

**INFORMATION TO OFFERORS OR QUOTERS  
SECTION A – COVER SHEET**

*Form Approved  
OMB No. 9000-0002  
Expires Oct 31, 2004*

The public reporting burden for this collection of information is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (9000-0002), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person will be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

**PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE ADDRESS IN BLOCK 4 BELOW.**

<b>1. SOLICITATION NUMBER</b> SP0600-04-R-0043	<b>2. (X one)</b> <input type="checkbox"/> a. INVITATION FOR BID (IFB) <input checked="" type="checkbox"/> b. REQUEST FOR PROPOSAL (RFP) <input type="checkbox"/> c. REQUEST FOR QUOTATION (RFQ)	<b>3. DATE/TIME RESPONSE DUE</b> JANUARY 30, 2004, 3:00PM LOCAL TIME, FT. BELVOIR, VA
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**INSTRUCTIONS**

**NOTE:** The provision entitled "Required Central Contractor Registration" applies to most solicitations.  
 1. If you are not submitting a response, complete the information in Blocks 9 through 11 and return to the issuing office in Block 4 unless a different return address is indicated in Block 7.  
 2. Offerors or quoters must include full, accurate, and complete information in their responses as required by this solicitation (including attachments). "Fill-ins" are provided on Standard Form 18, Standard Form 33, and other solicitation documents. Examine the entire solicitation carefully. The penalty for making false statements is prescribed in 18 U.S.C. 1001.  
 3. Offerors or quoters must plainly mark their responses with the Solicitation Number and the date and local time for bid opening or receipt of proposals that is in the solicitation document.  
 4. Information regarding the timeliness of response is addressed in the provision of this solicitation entitled either "Late Submissions, Modifications, and Withdrawals of Bids," or "Instructions to Offerors – Competitive Acquisition."

<b>4. ISSUING OFFICE (Complete mailing address, including ZIP Code)</b> DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN RD, STE 4950 FT. BELVOIR, VA 22060-6222	<b>5. ITEMS TO BE PURCHASED (Brief description)</b> KEROSENE: 60,940,720 US GALLONS PREM UNLEAD GASOLINE: 116,592,698 US GALLONS DIESEL FUEL: 87,144,027 US GALLONS LIQUEFIED PETROLEUM GAS: 38,220 METRIC TONS
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**6. PROCUREMENT INFORMATION (X and complete as applicable.)**

<input type="checkbox"/>	a. THIS PROCUREMENT IS UNRESTRICTED.
<input type="checkbox"/>	b. THIS PROCUREMENT IS           % SET-ASIDE FOR SMALL BUSINESS. THE APPLICABLE NAICS CODE IS:
<input type="checkbox"/>	c. THIS PROCUREMENT IS           % SET-ASIDE FOR HUB ZONE CONCERNS. THE APPLICABLE NAICS CODE IS:
<input type="checkbox"/>	d. THIS PROCUREMENT IS RESTRICTED TO FIRMS ELIGIBLE UNDER SECTION 8(a) OF THE SMALL BUSINESS ACT.

**7. ADDITIONAL INFORMATION:**  
 LOCATION: PURCHASE PROGRAM 1.6B IN SUPPORT OF RESTORE IRAQI OIL SERVICES (NORTHERN REGION)  
 ORDERING PERIOD: DATE OF AWARD THROUGH 30 JUNE 2004  
 DELIVERY PERIOD: 01 APRIL 2004 THROUGH 30 JUNE 2004

**8. POINT OF CONTACT FOR INFORMATION**

<b>a. NAME (Last, First, Middle Initial)</b> SHEPHERD, SANDRA S.	<b>b. ADDRESS (Include ZIP Code)</b> DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN RD., STE 4950 FT. BELVOIR, VA 22060-6222
<b>c. TELEPHONE NUMBER (Include Area Code and Extension)</b> 703-767-9544	<b>d. E-MAIL ADDRESS</b> sandra.shepherd@dla.mil

**9. REASONS FOR NO RESPONSE (X all that apply)**

<input type="checkbox"/> a. CANNOT COMPLY WITH SPECIFICATIONS	<input type="checkbox"/> d. DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
<input type="checkbox"/> b. UNABLE TO IDENTIFY THE ITEMS(S)	<input type="checkbox"/> e. OTHER
<input type="checkbox"/> c. CANNOT MEET DELIVERY REQUIREMENT	

**10. MAILING LIST INFORMATION (X one)**  
 WE  DO  DO NOT DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE INVOLVED.

<b>11a. COMPANY NAME</b>	<b>b. ADDRESS</b>
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**c. ACTION OFFICER**

(1) TYPED OR PRINTED NAME (Last, First, Middle Initial)	(2) TITLE
(3) SIGNATURE	(4) DATE SIGNED (YYYYMMDD)

A. **LIMITATION OF SOURCES:** Deputy Secretary of Defense Paul Wolfowitz issued a Determination and Findings (D&F) on December 5, 2003, under the authority of 41 USC 253(c)(7), 10 USC 2304(c)(7) and FAR 6.302-7, limiting competition for particular procurements of Iraqi Relief and Reconstruction prime contracts to firms from the United States, Iraq, Coalition partners and force contributing nations. A copy of the D&F is at [http://www.rebuilding-iraq.net/pdf/D\\_F.pdf](http://www.rebuilding-iraq.net/pdf/D_F.pdf). The listed contracts include the requirement in this solicitation in support of Restore Iraq Oil Services (Northern region). Pursuant to the D&F, competition for award of prime contracts is limited to companies from the United States, Iraq, Coalition partners and force contributing nations listed in Attachment 2 of the D&F. Offers from companies not from the United States, Iraq, Coalition partners and force contributing nations described in Attachment 2 of the D&F will not be considered.

B. **MULTISOURCE CONTRACT:** The entire requirement may be awarded to one offeror. However, the Government reserves the right to make more than one award under the solicitation (refer to clause L2.05.100). The Government also reserves the right to award to other than the low offeror if more than one contract is awarded.

C. The closing date for this solicitation is January 30, 2004, 3:00 p.m. Eastern Daylight Time (EDT), Ft. Belvoir, VA.

D. Any facsimile offer to this solicitation may be submitted in accordance with Clause L2.11-2, FACSIMILE PROPOSALS. The DESC facsimile number is (703) 767-8506.

E. Unless you specifically state otherwise, your offer is assumed to accept all terms and conditions of this solicitation. Any exceptions to any part of this solicitation must be specifically identified in a cover letter to your proposal.

F. **CONTRACT TYPE:** Any contract awarded as a result of this solicitation will be a "REQUIREMENTS – FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT" contract. Refer to Clause I84, REQUIREMENTS.

G. **ACKNOWLEDGEMENT OF AMENDMENTS:** Offerors must acknowledge receipt of any amendment to this solicitation by signing and returning the amendment with your offer. Failure to do so may result in your offer being considered unacceptable.

H. Any contract awarded to a contractor who at the time of award was suspended, debarred, or ineligible for receipt of contract with Government agencies or in receipt of proposed debarment from any Government agency is voidable at the option of the government.

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. If it is determined that discussions are necessary, the Contracting Officer may conduct discussions with offerors whose proposals have been determined to be within the competitive range. If required, tentative dates for discussion are February 09 through 13, 2004 and each offeror will be contacted for negotiations.

J. **EMERGENCY CONTACT POINT:** For emergencies during non-duty hours contact:

Operations Center, Contingency Plans and Operations Division (DESC-DL)  
Telephone Number (703) 767-8420

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER <b>SP0600-04-1130</b>		PAGE 1 OF 21	
2. CONTRACT NUMBER		3. AWARD/EFFECTIVE DATE <b>See Block 31c</b>		4. ORDER NUMBER		5. SOLICITATION NUMBER <b>SP0600-04-R-0043</b>	
6. SOLICITATION ISSUE DATE <b>January 22, 2004</b>		7. FOR SOLICITATION INFORMATION CALL: a. NAME <b>Sandra Shepherd</b>		b. TELEPHONE NUMBER (no collect calls) <b>Phone: (703) 767-9544</b> <b>Fax: (703) 767-8506</b>		8. OFFER DUE DATE/LOCAL TIME <b>January 30, 2004 3:00 PM EDT, Fort Belvoir, VA</b>	
9. ISSUED BY CODE  <b>Defense Energy Support Center</b> <b>8725 John J. Kingman Road, Suite 4950</b> <b>Fort Belvoir, VA 22060-6222</b> <b>Buyer/Symbol: SANDRA S. SHEPHERD/DESC-PEC</b> <b>Phone: (703) 767-9544</b>			<b>SP0600</b>		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV BUSINESS  <input type="checkbox"/> 8(A)  NAICS: 424720  SIZE STANDARD: 500		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE
12. DISCOUNT TERMS		13a. THIS CONTRACT IS RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING		14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP	
15. DELIVER TO CODE  <b>SEE SCHEDULE</b>				16. ADMINISTERED BY CODE  <b>SEE BLOCK 9</b>			
18a. PAYMENT WILL BE MADE BY CODE		FACILITY		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
TELEPHONE NO.		FAX NO:		<b>SEE CLAUSE F30.01</b>			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
		<b>The Schedule is shown on the SF1449 Continuation Sheets</b> (Attach additional Sheets as Necessary)					
25. ACCOUNTING AND APPROPRIATION DATA <b>TO BE CITED ON EACH DELIVERY ORDER</b>						26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED. *SCHEDULE OF SUPPLIES AND SOLICITATION CLAUSES ARE ATTACHED.							
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.							
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN - <b>2</b> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				<input type="checkbox"/> 29. AWARD OF CONTRACT: REFERENCE _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: _____			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (Signature of Contracting Officer)			
30b. NAME AND TITLE OF SIGNER (Type or Print)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or Print)		31c. DATE SIGNED	
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED				33. SHIP NUMBER		34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR
				<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL			
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE				32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	
				38. S/R ACCOUNT NO.		39. S/R VOUCHER NO.	37. CHECK NUMBER
				42a. RECEIVED BY (Print)			
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				42b. RECEIVED AT (Location)			
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

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**CONTRACT DOCUMENT**

[X]	OFFEROR SUBMISSION PACKAGE	UNDER SEPARATE COVER
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**POSTAWARD  
ADDENDUM 2**

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**B1.05.100 SUPPLIES TO BE FURNISHED (OVERSEAS PC&S) (IRAQ)(DESC JAN 2004)**

a. The supplies to be furnished during the period specified in the REQUIREMENTS clause, the delivery points, methods of delivery, and estimated quantities are shown below. The quantities shown are best estimates of required quantities only. Unless otherwise specified, the total quantity ordered and required to be delivered may be greater than or less than such quantities. The Government agrees to order from the Contractor and the Contractor shall, if ordered, deliver during the contract period all items awarded under this contract. The prices paid shall be the unit prices specified in subsequent price change modifications issued in accordance with the ECONOMIC PRICE ADJUSTMENT clause.

b. Oral orders may be issued and must be confirmed in writing by an SF 1449 or DD Form 1155 within 24 hours.

c. Offers may be submitted for quantities less than the estimated quantities specified below for each line item based on the offeror's supply capabilities, provided that such offers may not be for less than ten percent (10%) of the estimated quantity for a given product. Offers submitted for less than the estimated quantities will be considered for award. Offers submitted for less than ten percent (10%) of the estimated quantity for a given product may not be considered for award.

The following delivery areas are the Government's best estimate of locations to which product may be required to be delivered.

MOSUL AREA 1 - TO INCLUDE MOUSUL, IRBIL, SULAYMANIYAH, DAHUK, AND KIRKUK. BOUNDED BY THE IRAQI BORDER IN THE NORTH, EAST AND WEST AND IN THE SOUTH BY AN EAST-WEST LINE 50KM SOUTH OF KIRKUK.

BAIJI AREA 2- TO INCLUDE BAIJI, KIFRI, AND TIKRIT. BOUNDED BY THE IRAQI BORDER IN THE EAST AND WEST, IN THE NORTH BY AN EAST-WEST LINE 50KM SOUTH OF KIRKUK AND IN THE SOUTH BY AN EAST-WEST LINE 50KM SOUTH OF TIKRIT.

MASHADI AREA 3- TO INCLUDE MASHADI, SAMARRA, BAQUBAH, RAMADI, BALAD, AND BAGHDAD. BOUNDED BY THE IRAQI BORDER IN THE EAST AND WEST, IN THE NORTH BY AN EAST-WEST LINE 50KM SOUTH OF TIKRIT AND IN THE SOUTH BY AN EAST-WEST LINE 50 KM SOUTH OF BAGHDAD.

The following products and the estimated quantities represent the total requirement being solicited. Some, all or none of these estimated quantities may be required to be delivered to one or more of the areas listed above.

<u>ITEMS</u>	<u>SUPPLIES TO BE FURNISHED</u>	<u>ESTIMATED QUANTITY DAILY / 3 MONTHS</u>
KEROSENE	SPECIFICATION: TUPRAS 350 OR COMMERCIAL EQUIVALENT	677,119 / 60,940,720 GALLONS
PREMIUM UNLEADED GASOLINE	SPECIFICATION: TUPRAS 240 OR COMMERCIAL EQUIVALENT	129,547 / 116,592,698 GALLONS
DIESEL FUEL	SPECIFICATION: TUPRAS 400 OR COMMERCIAL EQUIVALENT	968,267 / 87,144,027 GALLONS
LIQUEFIED PETROLEUM GAS (LPG)	SPECIFICATION: TUPRAS 70, OR COMMERCIAL EQUIVALENT	425 / 38,220 METRIC TONS

**SPECIAL NOTES**

1. Offered prices for all of the line items listed above in Clause **B1.05.100 SUPPLIES TO BE FURNISHED (OVERSEAS PC&S) (IRAQ)(DESC JAN 2004)** should be listed in the appropriate space provided in the attached Offeror Submission Package.

2. The above details all products solicited and applicable specifications.

3. **LIMITATION OF SOURCES.** Deputy Secretary of Defense Paul Wolfowitz issued a Determination and Findings (D&F) on December 5, 2003, under the authority of 41 USC 253(c)(7), 10 USC 2304(c)(7) and FAR 6.302-7, limiting competition for particular procurements of Iraqi Relief and Reconstruction prime contracts to firms from the United States, Iraq, Coalition partners and force contributing nations. A copy of the D&F is at [http://www.rebuilding-iraq.net/pdf/D\\_F.pdf](http://www.rebuilding-iraq.net/pdf/D_F.pdf). The listed contracts include the requirement in this solicitation in support of Restore Iraq Oil Services (Northern region). Pursuant to the D&F, competition for award of prime contracts is limited to companies from the United States, Iraq, Coalition partners and force contributing nations listed in Attachment 2 of the D&F. Offers from companies not from the United States, Iraq, Coalition partners and force contributing nations described in Attachment 2 of the D&F will not be considered.

4. **TITLE AND RISK OF LOSS.** See I1.03-3.100(j).

5. **MULTIPLE AWARDS:** The entire requirement may be awarded to one offeror. However, the Government reserves the right to make more than one award under the solicitation (refer to clause L2.05-5.100). The Government also reserves the right to award to other than the low offeror if more than one contract is awarded.

6. **DELIVERY AND ORDERING PERIODS:**

(a) The period of this contract during which the Ordering Officer may order and the Contractor shall deliver, if ordered, shall be as follows unless the item in the Schedule specifies otherwise:

(1) Ordering Period Begins: Date of Award and Ends: June 30, 2004 with three (3), three month option periods.

(2) Delivery Period Begins: April 01, 2004 and Ends: July 30, 2004 with three (3), three month option periods.

(b) Notwithstanding the foregoing, deliveries made prior to the delivery period at the option of the Contractor and pursuant to an order by the Government shall be deemed to have been made under this contract at the applicable contract price(s).

(c) Notwithstanding the foregoing delivery period(s), if an order is placed prior to the end of the ordering period that requires delivery within 30 days following the end of the ordering period, the Contractor shall deliver the ordered volume.

7. **ORDERING:** The Government will issue monthly orders that may be adjusted daily. Contractor is required to perform delivery and return to the Iraq/Turkey border with authorized signature or authorized stamped documents within 10 days of order placement.

8. **INVOICE QUANTITY DETERMINATION:** Quantity will be determined at the loading point in accordance with the QUANTITY DETERMINATION clauses. The invoice quantity paid by the Government shall be the quantity determined at the Iraq customs border via scales.

9. **SPECIAL DELIVERY REQUIREMENTS:** After receipt of order and loading of product proceed unescorted to the Harbour gate and receive a mission number from the O&M contractor. Contractor will then be directed to proceed to the Turkish/Iraqi customs area. On completion of Iraqi customs, contractor will be assigned a convoy position and escorted to the download site by the US Military. Complete download and return to Turkish/Iraqi customs area to turn in delivery documentation.

10. **SUBMISSION OF INVOICES:** The Contractor shall submit an original invoice and three copies to the address designated in the contract to receive invoices. An invoice shall be accompanied by all supporting delivery documentation with appropriate stamp or signatures to the Government representative as identified in Clause F30.01, ORDERING AND PAYING OFFICERS. An invoice must include--

(1) Name and address of the Contractor;

(2) Invoice date and number;

(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) Mission number assigned by the operation and management contractor;

(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, and

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

(10) **Electronic funds transfer (EFT) banking information.**

11. **EVALUATION OF OPTIONS:**

Except when it is determined in accordance with FAR 17.206(b), not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

11. All products shall be furnished F.O.B. Destination via tank truck with pump.

**REQUIRED REGULATORY COMMERCIAL ITEM PROVISIONS AND CLAUSES****PREAWARD****K1.05 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (NOV 1995)****(a) DEFINITIONS.** As used in this clause--

(1) **Foreign person** means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) **United States person** is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern, as determined under regulations of the President.

**(b) CERTIFICATION.** By submitting this offer, the offeror, if a foreign person, company, or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(DFARS 252.212-7000, tailored)

**L2.05-5.100 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (PC&S) (IRAQ) (DESC JAN 2004)**

(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 [ X ], is not [ ] a master solicitation for the **Purchase Program 1.6b**. 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 date for the solicitation is **30 January 2004**. Subsequent openings and 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) 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.

(d) **NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE.** The NAICS code for this acquisition appears in Block 10 of the solicitation cover sheet (SF 1449).

(e) **PERIOD FOR ACCEPTANCE OF OFFERS.** The offeror agrees to hold the prices in its offer firm for **60** 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) 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 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 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.

(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.

**(h) CONTRACT AWARD.****(1) RFPs**

(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) If the Contracting Officer determines that negotiations are necessary, the Government will then 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 represents the lowest priced technically acceptable proposal. The Government may award to other than the low offeror if more than one contract is awarded. See M2.14.100 EVALUATION – COMMERCIAL ITEMS (PC&S)(IRAQ) (DESC JAN 2004).

(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. Proposals may be submitted for quantities less than those specified (refer to B1.05.100 SUPPLIES TO BE FURNISHED). 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.

(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.

(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 or other market analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(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 free of charge by submitting a request to:  
to--

GSA, FEDERAL SUPPLY SERVICE SPECIFICATIONS SECTION  
470 EAST L'ENFANT PLAZA, SW, SUITE 8100  
WASHINGTON, DC 20407  
TELEPHONE: (202) 619-8925  
FAX: (202) 619-8978

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 either through the Defense Standardization Program Internet website at <http://www.dsp.dla.mil> or 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://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](mailto:globalinfo@mail.dnb.com).

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

**POSTAWARD****II.03-3.100 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (NON-PORTS INTERNET APPLICATION) (IRAQ) (DESC JAN 2004)****(a) INSPECTION/ACCEPTANCE.**

(1) 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 (i) within a reasonable time after the defect was discovered or should have been discovered; and (ii) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(2) Also see the REQUESTS FOR WAIVERS AND DEVIATIONS clause in the Addendum.

(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 a payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its right 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, except as follows:

The Government reserves the right to unilaterally change the designated delivery point for all or any portion of a particular order at any time prior to final delivery. In the event such a change results in delivery being made into a different delivery area from that originally set forth in the order, the Contractor will be paid the corresponding price for the delivery area where final delivery actually takes place.

(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 and unusually severe weather. 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** See Special Notes in SUPPLIES TO BE FURNISHED.

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

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

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

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(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 OMB prompt payment regulations at 5 CFR part 1315. 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 which appears on the payment check or the specified payment date if an electronic funds transfer payment was made.

(j) **RISK OF LOSS AND TITLE.** The Government will assume title for product when it enters the Contractor's truck at the load point. After title for product passes to the Government, but while the fuel is in the Contractor's possession during transportation from the load point to the destination point, the risk of loss shall be determined as follows: (1) The Contractor shall be liable for loss or damage to the product that results from negligence, bad faith, or willful misconduct of the Contractor, its employees, agents or subcontractors. This includes, but is not limited to the Contractor assuming the risk of equipment failure; non-delivery of the fuel; short deliveries; theft by employees, agents or subcontractors; adulteration of the fuel; and losses from tampering with trucks or altering measurement devices; (2) The Government assumes the risk of loss for non-delivery of product due to circumstances beyond the control of the Contractor.

The Contractor bears all risk and responsibility for loss or damage to equipment and personal injury or death of its employees, agents or subcontractors during transportation of product. The Contractor is responsible for obtaining adequate insurance to cover this risk. The Government will not reimburse the Contractor for claims stemming from loss or damage to equipment or personal injury or death of employees, agents or subcontractors during transportation of product. See Special Notes following B1.05.100.

(k) **TAXES.** See Addendum 2.

(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 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) **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.

(o) **LIMITATION OF LIABILITY.** Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(p) **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.

(q) **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.

(r) **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, **tailored**/DESC 52.212-9F50)

**II.04.100 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (IRAQ) (JAN 2004)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

52.233-3, Protest After Award (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that 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:

[ X ] (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

[ X ] (2) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

[ X ] (3) 52.225-13, Restriction on Certain Foreign Purchases (Oct 2003) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

[ X ] (4) 52.225-15, Sanctioned European Union Country End Products (Feb 2000) (E.O. 12849).

[ X ] (5) 52.225-16, Sanctioned European Union Country Services (Feb 2000) (E.O. 12849).

[ X ] (6) 52.232-34, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

[ X ] (7) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. 1241 and 10 U.S.C. 2631).

[ ] (ii) Alternate I (Apr 1984) of 52.247-64.

(c) **COMPTROLLER GENERAL EXAMINATION OF RECORD.** The Contractor shall 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.

(d) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c) of this clause, the Contractor is not required to flow down any FAR clause, other below, in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. Appx. 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(FAR 52.212-5)

**II.05.100 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (JAN 2004)**

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207)

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement 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.

252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

252.225-7028 Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

252.247-7023 Transportation of Supplies by Sea (MAY 2002); ( Alternate I (MAR 2000)); ( Alternate II (MAR 2000)); ( Alternate III (MAY 2002)) (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (d) of the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS 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:

252.247-7023 Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).  
(DFARS 252.212-7001)

**PREAWARD****ADDENDUM 1****K15 RELEASE OF UNIT PRICES (DESC OCT 2002)**

The Defense Energy Support Center (DESC) will continue to release unit prices of successful offerors after the contract award pursuant to 10 U.S.C. 2305(g)(2), FAR 15.606(d)(2) and 32 CFR 286h-3. Unit prices are the bottom-line price per unit of product and may include the total contract price. They do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror's anticipated profit or any pricing factors.

(DESC 52.224-9F25)

**L2.01-3.100 PROPOSAL PREPARATION INSTRUCTIONS AND CONTENT (PC&S) (IRAQ) (DESC JAN 2004)**

Proposals shall be submitted in two sections and clearly labeled **Price Proposal** and **Technical Proposal**.

(a) **PRICE PROPOSAL.** The following items shall comprise the price proposal for this solicitation:

(1) In the Offeror Submission Package, submit a completed price data sheet, which shall include a single price for each product for each delivery area.

(2) The Standard Form 1449, and all certifications and representations contained in the Offeror Submission Package must be complete and;

(3) Additionally, exceptions (price or technical) taken to the terms and conditions of the solicitation and/or any of its formal attachments shall be identified. Each exception shall be specifically related to each paragraph and/or specific part of the solicitation to which the exception is taken. Provide rationale in support of the exception and fully explain the impact, if any, on the performance, price, and specific requirements of the solicitation. Failure to comply with the terms and conditions of the solicitation may result in the offeror being removed from consideration for award.

L2.01-3.100 Cont'd

**(b) TECHNICAL PROPOSAL.**

**NON-COST FACTOR: TECHNICAL CAPABILITY.** The offeror shall submit a written technical proposal. The complete technical proposal, exclusive of any résumés, drawings, or blueprints, shall not exceed 3 pages. The proposal will be evaluated strictly on technical merit and should describe and justify the offeror's technical approach to the requirements of the work to be performed and/or delivery of product under the contract. The technical proposal should be specific and provide concise, straightforward descriptions of the offeror's capability to perform the contract. Proposals that are unrealistic in terms of the description of the offeror's technical capability may be considered indicative of a lack of understanding of the solicitation's requirements. Technical proposals shall include the following (any element you do not address shall be identified as "N/A"):

- (i) A narrative describing how the offeror will ensure a reliable supply of product to meet the estimated quantities (include, if applicable, production, storage and distribution capabilities, supply commitments, terminal access, etc.);
- (ii) A narrative describing how the offeror will ensure reliable transportation of product to meet the estimated quantities (include, if applicable, trucking capabilities, trucking/transportation commitments, etc.);
- (iii) A description of quality control procedures that will be employed in support of this contract to assure that the product delivered complies with the specification;
- (iv) A description of how the offeror will meet all the technical and/or quality requirements of the solicitation (including attachments) not already described in (b)(i), (ii) and (iii) above.
- (v) Offerors will identify any technical, schedule, performance, or other risks associated with their proposals. Provide rationale for each risk, including quantitative estimates of the impact on price, schedule, and performance. Describe the impact on each identified risk in terms of its potential to interfere with or prevent the successful accomplishment of other contract requirements. Suggest a realistic "work around" or risk mitigation methodology for identified risks that will eliminate or reduce risk to an acceptable level. Identify any new risk introduced by such risk mitigation.

(DESC 52.215-9F98)

**L2.10 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)**

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(FAR 52.214-34)

**L2.10-1 SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)**

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(FAR 52.214-35)

**L2.11-2 FACSIMILE PROPOSALS (OCT 1997)**

(a) **DEFINITION. Facsimile proposal**, as used in this provision, means a proposal, revision, or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is **703-767-8506**.

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

- (1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;
- (2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and
- (3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(FAR 52.215-5)

**L5.01-1 AGENCY PROTESTS (SEP 1999) - DLAD**

Companies protesting this procurement may file a protest (1) with the Contracting Officer, (2) with the General Accounting Office, or (3) pursuant to Executive Order No. 12979, with the Agency for a decision by the Activity's Chief of the Contracting Office. Protests filed with the Agency should clearly state that they are an "Agency Level Protest under Executive Order No. 12979." (**NOTE:** DLA procedures for Agency Level Protests filed under Executive Order No. 12979 allow for a higher level decision on the initial protest than would occur with a protest to the Contracting Officer; this process is not an appellate review of a Contracting Officer's decision on a protest previously filed with the Contracting Officer.) Absent a clear indication of the intent to file an agency level protest, protests will be presumed to be protests to the Contracting Officer. (DLAD 52.233-9000)

**L74 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a Requirements Type with Economic Price Adjustment contract resulting from this solicitation.

(FAR 52.216-1)

**M2.14.100 EVALUATION – COMMERCIAL ITEMS (PC&S)(IRAQ) (DESC JAN 2004)**

(a) The Government will award a contract(s) resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation represents the lowest priced, technically acceptable offer.

(b) **TECHNICAL CAPABILITY.** The only non-cost factor to be evaluated is technical capability. In accordance with FAR 15.101-2(b)(3), proposals will be evaluated for acceptability but not ranked using the non-cost/price factor. Technical capability will be measured against requirements specified in the solicitation. As such, technical capability is considered acceptable when the offeror's proposal is in compliance with the requirements of the solicitation. Specific criteria used to judge acceptability are as follows:

- (1) Acceptability of the narrative describing how the offeror will ensure a reliable supply of product to meet the estimated quantities;
- (2) Acceptability of the narrative describing how the offeror will ensure reliable transportation of product to meet the estimated quantities;
- (3) Acceptability of stated quality control procedures;
- (4) Acceptability of how the offeror will meet technical and/or quality requirements of the solicitation not already evaluated in (b)(1) through (b)(3) above; and
- (5) Acceptability of risk mitigation (as applicable).

(c) **PRICE.** The Government will only evaluate prices submitted for Area 1 to determine the lowest price offer(s). However, 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 or other market analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government. See L2.05-5.100.

(d) **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 options.

(e) After evaluating price and technical capability, the Contracting Officer will award to the technically acceptable offeror(s) with the lowest price offered.

(f) A written notice of award or acceptance of 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

(FAR 52.212-2)

**M55 CONVERSION FACTORS (DESC APR 1998)**

(a) This provision applies to all products except lubricating oils.

(b) The offeror should use conversion factors that reflect its product characteristics and submit prices and transportation rates in the requested units. In the event prices or transportation rates are not submitted in the requested units, the following conversion factors based on an assumed density for the product will be used by DESC in the evaluation of the offer.

**(1) TABLE I.**

One Imperial Gallon	=	1.20095 U.S. Gallons at the same temperature
One Liter	=	0.264172 U.S. Gallons at the same temperature
One Cubic Meter (1,000 liters)	=	6.2898 Barrels at the same temperature
One U.S. Barrel	=	42 U.S. Gallons at the same temperature
One Kilometer	=	0.62137 Miles
One Mile	=	1.6093 Kilometers
One Nautical Mile	=	1.15 Statute Miles

**(2) TABLE II.**

<u>PRODUCT</u>	<u>DENSITY TYPICAL</u>		<u>BARRELS PER</u>	<u>GALLONS PER</u>	<u>LITERS PER</u>	<u>BARRELS PER</u>	<u>GALLONS PER</u>
	<u>@ 15°C</u>	<u>@ 60°F</u>					
<u>AUTOMOTIVE</u>							
GASOLINE (ALL)	744.9	58.4	8.462	355.42	1342.46	8.598	361.12
<u>AVIATION</u>							
GASOLINE (ALL)	716.3	66.0	8.801	369.66	1396.06	8.943	375.59
<u>BURNER FUEL OILS</u>							
FUEL OIL NO. 1	812.8	42.5	7.753	325.61	1230.31	7.877	330.83
FUEL OIL NO. 2	846.9	35.5	7.440	312.49	1180.78	7.560	317.51
FUEL OIL NO. 4	914.2	23.2	6.891	289.44	1093.85	7.002	294.09
<u>FUEL OIL</u>							
NO. 5 LIGHT	954.2	16.7	6.602	277.27	1048.00	6.707	281.71
<u>FUEL OIL NO.</u>							
5 HEAVY 960.7	15.7	6.557	275.39	1040.91	6.662	279.81	
FUEL OIL NO. 6	976.6	13.3	6.450	270.90	1023.96	6.554	275.25
<u>DIESEL FUELS</u>							
DFA	810.5	43.0	7.775	326.54	1233.81	7.900	331.79
DF1	818.9	41.2	7.695	323.17	1122.15	7.818	328.36
DF2/GAS OIL	839.3	37.0	7.507	315.30	1191.47	7.628	320.36
<u>INTERMEDIATE FUEL OILS</u>							
IFO 60	947.2	17.8	6.651	279.33	1055.74	6.757	283.81
IFO 180	965.3	15.0	6.526	274.09	1035.95	6.630	278.48
IFO 220	967.9	14.6	6.508	273.34	1033.16	6.612	277.72
IFO 380	973.9	13.7	6.468	271.65	1026.68	6.572	276.01

M55 Cont'd

JET FUELS

JP4/JET B	764.6	53.5	8.243	346.22	1307.87	8.376	351.78
JP5	819.9	41.0	7.686	322.80	1219.66	7.809	327.98
JP8/JET A1	805.9	44.0	7.820	328.42	1240.85	7.945	333.69
JET A	814.2	42.2	7.739	325.04	1228.20	7.863	330.26
KEROSINES (ALL)	815.2	42.0	7.730	324.68	1226.69	7.854	329.88
MARINE GAS OIL	839.3	37.0	7.507	315.30	1191.47	7.628	320.36
NAPHTHA	731.1	62.0	8.623	362.16	1367.80	8.761	367.97
NAVAL DISTILLATE FUEL (F76)							
AND DFW (F75)	844.3	36.0	7.463	313.43	1184.41	7.582	318.46

(3) **TABLE III.**

<u>PRODUCT</u>	<u>ASSUMED DENSITY</u> <u>20 deg C/20 deg C</u>		
	<u>g/mL</u>	<u>lb/gal</u>	<u>Kg/gal</u>
	FSII DIEGME	1.025	8.561

(DESC 52.215-9FA1)

**M72 EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DESC APR 1997)**

- (a) Offerors are expected to submit offers in full compliance with all terms and conditions of this solicitation.
- (b) Any exceptions/deviations to the terms and conditions of this solicitation will result in the Government's determination that

either--

- (1) The exception/deviation is material enough to warrant rejection of the offer in part or in full; or
- (2) The exception/deviation is acceptable.

(c) If the exception/deviation is in reference to a specification contained in this solicitation and the offeror cannot supply product fully meeting the required specification(s), the product can be offered for consideration provided the offeror clearly indicates, by attachment to the offer, the extent to which any product offered differs from the required specification(s).

(d) If the exception/deviation is in reference to a particular test, inspection, or testing method contained in this solicitation, the offer can be considered provided the offeror clearly indicates, by attachment to the offer, the extent to which its offer differs from those requirements.

(e) If the exception/deviation is determined acceptable, offered prices may be adjusted, for evaluation purposes only, by the Government's best estimate of the quantitative impact of the advantage or disadvantage to the Government that might result from making an award under those circumstances.

(DESC 52.209-9F45)

**LIST OF ATTACHMENTS**

- |     |  |             |
|-----|--|-------------|
| [X] | DD FORM 1707, INFORMATION TO OFFERORS OR QUOTERS                   | COVER SHEET |
| [X] | SF FORM 1449, SOLICITATION / CONTRACT / ORDER FOR COMMERCIAL ITEMS | PAGE 1      |

**CONTRACT DOCUMENT**

- |     |                            |                      |
|-----|----------------------------|----------------------|
| [X] | OFFEROR SUBMISSION PACKAGE | UNDER SEPARATE COVER |
|-----|----------------------------|----------------------|

**POSTAWARD  
ADDENDUM 2**

**E22.01 QUALITY REPRESENTATIVE (DESC JUL 1992)**

The Quality Office assigned inspection responsibility under this contract is Defense Energy Support Center Quality Assurance Representative (DESC OAR) at Incirlik, Turkey.

(DESC 52.246-9F35)

**E35.02 REQUESTS FOR WAIVERS AND DEVIATIONS (DESC JUL 2000)**

(a) The following procedures apply to requests for specification waivers.

(1) Requests for waivers and deviations shall be submitted by the Contractor to the Contracting Officer with a copy to the Quality Representative (QR). Each request shall provide the following information: Contractor name; contract number; contract line item and product, if applicable; clause number, paragraph and subparagraph, as appropriate; the nature of the request; the reason for the request; the corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and equitable price adjustment offered over the administrative fee. In extraordinary situations, the Contractor may initially submit the request for a deviation or waiver through the cognizant QR to the Contracting Officer or the Contracting Officer's Representative (COR) in the Bulk Fuels Business Unit, Product Technical and Standardization Division, Defense Energy Support Center (DESC). Extraordinary situation requests shall be submitted formally to the Contracting Officer prior to close of business of the next DESC normal workday. As used in this clause, the term "extraordinary situation" means the matter cannot await resolution until the DESC normal workday (0800 to 1630 hours), Monday through Friday - Federal holidays excluded. In addition, if either the Contracting Officer or the COR cannot be reached, the Duty Officer shall be contacted and provided the necessary information to forward to the proper individuals as soon as possible. The Duty Officer's telephone number is (800) 286-7633, (703) 767-8420, or DSN 427-8420.

(2) If the waiver is granted, the contract will be modified to provide an equitable price reduction or other adequate consideration commensurate with the waiver being granted. If the situation dictates, a waiver may be granted without prior agreement on price adjustment or other consideration subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such agreement shall be documented on the receiving document or other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS clause of this contract.

(3) If the waiver is granted and the nonconforming supplies are accepted, then in no event will consideration be less than \$250 to cover administrative costs, plus any additional cost of Government inspection or tests if reinspection or retest is necessary.

(4) If the waiver is granted modifying this contract but the supplies accepted are nevertheless determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the waiver. If, however, this consideration exceeds \$500, a second contract modification shall be issued reducing the Contractor's obligation to \$500 (the administrative cost of issuing the two required modifications).

(b) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to require repairs or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price under the INSPECTION OF SUPPLIES – FIXED-PRICE clause or the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause, then in no event will consideration be less than \$250 to cover administrative costs. This \$250 fee is in addition to--

(1) Consideration commensurate with the extent of nonconforming supplies; and

(2) Cost of Government inspection or tests if reinspection or retest is necessary.

The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

(DESC 52.246-9FR1)

**F9.98 DETERMINATION OF QUANTITY FOR GASOLINE (BENZENE), KEROSENE, AND DIESEL (IRAQ) (DESC JAN 2004)**

(a) **DELIVERIES BY TRUCK.** Quantity shall be determined at the loading point by a calibrated loading rack meter or calibrated scales. This quantity shall be mechanically imprinted on the loading rack meter ticket that is generated by the loading rack meter or calibrated scales. Quantity shall be volume corrected to 15 °C.

(b) **SEALS.** The Contractor shall furnish serially numbered seals and effectively seal all trucks at the loading point. The seal numbers shall be annotated on all shipping documents.

(c) **MEASUREMENT STANDARDS AND CALCULATIONS .** All measurements and calculations made to determine quantity shall be in accordance with the most recent edition of the American Petroleum Institute Manual of Petroleum Measurement Standards (API MPMS) or equivalent national or international standards. When required, volume correction shall be in accordance with API MPMS, Chapter 11.1, Volume Correction Factors, Volumes II (Table 6B), Volume V (Table 24 B) or Volume VII (Table 54B).

(d) **CONVERSION TO GALLONS.** All invoice quantities shall be converted to U.S. gallons. To convert liters to gallons multiply the quantity in liters by 0.264172 gallons per liter (3.78541 liters per gallon). API MPMS, Chapter 11.1, Volume XII, Table 58, shall be used to convert metric tons to US gallons.

F9.98 Cont'd

(e) **CALIBRATION.** All meters used in determining product volume shall be calibrated using API MPMS, Chapter 4, Proving Systems or equivalent national or international standards. The frequency of calibration shall be as required by local regulation. If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 6 months, whichever is more frequent

**F9.99 DETERMINATION OF QUANTITY FOR LPG (DESC JAN 2004)**

(a) **QUANTITY.** The quantity of LPG furnished under this contract shall be determined as follows:

(i) **DELIVERIES BY TRUCK.** The quantity of LPG furnished under this contract shall be determined at origin by calibrated meter or by weighing the conveyance using calibrated scales. Invoice quantities shall be in metric tons (1000 kg equals 1 metric ton).

(ii) **DELIVERIES BY TANKER/BARGE.** The quantity of LPG furnished under this contract shall be determined at destination by calibrated meter. Invoice quantities shall be in metric tons (1000 kg equals 1 metric ton).

(b) **SEALS.** The Contractor shall furnish serially numbered seals and effectively seal all trucks, tankers, and barges (where sea suction and overboard discharge valves exist) at the loading point. The seal numbers shall be annotated on all shipping documents.

(c) **MEASUREMENT STANDARDS AND CALCULATIONS.** All measurements and calculations made to determine quantity shall be in accordance with American Petroleum Institute Manual of Petroleum Measurement Standards ( API MPMS) or equivalent national or international standards.

(d) **CALIBRATION.** All meters and scales used to determine LPG quantity shall be calibrated in accordance with API MPMS, Chapter 14, *Natural Gas Fluids Measurement* or equivalent national or international standards. The frequency of calibration shall be as required by local regulation. If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every 6 months, whichever is more frequent.

**F30.01 ORDERING AND PAYING OFFICERS (OVERSEAS PC&S) (DESC APR 1998)**

(a) Ordering and Paying Officers under the contract are as indicated below:

1. The name of the ordering and paying officer(s) will be provided at time of award.
2. For all Items solicited under this solicitation, the following paying office will make payment:

**DFAS COLUMBUS CENTER, STOCK FUND DIRECTORATE  
FUELS ACCOUNTING AND PAYMENTS DIVISION  
ATTN: DFAS-BVDFF/CC, P.O. BOX 182317  
COLUMBUS, OHIO 43218-6252**

**FACSIMILE NUMBER: 614-693-2537**

(b) If Ordering and Paying Officers cannot be ascertained under (a) above, the following activities, as applicable, should be contacted:

ATTN: DESC-PEC  
Defense Energy Support Center  
8725 John J. Kingman Road, SUITE 4950  
Ft. Belvoir, VA 22060-6222

ATTN: Mr. Samuel Bekele  
Defense Energy Support Center-Europe  
Augusta Strasse No. 6  
65189 Wiesbaden, Germany

(DESC 52.216-9FB1)

**F105 VARIATION IN QUANTITY (APR 1984)**

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified in paragraph (b) below.

- 10 Percent increase
- 10 Percent decrease

This increase or decrease shall apply to each delivery order.

(FAR 52.211-16)

**G9.11 DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMATION (MAY 1999)**

(a) As provided in paragraph (b) of the PAYMENT BY ELECTRONIC FUNDS TRANSFER - OTHER THAN CENTRAL CONTRACTOR REGISTRATION clause, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) **DESIGNATED OFFICE.**

Name: Defense Energy Support Center

Mailing Address: 8725 John J. Kingman Rd, Suite 4950

Ft. Belvoir, VA 22060-6222

Telephone Number(s): 703-767-9544

Person(s) to Contact: Sandra S. Shepherd

Electronic Address: sandra.shepherd@dla.mil

(FAR 52.232-35)

**11.20-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC JAN 2003)**

(a) This clause incorporates contract clauses and solicitation provisions 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.

(b) The full text of any FAR, DFARS, or DLAD solicitation clause or provision may be accessed electronically at these addresses:

**FAR/DFARS:** <http://farsite.hill.af.mil>

**DLAD:** <http://www.dla.mil/j-3/j-336>

(c) **All DESC clauses and provisions are contained in full text in this document.**

(d) **Solicitation Provisions Only.** The offeror is cautioned that the solicitation provisions listed in (e)(1) below may include blocks that must be completed by the offeror and submitted with its quotation or offer. As long as the offeror identifies the solicitation provision by number, the offeror may simply complete those paragraphs requiring fill-in information to submit with its quotation or offer. In addition to the solicitation provisions listed in (e)(1) below, the contract clauses listed in (e)(2) below shall apply to any resultant contract but do not require the submission of additional offer information.

(e) The following FAR/DFARS/DLAD contract clauses and solicitation provisions are hereby incorporated by reference in addition to those listed in the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS and the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS clauses:

(1)

SOLICITATION	REGULATORY	
<u>PROVISION NUMBER</u>	<u>NUMBER</u>	<u>PROVISION TITLE</u>

NONE

(2)

CONTRACT	REGULATORY	
<u>CLAUSE NUMBER</u>	<u>NUMBER</u>	<u>CLAUSE TITLE</u>

None	52.228-3	Workers' Compensation Insurance (Defense Base Act).
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None	52.228-4	Workers' Compensation and War-Hazard Insurance Overseas.
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(Apply only to United States companies.)

(DESC 52.252-9F08)

**128.21 TAXES - FOREIGN FIXED-PRICE CONTRACTS (JUN 2003)**

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

(b) **DEFINITIONS.** As used in this clause—

**Contract date** 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** means any country, other than the United States and its outlying areas, in which expenditures under this contact are made.

**Tax and taxes** 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** 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** 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** 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** 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)

**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 31 March 2005.

(FAR 52.216-21)

**I209.07.100 OPTION TO EXTEND THE TERM OF THE CONTRACT (JAN 2004)**

(a) The Government may extend the term of this contract by written notice to the Contractor within 5 days of the expiration of the contract, **PROVIDED**, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 15 days before the contract expires. The preliminary notice does not commit the Government to an extension.

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

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 365 days.

(FAR 52.217-9)