

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 10
2. AMENDMENT/MODIFICATION NO. 0001	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO. SP0600-08-0751		5. PROJECT NO. (If applicable)
6. ISSUED BY DEFENSE ENERGY SUPPORT CENTER (DESC-MK) BLDG 1621-K 1014 BILLY MITCHELL SAN ANTONIO, TEXAS 78226-1859 BUYER: MARIA Q. NG/210-925-6845		CODE SP0600	7. ADMINISTERED BY (If other than Item 6) SAME AS BLOCK 6	
8. NAME AND ADDRESS OF CONTRACTOR (No. Street, county, State and ZIP: Code)			(4)	9A. AMENDMENT OF SOLICITATION NO. SP0600-09-R-0300
			X	9B. DATED (SEE ITEM 11) 2 OCT 2008
				10A. MODIFICATION OF CONTRACT/ORDER NO.
				10B. DATED (SEE ITEM 13)
CODE	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input checked="" type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning one (1) copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATA SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and data specified.				
12. ACCOUNTING AND APPROPRIATION DATA (If required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
(4)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.			
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).			
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:			
	D. OTHER Specify type of modification and authority)			
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return ___ copies to the issuing office.				
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)				
CONTINUED ON PAGES 2 THROUGH 10 OF 10				
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.				
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) SYLVIA T. URIAS-VALLEJO	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA		16C. DATE SIGNED
(Signature of person authorized to sign)		BY _____ (Signature of Contracting Officer)		

CONTINUED FROM PAGE 1, BLOCK 14

This amendment is being issued to replace the following clauses: B1.09-2.100 SUPPLIES TO BE FURNISHED and I1.03-1.100 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS. In addition, it is being issued to incorporate the following clauses: E45.01.100 MANUFACTURING QUALIFICATION REQUIREMENTS, L2.35.100 PROPOSAL FORMAT AND CONTENT, and M2.14.100 EVALUATION – COMMERCIAL ITEMS.

A. Clause **B1.09-2 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC APR 2006)** is hereby deleted in its entirety. Clause **B1.09-2.100 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC SEP 2008)** is hereby incorporated. Paragraph 7 was added (**change is in bold**) as follows:

B1.09-2.100 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC SEP 2008)

(a) This is an indefinite quantity contract for the purchase of supplies (and/or services, if applicable) to be furnished during the contract term. The delivery points, methods of delivery, and estimated quantities are specified in the Schedule as contract line item numbers (CLINs). The quantities shown are best estimates of required Government quantities only. Unless otherwise specified, the total quantity ordered and required to be delivered/loaded may be greater than or less than such quantities as allowed by the VARIATION IN QUANTITY clause.

(b) The following provisions apply **ONLY** if the applicable box is checked:

(1) This is a REQUIREMENTS-TYPE contract. The Government agrees to order from the Contractor and the Contractor shall deliver, if orders are placed by the DESC Contracting Officer during the contract period, all items awarded under this contract, as allowed by the REQUIREMENTS clause. A Blanket Delivery Order is considered "an order", for the purposes of this clause.

(2) This is an INDEFINITE DELIVERY/INDEFINITE QUANTITY contract. The Government agrees to order from the Contractor and the Contractor shall deliver, if orders are placed by the Contracting Officer during the contract period, at least the quantity of supplies or services designated in the Schedule as the "minimum", as allowed by the INDEFINITE QUANTITY clause. A Blanket Delivery Order is considered "an order", for the purposes of this clause.

(3) Orders issued by the Ordering Officer at the destination location are considered extensions of the Blanket Delivery Order issued by the DESC Contracting Officer and, as such, may be issued orally, by facsimile or by electronic commerce methods, as allowed by the ORDERING clause.

(4) The unit prices specified below shall be fixed for the term of the contract.

(5) The prices paid shall be the unit prices specified in subsequent price change modifications issued in accordance with the ECONOMIC PRICE ADJUSTMENT – STANDARD SUPPLIES clause, as contained in the Schedule.

(6) The prices paid shall be the unit prices specified in subsequent price change modifications issued in accordance with the ECONOMIC PRICE ADJUSTMENT – SEMISTANDARD SUPPLIES clause, as contained in the Schedule.

(7) The prices paid shall be the unit prices specified in subsequent price change modifications issued in accordance with the ECONOMIC PRICE ADJUSTMENT -- PUBLISHED MARKET PRICE (RP-1 AND/OR RP-2)(AEROSPACE ENERGY) (DESC AUG 2008) clause, as contained in the Schedule. Applicable to CLIN(s) 0002, 0004, and 0005.

(8) Items of this contract call for f.o.b. destination delivery, unless the item specifies otherwise. The destination for each item is the point of delivery shown in the particular item. Inspection for quality will be at origin with final acceptance at destination. Applicable to CLIN(s) _____.

(9) F.o.b. destination item(s) called for under this contract shall have shipment quantity determinations performed at destination.

(10) Items of this contract call for f.o.b. origin delivery, unless the item specifies otherwise. Inspection and acceptance will be at origin. Applicable to CLIN(s) 0002, 0004, and 0005.

(11) Any offers received for less than the full quantity for each line item will be rejected by the Government.

- (12) [X] A copy of the certified weight ticket shall accompany each shipment.
- (13) [X] A copy of the Certificate of Analysis shall accompany each shipment.
- (14) [X] An original and one copy of the H-14 Transport Equipment Delay Certificate shall be provided with each shipment, if applicable.

(DESC 52.207-9F79)

B. Clause **I1.03-1 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (FEB 2007)** is hereby deleted in its entirety. Clause **I1.03-1.100 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (SEP 2008)** is hereby incorporated. Paragraph (c) was changed (**changes are in bold**) as follows:

I1.03-1.100 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (SEP 2008)

(a) **INSPECTION/ACCEPTANCE.** The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

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

(c) CHANGES.

(1) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (i) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.**
- (ii) Method of shipment or packing.**
- (iii) Place of delivery.**

(2) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(3) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(4) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(5) Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

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

- (1) Name and address of the Contractor;
- (2) Invoice date and number;
- (3) Contract number, contract line item number, and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the items 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;

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.
- (9) **Taxpayer Identification Number (TIN).** The Contractor shall include its TIN on the invoice only if

required elsewhere in this contract.

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

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

(ii) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer - Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer - Other Than Central Contractor Registration), or applicable agency procedures.

(iii) EFT banking information is not required if the Government waived the requirement to pay by EFT. Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

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

(i) **PAYMENT.**

(1) **Items accepted.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) **Prompt payment.** The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C 3903) and prompt payment regulations at 5 CFR part 1315.

(3) **Electronic Funds Transfer (EFT).** If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) **Discount.** In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) **Overpayments.** If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(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.** The contract price includes all applicable Federal, State, and local taxes and duties.

(l) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE.** The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid a percentage of the contract price

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

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

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

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

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

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

(r) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701 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.

(t) **CENTRAL CONTRACTOR REGISTRATION (CCR).**

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, 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 review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) (i) If a Contractor has legally changed its business name, "**doing business as**" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

- (A) Change the name in the CCR database;
- (B) Comply with the requirements of Subpart 42.12; and
- (C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraphs (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the Suspension of Payment paragraph of the EFT clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the Suspension of Payment paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(FAR 52.212-4)

C. Clause **E45.01.100 MANUFACTURING QUALIFICATION REQUIREMENTS (PROPELLANT, ROCKET GRADE KEROSENE) (AEROSPACE ENERGY) (DESC OCT 2008)** is hereby incorporated as follows:

E45.01.100 MANUFACTURING QUALIFICATION REQUIREMENTS (PROPELLANT, ROCKET GRADE KEROSENE) (AEROSPACE ENERGY) (DESC OCT 2008)

(a) PRE-PRODUCTION SAMPLES.

(1) Within 14 days of contract award, the Contractor shall prepare four (4) homogenous 1-gallon samples for each grade of Rocket Grade Kerosene Propellant (both RP-1 and RP-2) manufactured by one of the following techniques:

(i) Produced/blended from an existing production plant; or,

(ii) Produced/blended from a pilot plant that will utilize the Contractor's proposed process, including the same materials of construction as the Contractor's proposed production plant.

(2) The Contractor shall notify the assigned quality assurance representative prior to performing any sampling/testing so the Government may witness the sampling and testing procedures.

(3) Two of the 1-gallon samples of each grade shall be tested by the Contractor in accordance with MIL-DTL-25576E. The Contractor shall submit a certified copy of the pre-production sample results to:

DESC-MK
BLDG 1621
1014 Billy Mitchell Blvd
San Antonio TX 78226
Or
Fax (210)925-9758

(4) The Contractor shall submit a certified copy of their pre-production RP-1 and RP-2 sample analyses along with the second set of samples (the remaining four 1-gallon samples) to--

AEROSPACE FUELS LABORATORY
HEADQUARTERS AFPET/PTPLA
2430 C STREET, BUILDING 70 AREA B
WRIGHT-PATTERSON AFB, OH 45433-7632

(5) All costs associated with meeting the pre-production sampling requirements and shipping the samples to the assigned U.S. Government laboratory identified in paragraph (4) above shall be at the Contractor's expense.

(6) If any of the pre-production samples analyzed by the U.S. Government laboratory fail to meet the specified requirements of MIL-DTL-25576E, the Contractor, at its own expense, will be allowed to resubmit a second set of samples for testing at least once. If the pre-production sample of either or both grades analyzed by the Government

repeatedly fails specification requirements the contract may be terminated in accordance with the Termination for Cause provision of this contract.

(7) If the pre-production samples pass full specification analysis by the Government lab, the Government shall advise the contractor, in writing, that the pre-production sample is acceptable to the Government and the contractor may proceed with plant retrofit/facility modifications. Any required modifications to the contractor's plant/facility to achieve full production capability must be completed at least 30 days prior to initial contract schedule delivery requirements.

(8) Condition for waiver for pre-production sample: If the contractor has previously submitted a pre-production sample of one or both grades for analysis and successfully passed Government lab testing, then the requirement for the grade that was previously submitted may be considered met and waived as determined by the CO.

(b) The Contractor's laboratory analysis may either be conducted at the Contractor's on-site laboratory facility or the Contractor may utilize an independent commercial laboratory. The Contractor shall ensure that all samples submitted to the government lab are properly labeled with product name and grade, lot/batch number, and a request for full specification testing in accordance with the military specification (MIL-DTL-25576E). Each sample's label should also clearly identify sample origin and should request that sample results be faxed to the DESC Contracting Officer at **(210) 925-9758**.

(c) FIRST ARTICLE APPROVAL.

(1) The Contractor shall produce a first article batch at least 30 days prior to initial contract schedule delivery requirements consisting of approximately 6,000 gallons of the RP-1 grade from the Contractor's production facility. The Contractor shall perform full specification testing of the first article batch and send a 2-gallon sample, along with a certified copy of their analysis results, to the U.S. Government laboratory, as designated in paragraph (a)(4) above. The Contractor shall notify the assigned quality assurance representative prior to sampling/testing of the first article batch in order to allow a Government representative to witness the Contractor's sampling and testing procedures.

(2) If the initial first article batch sample meets full specification requirements when analyzed by the U.S. Government laboratory, the Government shall notify the Contractor that the sample has met specification and, as such, lump sum payment pertaining to all start-up costs, to include plant retrofit/facility modification, may be invoiced and shall be paid by the Government in accordance with the appropriate contract line item number. When the Government issues its first delivery order, the Contractor shall submit batch samples prior to shipping in accordance with the CONTRACTOR INSPECTION RESPONSIBILITIES clause of this contract.

(3) However, if the initial first article batch sample fails to meet specification requirements when analyzed by the U.S. Government laboratory, the Contractor may be authorized by the Contracting Officer to resample and submit a second sample from the initial first article batch, with a Government representative witnessing the sampling procedures, for analysis at the U.S. Government laboratory. If the resample fails, when analyzed by the U.S. Government laboratory, the Government, at its sole discretion, has the following two options:

(i) The Contractor may be allowed to make necessary repairs, changes, modifications and/or other alterations to the Contractor's production process or plant in order to remedy the quality defects; or

(ii) The Government may terminate the contract for cause in accordance with the Termination for Cause provisions stated in the contract.

(iii) If the Government authorizes the Contractor to modify the plant or otherwise adjust his production process in the expectation of producing on-specification product, in lieu of termination for cause, such efforts on the part of the Contractor will not result in an equitable adjustment to the fixed lump sum price, as awarded. Upon completion of plant modification and/or adjustment of the Contractor's process, the Contractor shall then prepare another 6,000 gallon first article batch to be sampled and tested in accordance with the sampling and testing procedures at stated in paragraph (c)(1) of this clause. The sample procedures apply as previously described herein until such time as the Contracting Officer no longer authorizes plant modification and/or adjustment of the Contractor's process. Repeated failure will be grounds to terminate this contract under the Termination for Cause provision and in accordance with the terms and conditions of this contract with the Government having no responsibility to pay for any plant retrofit and/or facility modifications.

(DESC 52.246-9F57)

D. Clause **L2.35.100 PROPOSAL FORMAT AND CONTENT (AEROSPACE ENERGY) (DESC OCT 2008)** is hereby incorporated as follows:

L2.35.100 PROPOSAL FORMAT AND CONTENT (AEROSPACE ENERGY) (DESC OCT 2008)

Proposals shall be submitted in two sections and clearly labeled **Price Proposal** and **Technical Proposal**.

(a) **PRICE PROPOSAL**. The following items shall comprise the price proposal for this solicitation:

(1) In the Schedule, Section B, Supplies or Services and Prices/Costs, shall be completed for each Contract Line Item Number (CLIN) as well as for each of the subCLINs. **SPECIAL ATTENTION** shall be given to the price structure for **SubCLIN 0001AB RP-1 FIRST ARTICLE BATCH** and all associated costs for production and storage as well as the **MONTHLY FACILITY FEE (CLIN 0006)**. When preparing the Pricing Proposal, the offerors are instructed to include the following costs in each of the CLIN prices.

CLIN 0001AA PRE-PRODUCTION SAMPLE (RP-1): The offeror shall not propose a price for this subCLIN, it is considered Not Separately Priced (NSP).

CLIN 0001AB FIRST ARTICLE (FA) BATCH: The offeror shall include all developmental costs for the FA Batch and all associated capital asset costs for the preparation/retrofit/ modification of the offeror's plant/facility relevant to the production of the first article quantity as stated in the Schedule as well as full scale production of both RP-1 and RP-2. All costs associated with the storage and distribution of DLA-owned RP-1 in both bulk and drums as well as the storage and distribution of DLA-owned RP-2 in drums shall be included in the MONTHLY FACILITY FEE (MFF) (CLIN 0006)

CLIN 0002 RP-1 BULK: The offeror shall include all variable and incremental costs to produce a gallon of RP-1 and any other costs associated with the production of RP-1 in bulk quantities in SubCLINs 0002AA – 0002AK not otherwise included in the MFF.

CLIN 0003 SERVICE - RP-1 DRUMMING: The offeror shall include all variable and incremental costs to drum a gallon of RP-1 from DLA-owned inventory of RP-1 in SubCLINs 0003AA – 0003AK not otherwise included in the MFF.

CLIN 0004 RP-2 BULK: The offeror shall include all variable and incremental costs to produce a gallon of RP-2 and any other costs associated with the production of RP-2 bulk in SubCLINs 0004AA – 0004AK not otherwise included in the MFF.

CLIN 0005 RP-2 DRUM: The offeror shall include all variable and incremental costs to produce a gallon of RP-2 in drums and any other costs associated with the production of RP-2 in drums in SubCLINs 0005AA – 0005AK not otherwise included in the MFF.

CLIN 0006 SERVICE - MONTHLY FACILITY FEE (MFF) FOR STORAGE AND DISTRIBUTION: The offeror shall include all fixed costs associated with production, storage and distribution of rocket grade kerosene including any costs associated with preparation/retrofit/modification of the offeror's facility associated solely with storage and distribution. The MFF shall include the cost for providing and maintaining bulk storage tanks with a total capacity of a minimum of 60,000 gallons and with no individual storage tank capacity of less than 10,000 gallons. In addition, MFF shall include storage for drums of either RP-1 and/or RP-2 as required in clause C900 STATEMENT OF OBJECTIVES AND/OR SPECIFICATIONS. The offeror shall also include the following in this CLIN's price proposal: costs for laboratory testing; labor costs for performing Defense Fuel Support Point (DFSP) related functions, and all overhead costs and profit associated with production, storage and distribution.

Information relative to the pricing structure shall be submitted in the **Pricing Proposal**.

(2) The Standard Form 1449 must be completed, as well as the MANUFACTURING AND FILLING POINTS and TRANSPORT TRUCK AND/OR TRUCK AND TRAILER FREE TIME AND DETENTION RATES (AEROSPACE ENERGY) clauses, if included, and all certifications and representations contained in Section K of the solicitation; and

(b) **TECHNICAL PROPOSAL.**

(1) **NONCOST FACTOR 1: TECHNICAL CAPABILITY.** The offeror shall provide a technical proposal addressing technical information requested in paragraphs (b)(1)(i) through (b)(1)(iv) and attaching supply commitment letters requested in paragraph (b)(1)(v). The complete technical proposal, exclusive of any résumés, drawings, or blueprints, shall not exceed 20 pages. The proposal will be evaluated strictly on technical merit and should describe and justify the offeror's technical approach to the requirements of the work to be performed and/or delivery of product under the contract. The technical proposal should be specific and provide concise, straight-forward descriptions of the offeror's capability to perform the requirements of the contract. Proposals that are unrealistic in terms of the description of the offeror's technical capability may be considered indicative of a lack of understanding of the solicitation's requirements. Technical proposals shall include the following (any element you do not address shall be identified as "N/A"):

(i) **Manufacturing Process Design** - Provide a narrative of the proposed production processes for manufacturing RP Fuels. Include the anticipated production capacity (gallon/day) for each product type. Provide a detailed process flow diagram or a process and instrumentation diagram of the proposed production process, and a description of the materials of construction of the production plant and major plant components. Provide a description of how the First Article Approval requirements will be met. Provide a description of the proposed drumming process and include what would be considered an Economic Order Quantity for drummed RP-2, that is, the minimum quantity that would result in the lowest unit cost for the product.

(ii) **Quality Control** – Provide narrative on how offeror will meet requirements of the minimum sampling and testing requirements table in the Clause entitled **CONTRACTOR INSPECTION AND QUALITY ASSURANCE RESPONSIBILITIES**. Also provide location of laboratory that the offeror intends to use for performing analytical testing and a description of the test equipment calibration program.

(iii) **Product Storage and Handling** – Provide a narrative description and diagrams of storage facilities to include fire protection, secondary containment, and all associated valve and piping configurations. Include narrative describing how offeror will meet requirements of the Clause entitled **RESPONSIBILITY FOR GOVERNMENT-OWNED RP-1**.

(iv) **Securing Shipping Containers** - Provide a narrative describing the method for securing delivery container and/or cargo tank openings with tamper indicating devices (i.e., seals) to prevent tampering and/or pilferage from the time the cargo tank is loaded until it is delivered to its destination. (Refer to the CONTRACTOR SEAL REQUIREMENT clause.)

(v) **Provide Supply Commitment Letters** - For solicitations containing product CLINs, if the offeror is not the manufacturer of the product to be delivered under the contract, the offeror shall provide a detailed description of where the product(s) will be obtained. The offeror shall attach any written supply commitments that clearly indicate—

(A) The offeror's supplier is willing to provide the products required to be delivered/performed under any resultant contract for the duration of the delivery period shown in the Schedule; and

(B) Confirmation of the quantity and specification of the products to be delivered;

(2) **NONCOST FACTOR 2: PAST PERFORMANCE.** The offeror shall submit information regarding its past performance on the form entitled CONTRACTOR PERFORMANCE DATA REPORT, as attached to the solicitation. All contracts and subcontracts (completed or in progress) for the last three years awarded by DESC as well as other (completed or in progress) Government agencies or the private sector that are related to the proposed contract shall be included on the form. Failure to submit a complete list may reflect adversely on the offeror. The number of relevant past performance efforts submitted in accordance with the attachment shall not exceed five for the prime offeror. The Government reserves the right to make telephone contact with offerors, proposed subcontractors and references in order to confirm and/or clarify the past performance information submitted. The Government has the option to consider information from these sources, and any others that may be available, that it deems necessary in order to make an accurate assessment of the offeror's past performance. In addition, the offeror should provide additional information on any significant problems encountered and corrective actions taken under contract(s) which would otherwise cause an unacceptable rating in this factor.

(c) **EXCEPTIONS.** Exceptions (price or technical) taken to the terms and conditions of the solicitation and/or any of its formal attachments shall be identified. Each exception shall be specifically related to each paragraph and/or specific part of the solicitation to which the exception is taken. Provide rationale in support of the exception and fully explain the impact, if any, on the performance, price, and specific requirements of the solicitation. Failure to comply with the terms and conditions of the solicitation may result in the offeror being removed from consideration for award.

(DESC 52.215-9F98)

E. Clause **M2.14.100 EVALUATION – COMMERCIAL ITEMS (AEROSPACE ENERGY) (DESC OCT 2008)** is hereby incorporated as follows:

M2.14.100 EVALUATION – COMMERCIAL ITEMS (AEROSPACE ENERGY) (DESC OCT 2008)

(a) Award will be made on the basis of proposals meeting or exceeding the specific evaluation criteria contained in the solicitation. Non-cost factors to be evaluated shall be technical capability and past performance. In accordance with FAR 15.101-2(b)(3), proposals will be evaluated for acceptability but not ranked using the non-cost/price factors.

(b) Technical capability will be measured against requirements specified in the solicitation. As such, technical capability is considered acceptable when the offeror's proposal is in compliance with the requirements of the solicitation. Specific criteria used to judge acceptability are as follows:

- (1) Acceptability of the narrative describing offeror's manufacturing process design;
- (2) Acceptability of the narrative describing offeror's proposed quality control;
- (3) Acceptability of the narrative describing offeror's product storage and handling;
- (4) Acceptability of the narrative describing offeror's measures proposed to secure shipping containers

from tampering and pilferage;

(5) Acceptability of the offeror's supply commitment letters and sources when the offeror is not the manufacturer of the product to be delivered.

(c) Past performance shall generally include verification of performance with the offeror's past and current customers, to include Federal, State, and local governments as well as private entities. The form entitled Contractor Performance Data Sheet, located in Section J of the solicitation, may be used to provide relevant performance history pursuant to this solicitation. In accordance with FAR 15.305(a)(2)(iv), offerors without a record of relevant past performance or for whom information on past performance is not available may not be evaluated favorably or unfavorably on past performance. Additionally, past performance data may be obtained through the Past Performance Information Retrieval System, similar systems or other Government departments and agencies, questionnaires tailored to the circumstances of this acquisition, Defense Contract Management Agency channels, interviews with program managers and contracting officers, and other sources known to the Government (including commercial sources). Offerors will be given the opportunity to address any negative performance information resulting from the past performance assessment inquiries.

(d) After evaluating technical capability and past performance, the Contracting Officer will award one contract to the acceptable offeror with the lowest total evaluated price for Contract Line Items (CLINs) 0001AB through 0006, to include the option years.

(1) In calculating the total lowest laid down price of the basic requirement, the evaluated price of each product CLIN, to include the First Article (FA) batch, will be calculated by multiplying the Estimated Quantity as shown in the Schedule by the offeror's proposed unit price for each subCLIN. Each subCLIN's evaluated price is added together for a total evaluated price for that CLIN. The estimated transportation costs to be incurred by the Government for supplying the product to the end use customer will then be added to the product CLIN's evaluated prices as an "other price related factor," for a lowest laid down price for that CLIN. The applicable transportation rates are derived from the Surface Deployment and Distribution Command's competitively-awarded carrier contracts. The lowest laid down prices of all the product CLINs will then be added to the evaluated price of CLIN 0006, MONTHLY FACILITY FEE FOR STORAGE AND DISTRIBUTION, for the lowest total evaluated price for the basic 5-year requirement.

(2) The total lowest laid down prices for the five (5) one-year option requirements are calculated as described for the basic requirement except the First Article CLIN is not applicable.

(3) SubCLIN 0001AA is designated as "Not Separately Priced" and will not be evaluated for award but will be included as a SubCLIN in the awarded contract.

(e) 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).

(f) A written notice of award or acceptance of offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(DESC 52.212-9F70)