

INFORMATION TO OFFERORS OR QUOTERS		<i>Form Approved</i>
SECTION A - COVER SHEET		OMB No. 9000-0002 Expires Oct 31, 2004
<p>The public reporting burden for this collection of information is estimated to average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate of Information Operations and Reports (9000-0002), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person would be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p> <p>PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE ADDRESS IN BLOCK 4 BELOW.</p>		
1. SOLICITATION NUMBER SP0600-03-R-0033	2. (X one) <input type="checkbox"/> a. INVITATION FOR BID (IFB) <input checked="" type="checkbox"/> b. REQUEST FOR PROPOSAL (RFP) <input type="checkbox"/> c. REQUEST FOR QUOTATION (RFQ)	3. DATE/TIME RESPONSE DUE JANUARY 29, 2003, 1:00 P.M. (1300 HOURS), LOCAL TIME, FORT BELVOIR, VIRGINIA, USA
INSTRUCTIONS		
<p>NOTE: The provision entitled "Required Central Contractor Registration" applies to most solicitations.</p> <p>1. If you are not submitting a response, complete the information in Blocks 9 through 11 and return to the issuing office in Block 4 unless a different return address is indicated in Block 7.</p> <p>2. Offerors or quoters must include full, accurate, and complete information in their responses as required by this solicitation (including attachments). "Fill-ins" are provided on Standard Form 18, Standard Form 33, and other solicitation documents. Examine the entire solicitation carefully. The penalty for making false statements is prescribed in 18 U.S.C. 1001.</p> <p>3. Offerors or quoters must plainly mark their responses with the Solicitation Number and the date and local time for bid opening or receipt of proposals that is in the solicitation document.</p> <p>4. Information regarding the timeliness of response is addressed in the provision of this solicitation entitled "Late Submissions, Modifications, and Withdrawals of Bids" or "Instructions to Offerors - Competitive Acquisition."</p>		
4. ISSUING OFFICE <i>(Complete mailing address, including Zip Code)</i> ATTN DESC-BZD RM 2954 DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J KINGMAN RD SUITE 4950 FORT BELVOIR VA 22060-6222 FAX (703) 767-8506	5. ITEMS TO BE PURCHASED <i>(Brief description)</i> ATLANTIC/EUROPE/MEDITERRANEAN JP5 - 75,140,000 USG JP8 - 492,070,000 USG F76 - 117,900,000 USG DELIVERY PERIOD JULY 01, 2003 - JUNE 30, 2004, PLUS A 30-DAY CARRY-OVER PERIOD	
6. PROCUREMENT INFORMATION <i>(X and complete as applicable)</i>		
<input checked="" type="checkbox"/> a. THIS PROCUREMENT IS UNRESTRICTED		
<input type="checkbox"/> b. THIS PROCUREMENT IS _____% SET-ASIDE FOR SMALL BUSINESS. THE APPLICABLE NAICS CODE IS:		
<input type="checkbox"/> c. THIS PROCUREMENT IS _____% SET-ASIDE FOR HUB ZONE CONCERNS. THE APPLICABLE NAICS CODE IS:		
<input type="checkbox"/> d. THIS PROCUREMENT IS RESTRICTED TO FIRMS ELIGIBLE UNDER SECTION 8(a) OF THE SMALL BUSINESS ACT.		
7. ADDITIONAL INFORMATION		
a. Send offers to this address:		Attn: DESC-CPC Bid Custodian Rm 3729 Defense Energy Support Center 8725 John J. Kingman Rd., Suite 4950 Fort Belvoir, VA 22060-6222 Fax # (703) 767-8506 Verification # (703) 767-7367
b. Sealed offers in original and <u>1</u> copy for furnishing the supplies or services in the Schedule will be received at the place specified in Item a. above. If handcarried, the depository is located in Rm 3729 at DESC.		See DD Form 1707, Block 7 (Additional Information Continued)
8. POINT OF CONTACT FOR INFORMATION		
a. NAME <i>(Last, First, Middle Initial)</i> RALPH, ERIN S.	b. ADDRESS <i>(include Zip Code)</i> ATTN: DESC-BZD RM 2954 DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J KINGMAN RD., SUITE 4950 FORT BELVOIR, VA 22060-6222	
c. TELEPHONE NUMBER <i>(Include Area Code and Extension)</i> (703) 767-9311	d. E-MAIL ADDRESS Erin.Ralph@dla.mil	
9. REASONS FOR NO RESPONSE <i>(X all that apply)</i>		
<input type="checkbox"/> a. CANNOT COMPLY WITH SPECIFICATIONS		
<input type="checkbox"/> b. UNABLE TO IDENTIFY THE ITEM (S)		
<input type="checkbox"/> c. CANNOT MEET DELIVERY REQUIREMENT		
<input type="checkbox"/> d. DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED		
<input type="checkbox"/> e. OTHER <i>(Specify)</i>		
10. MAILING LIST INFORMATION <i>(X one)</i>		
WE <input type="checkbox"/> DO <input type="checkbox"/> DO NOT DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE INVOLVED.		
11a. COMPANY NAME	b. ADDRESS <i>(include Zip Code)</i>	
c. ACTION OFFICER		
(1) TYPED OR PRINTED NAME <i>(Last, First, Middle Initial)</i>		(2) TITLE
(3) SIGNATURE		(4) DATE SIGNED <i>(YYYYMMDD)</i>

FOLD

FOLD

FROM

AFFIX
STAMP
HERE

SOLICITATION NUMBER SP0600-03-R-0033	
DATE JANUARY 29, 2003	LOCAL TIME 1:00 P.M.

TO

ATTN: DESC-CPC BID CUSTODIAN RM 3729
DEFENSE ENERGY SUPPORT CENTER
8725 JOHN J KINGMAN RD SUITE 4950
FORT BELVOIR VA 22060-6222
USA

- c. For questions concerning Small Business matters, contact Ms. Kathy Williams at (703) 767-9400 or 1-800-523-2601.
- d. Standard Form (SF) 1449 and Segment I of this solicitation apply to both domestic and foreign concerns. Segment II applies to both domestic and foreign concerns to the extent that work is performed under any resultant contract within the United States or outside the United States by employees recruited within the United States.
- e. Offerors are advised to please complete and submit as your offer, the accompanying Offeror Submission Package. Certification and Representation clauses should be answered in either the affirmative or negative, as applicable. If a clause does not apply, LEAVE BLANK. (DO NOT state "N/A - Not Applicable.") Please initial all changes and corrections. Offerors must acknowledge receipt and acceptance of all amendments to this solicitation.
- f. NOTICE: Any contract awarded to a contractor who, at the time of award, was suspended, debarred, or ineligible for receipt of contracts with Government agencies, or was in receipt of a notice of proposed debarment from any Government agency, is voidable at the option of the Government.
- g. Offerors are advised that the inclusion of any provision which requires sequential evaluation of individual offers; i.e., offers requiring DESC to obtain more than one computer evaluation in order to evaluate that offer, may result in rejection of the offer. Offerors are encouraged to discuss the intended changes in proposals with DESC in order to identify potentially unacceptable proposals and to determine possible alternatives.
- h. For emergency situations during non-duty hours, the number to contact is (703) 767-8420 at the DESC Operations Center, Contingency Plans and Operations Division (DESC-DL).
- i. In order to be retained on the Atlantic/Europe/Mediterranean (AEM) bidder's mailing list, you must either respond to the solicitation or return the DD Form 1707 with the appropriate information in Blocks 9, 10, and 11. Failure to do so will result in deletion of your company from the bidder's mailing list. This includes all potential offerors and/or those receiving it for informational purposes only.
- j. Clause B19.34 ECONOMIC PRICE ADJUSTMENT (OVERSEAS BULK) - Initial offer price and base reference price date is December 11, 2002. For initial offers, assume date of lift to be December 11, 2002. The final proposed revision reference price effective date will be the same as the reference price established for initial offers.
- k. The "Standardized Format" as referenced in Clauses C16.01 TURBINE FUEL, AVIATION (JP4/JP5) (BULK) and C16.64-1 TURBINE FUEL, AVIATION (JP8) (ATL/EUR/MED) can be found in Section J, Attachment 2, STANDARDIZED FORMAT FOR USE IN THE PREPARATION OF AVIATION TURBINE FUEL TEST REPORT to this RFP.
- l. Clause G9.07 ELECTRONIC TRANSFER OF FUNDS PAYMENTS - CORPORATE TRADE EXCHANGE - Offerors may elect payment by electronic transfer of funds through the Corporate Trade Payment (CTX) system. Offerors are advised to verify their financial institution's (FI) participation in the CTX system, and the acceptability of their procedures. Firms receiving an award under this solicitation must ensure that the appropriate arrangements are made with their FI prior to submission of the first invoice.
- m. **IMPORTANT:** Clause I86.12 DELIVERY-ORDER LIMITATIONS - SCOPE OF CONTRACT (BULK) provides the minimum and maximum quantities under a resultant contract. Please direct ATTENTION to paragraph (d) of this clause regarding the final order placed calling for delivery into, or by means of tanker, barge, or pipeline. The additional quantity for this final order (50,000 BBLs) now applies to each product offered from each refinery source. This additional quantity cannot exceed the monthly quantity as defined in Clause F1.25 DELIVERY AND ORDERING PERIODS.
- n. Please note that the offeror agrees to submit prior to award a Material Safety Data Sheet (MSDS) in accordance with Clause I190.04 MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS.
- o. Section J, Attachment 1, Central Contractor Registration (CCR) and Cage Code Instructions. New procedures are explained in this attachment to obtain a Cage Code and to apply for the Central Contractor Registration, which are required to do business with the U.S. Department of Defense (DoD). Also see DESC home page www.desc.dla.mil. Doing Business with DESC.
- p. Clause K28 REFINERY INFORMATION (BULK) - Please provide telex/facsimile/telephone numbers to assist ordering officers in the placement of orders.
- q. Pursuant to Clause L2.11-2 FACSIMILE PROPOSALS, offers submitted by facsimile must constitute an offeror's hard copy. It must contain all required representations and certifications as well as all required signatures.
- r. The following tentative negotiation schedule is provided for planning purposes. Note this schedule is subject to change at any time:

January 29, 2003	Initial Offer Closing Date (1:00 p.m.)
February 19, 2003	Negotiations Open
March 25, 2003	Negotiations Close

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30</i>				1. REQUISITION NUMBER SC0600-03-0002/0003/0004		PAGE 4 OF 11		
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER		5. SOLICITATION NUMBER SP0600-03-R-0033		6. SOLICITATION ISSUE DATE December 20, 2002	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME E. RALPH/DESC-BZD			b. TELEPHONE NUMBER (<i>no collect calls</i>) (703) 767-9311		8. OFFER DUE DATE/ LOCAL TIME 29 Jan 03 @ 1:00PM	
9. ISSUED BY ATTN DESC BZD RM 2954 DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN RD, SUITE 4950 FORT BELVOIR, VA 22060-6222 SEE BLOCK 6 OF THE DD FORM 1707 FOR ADDRESS TO SEND OFFERS. PPN(S): 1.1d, 1.1i, 1.1b		CODE SC0600	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: 324110 SIZE STANDARD: See Clause L2.05-2		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE <input type="checkbox"/> 13a. THIS CONTRACT IS RATED ORDER UNDER DPAS (15 CFR 700)		12. DISCOUNT TERMS	
15. DELIVER TO CODE SEE SCHEDULE		16. ADMINISTERED BY CODE SEE BLOCK 9			HQ0104			
17a. CONTRACTOR / OFFEROR CODE		FACILITY CODE	18a. PAYMENT WILL BE MADE BY CODE Defense Finance and Accounting Service Columbus Center Stock Fund Directorate Fuels Accounting and Payments Division Attn: DFAS-BVDFB/CC P.O. Box 182317 Columbus, OH 43218-6250					
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM				
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES **SEE CLAUSE B1** (Use Reverse and/or Attach Additional Sheets as Necessary)		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT		
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only) ESTIMATED:				
<input 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 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 checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.				
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES <input type="checkbox"/> 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 AND CONDITIONS SPECIFIED HEREIN.				29. AWARD OF CONTRACT: _____ 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 (<i>SIGNATURE OF CONTRACTING OFFICER</i>)					
30b. NAME AND TITLE OF SIGNER (<i>TYPE OR PRINT</i>)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (<i>TYPE OR PRINT</i>)		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								
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE			32c. DATE SIGNED	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE				
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE				32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE				
				32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE				
33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER		
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL								
38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER	40. PAID BY					
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				42a. RECEIVED BY (<i>Print</i>)				
41b. SIGNATURE AND TITLE OF CERTIFYING			41c. DATE	42b. RECEIVED AT (<i>Location</i>)				
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS		

PerFORM (DLA)

STANDARD FORM 1449 (REV. 4/2002)
Prescribed by GSA FAR (48 CFR) 53.212

The following clauses are utilized in lieu of the FAR Commercial Item Clauses cited in 27(A) of the Standard Form 1449.

CLAUSE NUMBER	CLAUSE TITLE	PAGE (S)
SECTION I		
11.03-2	CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (BULK) (DESC SEP 2002)	C-6
11.04	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (MAY 2002)	C-7
11.05	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (NOV 2001)	C-10
111.01-2	ADMINISTRATIVE COST OF TERMINATION FOR CAUSE -- COMMERCIAL ITEMS (DESC FEB 1996)	C-11
1190.04	MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS (BULK) (DESC MAR 1996)	C-11

SECTION I**11.03-2 CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (BULK) (DESC SEP 2002)**

(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, 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 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.

(f) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable 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.**

(1) 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 –

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract Number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

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

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

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

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g. PAYMENT BY ELECTRONIC FUNDS TRANSFER – CENTRAL CONTRACTOR REGISTRATION, or PAYMENT BY ELECTRONIC FUNDS TRANSFER – OTHER THAN CENTRAL CONTRACTOR REGISTRATION), or applicable agency procedures.

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

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315. **Note:** Contractors are also required to provide additional information in their invoices as specified in the Addendum, as discussed in the SUPPLEMENTAL INVOICING INFORMATION (BULK) clause.

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

(i) **PAYMENT.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is 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 of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

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

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

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

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

11.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (MAY 2002)

(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 -- Supplies (41.U.S.C. 10a - 10d).
- 52.225-3, Buy American Act - North American Free Trade Agreement - Israeli Trade Act (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:

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (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.).

(FAR 52.212-5)

II.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)

I11.01-2 ADMINISTRATIVE COST OF TERMINATION FOR CAUSE -- COMMERCIAL ITEMS (DESC FEB 1996)

- (a) In the event this contract is terminated for cause, in whole or in part, the Government will incur administrative costs.
- (b) The Contractor agrees to pay all administrative costs associated with a contract termination action. The minimum amount the Contractor shall pay for each termination action is \$500. This payment for administrative costs is in addition to any excess procurement costs and any other remedies or damages resulting from the termination.
- (c) The term **termination action**, as used herein, means the termination for cause, including any associated procurement effort, involving--
 - (1) Any single order or any group of orders terminated together;
 - (2) Any item or group of items terminated together; or
 - (3) The entire contract.

(DESC 52.249-9F20)

I190.04 MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS (BULK) (DESC MAR 1996)

- (a) The apparently successful offeror agrees to submit, for each item prior to award, a Material Safety Data Sheet (MSDS), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all items to be delivered under this contract. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the MSDS prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.
- (b) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, that renders incomplete or inaccurate the data submitted under paragraph (a) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (c) The Contractor shall submit MSDSs to the Contracting Officer. MSDSs must cite the solicitation number, the applicable Commercial and Government Entity (CAGE) code of the manufacturer, and, where so identified, the National Stock Number (NSN).
- (d) The offeror need not submit a duplicate MSDS for a product for which the offeror has submitted an MSDS within the past five years. The MSDS of record must fully comply with the latest revision of FED-STD-313, and the data on the MSDS must still be current and complete. Should the description/composition of the product offered differ in any area specified on a previously submitted MSDS, a new MSDS is required.

(DESC 52.223-9F05)