase in the market price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.

(7) **REVISION OF MARKET PRICE INDICATOR.** In the event--

(i) Any applicable market price is discontinued or its method of derivation is altered substantially; or

(ii) The Contracting Officer determines that the market price indicator consistently and substantially failed to reflect market conditions--
the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on the date the indicator was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract.

G9.07 ELECTRONIC TRANSFER OF FUNDS PAYMENTS - CORPORATE TRADE EXCHANGE (DESC MAY 1999)

- (a) This clause applies to payments made by DFAS Columbus.
- (b) The Contractor shall supply the following information to the Contracting Officer no later than 3 days after contract award.

NAME OF RECEIVING BANK: _____
(DO NOT EXCEED 29 CHARACTERS)

CITY AND STATE OF RECEIVING BANK: _____
(DO NOT EXCEED 20 CHARACTERS)

AMERICAN BANKERS ASSOCIATION NINE DIGIT IDENTIFIER OF RECEIVING BANK: _____

ACCOUNT TYPE CODE: (Contractor to designate one)

CHECKING TYPE 22

SAVINGS TYPE 32

RECIPIENT'S ACCOUNT NUMBER ENCLOSED IN PARENTHESES: _____
(DO NOT EXCEED 15 CHARACTERS)

RECIPIENT'S NAME: _____
(DO NOT EXCEED 25 CHARACTERS)

STREET ADDRESS: _____
(DO NOT EXCEED 25 CHARACTERS)

CITY AND STATE: _____
(DO NOT EXCEED 25 CHARACTERS)

NOTE: Additional information may be entered in **EITHER** paragraph (c) **OR** paragraph (d) below. Total space available for information entered in (c) **OR** (d) is 153 characters.

(c) SPECIAL INSTRUCTIONS/OTHER IDENTIFYING DATA:

(DO NOT EXCEED 153 CHARACTERS)

OR

(d) THIRD PARTY INFORMATION: Where payment is to be forwarded from the receiving bank to another financial institution for deposit into Contractor's account, the following information **must** be supplied by the Contractor: Second Bank Name, City/State and/or Country, Account Number, and Account Name.

(ii) In the absence of any change in the Salvadoran Acuerdo between the 1st and the 15th of the month, the exchange rate monthly adjustment shall become effective on the 15th of the month.

(2) **EQUATION.** Convert the current unit price to the desired currency by multiplying by the current exchange rate. Divide the converted currency by the new exchange rate, which will then equal the new unit price in U.S. Dollars. In the event a simultaneous change occurs in both the Acuerdo and exchange rate, the adjustment affecting the exchange rate shall be computed first, and then the resultant new unit price shall be used as the current unit price in calculating the new market price.

(DESC 52.232-9FM5)

I11.01 ADMINISTRATIVE COST OF DEFAULT (DESC APR 1997)

If this contract is terminated for default, in whole or in part, the Government will incur administrative costs for the default action of the supplies or services so terminated. The Contractor and the Government expressly agree that the Contractor shall pay, as a minimum, an administrative fee of \$500 for each termination action as a result of its default. "Termination action" means the termination for default of any order (or group of orders terminated together), item (or group of items terminated together), or the entire contract. These charges are in addition to any excess costs of repurchase, as provided in paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause, or any other remedies or damages resulting from such default.

(DESC 52.249-9F15)

I209.09 EXTENSION PROVISIONS (PC&S) (DESC OCT 1994)

(a) The DESC Contracting Officer reserves the right to unilaterally extend this contract on the same terms and conditions one or more times for a total of no more than six months. Notice of contract extension will be furnished to the Contractor 30 days prior to expiration of this contract or any extension thereof. However, nothing in this clause precludes the Contractor from agreeing to an extension of the contract if the DESC Contracting Officer fails to issue the notice within the 30 day time frame.

(b) The foregoing extension may be exercised by the DESC Contracting Officer where continued performance is required until a follow-on contract is awarded or, in the event a follow-on contract has been awarded, until a succeeding Contractor is positioned to commence performance.

(c) Extension of this contract shall be considered to have been accomplished at the time the DESC Contracting Officer provides written notification to the Contractor by facsimile or by mail.

(DESC 52.217-9F20)

K45 FACSIMILE INVOICING (DESC SEP 1988)

(a) Submission of invoices by facsimile (FAX) is authorized when the offeror will utilize this method of invoicing at all times.

(b) Offeror shall indicate whether or not he intends to submit invoices via FAX:

[] YES [] NO

(c) See the SUBMISSION OF INVOICES BY FACSIMILE clause for FAX invoicing procedures.

(DESC 52.232-9F05)

L5.01 AGENCY PROTESTS (DESC AUG 1997) - DLAD

(a) Parties protesting this procurement may file a protest (1) with the Contracting Officer, (2) with the General Accounting Office, or (3) pursuant to Executive Order 12979, with the DESC Commodity Business Unit Director.

(b) Protests filed with the Director, DESC Commodity Business Unit, pursuant to Executive Order 12979 should be addressed to the Contracting Officer, but should clearly state that they are an "Agency Level Protest under Executive Order 12979." The Contracting Officer will forward the protest to the DESC Director of the appropriate commodity business unit for a decision. (This process allows for a higher level decision on the initial protest; it is not a review of a Contracting Officer's decision on a protest filed with the Contracting Officer.)

(c) Absent a clear indication of the intent to file an agency level protest under Executive Order 12979, protests will be presumed to be protests to the Contracting Officer.

(d) To the maximum extent possible, all parties shall use their best efforts to resolve concerns at the Contracting Officer level through frank and open discussions.

(DLAD 52.233-9000, **revised**)

L54 SITE VISIT (DESC OCT 1992)

(a) It is the responsibility of the offerors/bidders to inspect the site where supplies are to be delivered and to obtain all available information about the site necessary to satisfy themselves about general and local conditions that may affect delivery and the cost of contract performance, to the extent that the information is reasonably obtainable. Offerors/bidders are responsible for any costs incurred for any site inspection and for obtaining information.

(b) In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(DESC 52.237-9F05)