

Date: June 27, 2002

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SUBJECT: FMS JP8 Supplemental Solicitation SP0600-01-R-0144-0002

1. This is supplemental solicitation SP0600-01-R-0144-0002 for purchase of JP8, FOB origin East/Gulf Coast port under the FMS Israel Program. This solicitation incorporates the terms and conditions of solicitation SP0600-01-R-0144 (FMS Israel) issued September 20, 2001 and Amendment 0001, with the exception of clause deletions, modifications and additions reflected on pages 6-16 of this supplemental solicitation. If you need a copy of SP0600-01-R-0144, please visit our web site at <http://www.desc.dla.mil>, click on "Doing Business With DESC," "Solicitations," "Bulk Fuels."

2. **B14.03 SUPPLIES TO BE OFFERED (DOMESTIC BULK) (DESC MAY 1997)** is amended as follows:

Item	Product/Specification	Estimated Quantity (USG)
0401	Turbine Fuel, Aviation, JP8 NSN: 9130-01-031-5816 Purchase Program No: 1.1m	10,250,000

NOTES:

- (1) Method of Delivery – TK – Tanker.
- (2) The jet fuel shall conform to the requirements of the latest revision of MIL-DTL-83133E.
- (3) Deliveries are to be made FOB origin at an East Coast or Gulf Coast port to be determined at the time of contract award.
- (4) The following additives shall not be added to the product:
 - (a) Metal Deactivator
 - (b) Static Dissipation Additive
 - (c) Corrosion Inhibitor
 - (d) Fuel System Icing Inhibitor (FSII)
- (5) The minimum vessel draft will be 36 feet plus 2 feet for safety allowance.
- (6) Load port must be capable of handling vessel lengths (LOA) up to 680 feet accessible for commercial vessels.
- (7) DESC anticipates one lift of approximately 250,000 BBLS.
- (8) Evaluation of offers will be in accordance with Clause M24.03-1, EVALUATION OF OFFERS INVOLVING F.O.B. TANKER LOADING (FMS ISRAEL) (DESC NOV 2000).

- (9) **Antioxidant** of type listed in the abovementioned specification, shall be added to the fuel, at a concentration of 17.0-24.0 mg/L, regardless of the process used. The contractor shall state the type and concentration of the antioxidant used.
- (10) The jet fuel shall be sweetened by any method, except copper based processes.
- (11) The fuel supplied under this agreement shall be supplied within one (1) month of its manufacture.
- (12) The Contractor shall submit to the GOI/MOD Mission a typical full laboratory analysis for its product prior to the first shipment as early as possible.
- (13) The fuel shall be transferred from the refinery to the seashore storage facilities, and to the ocean tanker, by pipeline intended for carrying jet fuel only. If such a pipeline is unavailable, the intended pipeline shall be emptied and flushed with kerosene prior to transferring the cargo through it.
- (14) The jet fuel quantity produced for each shipment to be transported by an ocean tanker shall be supplied from a single refinery, (no more than one jet fuel producer for each shipment).
- (15) The fuel in each seashore storage tank shall conform to the requirements of this specification. Each shipment of fuel furnished under this specification shall be inspected separately by a U.S. representative accompanied by a GOI/MOD representative. At time of inspection, the finished fuel shall be visually clear and bright at ambient temperature.
- (16) Prior to loading the jet fuel on the ocean tanker, the ship's cargo cells shall be clean in accordance with standard U.S. Department of Defense Requirements for sea shipment of jet fuel, as set forth in MIL-HDBK-291(SH), "Cargo Tank Cleaning". The exact cleaning method shall be determined by the last cargo carried by the ocean tanker.
- (17) Ocean Tanker cleanliness approval shall be conducted by a QAR by entering each cargo cell of the ocean tanker after it has been cleaned in accordance with standard U.S. Department of Defense Requirements for sea shipment of Jet Fuel as a set forth in MIL-HDBK-291(SH). "Cargo Tank Cleaning".
- (18) The GOI/MOD does not have any sourcing requirements for the crude oil used to make the Jet Fuel; the refining process will take place close to the load port on the East Coast or Gulf Coast port of the United States.
- (19) Contract period of performance will be the date of award until October 31, 2002.
- (20) DESC anticipates ten (10) lifts of approximately 252,000 BBLs.
- (21) The Transfer of ownership of the product will occur at the flange, i.e., the connection of shoreline to vessel. The U.S. Government is responsible for acceptance of the product. Any quality disputes will be decided by a composite sample at dock header to determine source of contamination.
- (22) The refinery must provide what is considered a safe berth in a safe load port. The port must be accessible to commercial vessels, i.e., not limited to military vessels. The load port and berth must allow for direct loading of the product by dedicated pipeline. The GOI/MOD is not willing to accept a loading procedure that relies on transfers via barge.
- (23) The U.S. Government representative is responsible for quality assurance of the product and shall be the contractor's sole point of contact. The GOI/MOD representative is restricted to an observer status and may accompany the U.S. Government representative shall govern.

- (24) The U.S. Government representative shall inspect and approve the ocean tanker before its loading. The fuel shall not be transferred onto ocean tanker before its loading. The fuel shall not be transferred onto the ocean tanker without approval by the U.S. Government representative.
- (25) Quality control procedures for each shipment of fuel furnished under this document shall be monitored by a U.S. Government representative accompanied by a GOI/MOD representative.
- (26) Quality control procedures for each shipment of fuel furnished under this document shall be in accordance with the standard **DESC's** procedures **Clause E1 CONTRACTOR INSPECTION RESPONSIBILITIES-DESC** in its latest revision including Ocean Tanker cleanliness approval as specified in Note 8 below.
- (27) Results of all quality control tests performed by the refinery before and after the transfer of the fuel to seashore storage tanks and during the loading of the ocean tanker, shall be made available to the GOI/MOD mission within 48 hours after the cargo has been released. A copy of all laboratory test results documents shall be sent via fax to IDF/POI and Devices Field, Fax Number (972) 3-5307043, within 48 hours after the cargo has been released.
- (28) The U. S. Government shall perform the same tanker inspection on furnished vessels as it performs on Military Sealift Command (MSC) tankers under Defense Energy Support Center (DESC) FOB origin contracts. In the event the GOI/MOD representative chooses to witness the inspection, and there is a dispute between the U.S. Government representative and the GOI/MOD representative as to the suitability of the tanker to load the cargo, the determination of the U.S. Government representative shall govern. There shall be no liability accruing to DESC, the defense employees, agents, successors, and assigns, as a result of the inspection including, but not limited to, liability arising from any action or omission of the U.S. Government representative to performing the inspection.
- (29) The ocean tanker shall be able to transport different kinds of petroleum fuels (jet fuel, diesel gas-oil) **at the same time**, without any risk of fuel mixtures at time of transportation, loading and unloading of the fuel.
- (30) A Government of Israel/Ministry of Defense representative may accompany the U.S. Government Quality Assurance Representative in the product inspection procedures as an observer only.
- (31) The contractor shall provide the QAR (DESC representative) with adequate facilities and professional personnel necessary to perform the tests and for the sampling procedures, at its own expense.

3. In accordance with clause F1.25, DELIVERY AND ORDERING PERIODS (DESC JUL 1995), the ordering and delivery periods will be:

- (a) Ordering Period Begins: **Date of Award** and Ends: **October 31, 2002**
- (b) Delivery Period Begins: **October 1, 2002** and Ends: **October 31, 2002**, plus the 30 day carry-over period.

4. The following will be incorporated into paragraph (g) **Table** of Clause B19.33, ECONOMIC PRICE ADJUSTMENT – PUBLISHED MARKET PRICE (DOMESTIC BULK) (DESC MAR 1997):

Name of Publication	Heading/Location Under Which Market Indicator is published	Base Market Price As of <u>June 25, 2002</u> (Exclude All Taxes) (See Note(s) Below)
Platt's Oilgram Price Report (U.S. Edition)	JET KERO 54 US Gulf Coast Waterborne	\$0. 664350

NOTE: Buyer shall include a note or notes in the Table, which will identify the specific publication(s), method(s), and time period(s) for calculating the market price(s), as exemplified below:

For Platt's Oilgram: "NOTE: The East/Gulf Coast adjusting market price will be firm for weekly periods and is defined as the average of the applicable daily Platt's spot assessment quotations effective for the prior week. The simple average of the daily average highs and lows of the prices effective Monday through Friday (excluding any days prices are not published) shall be the adjusting market price effective for the following Tuesday through Monday."

5. No hard copy of this solicitation will be issued however, the following information must be provided with your initial offer:

Offer Schedule

Item	Product	Quantity (USG)	Mode	(O) Orig	Shipping/FOB Point	Base Unit Price (USD/USG) Eff. Jun 25, 02
0401	JP8					

a. State the minimum/maximum quantities for award by shipping point:

Product	Mode	Shipping Point	Minimum Qty (USG)	Maximum Qty (USG)
JP8				

b. State minimum/maximum quantities (parcel size) for each individual lift:

Product	Mode	Shipping Point	Minimum Qty (BBLs)	Maximum Qty. (BBLs)
JP8				

c. Please provide the Maximum Tanker Size your facility can handle.

Cargo Capacity: _____

Beam: _____

d. Please provide the Maximum Shipping Rate in Barrels Per Hour.

Tanker: _____

e. Please provide any vetting criteria.

6. Acceptance of the terms and conditions of RFP SP0600-01-R-0144 and Amendment 0001 is required and must be stated in the offer.

7. If you have submitted an offer under RFP SP0600-01-R-0144 and would like to apply those certifications and representations to this supplemental, please confirm in writing that the certifications and representations of the pending offer are in effect for your offer under SP0600-01-R-0144-0001. If you have not submitted an offer under RFP SP0600-01-R-0144, please complete and submit with your offer the 'Offeror Submission Package' provided under RFP SP0600-01-R-0144.

8. Closing date and time for this solicitation is August 1, 2002 at 1:00 p.m. (1300 hours), local time, Ft. Belvoir, Virginia, USA.

9. Offers received after the date and time specified above will be considered late in accordance with paragraph (f) to Clause L2.05-2 INSTRUCTIONS TO OFFERORS – COMMERCIAL ITEMS (BULK) (DESC SEP 2000).

10. The following tentative negotiation schedule is provided for planning purposes. Note this schedule is subject to change at any time:

August 1, 2002	Initial Offer Closing Date (1:00 p.m.)
August 15, 2002	NEGOTIATIONS OPEN
August 22, 2002	NEGOTIATIONS CLOSE

11. The facsimile transmission number is (703) 767-8506. If for any reason you experience any difficulties with this number, or if you have questions concerning this solicitation please contact Tammie L. Coll at telephone (703) 767-9312 or by e-mail at tcoll@desc.dla.mil.

JOY E. MULLORI, Overseas Contracting Officer, Bulk Fuels

Updated Clauses

Commercial Item Clauses

Section I

1. Revise pages 6-7, Clause:

11.03-2 CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (BULK) (DESC DEC 2001)

(a) **INSPECTION/ACCEPTANCE.** See Addendum.

(b) **ASSIGNMENT.** The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes a payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its right to receive payment under this contract.

(c) **CHANGES.** See Addendum.

(d) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference. Also see Addendum.

(f) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) **INVOICE.** The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number, and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the item delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on

Government bill of lading;

- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

(h) **PATENT INDEMNITY.** The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) **PAYMENT.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Prompt payment discount will be applied to the total amount of each invoice. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date the invoice was received. For the purposes of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the date on which an EFT was made. Also see Addendum.

(j) **RISK OF LOSS.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon--

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b.

destination.

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

(l) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE.** The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work

hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purposes. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) **TERMINATION FOR CAUSE.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **TITLE.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) **WARRANTY.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

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

(q) **OTHER COMPLIANCES.** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations applicable to its performance under this contract.

(r) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti- Kickback Act of 1986, 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistle blower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services;
- (2) The Assignments; Disputes, Payments; Invoices; Other Compliances; and Compliance with Laws Unique to Government Contracts paragraphs of this clause;
- (3) The clause at 52.212-5;
- (4) Addenda to this solicitation or contract, including any license agreements for computer software;
- (5) Solicitation provisions if this is a solicitation;
- (6) Other paragraphs of this clause;
- (7) Standard Form 1449;
- (8) Other documents, exhibits, and attachments; and
- (9) The specification.

(FAR 52.212-4, **tailored**/DESC 52.212-9F40)

2. Revise pages 7-10, Clause:

11.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (DEC 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:

[Contracting Officer must check as appropriate.]

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

[] 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999).

- 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).
- 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994). Alt I. Alt II.
- 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637(d)(2) and (3)).
- 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).
- 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).
- 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer). Alt I.
- 52.219-25, Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- 52.219-26, Small Disadvantaged Business Participation Program - Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- 52.222-19, Child Labor – Cooperation with Authorities and Remedies (E.O. 13126).
- 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- 52.222-26, Equal Opportunity (E.O. 11246).
- 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
- 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).
- 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
- 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).** **Alt I (42 U.S.C. 6962(i)(2)(C)).**
- 52.225-1, Buy American Act - Balance of Payments Program - Supplies (41.U.S.C. 10a - 10d).
- 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). Alt I. Alt II.
- 52.225-5, Trade Agreements (19 U.S.C 2501, et seq., 19 U.S.C. 3301 note).
- 52.225-13, Restriction on Certain Foreign Purchases (E.O.'s 12722, 12724, 13059, 13067; 13121, and 13129).
- 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).
- 52.225-16, Sanctioned European Union Country Services (E.O. 12849).
- 52.232-33, Payment by Electronic Funds Transfer -- Central Contractor Registration (31 U.S.C. 3332).
- 52.232-34, Payment by Electronic Funds Transfer -- Other than Central Contractor Registration (31 U.S.C. 3332).
- 52.232-36, Payment by Third Party (31 U.S.C. 3332).

52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).

52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241). Alt I.

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

[Contracting Officer must check as appropriate.]

52.222-41, Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

Subcontracts for certain commercial services may be exempt from coverage if they meet the criteria in FAR 22.1103-4(c) or (d) (see DoD Class Deviation number 2000-O0006).

52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).

52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).

52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).

52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 et seq.).

(d) **COMPTROLLER GENERAL EXAMINATION OF RECORD.** The Contractor 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) and (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by any addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components:

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

52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (38 U.S.C. 4212); and

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

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

(FAR 52.212-5)

3. Revise pages 10–11, Clause:

11.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (NOV 2001)

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

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

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

- 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
- 252.206-7000 Domestic Source Restriction (DEC 1991) (10 U.S.C. 2304).
- 252.219-7003 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).
- 252.219-7004 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).
- 252.225-7001 Buy American Act and Balance of Payments Program (MAR 1998) (41 U.S.C. 10a-10d, E.O. 10582).
- 252.225-7007 Buy American Act -Trade Agreements Act - Balance of Payments Program (SEP 2001) (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 (AUG 2000) (10 U.S.C. 2241 note).
- 252.225-7014 Preference for Domestic Specialty Metals (MAR 1998) (10 U.S.C. 2241 note).
- 252.225-7015 Preference for Domestic Hand or Measuring Tools (DEC 1991) (10 U.S.C. 2241 note).
- 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (DEC 2000); (Alternate I (DEC 2000)) (Section 8064 of Pub. L. 106-259).
- 252.225-7021 Trade Agreements (SEP 2001) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
- 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (MAR 1998) (22 U.S.C. 2779).
- 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (DEC 1991) (22 U.S.C. 2755).
- 252.225-7029 Preference for United States or Canadian Air Circuit Breakers (AUG 1998) (10 U.S.C. 2534(a)93).
- 252.225-7036 Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program (MAR 1998); (Alternate I (SEP 1999)) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
- 252.227-7015 Technical Data-- Commercial Items (NOV 1995) (10 U.S.C. 2320).
- 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
- 252.243-7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
- 252.247-7023 Transportation of Supplies by Sea (MAR 2000); (Alternate I (MAR 2000)); (Alternate II (MAR 2000)) (10 U.S.C. 2631).
- 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

- [] 252.225-7014 Preference for Domestic Specialty Metals, Alternate I (MAR 1998) (10 U.S.C. 2241 note).
- [] 252.247-7023 Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).
- [] 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(DFARS 252.212-7001)

4. Add Clause:

112.02 CHOICE OF LAW (OVERSEAS) (JUN 1997)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of Federal Claims for the hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(DFARS 252.233-7001)

Addendum Package

Segment I

Section H

5. Revise pages A-34 – A-36, Clause:

H19.02 REPORTING REQUIREMENTS FOR SHIPMENTS (DESC MAR 2002)

- (a) Under Data Item Description (DID) Number DI-MGMT-80320 and AMSC Number S4068, the Contractor shall provide the required transaction data shown under (d) below.
- (b) The Contractor agrees to submit, within 72 hours of delivery, the shipping data specified in (d) below for all f.o.b. origin shipments requiring transportation by pipeline, tank truck, or tank car. In addition to f.o.b. origin shipments, the Contractor also agrees to submit such information on all other shipments to areas under the responsibility of Defense Energy Support Center (DESC) West. Data specified shall be submitted to the appropriate DESC office listed below:

AREA OF LIFT (SHIPMENT)

DESC ADDRESS AND TELEPHONE NUMBER

Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Bolivia, Caribbean Area, Colombia, El Salvador, Honduras, Mexico, Puerto Rico, and West Indies

Defense Energy Support Center - Houston
 2320 La Branch Street, Suite 1005
 Houston, TX 77004-1091
 TELEPHONE: 713-718-3883
 DSN: 940-1373
 FAX: 713-718-3891/3899

California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming

Defense Energy Support Center - Los Angeles
 3171 N. Gaffey Street
 San Pedro, CA 90731-1099
 TELEPHONE: 310-900-6960
 FAX: 310-900-6976

Alaska and Aleutians

Defense Energy Support Center - Alaska
 Elmendorf AFB, AK 99506-5000
 TELEPHONE: 907-552-3760/2857/4650
 TWX: 907-753-0517

(c) OVERSEAS AREA OF RESPONSIBILITY (INCLUDING ALASKA AND HAWAII):

<u>AREA</u>	<u>FOOTNOTE</u>	<u>AREA</u>	<u>FOOTNOTE</u>
Afghanistan	2	Marianas	3
Africa (except countries assigned to DFR Middle East)	1	Mediterranean Sea countries	1
Alaska	3	New Zealand	3
Australia	3	Oman	2
Bahrain	2	Pakistan	2
Burma	3	Philippines	3
Djibouti	2	Qatar	2
East Indies	3	Ryukyu Islands	3
Egypt	2	Saudi Arabia	2
Ethiopia	2	Somalia	2
Europe (continental)	1	South Pacific Islands	3
Hawaii	3	Sri Lanka	3
Indian Ocean countries	3	Sudan	2
Japan	3	Taiwan	2
Jordan	2	Thailand	3
Kenya	2	Turkey	1
Korea	3	United Arab Emirates	2
Kuwait	2	United Kingdom	1
Malaya	3	Yemen	2

FOOTNOTES:

1. DESC Europe

American Arms Hotel
August STR 6 Box 224
65189 Wiesbaden, Germany

Phone:

COM 49-611-380-7666

FAX 011 49-611-380-7412

2. DESC Middle East

PSC 451, Box 386
FPO AE 09834-0386

Phone: Awali, Bahrain

DSN (318) 439-4650

COM 011 973-724650

FAX 011 973-724670

3. DESC Pacific

Box 64110
Camp H M Smith HI 96861-4110

Phone: COM (808) 477-6692

FAX (808) 477-5710

(d) In order of preference, shipment data may be submitted via facsimile (FAX), mail, telephone, or TWX/TELEX.

(1) If the FAX method is used, the Contractor shall transmit one copy of the signed DD Form 250, Material Inspection and Receiving Report.

(2) If the FAX method is NOT used, AND the normal mailing time DOES NOT EXCEED 72 hours, the Contractor may submit one copy of the signed DD Form 250 by mail.

(3) If the FAX method is NOT used and the normal mailing time EXCEEDS 72 hours, the Contractor shall extract the data specified below from the applicable DD Form 250 for submission via telephone or TWX/TELEX. Submission of data via these methods shall be confirmed by a signed copy of the DD Form 250, received by the cognizant DESC office within 14 days of the f.o.b. origin delivery.

DATA**DD FORM 250 BLOCK NO./DATA**

A. National stock number	16 Enter as cited
B. Quantity	17 Enter as cited
C. Contract number	1 Enter as cited
D. Contract line item number	15 Enter as cited
E. Shipment number/SUPAAC	2 Enter as cited
F. Day commenced loading/pumping	16 Enter for pipeline, if cited
G. Bill of lading (B/L) number	4 Enter as cited, for f.o.b. origin shipments only
H. Delivery order number	1 Enter as cited
I. Final shipment indicator	2 Enter, if cited, after "Shipment No."
J. Product Shipment Day	3 Enter as cited, for f.o.b. origin shipments only
K. Product receipt day	22 Enter as cited, for other than f.o.b. origin shipments
L. Mode of shipment	4 Enter as cited

(4) For those Contractors that are authorized Alternate Release Procedures on f.o.b. origin shipments, the unsigned DD Form 250 shall be sent to the applicable DESC office in lieu of the signed copy referenced in (1), (2), and (3) above.
(DESC 52.242-9FQ1)

Section I

THIS CLAUSE DOES NOT APPLY TO FOREIGN VENDORS PERFORMING OUTSIDE THE UNITED STATES.

6. Revise page A-37, Clause:

11.07 REQUIRED CENTRAL CONTRACTOR REGISTRATION (NOV 2001)

(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.ccr.gov>.

(DFARS 252.204-7004)

Segment II

Section I

7. Revise pages A-47 – A-48, Clause:

128.02-1 FEDERAL, STATE, AND LOCAL TAXES/FEES EXCLUDED FROM CONTRACT PRICE (DESC MAR 2002)

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

(1) **GASOLINE/GASOHOL.** The FET should be included on the Contractor's invoice as a separate item. The following FET will apply:

<u>FET PER GALLON</u>	<u>GASOLINE/GASOHOL</u>	<u>PERCENTAGE OF ALCOHOL</u>
\$0.184	Gasoline	
\$0.15379	5.7% Gasohol	At least 5.59%, but less than 7.55%
\$0.14319	7.7% Gasohol	At least 7.55%, but less than 9.8%
\$0.131	10% Gasohol	At least 9.8%, but less than 10%

(2) **AVIATION GASOLINE.** Do not include the FET of \$0.194 per gallon on the Contractor's invoice since all fuel is intended for exempt uses.

(3) **RESIDUAL FUEL OIL (NUMBERS 5 AND 6).** There is no FET on residual fuel oil.

(4) **DIESEL FUEL.**

(i) **UNDYED DIESEL FUEL.** Include the FET of \$0.244 per gallon as a separate item on the Contractor's invoice.

(ii) **DYED DIESEL FUEL.** There is no FET on dyed diesel fuel.

(iii) **F76.** There is no FET on F76. F76 is excluded from the definition of diesel fuel under Internal Revenue Service (IRS) Regulation 26 CFR Section 48.4081-1.

(5) **JET FUEL.** Do not include the FET of \$0.219 per gallon on the Contractor's invoice since all fuel is intended for exempt uses. **A Contractor not permitted by IRS regulations to sell fuel tax free should state that in its offer.**

(b) **STATE AND LOCAL TAXES EXCLUDED.** All contract prices exclude State and local excise taxes on fuels (including gasoline taxes, motor fuel taxes, diesel fuel taxes, special fuel taxes, aircraft fuel taxes, jet fuel taxes, heating oil taxes, kerosene taxes, lubricating oil taxes, and naphtha, solvent, benzol, and benzine taxes). Contractors should include any applicable taxes (for which no exemption applies) as a separate item on the Contractor's invoice in accordance with the terms of this contract.

(c) **CALIFORNIA SALES AND USE TAX.** All contract prices exclude the California State Sales and Use Tax. Sales to the United States are exempt from these taxes.

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

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

(DESC 52.229-9F20)

8. Revise page A-48, Clause:

128.03-1 TAX EXEMPTION CERTIFICATES (DESC MAR 2002)

(a) **FEDERAL EXCISE TAXES.** Contractors shall forward requests for tax exemption certificates covering any Federal Excise Tax (FET) excluded from the contract price pursuant to the terms of this contract with Contractor's invoices or as otherwise indicated by the Contracting Officer or Ordering Officer.

(b) **STATE AND LOCAL TAXES.** Contractors shall forward requests for tax exemption certificates covering any State or local tax excluded from the contract price pursuant to the terms of this contract with Contractor's invoices or as otherwise indicated by the Contracting Officer or Ordering Officer.

(c) **GOVERNMENT OPTION TO DEDUCT TAX AND FURNISH TAX EXEMPTION CERTIFICATES.** If this contract provides that the Contractor should invoice for FET, the supplies to be furnished at the time of contract execution are generally intended for a taxable purpose. However, where the invoice for any item includes FET and tax exemption can be claimed, the applicable tax may be deducted by the Government from the order or the invoice and a tax exemption certificate furnished in lieu of paying the tax. The Contracting Officer or Ordering Officer will issue these tax exemption certificates.

(DESC 52.229-9F40)

Section L

9. Revise page A-49, Clause:

L96 ADMINISTRATION OF THE SMALL BUSINESS SUBCONTRACTING PROGRAM (DESC FEB 2002)

The SMALL BUSINESS SUBCONTRACTING PLAN clause contained in any contract awarded under this solicitation will be administered by the cognizant Defense Contract Management Office.

(DESC 52.242-9F15)

Section M

10. Revise page A-43, Clause:

M2.11 EVALUATION – COMMERCIAL ITEMS, paragraph (a) to read:

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to this solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

The Government will award a contract or group of contracts which will result in the lowest overall cost to the Government for the procurement as a whole in accordance with the other evaluation clauses contained in the solicitation.

Offeror Submission Package

Segment I

Section K

11. Revise page O-21 - O-22, Clause:

K1.06 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 1999)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “**DUNS**” followed by the DUNS number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at **1-800-333-0505**. The offeror should be prepared to provide the following information:

- (1) Company name;
- (2) Company address;
- (3) Company telephone number;
- (4) Line of business;
- (5) Chief executive officer/key manager;
- (6) Date the company was started;
- (7) Number of people employed by the company; and
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an email to Dun and Bradstreet at globalinfo@mail.dnb.com.

(FAR 52.204-6)

12. Add Clause:

K300.100 RESTRICTION ON DISCLOSURE OF PRICING INFORMATION (DESC JUN 2002)

The Government's normal post-award procedures and practices involve the release of successful and unsuccessful unit prices after the conclusion of each procurement to interested parties. Such information is normally released pursuant to the Freedom of Information Act in formats that include abstracts of offers received, bid evaluation model reports, formal notices that are sent to unsuccessful offerors, or other summary formats. In addition, updated prices are publicly posted at the DESC website throughout the delivery period of some contracts.

Prior approval for release of such information is required. Therefore, offerors must advise of any objections to the future release of unit pricing information submitted as part of its initial or final proposals.

In the event offeror objects to the release of unit prices, the rationale for the objection must be included in the initial offer. The Government will determine if it will honor the objection or if it will dispute the objection. Such issues will be resolved during discussions.

___ **Offeror AGREES to the release of unit prices.**

___ **Offeror DOES NOT AGREE to the release of unit prices.**

Section L

13. Delete Clause **L2.05 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (AUG 2000)** and use **L2.05-2** in lieu of; page O-28.

14. Attachments:

Please complete and submit a Subcontracting Plan in accordance with **Clause 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN**, (Attachments 1 and 2 of this document).