

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS				1. REQUISITION NO.	PAGE 1 of 23
<i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30</i>				5. SOLICITATION NO. SP0600-01-R-0084	6. SOLICITATION ISSUE DATE 27 August 2001
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NO.	7. FOR SOLICITATION INFORMATION CALL		8. OFFER DUE DATE/LOCAL TIME 19 April 2001
9. ISSUED BY DEFENSE ENERGY SUPPORT CENTER ALTERNATIVE FUELS (DESC-APE) 8725 JOHN J. KINGMAN RD, Suite 4950 FORT BELVOIR, VA 22060-6222 BUYER/SYMBOL: Shirley Bergman/DESC-EPD P.P. 8.1			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: 221112 SIZE STD: 4 million megawatt	11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFO <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP	12. DISCOUNT TERMS
15. DELIVER TO DEFENSE ENERGY SUPPORT CENTER INSTALLATION ENERGY (DESC-APE) Attn: BID CUSTODIAN 8725 JOHN J. KINGMAN RD, Suite 4950 FORT BELVOIR, VA 22060-6222	16. ADMINISTERED BY	17a. CONTRACTOR/ OFFEROR CODE FACILITY CODE			
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER	18a. PAYMENT WILL BE MADE BY				
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
	MODULE II - Electricity (kWh) and Capacity (kW) for Ft. Hood <i>(Attach Additional Sheets as Necessary)</i>	See Attachment III	kWh		
25. ACCOUNTING AND APPROPRIATION DATA				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.					
<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.					
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN ____ 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.			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 <input type="checkbox"/> PARTIAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR
32b. SIGNATURE OF AUTHORIZED GOVT REPRESENTATIVE		32c. DATE	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/>		37. CHECK NUMBER
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT			38. S/R ACCOUNT NO.	39. S/R VOUCHER NO.	40. PAID BY
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE	42a. RECEIVED BY (Print)		
			42b. RECEIVED AT (Location)		
			42c. DATE REC'D (YYMMDD)	42d. TOTAL CONTAINERS	

B1.06.100 SUPPLIES TO BE FURNISHED (ELECTRICITY)

- (a) The contract quantities provided in each price submittal request are best estimates only of the Government’s requirements for the contract period. The Contractor shall furnish all labor, material, tools, equipment, and incidentals to supply and deliver electricity as defined in the STATEMENT OF WORK/SPECIFICATIONS clause. Contract performance shall be accomplished in accordance with the terms and conditions of this contract.
- (b) As used throughout this solicitation/contract, **kWh** means kilowatt-hour, **kW** means kilowatt, **TXU** means Texas Electric & Gas; **USD** means U.S. Dollar and **Renewable Energy** is, as defined by Executive Order 13123, Section 710, energy produced by solar, wind, geothermal, and biomass power.
- (c) The Government is soliciting offers for supply and transmission of electricity and ancillary services for the following locations:

Line Items	Location	Number of Accounts	Spreadsheet(s)*
4801	U.S. Army Ft. Hood	4	Hood Consumption-Interval.xls

* Click on “Hood Consumption-Interval.xls” for a direct link to that spreadsheet.

- (d) The Government is soliciting offers for supply and transmission of electricity and ancillary services for Ft. Hood. The Government is soliciting offers for up to 3, 1-year delivery periods (meter read in January through meter read in December, of the same calendar year).

Specifics for each line item will be provided with the information data sheet (Hood.xls). The information to be provided will include: Line Item Number, Location, Local Electric Utility, Current Tariff Rate, Utility Account Number, Contract Performance Period, Monthly Consumption and Demand Data, and Interval Data (where available).
- (e) **The Government is soliciting offers on a firm fixed unit price basis for electricity and transmission to the point of receipt, as specified in this solicitation.**
- (f) **The Government is soliciting both summer and winter prices for certain accounts identified in Attachment III.** Summer is defined as June through October (shown as “s”), and Winter is defined November to May (shown as “w”).
- (h) Award will not be made to any offer unless the offer price for each line item is less than that of the default price.

ADDENDUM I TO FAR 52.212-4

IDENTIFIES THE CONTRACTUAL TERMS AND CONDITIONS THAT HAVE BEEN TAILORED TO BE MORE CONSISTENT WITH COMMERCIAL PRACTICE. ALL OTHER CONTRACTUAL TERMS AND CONDITIONS OF FAR 52.212-4 ARE HEREBY INCORPORATED BY REFERENCE (SEE BLOCK 27A OF STANDARD FORM 1449). TO VIEW ALL FAR CLAUSES, PLEASE USE THE FOLLOWING LINK: [HTTP://FARSITE.HILL.AF.MIL/](http://farsite.hill.af.mil/)

- (j) Risk of loss. Risk of loss of the electricity supplied under this contract shall remain with the Contractor until, and shall pass to the Government upon delivery to the delivery point specified in the Schedule.
- (k) Taxes.
- (1) The contract price includes all applicable Federal, State, and Local taxes and duties in effect at contract signing.
 - (2) After-imposed Federal, State or Local tax, as used in this clause, means any new or increased Federal, State or Local excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced, or whose computation was later changed during the contract period, 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. It does not include social security tax, other employment taxes, or income tax. The contract price shall be increased by the amount of any after-imposed Federal, State, or Local tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal, State, or Local excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
 - (3) After-relieved Federal, State or Local tax, as used in this clause, means any amount of Federal, State or Local excise tax or duty, 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 or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax, other employment taxes, or income tax. The contract price shall be decreased by the amount of any after-relieved Federal, State, or Local tax.
- (l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall cease deliveries hereunder at the date and time specified by the Government and shall cause any and all of its suppliers and subcontractors to cease work related to this contract prior to the date and time specified by the Government for the termination. Subject to the terms of this contract, the Contractor shall be paid for electricity delivered under the contract prior to the date and time specified by the Government for the 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 costs incurred which reasonably could have been avoided.
- (n) Title. Title to the electricity supplied by the Contractor under this contract shall pass to the Government upon delivery at the delivery point specified in the Schedule. The Contractor warrants that the electricity delivered to the Government under this contract will be free and clear of all liens, claims and encumbrances arising prior to delivery at the delivery point specified in the Schedule.
- (o) Warranty. The Contractor warrants and implies that the electricity delivered hereunder conforms to the tariff of the transmitting and/or distributing utility at the delivery point specified in the Schedule.

**ADDENDUM II TO FAR 52.212-4
IDENTIFIES OTHER CONTRACTUAL CLAUSES THAT ARE HEREBY INCORPORATED INTO THIS
SOLICITATION.**

FAR 52.216-21 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.

DFARS 252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 2000)

- (a) **DEFINITIONS.** As used in this clause--
 - (1) **Central Contractor Registration (CCR) database** means the primary DoD repository for Contractor information required for the conduct of business with DoD.
 - (2) **Data Universal Numbering Systems (DUNS) number** means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.
 - (3) **Data Universal Numbering System + 4 (DUNS+4) number** means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.
 - (4) **Registered in the CCR database** means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.
- (b)
 - (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.
 - (2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
 - (3) Lack of registration in the CCR database will make an offeror ineligible for award.
 - (4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.
- (d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling **1-888-227-2423** or via the Internet at <http://www.ccr2000.com>.

ADDENDUM II CONTINUED:

DESC CLAUSES :

1. STATEMENT OF WORK/SPECIFICATIONS

- (a) **DEFINITIONS** – UDC means Utility Distribution Company and **ERCOT** means Electric Reliability Council of Texas.
- (b) **STATEMENT OF WORK** - The Contractor shall furnish all labor, material, tools, equipment, and incidentals to supply and deliver electricity and any ancillary and/or incidental services required to deliver electricity to the point of delivery and for the scheduling and coordination of the delivery of electricity to the service point for each account under the contract. All quantities ordered by the Government shall be considered firm and guaranteed for delivery by the Contractor to the delivery point and, for scheduling and coordinating, for ultimate delivery to the service point for each account. Charges incurred as a result of the Contractor's failure to abide by the terms of the applicable Retail Access rules and/or the UDC Service Agreement shall be the responsibility of the Contractor. With the exception of any and all transmission and distribution related charges payable by the Government to the UDC under the applicable tariff for each account (unless said charges are the result of the contractor's failure to perform in accordance with the contract), the Contractor is responsible for all costs associated with deliveries to the delivery point and the scheduling and coordination for delivery of electricity to the service point for each account under the contract. The Contractor shall be liable for any and all penalties and/or additional costs assessed to the Government for the nondelivery of the firm requirements in accordance with paragraphs (f) and (m) of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause.
- (c) **CONSOLIDATED /REP BILLING:** The Government will utilize Consolidated Retail Energy Provider (REP) Billing for any and all awards made under this solicitation. All costs associated with billing shall be included in the offered price. The Government will not pay any additional charges for billing services. The contractor shall provide a single bill for all accounts to Ft. Hood. Each invoice shall be prepared in a manner consistent with all REP/UDC arrangements and shall conform to all Texas Public Utility Commission (PUC) requirements for REP Consolidated Billing. In addition to the requirements set forth in FAR 52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS Paragraph (g), each contractor invoice shall include the following information:
- (1) Installation name, Line Item, and individual account information (Account Number, Meter Number, and Service Location)
 - (2) Billing period for each account
 - (3) Total consumption for each account (broken down by Peak, Off-Peak, Semi-Peak if applicable)
 - (4) Demand information for each account (broken down by Peak, Off-Peak, Semi-Peak if applicable)
 - (5) Total energy charge (broken down by energy charges and demand charges)
 - (6) UDC "pass through" charges for UDC services broken out in detail for each account in a manner consistent with REP/UDC arrangements and PUCT requirements.
 - (8) All information required by the PUCT to be included on customer invoices.
- (d) **METERING & METER READING SERVICES** – Will be provided by the incumbent UDC for each account.
- (e) **SCHEDULING & SUPPLY MANAGEMENT:** It shall be the Contractor's responsibility to schedule deliveries for all accounts awarded for the time period specified herein. The Contractor shall be responsible for supply management and overall coordination of production, transmission, and distribution of electrical power to the service point of each account identified in the contract. As such, the Contractor shall be knowledgeable of and responsible for imbalance policies, transmission grid losses, transmission congestion charges and UDC line losses for the delivery of electricity to the service point of each account under the contract. The Contractor must meet all applicable State and Federal requirements necessary to successfully complete any contract. The Government will not pay any costs associated with the Contractor's failure to deliver electrical power at the delivery point sufficient to meet the demand at the service point of each account under contract or to schedule and coordinate for the delivery of electricity to each service point.
- (f) **RECORD KEEPING:** The Contractor shall keep records of data required to bill in accordance with the utility tariff of each account (demand and consumption data) in a electronic database format compatible with Microsoft Access or a spreadsheet formats compatible with Microsoft Excel. These records shall be made available to the Contracting Officer or to any party designated by the Contracting Officer as authorized to request this data. In the event that the contractor maintains records data on demand and consumption data in addition to that required to bill in accordance with the utility tariff, said data shall also be made available to the Contracting Officer or to any party designated by the Contracting Officer as authorized to request this data
- (g) **POINT OF DELIVERY** – For this solicitation and any resulting contract, the Delivery Point for each account is defined as an interconnect with the UDC owned or controlled transmission or distribution systems.
- (h) **SERVICE POINT** – For this solicitation and any resulting contract, the Service Point is defined as the meter(s) indicated for each account awarded as described in **the individual installation spreadsheets**.
- (i) **SPECIFICATIONS:** The electricity provided under this contract shall conform to the tariff of the transmitting and/or distributing utility at the delivery point(s) specified in the Schedule.
- (J) **SERVICE ORDERS/OUTAGE REPORTS:** Customers shall contact their applicable UDC, not the contractor.

ADDENDUM II CONTINUED:

2. NOTIFICATION OF TARIFF/RATE CHANGES

The Contractor shall give the Contracting Officer and the installation written notice of the filing of an application for transportation tariff/rate changes and/or the scheduling of a tariff/rate hearing that would impact installations within one working day of receiving such application or notification of such hearing.

CLAUSE H800 (ELECTRICITY) (DESC JAN 1998)

3. EXTENSION PROVISIONS

- (a) For line items priced as Fixed Price with Economic Price Adjustment, the Government reserves the right to unilaterally extend performance, one or more times, in accordance with the existing contracts terms and provisions, so long as the total additional performance does not exceed six months.
- (b) For line items priced as Firm-Fixed Price, the Government may request extension of performance, one or more times, at the existing fixed price and in accordance with the existing contract terms and provisions, so long as the total additional performance does not exceed six months. If the Contractor declines to extend at the existing price, the Government may propose a new firm-fixed price for the extension. Extension of Firm-Fixed Price line items must be accomplished by agreement of all parties (bilateral modification). Failure to agree will result in expiration of the contract at the end of the current performance period.
- (c) Notice of unilateral contract extension or request for bilateral extension will be furnished to the Contractor not later than 45 days prior to the expiration of the contract or any extension thereof. However, nothing in this clause precludes the Contractor from agreeing to an extension of the contract if the Government fails to issue the notice prior to the 45 days.
- (d) Extension of this contract shall be considered to have been accomplished at the time the Government deposits written notification in the mail or provides such notification by facsimile transmission.

CLAUSE I209.15 (ELECTRICITY) (DESC JAN 1998)

4. ELECTRICITY ORDERING PROCEDURES

For the purposes of this contract, the instantaneous load at the service point, as described in the individual installation spreadsheets, shall constitute an order for electricity to be furnished under this contract.

CLAUSE I800.100 (DESC FEB 2000)

**FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--
COMMERCIAL ITEMS (May 2001)**

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

(1) 52.222-3, Convict Labor (E.O. 11755);

(2) 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 or components:

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

(2) 52.219-3, Notice of HUBZone Small Business Set-Aside (Jan 1999).

(3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).

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

(ii) Alternate I to 52.219-5.

(iii) Alternate II to 52.219-5.

(5) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

(6) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).

(7) 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).

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

(ii) Alternate I of 52.219-23.

(9) 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

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

(11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

(12) 52.222-26, Equal Opportunity (E.O. 11246).

(13) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

(14) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

(15) 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

(16) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (E.O. 13126)

(17)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).

(ii) Alternate I of 52.223-9 (42 U.S.C. 6962(i)(2)(C))

(18) 52.225-1, Buy American Act-Balance of Payments Program-Supplies (41 U.S.C. 10a-10d).

- ___ (19)(i) 52.225-3, Buy American Act - North American Free Trade Agreement - Israeli Trade Act - Balance of Payments Program (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).
 - ___ (ii) Alternate I of 52.225-3.
 - ___ (iii) Alternate II of 52.225-3.
 - ___ (20) 52.225-5, Trade Agreements (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
 - ___ (21) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).
 - ___ (22) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).
 - ___ (23) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).
 - X (24) 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration (31 U.S.C. 3332).
 - ___ (25) 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration (31 U.S.C. 3332).
 - ___ (26) 52.232-36, Payment by Third Party (31 U.S.C. 3332).
 - ___ (27) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
 - ___ (28) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).
 - ___ (ii) Alternate I of 52.247-64.
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:
[Contracting Officer check as appropriate.]
- ___ (1) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.).
 - ___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - ___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C.206 and 41 U.S.C. 351, et seq.).
 - ___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - ___ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).
- (d) Comptroller General Examination of Record. The Contractor 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.
- (e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components --

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);
- (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);
- (4) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996); and
- (5) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.).

DFARS 252.212-7001 -- CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (DEC 2000)

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

- 252.205-7000 Provision of Information to Cooperative Agreement Holders ((5) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.). 10 U.S.C. 2416).
- 252.206-7000 Domestic Source Restriction (10 U.S.C. 2304).
- 252.219-7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (15 U.S.C. 637).
- 252.225-7001 Buy American Act and Balance of Payments Program (41 U.S.C. 10a-10d, E.O. 10582).
- 252.225-7007 Buy American Act--Trade Agreements--Balance of Payments Program (41 U.S.C. 10a-10d, 19 U.S.C. 2501-2518, and 19 U.S.C. 3301 note).
- 252.225-7012 Preference for Certain Domestic Commodities.
- 252.225-7014 Preference for Domestic Specialty Metals (10 U.S.C. 2241 note).
- 252.225-7015 Preference for Domestic Hand or Measuring Tools (10 U.S.C. 2241 note).
- 252.225-7016 Restriction on Acquisition Ball and Roller Bearings (___Alternate I) (Section 8064 of Pub. L. 106-259).
- 252.225-7021 Trade Agreements (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (22 U.S.C. 2779).
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (22 U.S.C. 2755).
- 252.225-7029 Preference for United States or Canadian Air Circuit Breakers (10 U.S.C. 2534(a)(3)).
- 252.225-7036 Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program (___ Alternate I) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
- 252.227-7015 Technical Data--Commercial Items (10 U.S.C. 2320).
- 252.227-7037 Validation of Restrictive Markings on Technical Data (10 U.S.C. 2321).
- 252.243-7002 Requests for Equitable Adjustment (10 U.S.C. 2410).
- 252.247-7023 Transportation of Supplies by Sea (___Alternate I) (___Alternate II) (10 U.S.C. 2631).
- 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

- (b) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (Federal Acquisition Regulation 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract

- 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).
- 252.247-7023 Transportation of Supplies by Sea (10 U.S.C. 2631).
- 252.247-7024 Notification of Transportation of Supplies by Sea (10 U.S.C. 2631).

ADDENDUM I TO FAR 52.212-1

IDENTIFIES INSTRUCTIONS (PARAGRAPHS) THAT HAVE BEEN TAILORED TO BE MORE CONSISTENT WITH COMMERCIAL PRACTICE. ALL OTHER INSTRUCTIONS INCLUDED IN FAR 52.212-1 ARE HEREBY INCORPORATED BY REFERENCE (SEE BLOCK 27A OF STANDARD FORM 1449).

- (a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code (22112) and small business size standard for this acquisition is 4 million megawatts (MW), for a small business offering electricity that it generated itself. However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish electricity which it did not itself generate, is 500 employees.
- (c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 48 hours from the date specified for receipt of offers.
- (g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. If the Contracting Officer determines that the number of offers 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 offers in the competitive range to the greatest number that will permit efficient competition among the most highly rated offers. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received. It should be noted that the Government reserves the right to reject all offers if none of the offers received results in a delivered cost of electricity lower than the delivered cost under the applicable "standard offer" or established default rate under state and/or local regulation.
- (h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government will not make an award on any item for less than the quantity specified.

**ADDENDUM II TO FAR 52.212-1
OUTLINES ADDITIONAL INSTRUCTIONS THAT OFFERORS ARE TO FOLLOW WHEN PREPARING
THEIR PROPOSAL.**

DFARS 252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

- (a) Definitions. As used in this provision-
- (1) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.
 - (2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.
 - (3) "Significant interest" means-
 - (i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;
 - (ii) Holding a management position in the firm, such as a director or officer;
 - (iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or
 - (v) Holding 50 percent or more of the indebtedness of a firm.
- (b) Prohibition on award. In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.
- (c) Disclosure. If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include-
- (1) Identification of each government holding a significant interest; and
 - (2) A description of the significant interest held by each government.

ADDENDUM II CONTINUED:

DESC CLAUSES:

1. INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS

(a) EVIDENCE OF RESPONSIBILITY.

- (1) An offeror must possess, at a minimum, six months of experience (within the past two years) providing supply and transportation (firm and/or interruptible) of electricity to wholesale or retail customers. If the offeror does not possess at least six months of experience, it will not be considered for award.
- (2) An offeror shall provide, as part of the technical/management submission, documentation that the offeror possesses a Marketing License (Date of Application and Date of Approval by PUCT) or a rate schedule on file with the Federal Energy Regulatory Commission (FERC) and/or authority to sell electricity at the retail level from a state utility commission.
- (3) The offeror shall provide, as part of the technical/management submission, a description of all purchases and sales for the most recent two quarters to include: identification of the buyer or seller, a description of the transaction (firm or interruptible, sale or purchase), delivery/receipt point(s), price(s), quantities and the term of the transaction (hourly/daily/monthly) and a current listing of its 20 largest retail purchasers of electricity. Power marketers required to submit this information to the FERC may submit copies of their most recent applicable FERC filings.
- (4) The offeror must possess, or demonstrate the ability to obtain, transmission service agreements in the company's name for the points of receipt specified in the Schedule (on which they are planning to offer). Failure to document the ability to obtain necessary transmission service agreements shall render the offeror nonresponsible.
- (5) The offeror shall provide evidence that it is licensed to conduct business by each state's regulatory body having jurisdiction over the state's electric industry prior to award of any contract for solicited requirements.
- (6) The evidence of responsibility required by the above is in addition to the general responsibility criteria set forth in FAR 9.104.
- (7) Information substantiating the special standard of responsibility, (1), (2), (3), (4) and (5) above, shall be submitted with the initial offer in accordance with the guidelines in the OFFEROR'S PROPOSAL provision.
- (8) In addition, the Government may conduct preaward surveys in accordance with FAR 9.106 and obtain, from available sources, relevant information concerning the offeror's ability to satisfy the responsibility standards stated in this provision and FAR Part 9.

(b) FACSIMILE PROPOSALS (FAR 52.215-5). Incorporated by reference.

(c) FACSIMILE PROPOSALS Pursuant to the FACSIMILE PROPOSALS provisions, the offeror must submit a hard copy of the original signed offer, which MUST BE RECEIVED WITHIN 3 WORKING DAYS OF THE OPENING/CLOSING DATE.

(d) PRICING: Offerors shall submit a firm fixed unit price per kWh on all of the line items contained in the price submittal request (Attachment III).

(e) TYPE OF CONTRACT. The Government contemplates award of a Firm Fixed Price Requirements Type Contract.

CLAUSE L2.08-3.100 (ELECTRICITY)(DESC FEB 2000)

2. OFFEROR'S PROPOSAL

(a) An offeror's proposal must be complete with regard to this provision as well as all other requirements of the solicitation; offeror's are advised to submit proposals that are fully and clearly acceptable without additional information or explanation. Failure to provide a complete Technical Experience submission shall make an offer unacceptable and ineligible for award.

(b) Submissions shall consist of one original and one copy of each of the following severable parts:

- (1) **PART I - EXECUTED RFP:** The original Part I shall contain original signatures. The executed RFP shall consist of the following:

ADDENDUM II CONTINUED:

- (i) Standard Form 1449, Solicitation, Contract, Order for Commercial Items, with Blocks 17, and 30A through 30C completed. By completing Blocks 30A through 30C the offeror agrees to the terms and conditions of the RFP.
 - (ii) Offeror Representations and Certifications
 - (iii) Attachment III, Offer Submittal Sheet shall be completed. Offerors are requested to submit its offer on diskette, by e-mail (sbergman@desc.dla.mil or cdraper@desc.dla.mil), and by hard copy.
 - (iv) **Other Required Documents.** The offeror shall submit all documents required by the terms and conditions of RFP, such as offer information (Attachment I); past performance-experience with endusers (Attachment II); subcontracting plans (see Attachment IV) and supply commitment letters. In addition, all offerors must include their "Electricity Facts Label."
- (2) **PART II - TECHNICAL/MANAGEMENT SUBMISSION:** To substantiate meeting general and special responsibility criteria and the evaluation criteria stated in the RFP, the offeror shall submit the following:
- (i) Most recent annual report (Web address is acceptable)
 - (ii) Most recent 10K report (Web address is acceptable)
 - (iii) A brief description of the risk management practices to be employed during contract performance
 - (iv) A brief description of the sources of working capital for the offeror's power marketing activities
 - (v) Resumes of the key personnel who would be assigned to administer a resultant contract.
 - (vi) ERCOT/PUCT Marketing License data: Date of Application and Date of Approval
 - (vii) Offerors interested in providing renewable energy are required to provide a breakdown of the renewable energy's individual components (for example, the percentage of biomass, the percentage of hydro (large and small, etc.)
 - (viii) The documentation required in L2.08-3, INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (ELECTRICITY), (a)(3), EVIDENCE OF RESPONSIBILITY.
 - (ix) **Provide a description of the offeror's supply portfolio/proposed sources of supply and its access to transmission required to supply electricity to end-users in regions and control areas listed below:**

- 1. **Texas Region** – Comprised of the Electric Reliability Council of Texas (ERCOT) NERC Region.

Control Areas

Acronym:

AEPT	American Electric Power
AEN	Austin Energy
LCRA	Lower Colorado River Authority
BPUB	Public Utilities Board, Brownsville
HLPT	Reliant Energy HL&P
STEC	S. Texas & Medina Electric Cooperatives
TMPP	Texas Municipal Power Pool
TNPX	Texas-New Mexico Power Company
TUE	TXU Electric

Name:

For each region: Describe whether electricity would be provided from generation owned by the offeror, obtained under long term contracts, and/or obtained under short term contracts/spot market purchases. Identify the approximate uncommitted quantities from specific generation assets and/or supply contracts which would be available under resultant contracts. Describe and identify additional quantities which the offeror can demonstrably obtain for delivery under resultant contracts. Indicate whether the sources of supply identified above are located within the service control area, an adjacent control area. If applicable, describe how electricity would be transmitted from the sources of supply identified above to the region or sub-region. Identify and describe any existing transmission service agreements held by the offeror which could be used for the transmission of electricity under a resultant contract or provide a description of what transmission service agreements would be obtained and demonstrate that the credit-worthiness requirements of the transmission provider would be met by the offeror. Descriptions should include the identity of the transmission provider, indicate if service is Firm or Non-Firm, Short-Term or Long-Term, identify points of receipt, points of delivery and include the expiration date of the agreement.

ADDENDUM II CONTINUED:

- (3) **PART III - PAST PERFORMANCE:** Information collected in the Experience with Endusers Form (Attachment II) will be used to contact offeror's customers and inquire about the offeror's past performance. By submitting this form, the offeror agrees to permit the Government's representatives to contact the customers listed and inquire about the past performance of the offeror. The offeror will be given an opportunity to address unfavorable reports of past performance and the offeror's response, or lack thereof, will be taken into consideration. The offeror's recent contracts will be examined to ensure that corrective measures have been put in place to prevent the recurrence of past performance problems. Prompt actions taken by the offeror to correct performance problems will be a reflection of management concern for customer satisfaction. However, such action may not mitigate all negative performance trends. Other past performance data available to the Government will be used in the evaluation of past performance. In addition, describe any past efforts to subcontract with small, small disadvantaged, and women-owned small businesses. Include, for past efforts (within 3 years of the closing date of this solicitation), a statement identifying highly successful efforts or any regulatory or subcontracting plan non-compliance.
- (4) **PART IV – COMMERCIAL SUBCONTRACTING PLAN:** The contractor shall submit a Commercial Subcontracting Plan in accordance with **FAR Part 19.704 Subcontracting Plan Requirements (See Attachment IV).**

(5) **PART V - SOCIOECONOMIC PROPOSAL (MAR 1996) – DLAD (REVISED)**

In addition to any subcontracting plan required by the clause 52.219-9;

- (a) Provide a description of the efforts your company will make to assure that small businesses and historically black colleges or universities and minority institutions will have equal opportunity to compete for subcontracts under any resulting contract. Describe your current and planned proposed range of services, supplies, and any other support that will be provided to you by small businesses and historically black colleges or universities and minority institutions. Include specific names of subcontractors to the extent they are known.
- (b) Describe any future plans your company has for developing additional subcontracting opportunities for small businesses and historically black colleges or universities and minority institutions during the contract period.
- (c) Specify what proportion of your proposal, as a percentage of dollars, will be subcontracted to small businesses and historically black colleges or universities and minority institutions.
- (d) Specify what type of performance data you will accumulate and provide to the Contracting Officer regarding your support of small businesses and historically black colleges or universities and minority institutions during the period of contract performance. Provide the name and title of the individual principally responsible for ensuring company support to such firms.

CLAUSE L801.100 (ELECTRICITY) (DESC FEB 2000)

3. AUTHORIZED NEGOTIATORS (DESC JAN 1998)

The first page of the offer must show names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate with the Government on the offeror's behalf in connection with this solicitation. The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations.

(DESC 52.215-9F28)

CLAUSE K33.01 (DESC JAN 1998)

4. AGENCY PROTESTS

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 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.

CLAUSE L5.01-1 (SEP 1999) - DLAD

FAR 52.212-2 EVALUATION – COMMERCIAL ITEMS (JAN 1999)

- (a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:
 - (i) Technical Capability
 - a) Supply Portfolio and/or Proposed Sources of Supply
 - b) Access to Transmission
 - (ii) Industry Experience
 - (iii) Past Performance
 - (iv) Price
 - (v) Participation of Small Businesses and Historically Black Colleges or Universities and Minority Institutions in Performance of the Contract
- (b) Technical Capability, Industry Experience, and Past Performance are equally important and are each more important than price. Participation of small businesses and historically black colleges or universities and minority institutions in performance of the contract is weighted less heavily than price in the evaluation of offers.
- (c) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).
- (d) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

DESC CLAUSE:

PRICE EVALUATION

Price evaluations will be conducted by comparing the estimated savings to be obtained by the Government under each offer received. The basis for calculating the estimated savings will be a comparison of the anticipated total delivered cost under the offer received and the default rate, in effect on the closing date of this solicitation, with respect to the annual consumption of each line item.

For those installations requesting pricing for each of their accounts, the Government intends to award all line-items to one REP (for each installation), as an aggregate. Price evaluations will be conducted in the same manner as installations not requesting prices for all accounts. The Government will evaluate offered prices on all accounts in each aggregate to determine the best overall value. A price reasonableness determination will be made for all accounts under 1MW.

NOTE: Award will not be made to any offer unless the anticipated total delivered cost under the offer received for each line item is less than that of the default price, with respect to the annual consumption of each line item.

CLAUSE M800.100 (ELECTRICITY)

DLA CLAUSE:

SOCIOECONOMIC EVALUATION

The Socioeconomic Proposal provided by the offeror under I71.01 will be evaluated on a comparative basis among all offerors. An offeror that proposes a higher percentage, complexity level, and variety of participation by small businesses and historically black colleges or universities and minority institutions combined, generally will receive a higher rating on this factor. An offeror's efforts to develop additional opportunities for small businesses and historically black colleges or universities and minority institutions will also be comparatively evaluated with the proposals of other offerors. Offerors' proposals for socioeconomic support will be made a part of any resulting contract for use in determining how well the Contractor has adhered to its socioeconomic plan. This plan will be monitored by the cognizant Defense Contract Management Command's small business office as a means of assisting the Contracting Officer in determining how well the Contractor has in fact performed. This determination will then be used as a consideration prior to option exercise and future source selection decisions. Performance on prior contracts in subcontracting with and assisting small businesses and historically black colleges or universities and minority institutions will be part of past performance evaluation.

CLAUSE DLAD 52.215-9003 (OCT 1996) (REVISED)

**K1.01-10 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (ALTS I/III)
(APR 2001/OCT 2000/OCT 2000)**

- (a) **DEFINITIONS.** As used in this provision--
- (1) **Emerging small business** means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.
 - (2) **Forced or indentured child labor means** all work or service—
 - (i) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
 - (ii) *Performed by any person under the age of 18 pursuant to a contract, the enforcement of which can be accomplished by process of penalties.*
 - (3) **Service-disabled veteran-owned small business concern—**
 - (i) Means a small business concern—
 - (A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (B) *The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.*
 - (ii) Service disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).
 - (4) **Small business concern** means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.
 - (5) **Veteran-owned small business concern means a small business concern—**
 - (i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more veterans.
 - (6) **Women-owned business concern** means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.
 - (7) **Women-owned small business concern** means a small business concern--
 - (i) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
 - (ii) Whose management and daily business operations are controlled by one or more women.
- (b) **TAXPAYER IDENTIFICATION NUMBER (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)**
- (1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).
 - (2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.
 - (3) **TAXPAYER IDENTIFICATION NUMBER (TIN).**
 - TIN: _____
 - TIN has been applied for.
 - TIN is not required because:
 - Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.
 - Offeror is an agency or instrumentality of a foreign government;
 - Offeror is an agency or instrumentality of a Federal, state, or local government;
 - Other. State basis. _____
- (4) **TYPE OF ORGANIZATION.**
- Sole proprietorship;
 - Partnership;
 - Corporate entity (not tax-exempt);
 - Corporate entity (tax-exempt);
 - Government entity (Federal, State, or local);
 - Foreign government;
 - International organization per 26 CFR 1.6049-4;
 - Other: _____.

(5) **COMMON PARENT.**

Offeror is not owned or controlled by a common parent.

Name and TIN of common parent:

Name _____

TIN _____

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

(1) **SMALL BUSINESS CONCERN.** The offeror represents as part of its offer that it--

is

is not a small business concern.

(2) **VETERAN-OWNED SMALL BUSINESS CONCERN. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.)** The offeror represents as part of its offer that it--

is

is not a veteran-owned small business concern.

(3) **SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERN. (Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.)** The offeror represents as part of its offer that it--

is

is not a service-disabled veteran-owned small business concern.

(4) **SMALL DISADVANTAGED BUSINESS CONCERN. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.)** The offeror represents, for general statistical purposes, that it--

is

is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) **WOMEN-OWNED SMALL BUSINESS CONCERN. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.)** The offeror represents that it--

is

is not a women-owned small business concern.

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

(6) **WOMEN-OWNED BUSINESS CONCERN (OTHER THAN SMALL BUSINESS CONCERN). (Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.)** The offeror represents that it -

is

a women owned business concern.

(7) **TIE BID PRIORITY FOR LABOR SURPLUS AREA CONCERNS.** If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price.

(8) **SMALL BUSINESS SIZE FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM AND FOR THE TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.** (Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.)

(i) **(Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs)).** The offeror represents as part of its offer that it--

is

is not

an emerging small business.

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

- (A) The offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or
- (B) The offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following:)

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

(9) **(Complete only if the solicitation contains the clause at FAR 52.219-23, NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS, or FAR 52.219-25, SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM - DISADVANTAGED STATUS AND REPORTING, and the offeror desires a benefit based on its disadvantaged status.)**

(i) **GENERAL.** The offeror represents that either--

(A) It--

- is
- is not

certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It--

- has
- has not

submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) **JOINT VENTURE UNDER THE PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS.** The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(7)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:

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

- Black American
- Hispanic American
- Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

- Asian-Pacific American (persons with origin from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- Individual/concern, other than one of the preceding.

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

(i) It--

- is
- is not

a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns Maintained by the Small Business Administration, and no material change in ownership and control, principal place of ownership, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It--

- is
- is not

a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating on the joint venture. (The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.)

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

(d) CERTIFICATIONS AND REPRESENTATIONS REQUIRED TO IMPLEMENT PROVISIONS OF EXECUTIVE ORDER 11246.

(1) **PREVIOUS CONTRACTS AND COMPLIANCE.** The offeror represents that--

(i) It--

- has
- has not

participated in a previous contract or subcontract subject to the EQUAL OPPORTUNITY clause of this solicitation; and

(ii) It--

- has
- has not

filed all required compliance reports.

(2) **AFFIRMATIVE ACTION COMPLIANCE.** The offeror represents that--

(i) It--

- has developed and has on file
- has not developed and does not have on file

at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It--

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

(e) **CERTIFICATION REGARDING PAYMENTS TO INFLUENCE FEDERAL TRANSACTIONS (31 U.S.C. 1352).** (Applies only if the contract is expected to exceed \$100,000). By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) **BUY AMERICAN ACT - TRADE AGREEMENTS - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (DFARS 252.225-7006).** (Applies only if DFARS clause 252.225-7007, TRADE AGREEMENTS ACT, is incorporated by reference in this solicitation.)

(1) The offeror certifies that--

- (i) Each end product, except the end products listed in subparagraph (2) below, is a domestic end product (as defined in the BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM clause of this solicitation); and
- (ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror must identify and certify all end products that are not domestic end products.

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

(Insert line item no.)

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

_____ (Insert line item no.) _____ (Insert country of origin)

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

_____ (Insert line item no.) _____ (Insert country of origin)

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

_____ (Insert line item no.) _____ (Insert country of origin)

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

_____ (Insert line item no.) _____ (Insert country of origin)

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

_____ (Insert line item no.) _____ (Insert country of origin)

(LIST AS NECESSARY)

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

(g) **BUY AMERICAN ACT - NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) IMPLEMENTATION ACT - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (DFARS 252.225-7035). (Applies only if DFARS clause 252.225-7036, NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) IMPLEMENTATION ACT, clause is incorporated by reference in this solicitation.)**

- (1) The offeror certifies that--
- (i) Each end product, except the end products listed in subparagraph (2) below, is a domestic end product (as defined in the BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM clause of this solicitation); and
 - (ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.
- (2) The offeror must identify and certify all end products that are not domestic end products.
- (i) The offeror certifies that the following supplies qualify as "U.S.-made end products," but do not meet the definition of "**domestic end products**":

(Insert line item number)

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

(Insert line item number)

(Insert country of origin)

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

(Insert line item number)

(Insert country of origin)

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

(Insert line item number)

(Insert country of origin)

(LIST AS NECESSARY)

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

(h) **CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY FOR AWARD (EXECUTIVE ORDER 12549).**

The offeror certifies, to the best of its knowledge and belief, that--

- (1) The offeror and/or any of its principals

[] are
[] are not

presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

- (2) [] have or
[] have not,

within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

[] are or
[] are not

presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses.

- (i) **CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (EXECUTIVE ORDER 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]**

(1) List End Product.

----- (Insert end product)	----- (Insert country of origin)
----- (Insert end product)	----- (Insert country of origin)
----- (Insert end product)	----- (Insert country of origin)
----- (Insert end product)	----- (Insert country of origin)
----- (Insert end product)	----- (Insert country of origin)

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

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

(FAR 52.212-3/Alts I/III)

DFARS 252.212-7000 -- 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 which 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.

(c) *Representation of Extent of Transportation by Sea.* (This representation does not apply to solicitations for the direct purchase of ocean transportation services).

- (1) The Offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term “supplies” is defined in the Transportation of Supplies by Sea clause of this solicitation.

- (2) Representation. The Offeror represents that it—
- _____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.
- _____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.
- (3) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense Federal Acquisition Regulation Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.