

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 14	
2. AMENDMENT/MODIFICATION NO. 0005		3. EFFECTIVE DATE SP0600	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)
6. ISSUED BY CODE DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN RD., SUITE 4950 FT. BELVOIR, VA 22060-6222 FAX: 703-767-8506 BUYER/SYMBOL: L. OBRIEN/DESC-PLB PP 3.26 PHONE: 703-767-9536 E-MAIL: LISA.OBRIEN@dla.mil		7. ADMINISTERED BY (If other than Item 6) CODE		
8. NAME AND ADDRESS OF CONTRACTOR (NO., street,city,county,State,and ZIP Code)		(✓)	9A. AMENDMENT OF SOLICITATION NO. SP0600-01-R-0036-0006	
			9B. DATED (SEE ITEM 11)	
			10A. MODIFICATION OF CONTRACT/ORDER NO.	
			10B. DATED (SEE ITEM 13)	
CODE	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [] is extended, [<input checked="" type="checkbox"/>] is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment,(b) By acknowledging receipt of this amendment on each copy of the offer submitted,or(c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.				
12. ACCOUNTING AND APPROPRIATION DATA (if required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO. (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.				
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43 103(b)				
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:				
D. OTHER Specify type of modification and authority)				
E. IMPORTANT: Contractor [] is not, [] is required to sign this document and return ___ copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)				
<p>Offerors must acknowledge receipt of this amendment by completing block 8 above, and signing and dating blocks 15A, 15B and, 15C below and returning this document with their offer to DESC-PLB, fax (703) 767-8506.</p> <p>The closing date and time for receipt of offers for all items is hereby extended to <u>December 30, 2003 4:00 p.m. ET, local time Fort Belvoir, Virginia.</u></p> <p style="text-align: center;">SEE CONTINUATION PAGES</p> <p>Except as provided herein, all terms and conditions of the document referenced in Items 9A or 10A, as heretofore changed, remain unchanged and in full force and effect.</p>				
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED	
(Signature of person authorized to sign)		(Signature of Contracting Officer)		

A. The following clauses are hereby deleted from solicitation SP0600-01-R-0036, which is incorporated by reference into this solicitation:

1. 11.03-1, CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (DESC MAY 1999)
2. 11.03-8, CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATIONS) (DESC AUG 1999)
3. 128.01, FEDERAL, STATE AND LOCAL TAXES (DESC NOV 1993) (DEVIATION).
4. 128.02-2, FEDERAL, STATE, AND LOCAL TAXES AND FEES (DESC NOV 2001)
5. 128.03-2, TAX EXEMPTION CERTIFICATES (DESC JULY 1999)
6. 12.20-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC NOV 1995)

B. The following clauses are hereby added to this solicitation:

1. 11.03-3, CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (PC&S) (NON-PORTS INTERNET APPLICATIONS) (DESC SEP 2002)
2. 128.01, FEDERAL, STATE, AND LOCAL TAXES (DESC AUG 2003) (DEVIATION)
3. 128.02-2, FEDERAL STATE AND LOCAL TAXES AND FEES (DESC OCT 2003)
4. 128.03-2, TAX EXEMPTION CERTIFICATES (DESC OCT 2003)
5. G160, PAYMENT BY CREDIT CARD (FEDERAL CIVILIAN AGENCIES) (DESC MAR 2002)
6. F3.03, NOTIFICATION OF CHANGE IN TRANSPORTATION COMPANY (DOMESTIC PC&S) (DESC JUN 1997)
7. F4, DELIVERY AND ORDERING PERIODS (DESC AUG 1976)
8. I211, ORDERING (DESC OCT 1995)
9. CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC JAN 2003)

C. As a result of the above clause additions to the solicitation, offerors are reminded that offers submitted under this solicitation should exclude the Federal Excise Tax (FET) from the offer price. All other taxes and/or fees should be included in each offerors bottom line price per gallon for the item being offered on (see chart example below):

(Reference prices used in the below examples are \$0.8500 (123-BD) and \$0.9520 (XYZ-28))

<u>Item#</u>	<u>Tax/fee</u>	<u>Amount</u>	<u>Offerors Diff (includes tax/fee)</u>	<u>Offer price/gallon (includes OPIS/AXXIS reference price + diff/tax & fees w/out FET)</u>
123-BD	Underground Storage Tank Fee	\$0.0325	\$0.2580	\$1.1405
XYZ-28	Petro. Products Delivery fee	\$0.0040	\$0.3740	\$1.3260
	Tank Clean up fee	\$0.0500		
	Petroleum release fee	\$0.0200		

- D. Offerors are further advised that awardees of contracts under this solicitation will also be responsible for listing the all applicable taxes/fees individually when submitting an invoice to the paying office for payment, e.g.:

Taxes Included in invoice price are as follows:

State Excise Tax \$X.XXX
 Petroleum Inspection Fee \$X.XXX

- E. Line item narratives under this solicitation are hereby revised to indicate that credit card payments will be the method of payment used for awards made under this solicitation, pursuant to Clause G160, PAYMENT BY CREDIT CARD (FEDERAL CIVILIAN AGENCIES) (DESC MAR 2002). The revised line item narratives will now read as follows:

ITEM
 NUMBER

QUANTITY

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SHAWNEE MISSION,

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SHAWNEE MISSION,
 KS, USPS, 6029 BROADMOOR STREET,
 SHAWNEE MISSION, KS 66202-9603
 JOHNSON COUNTY
 DELIVERY FEDAAC: 1862EO
 LOCATION A: SHAWNEE MISSION MAIN OFFICE; 6029
 BROADMOOR ST., SHAWNEE MISSION KS
 LOC B: SHAWNEE BRANCH OFFICE; 6201 NEIMAN RD.,
 SHAWNEE, KS
 LOC C: BLUE VALLEY BRANCH; 12433 ANTIOCH RD.,
 OVERLAND PARK, KS
 LOC D: BROOKRIDGE BRANCH; 9727 ANTIOCH RD.,
 OVERLAND PARK, KS
 LOC E: INDIAN CREEK BRANCH, 4225 107TH ST.,
 OVERLAND PARK, KS

ITEM
NUMBER

QUANTITY

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SHAWNEE MISSION,

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LOC F:OVERLAND PARK BRANCH; 8010 CONSER ST.,
OVERLAND PARK, KS
LOC G: LEAWOOD BRANCH; 3500 WEST 95TH ST.,
LEAWOOD, KS
LOC H: LENEXA BRANCH; 8820 MOROVIA ST., LENEXA, KS
LOC I: OLATHE EAST BRANCH; 15050 WEST 138TH ST.,
OLATHE, KS
LOC J: OLATHE WEST BRANCH, 110 N. CHESTNUT ST.,
OLATHE, KS
LOC K: PRAIRIE VILLAGE BRANCH; 3710 WEST 73RD
TER., PRAIRIE VILLAGE, KS
ORDERING OFFICE: 913-831-5364

C50-24 GASOHOL, REG UNL (GUR) 97,100 GL

TANK WAGON (TW),
ANTICIPATE 0% ON HIGHWAY USE
DELIVERY HOURS: 0600-0600
42 VEHICLES AT LOCATION A
DELIVERY REQUIRED 1 NIGHT PER WEEK
40 VEHICLES AT LOCATION B
DELIVERY REQUIRED 2 NIGHTS PER WEEK
63 VEHICLES AT LOCATION C
DELIVERY REQUIRED 2 NIGHTS PER WEEK
41 VEHICLES AT LOCATION D
DELIVERY REQUIRED 1 NIGHT PER WEEK
29 VEHICLES AT LOCATION E
DELIVERY REQUIRED 1 NIGHT PER WEEK
21 VEHICLES AT LOCATION F
DELIVERY REQUIRED 1 NIGHT PER WEEK
14 VEHICLES AT LOCATION G
DELIVERY REQUIRED 1 NIGHT PER WEEK
42 VEHICLES AT LOCATION H
DELIVERY REQUIRED 2 NIGHTS PER WEEK
33 VEHICLES AT LOCATION I
DELIVERY REQUIRED 2 NIGHTS PER WEEK
28 VEHICLES AT LOCATION J
DELIVERY REQUIRED 1 NIGHT PER WEEK
33 VEHICLES AT LOCATION K
DELIVERY REQUIRED 1 NIGHT PER WEEK
PAYMENT WILL BE MADE BY CREDIT CARD

C50-28 GASOLINE, REG UNL (MUR) 0 GL

TANK WAGON (TW),
ANTICIPATE 0% ON HIGHWAY USE
DELIVERY HOURS: 0600-0600
42 VEHICLES AT LOCATION A
DELIVERY REQUIRED 1 NIGHT PER WEEK
40 VEHICLES AT LOCATION B

ITEM
NUMBER

QUANTITY

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SHAWNEE MISSION,

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con't

DELIVERY REQUIRED 2 NIGHTS PER WEEK
 63 VEHICLES AT LOCATION C
 DELIVERY REQUIRED 2 NIGHTS PER WEEK
 41 VEHICLES AT LOCATION D
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 29 VEHICLES AT LOCATION E
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 21 VEHICLES AT LOCATION F
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 14 VEHICLES AT LOCATION G
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 42 VEHICLES AT LOCATION H
 DELIVERY REQUIRED 2 NIGHTS PER WEEK
 33 VEHICLES AT LOCATION I
 DELIVERY REQUIRED 2 NIGHTS PER WEEK
 28 VEHICLES AT LOCATION J
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 33 VEHICLES AT LOCATION K
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 PAYMENT WILL BE MADE BY CREDIT CARD
 NOTE: THIS IS AN ALTERNATE LINE ITEM FOR ITEM
 C50-24. AWARD WILL BE MADE AT THE OVERALL LEAST
 COST TO THE GOVERNMENT.

C50-67 DIESEL FUEL #1, LOW SULF (LS1) 4,914 GL

TANK WAGON (TW),
 ANTICIPATE 0% ON HIGHWAY USE
 DELIVERY HOURS: 0600-0600
 7 (1-TON) VEHICLES AT LOCATION A
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 1 (2-TON) VEHICLE AT LOCATION C
 DELIVERY REQUIRED 2 NIGHTS PER WEEK
 2 (2-TON) VEHICLES AT LOCATION E
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 2 (2-TON) VEHICLES AT LOCATION I
 DELIVERY REQUIRED 2 NIGHTS PER WEEK
 PAYMENT WILL BE MADE BY CREDIT CARD.

C50-68 DIESEL FUEL #2, LOW SULF (LS2) 4,914 GL

TANK WAGON (TW),
 ANTICIPATE 0% ON HIGHWAY USE
 DELIVERY HOURS: 0600-0600
 7 (1-TON) VEHICLES AT LOCATION A
 DELIVERY REQUIRED 1 NIGHT PER WEEK
 1 (2-TON) VEHICLE AT LOCATION C
 DELIVERY REQUIRED 2 NIGHTS PER WEEK
 2 (2-TON) VEHICLES AT LOCATION E
 DELIVERY REQUIRED 1 NIGHT PER WEEK

ITEM NUMBER	=====	QUANTITY
	SHAWNEE MISSION, =====	
con't		
	2 (2-TON) VEHICLES AT LOCATION I DELIVERY REQUIRED 2 NIGHTS PER WEEK PAYMENT WILL BE MADE BY CREDIT CARD.	
C50-E8	FUEL ETHANOL (E85) (E8) TANK WAGON (TW), ANTICIPATE 0% ON HIGHWAY USE DELIVERY HOURS: 0600-0600 39 VEHICLES AT LOCATION C DELIVERY REQUIRED 2 NIGHTS PER WEEK 41 VEHICLES AT LOCATION D DELIVERY REQUIRED 1 NIGHT PER WEEK 28 VEHICLES AT LOCATION E DELIVERY REQUIRED 1 NIGHT PER WEEK 14 VEHICLES AT LOCATION G DELIVERY REQUIRED 1 NIGHT PER WEEK 42 VEHICLES AT LOCATION H DELIVERY REQUIRED 2 NIGHTS PER WEEK 18 VEHICLES AT LOCATION I DELIVERY REQUIRED 2 NIGHTS PER WEEK 18 VEHICLES AT LOCATION J DELIVERY REQUIRED 2 NIGHTS PER WEEK PAYMENT WILL BE MADE BY CREDIT CARD.	155,220 GL

SPECIAL NOTES TO ALL POTENTIAL OFFERORS UNDER THIS SOLICITATION

Note 1: Offerors are hereby informed that for the USPS truck-to-truck items identified in this solicitation, the awardee of these line

items will be required to submit an electronic data spreadsheet (MS Excel format) for identifying each truck-to-truck delivery by location. **No systems upgrade/intervention will be required by the potential awardee to utilize this**

document prior to submission of an offer, as the document and all necessary training will be provided by the USPS for the subsequent awardee of the locations, at the offerors facility once contract award has been made.

Note 2: Offerors must accept payment via credit card. In accordance with Clause, L2.05-5 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (PC&S) (DESC AUG 2001), subparagraph (M)(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 sub factors) specified elsewhere in this solicitation, considered. " Therefore, it is requested that all offerors bear credit card transaction charges without passing these cost to the Government. Your offer must contain a statement that the offered price does not contain any credit card transaction charges.

II.03-3 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (NON-PORTS INTERNET APPLICATION) (DESC SEP 2002)

(a) INSPECTION/A CCEPTANCE.

(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.

(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 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) 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, 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.

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

128.01 FEDERAL, STATE, AND LOCAL TAXES (DESC AUG 2003) (DEVIATION)

(a) As used in this clause--

(1) **After-imposed tax** means any new or increased Federal, State, or local tax that the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the contract date.

(2) **After-relieved tax** means any amount of Federal, State, or local 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 the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(3) **All applicable Federal and State taxes** means all excise taxes 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.

(4) **Contract date** means the date set for bid opening or, if this is a negotiated contract or a modification, the date set for final revised prices.

(5) **Local taxes** means taxes levied by the political subdivisions of the States, District of Columbia, or outlying areas of the United States, e.g., cities and counties.

(6) **Outlying areas** means—

(i) **Commonwealths.** Puerto Rico and The Northern Mariana Islands;

(ii) **Territories.** American Samoa, Guam, and The U.S. Virgin Islands; and

(iii) *Minor outlying islands. Baker Island; Howland Island, Jarvis Island; Johnston*

Atoll; Kingman Reef; Midway Islands; Navassa Island; Palmyra Atoll; and Wake Atoll.

(7) **State taxes** means taxes levied by the States, the District of Columbia, or outlying areas of the United States.

(8) **Tax** means taxes, duties and environmental or inspection fees, except social security or other employment taxes.

(b) The contract price includes all applicable Federal, State, and local taxes, except as otherwise provided. (See either the FEDERAL AND STATE TAXES/FEES EXCLUDED FROM CONTRACT PRICE clause or the FEDERAL, STATE, AND LOCAL TAXES AND FEES clause.)

(c) The contract price shall be increased by the amount of any after-imposed tax if the Contractor states in writing that the contract price does not include any contingency for such tax.

(d) The contract price shall be decreased by the amount of any after-relieved tax.

(e) The contract price shall also be decreased by the amount of any tax that the Contractor is required to pay or bear the burden of, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of all matters relating to any tax 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.

(g) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(DESC 52.229-9F15)

128.02-2 FEDERAL, STATE, AND LOCAL TAXES AND FEES (DESC OCT 2003)

(a) **FEDERAL EXCISE TAXES EXCLUDED.** Contract prices for fuel and fuels oils furnished under this contract exclude Federal Excise Taxes (FET). Contractors shall invoice applicable FET as follows:

(1) **GASOLINE/GASOHOL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(2) **AVIATION GASOLINE.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice. **NOTE: Use of aviation gasoline for military aircraft is tax-exempt.**

(3) **FUEL OIL (BURNER GRADES) NUMBERS 1, 2, 4, 4 (LIGHT), 5 (LIGHT), 5 (HEAVY), AND 6.** There is no FET on fuel oils (burner grades). Lighter grades (numbers 1, 2, and 4 (light)) must be dyed. Contractors are responsible for obtaining fuel oils (burner grades numbers 1, 2, and 4 (light)) meeting Internal Revenue Service (IRS) dyeing requirements.

(4) **DIESEL AND NONAVIATION GRADE KEROSENE FUEL.**

(i) **UNDYED DIESEL AND UNDYED NONAVIATION KEROSENE FUEL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(ii) **DYED DIESEL AND DYED NONAVIATION KEROSENE FUEL.** There is no FET on dyed diesel and dyed nonaviation kerosene fuel.

(5) **JET FUEL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

NOTE: Use of jet fuel for military aircraft is tax-exempt.

(6) **BIODIESEL (B-20).** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(7) **E85 (QUALIFIED ETHANOL).** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.

(8) **EXEMPT SALES.** As noted above, use of jet fuel and aviation gasoline for military aircraft is tax exempt. Certain uses of gasoline, undyed diesel fuel, and undyed nonaviation kerosene may also be tax-exempt. Contractors authorized by the IRS to sell tax-free fuel should obtain exemption certificates for these sales and not invoice the FET. **A Contractor not permitted by IRS regulations to sell tax-free fuel must state that in its offer.**

(b) **STATE TAXES INCLUDED.** Unless an exemption applies, all contract prices **INCLUDE** State taxes. Examples of such taxes include excise, gross receipts, NORA, etc. The Contractor's invoice shall include a list of all State taxes that are included in the price, including the applicable rate.

(c) **LOCAL TAXES INCLUDED.** Unless an exemption applies, all contract prices **INCLUDE** local (city, county, etc.) taxes. The Contractor's invoice shall include a list of all local taxes that are included in the price, including the applicable rate.

(d) **ENVIRONMENTAL AND OIL SPILL TAXES AND INSPECTION FEES INCLUDED.** Unless an exemption applies, all contract prices **INCLUDE** State and local environmental and oil spill taxes and inspection fees.

(e) **LICENSES** Federal, State, and local licenses or other requirements necessary to establish Contractor's entitlement to do business and/or to make tax-exempt sales under this contract are the Contractor's responsibility. Failure to obtain appropriate licenses or to follow required procedures shall preclude the reimbursement of taxes that would otherwise be exempt.

(DESC 52.229-9F25)

128.03-2 TAX EXEMPTION CERTIFICATES (DESC OCT 2003)

(a) TAX EXEMPTION CERTIFICATES FOR MILITARY ACTIVITIES, INCLUDING THE NATIONAL GUARD.

(1) The Ordering Officer will issue tax exemption certificates for Federal Excise Tax (FET), where applicable.

(2) Tax exemption certificates for the FET will not be issued for Army National Guard and Air National Guard activities. DFAS Columbus will pay the FET and apply to the Internal Revenue Service (IRS) for any applicable refund.

(3) All military activities, including the National Guard, will issue tax exemption certificates for State and local taxes and fees, where applicable. Contractors shall forward requests for tax exemption certificates covering any State or local taxes or fees to the Ordering Officer. If the Ordering Officer fails to provide tax exemption certificates requested by the Contractor, the Contractor shall notify the DESC Contracting Officer and an exemption certificate shall be issued, if applicable. The DESC Contracting Officer may authorize payment of the tax if the Ordering Officer refuses to issue the tax.

(b) FEDERAL, STATE, AND LOCAL TAX EXEMPTIONS FOR FEDERAL CIVILIAN AGENCIES.

Contractors shall forward requests for tax exemption certificates for Federal, State, and local taxes or fees to the Ordering Officer, when applicable.

(c) **GOVERNMENT OPTION TO DEDUCT TAX AND FURNISH TAX EXEMPTION CERTIFICATES.** If this contract provides that the Contractor should invoice for the FET, the supplies under contract are intended for a taxable purpose. However, where the invoice for any item includes the FET and tax exemption can be claimed, the Government may deduct the applicable

tax from the order or the invoice and furnish a tax exemption certificate in lieu of paying the tax. The Ordering Officer will issue these tax exemption certificates.

(DESC 52.229-9F45)

THIS CLAUSE APPLIES TO FEDERAL CIVILIAN ITEMS ONLY.

G160 PAYMENT BY CREDIT CARD (FEDERAL CIVILIAN AGENCIES) (DESC MAR 2002)

(a) **METHOD OF PAYMENT.**

(1) If the delivery narrative states that payment by credit card is authorized, payment for Federal Civilian items will be made using a Government credit card, except as provided in (a)(2) of this clause.

(2) In the event the Government is unable to make payment by credit card, the Contractor shall accept payment by check or other mutually agreeable method of payment.

(b) **CONDITIONS FOR CREDIT CARD PAYMENT.** The Government may make payment by credit card only after receipt of a proper invoice and after verification of quantity and price. Verification of the price stated on the invoice shall be determined by accessing DESC's website at http://www.rifas04.desc.dla.mil/p2wt/plsql/dfsc_pkg.df_activity.

(c) **PAYMENT INFORMATION.** If the Government makes payment by check in accordance with (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(DESC 52.232-9FK2)

F3.03 NOTIFICATION OF CHANGE IN TRANSPORTATION COMPANY (DOMESTIC PC&S) (DESC JUN 1997)

(a) In the performance of this contract, the Contractor agrees not to utilize transportation companies that have been debarred or suspended, are ineligible for receipt of contracts with Government agencies, are in receipt of a notice of proposed debarment or ineligibility from any Government agency, or are otherwise ineligible under Federal programs. Substitution of a new transportation company is subject to review by the Contracting Officer for use under this contract.

(b) If the Contractor changes transporters after award, the Contractor shall provide the Contracting Officer with the following information on alternative or new transportation company(ies) being utilized in the transportation of supplies under this contract.

Name, Address, and Phone Number
of Transportation Company _____

State(s) in which transporter
is authorized to operate _____

(DESC 52.247-9FJ5)

F4 DELIVERY AND ORDERING PERIODS (DESC JUN 2002)

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

(1) Ordering period begins **DATE OF AWARD** and ends: **31 MAY 2005**.

(2) Delivery period begins: **DATE OF AWARD** and ends: **30 days after end of ordering period**.

(b) Notwithstanding the foregoing, deliveries prior to the delivery period, made 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).

(DESC 52.242-9F75)

I211 ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from DATE OF AWARD through 31 MAY 2005.

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

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

(FAR 52.216-18)

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)

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

(2)

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

11.04 FAR 52.212-5 CONTRACT TERMS AND CONDITIONS
 REQUIRED TO IMPLEMENT STATUTES OR
 EXECUTIVE ORDERS – COMMERCIAL ITEMS

- 52.203-6 Restriction on Subcontractor sales to the Government
- 52.219-4 Notice of PEP for HUB SB concerns
- 52.219-9 Small Business Contracting Plan
- 52.219-14 Limitation on Subcontracting
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11.20-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC JAN 2003) CONT.

CONTRACT
 CLAUSE NUMBER

REGULATORY
 NUMBER

CLAUSE TITLE

11.04 FAR 52.212-5 CONTRACT TERMS AND CONDITIONS
 REQUIRED TO IMPLEMENT STATUTES OR
 EXECUTIVE ORDERS – COMMERCIAL ITEMS

- 52.219-22/1 Notice of Price Evaluation for SDB concerns
- 52.222-21 Prohibition of segregated facilities
- 52.222-26 Equal Opportunity
- 52.222-35 Affirmative action for Disabled Vets
- 52.222-37 Employment reports for Disabled Vets and Vets of the Vietnam Era

(DESC 52.252-9F08)