



DEFENSE LOGISTICS AGENCY
DEFENSE ENERGY SUPPORT CENTER (DESC)
Ground Fuels Division II, DESC-PLC

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<http://www.desc.dla.mil>

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SP0600-04-R-0051
SOLICITATION OF OFFERS
FOR THE SALE OF
FUEL OIL, RECLAIMED (FOR) AT
Fleet and Industrial Supply Center (FISC)
PEARL HARBOR

Offers Closing Date: **07 JANUARY 2004**

BUYER:	PATRICIA BURKE
PHONE:	(703) 767-9503
CONTRACTING OFFICER:	KATHRYN R. RISO
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TABLE OF CONTENTS

SECTION A – SOLICITATION	3
A.1 Introduction/Description	3
SECTION B – PRICE	3
B.1 Preparation and Submission of Offers	3
B.2 Modification and Withdrawal of Offers	3
B.3 Facsimile Offers, Modifications, and Withdrawals	3
B.4 Consideration of Offers	4
B.5 Contract Award	4
SECTION C – INSPECTION	4
C.1 Inspection	4
C.2 Condition of Product	5
SECTION D – PAYMENT	5
D.1 Payment	5
D.2 Payment Due Date	6
D.3 Title	6
D.4 Payment Address	6
D.5 Interest	6
D.6 Letter of Credit	6
D.7 Cashier’s Check (Optional)	7
SECTION E – REMOVAL OF PRODUCT	7
SECTION F – SHIPPING	7
F.1 Outloading	7
F.2 Quantity Determination	8
F.3 Insurance Requirements	9
F.4 Assumption of Risk and Disclaimer of Liability	9
F.5 Safety and Fuel Spills	10
F.6 Environmental Protection and Precautions of Packing Materials	10
SECTION G – CONTRACT ADMINISTRATION DATA	10
G.1 Termination for Cause	10
G.2 Disputes	11
G.3 Termination for the Convenience of the Government	11
G.4 Protests	11
G.5 Excusable Delays	11
G.6 Modification	11
G.7 Officials Not to Benefit	11
G.8 Covenant Against Contingent Fees	11
SECTION H – DEFINITIONS	12
SECTION I – CERTIFICATIONS	13
I.1 Taxpayer Identification Number (TIN):.	13
I.2 Contingent Fee Representation and Agreement	13
I.3 Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters	13
I.4 Barge Free Time and Demurrage Charges	14
I.5 Certification for Intended Use of Purchased Product	15
I.6 Certification for Letter of Credit/Cashier’s Check (Optional)	15
SECTION J – EXHIBITS	15
J.1 EXHIBIT A – Solicitation/Contract for Sale of Product	
J.2 EXHIBIT B – Specification MIL-F-24951B (SA), 10 Feb 95	
J.3 EXHIBIT C – Material Safety Data Sheets	
J.4 EXHIBIT D – Sample – Irrevocable Standby Letter of Credit	
J.5 EXHIBIT E – TEST RESULTS OF FOR AT PEARL HARBOR, HI	

SECTION A – SOLICITATION

A.1 Introduction/Description

a. The Defense Logistics Agency (DLA), Defense Energy Support Center (DESC), is soliciting written offers for the Sale of Fuel Oil Reclaimed (FOR), as follows:

<u>Item Number</u>	<u>Location</u>	<u>Product</u>	<u>Estimated Quantity / USG</u>
559-FR	FISC Pearl Harbor, HI	FOR	350,000

b. The deadline for the receipt of offers is **3:00 p.m.**, local time Fort Belvoir, Virginia, USA, on **07 JANUARY 2004**. Offers should be based on the terms and conditions set forth in this solicitation.

SECTION B – PRICE

B.1 Preparation and Submission of Offers

a. The minimum offer for each line item shall be for the removal of all product. An offer for less than the minimum quantity shall be considered non-responsive. Offerors should telephone the Contracting Officer at (703) 767-9511 or Buyer at (703) 767-9503, prior to the submission of an offer to clarify issues or resolve concerns regarding this sale initiative.

b. All offers are to be fully executed and must be submitted with an original signature appearing on the form provided in **EXHIBIT A – Solicitation/Contract for Sale of Product**. For each line item offered, the Offeror shall:

- (1) enter the mode of pick-up to be used;
- (2) enter the unit price; and
- (3) the total price in the "Total Offered Price" column. Offeror must submit the price for removal of all of the product.

c. Each Offeror shall complete and furnish SECTION I - Certifications along with its offer.

d. Offerors shall submit initial offers by facsimile offers under this solicitation. These responses must arrive at the place, and by the time, specified in this solicitation (see SECTION B.2 – Facsimile Offers, Modifications, and Withdrawals). Offerors should use the facsimile number: (703) 767-8506.

e. **Offers are to be entered in the space(s) provided in EXHIBIT A – Solicitation/Contract for Sale of Product. By the submission of an offer, the Offeror agrees to be bound by the terms and conditions of this solicitation.**

f. In compliance with the solicitation, the Offeror agrees, if this offer is accepted within five (5) calendar days from the date specified in the solicitation for receipt of offers, to purchase all product on which offers are made at the price offered and to take delivery of the product within the removal period specified in **SECTION E - Removal of Product**.

B.2 Modification and Withdrawal of Offers

a. Offers may be withdrawn or modified by written notice or facsimile or telegram received at any time prior to the exact time Specified for receipt of offers (see Section B.3 – Facsimile Offers, Modifications, and Withdrawals below).

b. Prior to the exact time specified for receipt of offers, an offer may be withdrawn in person by an Offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

B.3 Facsimile Offers, Modifications, and Withdrawals

Offers, modifications, and withdrawals submitted by facsimile will be accepted any time prior to the exact time set for the receipt of offers. Offerors should use the facsimile number: (703) 767-8506.

(1) Definition. "Facsimile offer/modification", as used in the solicitation, means an offer, a modification of an offer, or withdrawal of an offer that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(2) Facsimile offers/modifications, and withdrawals that reject any of the terms and conditions, and provisions of this solicitation, are otherwise incomplete, or contain garbled information, may be excluded from consideration.

(3) Facsimile offers/modifications must contain the required signatures.

(4) If requested to do so by the Contracting Officer, the apparently successful Offeror agrees to promptly submit the complete original signed offer/modification.

(5) If the Offeror chooses to transmit a facsimile offer/modification, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile offer/modification including, but not limited to, the following:

- (a) Receipt of garbled or incomplete offer/modification.
- (b) Availability or condition of the receiving facsimile equipment.
- (c) Incompatibility between the sending and receiving equipment.
- (d) Delay in transmission or receipt of the offer/modification.
- (e) Failure of the Offeror to properly identify the offer/modification.
- (f) Illegibility of offer/modification.
- (g) Security of the data contained in the offer/modification.

B.4 Consideration of Offers

a. The Government will award a contract resulting from this solicitation to the responsible Offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price, and other factors considered.

b. The Government reserves the right to reject any or all offers, to waive any informalities and minor irregularities in an offer, and unless otherwise specified by the Offeror, to accept any one item or group of items in an offer, as may be in the best interest of the Government.

c. The Government may award a contract on the basis of initial offers received, without discussions. Accordingly, each initial offer should be submitted on the most favorable terms, which the Offeror can submit to the Government. However, the Government reserves the right to conduct discussions if it is later determined by the Contracting Officer to be necessary.

d. The Government reserves the right to award a quantity less than the quantity offered, at the unit price offered, unless the Offeror specifies otherwise in the offer.

e. When more than one offer has been received for product listed in the solicitation, the Government reserves the right, at its discretion, to request final proposal revisions from those Offerors who have submitted responsive offers. In the event the Government requests final proposal revisions, a date and time for receipt of such offers will be set forth in the request. Any final proposal revisions received after the time and date specified for the receipt of final proposal revisions will not be considered unless they are received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

f. An Offeror may be determined to be non-responsible and therefore ineligible for award if there is a record of poor payment (e.g. checks returned for insufficient funds) or poor performance (failure to pay or remove product in a timely fashion).

B.5 Contract Award

A written 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. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

SECTION C – INSPECTION

C.1 Inspection

a. FOR fuel supplied by the Government is expected to meet or exceed specifications contained in MIL-F-24951B (SA), however, **fuel is being sold "AS IS"** see Section C.2. FOR Specification is included at **EXHIBIT B** – Specification MIL-F-24951B (SA), 10 Feb 95. Inasmuch as the facility desires that product be removed as soon as possible, EXHIBIT E, a recent sample of product in the tank is provided as part of this Solicitation.

b. Notwithstanding Paragraph a. , applicable specification, above, **the product is sold strictly on an "AS-IS" basis**. Therefore, Offeror is **invited and urged** to inspect the product to be sold prior to submitting an offer.

c. The prospective Offeror, or its designee, may at its own cost and expense, take samples not to exceed five (5) gallons. The Government does not warrant any samples of this product to be representative of the entire quantity being offered under this solicitation.

d. **Inspection of the product can be arranged by calling Mr. Ray Ortiz at (808) 473-7989, who will act as or arrange escorts, required at the facility.**

e. Any requests should include the name and title of each individual wishing to examine the product. The Government reserves the right to limit the number of individuals seeking access to Pearl Harbor, HI. Prospective Offerors should telephone the facility to be apprised of the time when product will be available for inspection at the facility. Product is generally available **Monday-Friday from 0800-1530**. Requests for an appointment to inspect the product must be made to:

FISC PEARL HARBOR [Line Item 559-FR]

**Mr. Ray Ortiz
FISC PEARL Harbor Fuel Department Code 705
Fleet and Industrial Supply Center
1942 Gaffney Street Suite 100
Pearl Harbor, HI 96860-4549**

**Facsimile Number: (808) 473-1566
Telephone Number (808) 473-7989
E-Mail: Raymond_Ortiz@pearl.fisc.navy.mil**

REQUESTS SHOULD BE MADE AS SOON AS POSSIBLE

f. Prospective Offerors, their agents, and employees shall at all times comply with applicable rules and regulations in existence at FISC Pearl Harbor.

C.2 Condition of Product

All product listed herein is offered for sale "**AS-IS**". "AS-IS" means the Government makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the product, or its fitness for any use or purpose. The product will be sold in United States Gallons (USG). The description of the product is based on the best information available to the Government.

SECTION D – PAYMENT

D.1 Payment

a. The Offeror agrees to pay for product awarded at the price or prices quoted in this offer. Payments shall be made in US dollars and shall be paid to the following: Defense Finance & Accounting Services, Columbus; P.O. Box 182317, ATTN: DFAS-ADPSD/CA-F, Columbus, OH 43219-6255. **Check should be made payable to "U.S. Treasury" and note the Line of Accounting 97X4930.5CF0.01-26-S33150.** Payment of amount due under the contract shall be made by company check, certified check, cashier's check or bank check made payable to the designated office. All checks must be drawn on a U.S. domestic bank. Foreign checks will not be accepted. **A service charge of \$50.00 will be applied to all returned checks.**

b. Payments shall be accompanied by identifying information including the contract number and a copy of the DD 250 / DD 250-1 (Inspection and Receiving Report); DD1149 (Requisition and Invoice / Shipping Document) and/or other tickets provided by the transporter to show quantity sold. Receipt document will be signed by a Government representative to verify quantity sold.

D.2 Payment Due Date

The Purchaser shall pay for the product within **ten (10) calendar days** after the Government transfers title to the Purchaser.

D.3 Title

Title to the product, and risk of loss thereof, shall pass from the Government to the Purchaser at the point the product passes into the Purchaser's Barge, or other conveyance at the pick-up location designated in **EXHIBIT A – Solicitation/Contract for Sale of Product**.

D.4 Payment Addresses

Defense Finance and Accounting Service [DFAS] Columbus
P.O. Box 182317
ATTN: DFAS-ADPSD/CA-F
Columbus, OH 43218-6255

D.5 Interest

a. Notwithstanding any other clause of this contract, all amounts that become payable by the Offeror to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. Simple interest shall be paid at the rate, fixed by the Secretary of the Treasury as provided in 41 USC. Section 611, which is applicable to the period in which the amount becomes due and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until the amount due is paid in full.

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

(1) **Ten (10) calendar days** after the Government transfers title to the Purchaser.

(2) The date specified under **SECTION E - Removal of Product**, Paragraph b. if the Purchaser fails to remove the product within the contract removal period.

(3) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(4) The date the Government transmits to the Offeror a proposed settlement agreement to confirm completed negotiations establishing the amount of debt.

D.6 Letter of Credit

a. Within two (2) business days of receipt of award the Purchaser must provide the Contracting Officer an "Irrevocable Standby Letter of Credit" established in favor of the Defense Finance and Accounting Service – Columbus, and equal to **75%** of the contract award ("contract award" being the estimated quantity per line item multiplied by the award price per line item) and containing the provisions set out in **EXHIBIT D – Sample – Irrevocable Standby Letter of Credit**. The Letter of Credit must be issued by a depository institution located in and authorized to do business in any state of the United States or the District of Columbia, and authorized to issue letters of credit by the banking laws of the United States or any state of the United States or the District of Columbia. The original of the Letter of Credit must be sent to the Contracting Officer at the address specified on the cover page of this solicitation. Failure to provide the Letter of Credit may constitute grounds for termination of the contract(s) for cause.

b. The Letter of Credit must be an "Irrevocable Standby Letter of Credit," and **MUST NOT VARY IN SUBSTANCE** from the sample in **EXHIBIT D**. If the Letter of Credit contains any provisions at variance with **EXHIBIT D**, or fails to include any provisions

contained in **EXHIBIT D**, nonconforming provisions must be deleted and any missing provisions must be added or the Letter of Credit will not be accepted. The Letter of Credit must be effective on or before the date of first pick-up under the contract, and remain in effect for the entire contract period, must permit multiple partial drawings, and must contain the contract number. The issuing bank must provide documentation indicating that the person signing the Letter of Credit is authorized to do so, in the form of corporate minutes, the Authorized Signature List, or the General Resolution of Signature Authority.

c. All wire deposit and Letter of Credit costs will be borne by the Purchaser.

d. Within 30 calendar days after the final payment under the contract, the Contracting Officer shall authorize the cancellation of the Letter of Credit and shall return it to the bank or financial institution issuing the Letter of Credit. A copy of the notice of cancellation will be provided to the Purchaser.

D.7 Cashier's Check (Optional)

In lieu of providing a Letter of Credit under **SECTION D.6** above, the Purchaser may agree to pay for **75%** of product by means of a certified or cashier's check issued by a depository institution located in and authorized to do business in any state of the United States or the District of Columbia. Prior to removing product, the Purchaser must provide a certified or cashier's check for FISC Pearl Harbor, HI payable to "Defense Finance and Accounting Service – Columbus" for an amount equal to **75%** of the quantity of product stated in the contract multiplied by the price in effect on the date of the product pick-up. The certified or cashier's check must be received by the Office designated in Block D4 above, at or before the time and the place of the product pick-up. Any balance due to the Government will be payable 10 days after product has been removed from the facility.

SECTION E – REMOVAL OF PRODUCT

a. The removal period for the product at FISC Pearl Harbor, HI shall be **completed as soon as possible but not later than 20 JANUARY 2004 during normal hours of operation 0830-1530 Monday through Friday.**

b. The product purchased hereunder shall be removed from the appropriate storage facility within the time specified in Paragraph a. above, and after notice of acceptance of Offeror's offer by the Government. If the Purchaser fails to remove the product on or before the last day of the contract removal period through no fault of the Government, an invoice for all product remaining in storage on the last day of the contract removal period will be issued by the Government to the Offeror.

c. The product shall be removed to the suction line in the tank.

SECTION F – SHIPPING

F.1 Outloading

a. The product is sold on an "AS-IS" basis. Delivery is f.o.b. carrier's conveyance. The Purchaser shall furnish the Government complete shipping and document distribution instructions and the necessary commercial bills of lading to accomplish shipment. These documents shall be furnished prior to the close of business on the day of transfer of product. Shipping instructions shall include, but not be limited to, the following:

(1) Quantity of product to be released.

(2) Designation of type and kind of conveyance.

(3) Name of carrier and the name of an individual who will serve as a contact for the carrier (please include a phone number where this contact can be reached).

(4) "Ship to" location.

(5) Minimum load per conveyance (optional).

(6) Desired shipping schedule.

(7) Warning labels, as required by Federal, State, or local health, environmental, or transportation agencies.

(8) Any additional pertinent information.

The shipping schedule furnished by the Purchaser shall be coordinated with Mr. Herb Kikucht, **two weeks before lift**, due to existing loading facilities and other commitments at the Government's storage location. Information regarding Government commitments at the storage location involved may be obtained from the address specified in Paragraph c. below. When applicable, instructions furnished shall also include the name of Purchaser's duly authorized agent who, as such, may furnish the above shipping instructions.

b. The Purchaser, its agent and employees shall at all times comply with all applicable rules and regulations existing at FISC Pearl Harbor, HI and comply with all appropriate Federal, State and Local load limitations and any safety, health, and environmental requirements.

c. The contractor is solely responsible for ensuring that the proper fittings and transport equipment is provided for off loading. The government will not be held responsible for delays caused by improper off loading equipment. Shipping instructions and information requested in Paragraph a. above are to be furnished to the following address:

Ms. Jenae Meyers {LINE ITEM 559-FR}
Fleet and Industrial Supply Center
1942 Gaffney Street Suite 100
Pearl Harbor, HI 96860-4549

Facsimile Number: (808) 473-0000
Telephone Number: (808) 473-7886

E-Mail: Jenae_A_Meyers@pearl.fisc.navy.mil

d. Offloading and pick-up(s) at FISC Pearl Harbor, HI shall be completed as soon as possible, but not later than 20 January 2004; within 48 hours after scheduled lift and during daylight hours only between 0830 --1530. The FOR at Pearl Harbor will be issued from FISC Pearl Harbor Waste Oil Reclamation Facility Tank B-2 by Tank Truck (TT) and/or by Barge at H-Pier or Sierra Pier. Specific requirements for attachments etc. are defined in Exhibit A. Offloading will be performed to the extent that loading facilities and other commitments will permit.

e. The Government reserves the right to schedule and coordinate the offloading of product.

f. The product is sold subject to quantity determination as described in SECTION F.2 – Quantity Determination.

g. DESC should be contacted in emergencies for assistance during the off load by calling the Operations Center, Contingency Plans and Operations Division (DESC-DL) Telephone: (703) 767-8420.

h. The Government shall be afforded the opportunity to inspect the transport conveyance before and after offloading of the product. Furthermore, the Government shall be afforded an opportunity to retain a sample of the product dispensed into the transport conveyance. The Contractor should report any unforeseen problems to the DESC Operations Center, Contingency Plans and Operations Division immediately, see Subparagraph F.1.g above.

F.2 Quantity Determination

The quantity of product purchased under this contract shall be determined as follows:

a. For FISC Pearl Harbor Fuel Department meters or automatic tank gauges shall be used to determine the actual amounts of fuel issued depending on the mode of transport chosen by the Contractor.

b. For issue(s) to a barge or tanker the quantity delivered will be measured using the automatic tank gauge on the issue tank.

c. The Contractor has the right to have a representative present to witness the delivery and measurement of quantity.

Volume Correction: All product volume will be corrected to 60 degrees Fahrenheit as detailed in Paragraph f. below.

d. **Measurement Standards:** All measurements and calibrations made to determine quantity shall be in accordance with the most recent edition of the American Petroleum Institute (API) Manual of the Petroleum Measurement Standards. Certified capacity tables shall mean capacity tables prepared by an independent inspector or an independent surveyor. In addition, the following specific standards will be used as applicable:

(1) API Manual of Petroleum Measurement Standards Chapter 7, Method of Measuring the Temperature of Petroleum Products (API 2543/ASTM D 1086).

(2) API Manual of Petroleum Measurement Standards Chapter 9, Section 1, Density Determination (ASTM 1298).

(3) API Manual of Petroleum Measurement Standards Chapter 3, Method of Gauging Petroleum Products (API 2545/ASTM D 1085).

(4) API Manual of Petroleum Measurement Standards Chapter 11.1, Volume Correction Factors (API 2540/ASTM D 1250/IP 200). Either the printed version or the computer subroutine version of the standard may be used. For motor gasoline use Volume II, Tables 5B and 6B (or Volume VIII, Tables 53B and 54B). If the original measurement is by weight, using calibrated scales, then Volume XI, Table 8, shall be used to convert pounds to US gallons at 60 degrees Fahrenheit.

(5) API Manual of Petroleum Measurement Standards Chapter 4, Proving Systems. All meters used in determining product volume shall be calibrated using this standard with the frequency required by local regulation (foreign or domestic). 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.

e. **Units of Measure:** Depending upon the unit shown in EXHIBIT A – Solicitation/Contract for Sale of Product, the unit of quantity, as used in this contract, shall be:

(1) The barrel of 42 USG;

(2) The USG of 231 cubic inches;

(3) The long ton of 2,240 pounds;

(4) The pound of 16 ounces.

Unless otherwise specified in the contract, the reference to gallons shall mean US gallons (USG).

F.3 Insurance Requirements

The Purchaser agrees to procure and maintain, and require any subcontractor to procure and maintain, during the term of this contract, or any extension thereof, adequate motor vehicle and general public liability and property damage insurance covering all duties and work to be performed under this contract, insuring against any third party claim for bodily injury or property damage, and Workman's Compensation and Employer's Liability Insurance and other legally required insurance for protection of employees. The motor vehicle and general public liability insurance shall provide limits of liability for bodily injury of not less than \$200,000 for each person and \$500,000 for each occurrence and property damage limits of not less than \$100,000 for each accident.

F.4 Assumption of Risk and Disclaimer of Liability

The Purchaser, its assigns or agents, assumes full responsibility for all injury or damage to persons or property occasioned by or occurring in connection with or incident to any use or possession of this product. The Government assumes no liability for any damages to the property of the Purchaser or any other person or property, or for any personal injury, illness, disability or death to the Purchaser, Purchaser's employees or any other person subject to Purchaser's control, or for any other consequential damages arising from or incident to Purchaser's control, or for any other consequential damages arising from or incident to the purchase, use, loading, processing, disposition, or any subsequent operation performed upon, exposure to or contact with any component, part, constituent or ingredient of this item, material or substance. The Purchaser agrees to include this clause in any transportation contract for removal of the product.

F.5 Safety and Fuel Spills

- a. The Purchaser shall take all measures as required by law to prevent oil spills at the pick-up locations (including but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping into or onto any land or water). In the event the Contractor spills any oil the Purchaser shall be responsible for containment, cleanup, and disposal of the oil spilled. Should the Purchaser fail or refuse to take the appropriate containment, cleanup and disposal actions, the Government may do so itself. The Purchaser shall reimburse the Government for all expenses incurred including fines levied by Federal, State or local Governments. The Purchaser shall adhere to all US Navy safety regulations while on US Navy property.
- b. At the discretion of the Ordering Officer, the fuel Fuel Departments can provide for fuel containment and assist in spill cleanup on the facility or at the pick-up location(s) designated in EXHIBIT A – Solicitation/Contract for Sale of Product.
- c. Any fuel spills, which occur off base during shipment for the product, shall be the sole responsibility of the Purchaser.
- d. The Purchaser shall adhere to all US Navy safety regulations while on US Navy Property.

F.6 Environmental Protection and Precautions of Packing Materials

- a. FOR is considered to be hazardous material. The Purchaser hereby agrees to comply with all applicable federal, state, or local laws, governing the storage, handling, transportation, disposal, and disposition of product. **Material Safety Data Sheets as required by OSHA Hazard Communication Standard-29 CFR 1910.1200 are incorporated herein. (See EXHIBIT C - Material Safety Data Sheets).** (See also 29 CFR 1910.1000, Table Z-3). It is the responsibility of the Purchaser to further communicate this information to the distributor, manufacturer, user, and/or transporter of this material as may be required by federal regulations.
- b. The purchaser shall provide documentation to the Government of compliance with 40 CFR Part 279 for any FOR burned for energy recovery.
- c. The transportation of hazardous material is governed by Department of Transportation (DOT) Hazardous Materials Regulations (Title 49, Code of Federal Regulations, Parts 170-189). The Purchaser, as shipper, will have the responsibility to certify to the DOT that such hazardous materials are properly classified, described, packaged, marked and labeled and are in a condition safe to transport based on the Offeror's own examination of the material.
- d. The Government reserves the right to conduct reasonable inspection of the Offeror's and/or its agent's representatives, assignee's and/or vendor's transportation conveyances and/or equipment utilized to effect removal of property purchased under this offering. Such action may be accomplished prior to, during, and/or subsequent to removal of property from Government premises. The Offeror shall furnish Government employees, and/or authorized Government representatives, with access and any reasonable assistance required conducting such inspections.
- e. The Offeror represents, warrants, and certifies to the United States Government that it will use and ultimately dispose of any hazardous property purchased under this Solicitation of Offers in accordance with all applicable Federal, State, Local, and International laws and regulations and in a manner safe for the public and the environment. The Government cautions that the subject item(s) have or may have one or more components, parts, constituents or ingredients that may be corrosive, reactive, ignitable or exhibit other hazardous or toxic properties.
- f. **HEALTH WARNING.** As part of this solicitation, a specific detailed Materials Safety Data Sheet has been provided. This data provides specific toxicity and health related data for the protection of human health and the environment. Offerors should review this information carefully prior to submitting an offer. All that use, handle, transport, and/or store this material should review this data sheet carefully. Guidance in these documents should be adhered to and communicated to all involved.

SECTION G – CONTRACT ADMINISTRATION DATA

G.1 Termination for Cause

- a. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractors fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurance 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 sold, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- b. If the Government terminates the Purchaser for cause, it may subsequently resell the product for the Purchaser's account, under the terms and in the manner the Contracting Officer considers appropriate, and assess the Purchaser the difference between the contract price and the price obtained on resale as actual damages. In no event will the Purchaser be refunded any monies due to the Government obtaining a greater price on resale, nor will an accounting of money be made until resale is complete.

c. In the event that the Government does not succeed in reselling the product within 12 months, the Purchaser may be held liable for the full contract price.

G.2 Disputes

This contract is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613) (the Act). 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 of FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of the contract, pending final resolution of any dispute arising under the contract.

G.3 Termination for the Convenience of the Government

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall only be liable for actual costs incurred by the Contractor before the effective date of termination.

G.4 Protests

a. Protests that are filed directly with the Defense Energy Support Center and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer by obtaining written and dated acknowledgment of receipt from:

**ATTN: DENNIS STANLEY, DESC-CPB RM 3729
DEFENSE ENERGY SUPPORT CENTER (DESC)
8725 JOHN J. KINGMAN RD STE 4950
FORT BELVOIR VA 22060-6222**

b. The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

G.5 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.6 Modification

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. The DESC Contracting Officer must make all modifications to the contract in writing; the Ordering Officer may modify orders or shipping arrangements made with the Purchaser.

G.7 Officials Not to Benefit

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

G.8 Covenant Against Contingent Fees

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

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

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

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

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

SECTION H – DEFINITIONS

As used throughout this solicitation, the following terms shall have the meaning set forth below:

a. The term "Contracting Officer" means a US Government person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

b. The term "Offeror" or "Purchaser" herein means Contractor.

(This SECTION is to be completed and returned with your offer)

SECTION I – CERTIFICATIONS

I.1 Taxpayer Identification Number (TIN):

a. TAXPAYER IDENTIFICATION NUMBER (TIN) (26 U.S.C. 6050M).

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) TAXPAYER IDENTIFICATION NUMBER (TIN).

TIN: _____

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of a Federal, state, or local government;

Other. State basis. _____

I.2 Contingent Fee Representation and Agreement

a. Representation. The Offeror represents that, except for full-time bona fide employees working solely for the Offeror, the Offeror: (NOTE: The Offeror must check the appropriate boxes. For interpretation of the representation, including the term bona fide employee, See **SECTION G.8 – Covenant Against Contingent Fees**)

(1) has, has not employed or retained any person or company to solicit or obtain this contract; and

(2) has, has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

b. Agreement. The Offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when Subparagraph **a.(1)** or **a.(2)** is answered affirmatively, to promptly submit to the Contracting Officer–

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same Contracting Officer, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

I.3 Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters

a. (1) The Offeror certifies, to the best of its knowledge and belief, that

(i) The Offeror and/or any of its Principals–

(A) [] Are, [] are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by an Federal agency.

(B) [] Have, [] have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) [] Are, [] are not presently indicted for, or otherwise criminally or civilly charges by a governmental entity with, commission of any of the offenses enumerated in Subparagraph (a)(1)(i)(B) of this provision.

(ii) The Offeror [] has, [] has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.

b. The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous by reason of changed circumstances.

c. A certification that any of the items in Paragraph a. of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

d. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required in Paragraph a. of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

e. The certification in Paragraph a. of this provision is material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to the other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

I.4 Barge Free Time and Demurrage Charges

a. Unless the offeror indicates otherwise, free time will be unlimited.

<u>ITEM</u>	<u>FREE TIME ALLOWED</u>	<u>DEMURRAGE BEYOND FREE TIME</u>		
		<u>BARGE</u>	<u>TUG</u>	<u>OTHER</u>

Notwithstanding the above, the Government is entitled to at least as much free time as is allowed by the common carrier or that the Purchaser normally allows the regular commercial customers, whichever is greater. In addition, the Government will not pay more in detention rates than the actual rate charged by the common carrier or the rate the Purchaser normally charges its regular customers, whichever is lower.

UNLESS PURCHASER INDICATES OTHERWISE, FREE TIME WILL BE CONSIDERED UNLIMITED

I.5 Certifications for Intended Use of Purchased Product

a. Offeror certifies that intended use of this product is: _____

b. Offeror certifies that it is responsible for determining the applicability of any Federal, state and local taxes and fees on the product and remitting the taxes to the proper authorities.

c. Offeror certifies that product purchased under this solicitation will not be resold to the US Government.

(Offeror's Signature)

I.6 Certification for Letter of Credit/Cashier's Check (Optional)

Reference **SECTION D.6 – Letter of Credit** and **D.7 – Cashier's Check (Optional)**. Offeror **must initial** one of the following:

(1) Purchaser elects to provide a Letter of Credit in accordance with **SECTION D.6** _____ (*initial*); **or**

(2) Purchaser elects to pay for product by certified or cashier's check in accordance with **SECTION D.7** _____ (*initial*).

SECTION J – EXHIBITS

J.1 EXHIBIT A – Solicitation/Contract for Sale of Product

J.2 EXHIBIT B – Specification MIL-F-24951B (SA), 10 Feb 95

J.3 EXHIBIT C – Material Safety Data Sheets

J.4 EXHIBIT D – Sample – Irrevocable Standby Letter of Credit

J.5 EXHIBIT E – TEST RESULTS FOR AT PEARL HARBOR, HI