

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 16
2. AMENDMENT/MODIFICATION NO. 0003	3. EFFECTIVE DATE 13 MAR 2009	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		7. ADMINISTERED BY (If other than Item 6) SAME AS BLOCK 6	CODE SP0600	
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.
CODE			10B. DATED (SEE ITEM 13)	
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 16 OF 16				
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 revise Economic Price Adjustment (EPA) provisions as a result of negotiations with industry. Clause B19.33.100 ECONOMIC PRICE ADJUSTMENT -- PUBLISHED MARKET PRICE (RP-1 AND/OR RP-2)(AEROSPACE ENERGY) (DESC AUG 2008) is deleted from the solicitation and clauses B19.40 ECONOMIC PRICE ADJUSTMENT -- PRICE INDEX ROCKET GRADE PROPELLANT (DESC OCT 2003), B25.06-4 IMPLEMENTATION OF FAR 52.216-4, ECONOMIC PRICE ADJUSTMENT -- LABOR AND MATERIAL and B19.28-2.100 ECONOMIC PRICE ADJUSTMENT -- LABOR AND MATERIAL (MAR 2009) are incorporated also as a result of EPA negotiations. Clause B1.09-2.100 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) is replaced with a revised version. I1.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS and I1.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS hereby replace the versions that were included in the initial solicitation. Lastly, the Period of Performance is changed to accommodate the delay in the award of a contract under this solicitation.

Approval of Clauses B19.28-2.100 ECONOMIC PRICE ADJUSTMENT -- LABOR AND MATERIAL (MAR 2009) and B1.09-2.100 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY)(DESC MAR 2009) is pending. If any of the approved clauses are changed from what is included in this amendment, a subsequent amendment to the RFP will be issued to incorporate the revised clause(s).

A. Clause B19.33.100 ECONOMIC PRICE ADJUSTMENT -- PUBLISHED MARKET PRICE (RP-1 AND/OR RP-2)(AEROSPACE ENERGY) (DESC AUG 2008) is hereby deleted in its entirety.

B. Clause B19.40 ECONOMIC PRICE ADJUSTMENT -- PRICE INDEX ROCKET GRADE PROPELLANT (DESC OCT 2003) is incorporated as follows:

B19.40 ECONOMIC PRICE ADJUSTMENT -- PRICE INDEX ROCKET GRADE PROPELLANT (DESC OCT 2003)

(a) The Contractor warrants that the contract prices do not include any amounts to protect against increases covered by this clause.

(b) **DEFINITIONS.** As used herein,—

(1) **Base price** means the price per gallon of RP product (CLINs 0002, 0004, and 0005) as identified in the contract Schedule; Base price means the price per unit of issue (drum or month) for RP services (CLINs 0003 and 0006).

(2) **Index** means Employment Cost Index (CIU201G000000000I) as published by the Bureau of Labor Statistics, U.S. Department of Labor.

(3) **Base index** is the Quarterly index (CIU201G000000000I) published as of the quarter prior to contract award.

(4) **Current index** is the most current quarterly index (CIU201G000000000I) published prior to the annual price adjustment.

(5) **Adjustment amount** shall be the product of the rate of change from the base index to the current index, multiplied times ___ percent of the base price for CLIN 0002, multiplied times ___ percent of the base price for CLIN 0004; multiplied times ___ percent of the base price for CLIN 0005; and for services the adjustment amount shall be the product of the rate of change from the base index to the current index, multiplied times 100 percent of the base price.

(6) **Adjusted price** means the sum, rounded to two decimal places of the base price plus the instant adjustment amount.

(c) It is hereby agreed that—

(1) The prices payable under this contract shall be subject to annually adjustment, which will be accomplished promptly following publication of the applicable index.

(2) Adjustments to the base price shall be determined by the percentage of change from the base index, as stated in paragraph (b)(3) of this clause, to the current index, as defined in paragraph (b)(4) of this clause. Adjustments to the base price shall not be compounded.

(3) **EXAMPLES.** The following examples are provided to demonstrate the mechanics of this clause as it pertains to the adjustment of each CLIN. Please note they are examples ONLY as the dates and index numbers used in

all sample calculations are fictitious. For example purposes assume the Contract was awarded December 15, 2003 with a start date of January 1, 2004. Also assumed are the adjustment percentages of 47% for CLIN 0002; 55% for CLIN 0004, and 55% for CLIN 0005 for product.

FOR PRODUCT CLINS 0002, 0004 AND 0005 (with respective percentages):

This example is for CLIN 0002:

Monthly EPA's for actual cost of raw materials during January 2004 through January 2005 under Clause B19.28-2.100 have resulted in an increase to the base price of \$0.15

Start of Second Year (January 2005):

Assume Base Price: \$4.00

Current Index (4th Quarter 2004) 97.1

Base Index (4th Quarter 2003) 92.8

Calculate rate of change [(current index - base index)/base index] from the base index:

$$(97.1 - 92.8) / 92.8 = 4.63\%$$

Calculate the adjustment amount (index rate of change x base price):

$$\$4.00 \times 47\% = \$1.88$$

$$\$1.88 \times 4.63\% = \$0.09$$

Calculate the adjusted price (Sum of the base price, the adjustment under this clause and the adjustment as defined in Clause B19.28-2.100 ECONOMIC PRICE ADJUSTMENT -- PUBLISHED MARKET PRICE (RP-1 AND/OR RP-2)(AEROSPACE ENERGY) (DESC MAR 2009):

$$\$4.00 + \$0.15 + \$0.09 = \$4.24$$

Monthly EPA's for actual cost of raw materials during January 2004 through January 2006 under Clause B19.28-2.100 have resulted in an increase to the base price of \$0.38

January 2006:

Base Price \$4.00

Current Index (4th Quarter 2005) 100.2

Base Index (4th Quarter 2003) 92.8

Calculate rate of change [(current index - base index)/base index] from the base index:

$$(100.2 - 92.8) / 92.8 = 7.97\%$$

Calculate the adjustment amount (index rate of change x base price):

$$\$4.00 \times 47\% = \$1.88$$

$$\$1.88 \times 7.97\% = \$0.15$$

Calculate the adjusted price (Sum of the base price, the adjustment under this clause and the adjustment as defined in Clause B19.28-2.100 ECONOMIC PRICE ADJUSTMENT -- PUBLISHED MARKET PRICE (RP-1 AND/OR RP-2)(AEROSPACE ENERGY) (DESC MAR 2009):

$$\$4.00 + \$0.38 + \$0.15 = \$4.53$$

FOR SERVICE CLINS 0003 AND 0006:

Start of Second Year (January 2005):

Assume Base Price: \$15.00

Current Index (4th Quarter 2004) 97.1

Base Index (4th Quarter 2003) 92.8

Calculate rate of change [(current index - base index)/base index] from the base index:

$$(97.1 - 92.8) / 92.8 = 4.63\%$$

Calculate the adjustment amount (index rate of change x base price):

$$\$15.00 \times 4.63\% = \$0.69$$

Calculate the adjusted price (base price plus adjustment amount):

$$\$15.00 + \$0.69 = \$15.69$$

January 2006:

Base Price \$15.00

Current Index (4th Quarter 2005) 100.2

Base Index (4th Quarter 2003) 92.8

Calculate rate of change [(current index - base index)/base index] from the base index:

$$(100.2 - 92.8) / 92.8 = 7.97\%$$

Calculate the adjustment amount (index rate of change x base price):

$$\$15.00 \times 7.97\% = \$1.20$$

Calculate the adjusted price (base price plus adjustment amount):

$$\$15.00 + \$1.20 = \$16.20$$

- (d) The Contracting Officer shall obtain the current Price Index and calculate the adjusted price.
- (e) Adjustments pursuant to this clause shall be made by contract modification showing the calculation of the adjusted contract unit price and specifying its effective date.
- (f) No adjustments shall be made under this clause until AFTER First Article Approval (CLIN 0001) and/or performance under any other CLIN.
- (g) In the event--
 - (1) Any applicable index is discontinued or its method of derivation is altered substantially; or
 - (2) The Contracting Officer determines that an index consistently and substantially fails to reflect market conditions—

the parties shall agree upon an appropriate substitute index and the Contracting Officer shall amend the contract to specify use such substitute index for determining price adjustments hereunder. The contract shall be modified to reflect such substitute index, effective on the date the index specified in the contract begins to consistently and substantially fail to reflect market conditions. Failure to agree on an appropriate substitute or adjustment shall constitute a dispute under the DISPUTES clause of this contract.

(h) The Contractor shall include a statement on the final invoice that amounts invoiced under this contract reflect all applicable decreases required by the clause.

(DESC 52.216-9F54)

C. Clause **B25.06-4 IMPLEMENTATION OF FAR 52.216-4, ECONOMIC PRICE ADJUSTMENT -- LABOR AND MATERIAL (JAN 2002) – DLAD** is incorporated as follows:

B25.06-4 IMPLEMENTATION OF FAR 52.216-4, ECONOMIC PRICE ADJUSTMENT -- LABOR AND MATERIAL (JAN 2002) - DLAD

(a) Economic price adjustment (EPA), pursuant to the clause of this contract entitled ECONOMIC PRICE ADJUSTMENT -- LABOR AND MATERIAL (FAR 52.216-4), shall be determined as implemented herein.

(b) Economic price adjustment is limited to changes in the Contractor's cost relative to the labor category or item of material and the related Contract Line Item Number (CLIN) listed below. The offeror shall list its current cost per unit of labor and/or materials for such item; shall identify the name, source and date of the document containing such cost; and shall attach to its offer a copy of the pages from such document identifying the item and its cost:

CLIN 0002,
RP-1 Bulk

CLIN 0004
RP-2 Bulk

CLIN 0005
RP-2 Drums

Johann Haltermann Ltd letter dated _____ is hereby attached by reference and identifies the actual cost of materials for each CLIN cited above relative to the proposed price, including the formula associated with each material utilized in calculating the actual cost. Contractor shall submit supporting data for each production order for the purpose of adjusting the unit cost for each order.

(c) Economic price adjustment for the specified cost element relative to each CLIN shall be calculated as follows:

Note: The resulting unit price is a combination of the calculations under this Clause B19.28-2.100 and the calculations under Clause B19.40 ECONOMIC PRICE ADJUSTMENT – PRICE INDEX ROCKET GRADE PROPELLANT (DESC OCT 2003). In summary, the adjusted unit price will incorporate both adjustments IAW B19.28-2.100, and B19.40.

Example: The following example is provided to demonstrate the mechanics of Clause B19.28-2.100 along with B19.40 as they pertain to the adjustment of each CLIN affected. Please note this is only an example as the dates and index numbers used in all sample calculations are fictitious. For example purposes assume the Contract was awarded December 15, 2003 with a start date of January 1, 2004.

	Current Price	\$ Change	New Adjusted Price
December 2003, RP-1 Price	\$ 4.00		
Actual cost of Raw Materials	\$ 2.12		
January 2004 Raw Materials Increase to:	\$ 2.50	\$ 0.38	\$ 4.38
April 2004 Raw Materials Increase to:	\$ 2.25	\$ (0.25)	\$ 4.13
August 2004 Raw Materials Decrease to:	\$ 2.10	\$ (0.15)	\$ 3.98
October 2004 Raw Materials Increase to:	\$ 3.00	\$ 0.90	\$ 4.88
November 2004 Raw Materials Decrease to:	\$ 2.75	\$ (0.25)	\$ 4.63
December 2004 Raw Materials Decrease to:	\$ 2.27	\$ (0.48)	\$ 4.15
No Change Raw Materials Price January 2005	\$ 2.27	\$ -	\$ 4.15

The following Annual Calculation will be performed in January 2005 after the B19.28-2.100 EPA has been incorporated:

\$ 4.00	X	47.00%	Non-Raw Material	\$ 1.88	X	($\frac{\text{Index 2004} - \text{Index 2003}}{\text{Index 2003}}$)
							$\frac{97.1 - 92.80}{92.8}$	
				\$ 1.88	X	($\frac{4.3}{92.8}$)
				\$ 1.88	X	(0.046)
DIFFERENCE FROM 2004				\$ 0.087				

TO 2005

JANUARY 2005 PRICE: **\$4.15**

ADJUSTED JANUARY 2005
PRICE FOR RP-1 PRODUCT **\$4.24**

The following month, February 2005, we will continue with the B19.28-2.100 EPA as follows:

	Current Price	\$ Change	New Adjusted Price
January 2005 Price After B19.40 Adjustment	\$4.24		\$4.24
February 2005 Raw Materials Increase to:	\$ 2.40	\$ 0.13	\$4.37
April 2005 Raw Materials Increase to:	\$ 2.45	\$ 0.05	\$4.42
June 2005 Raw Materials Decrease to:	\$ 2.35	\$ (0.10)	\$4.32
July 2005 Raw Materials Increase to:	\$ 2.75	\$ 0.40	\$4.72
October 2005 Raw Materials Decrease to:	\$ 2.55	\$ (0.20)	\$4.52
December 2005 Raw Materials Decrease to:	\$ 2.50	\$ (0.05)	\$4.47
No Change Raw Materials Price January 2006	\$ 2.50	\$ -	\$4.47

In January 2006 the following calculations would be made under B19.40:

\$	4.00	X	47.00%	Non-Raw Material	\$	1.880000	X	($\frac{\text{Index 2005} - \text{Index 2003}}{\text{Index 2003}}$
									$\frac{100.20 - 92.8}{92.8}$
					\$	1.880000	X	($\frac{7.97}{92.8}$

DIFFERENCE FROM 2004
 TO 2006 \$ 0.15

JANUARY 2006 PRICE: **\$4.47**

ADJUSTED JANUARY 2006
 PRICE FOR RP-1 PRODUCT **\$4.53**

(d) The Contractor shall include, with the final invoice, a statement that the Contractor has not experienced a decrease in the unit price for the item listed herein, or a statement that it has given notice of all such decreases in compliance with the EPA clause.

(DLAD 52.216-9002)

D. Clause **B19.28-2.100 ECONOMIC PRICE ADJUSTMENT -- LABOR AND MATERIAL (MAR 2009)** is incorporated as follows:

B19.28-2.100 ECONOMIC PRICE ADJUSTMENT -- LABOR AND MATERIAL (MAR 2009)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. The Contracting Officer shall modify this contract--

(1) To include the price adjustment and its effective date; and

(2) To revise the labor rates (including fringe benefits) or unit prices of material shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rate of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no more adjustment for--

(i) Supplies or services for which the production cost is not affected by such changes;

(ii) Changes in rates or unit prices other than those shown in the Schedule; or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each

item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) The aggregate of the increases in any contract unit price made under this clause shall not exceed 575% percent of the original price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(FAR 52.216-4)

E. Clause **B1.09-2.100 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC SEP 2008)** is hereby deleted in its entirety. Clause **B1.09-2.100 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC MAR 2009)** is hereby incorporated as follows:

B1.09-2.100 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC MAR 2009)

(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 – PRICE INDEX ROCKET GRADE PROPELLANT 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) A copy of the certified weight ticket shall accompany each shipment.

(13) A copy of the Certificate of Analysis shall accompany each shipment.

(14) 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)

F. Clause **11.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (JUN 2008)** is hereby deleted in its entirety. Clause **11.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (JAN 2009)** is hereby incorporated as follows:

11.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (JAN 2009)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78).

(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:

[Contracting Officer shall check as appropriate.]

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sep 2006), with Alternate I (Oct 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(3) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).

(4) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jul 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer.) (15 U.S.C. 657a).

(5) [RESERVED]

(6) (i) 52.219-6, Notice of Total Small Business Set-Aside (Jun 2003) (15 U.S.C. 644).

(ii) Alternate I (Oct 1995) of 52.219-6.

(iii) Alternate II (Mar 2004) of 52.219-6.

(7) (i) 52.219-7, Notice of Partial Small Business Set-Aside (Jun 2003) (15 U.S.C. 644).

(ii) Alternate I (Oct 1995) of 52.219-7.

(iii) Alternate II (Mar 2004) of 52.219-7.

(8) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).

(9) (i) 52.219-9, Small Business Subcontracting Plan (Apr 2008) (15 U.S.C. 637(d)(4)).

(ii) Alternate I (Oct 2001) of 52.219-9.

(iii) Alternate II (Oct 2001) of 52.219-9.

(10) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).

(11) 52.219-16, Liquidated Damages – Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).

(12) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Oct 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) Alternate I (Jun 2003) of 52.219-23.

(13) 52.219-25, Small Disadvantaged Business Participation Program – Disadvantaged Status and Reporting (Apr 2008) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

(14) 52.219-26, Small Disadvantaged Business Participation Program – Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

(15) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).

(16) 52.219-28, Post Award Small Business Program Rerepresentation (June 2007) (15 U.S.C. 632(a)(2)).

(17) 52.222-3, Convict Labor (Jun 2003) (E.O. 11755).

(18) 52.222-19, Child Labor – Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126).

(19) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

(20) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(21) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006) (38 U.S.C. 4212).

(22) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(23) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sep 2006) (38 U.S.C. 4212).

(24) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(25) (i) 52.222-50, Combating Trafficking in Persons (Aug 2007) (Applies to all contracts).

(ii) Alternate I (Aug 2007) of 52.222-50.

(26) (i) 52.222-54, Employment Eligibility Verification (Jan 2009) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

(ii) Alternate I (Aug 2007) of 52.222-50.

(27) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)).

(ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

(28) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).

(29) 52.223-16, IEEE 1680 Standard for the Government Assessment of Personal Computer Products (Dec 2007) (E.O. 13423).

(ii) Alternate I (Dec 2007) of 52.223-16.

(30) 52.225-1, Buy American Act – Supplies (Jun 2003) (41 U.S.C. 10a-10d).

(31) (i) 52.225-3, Buy American Act – Free Trade Agreements – Israeli Trade Act (Jun 2006) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78, 108-286, and 109-53).

(ii) Alternate I (Jan 2004) of 52.225-3.

(iii) Alternate II (Jan 2004) of 52.225-3.

(32) 52.225-5, Trade Agreements (Aug 2007) (19 U.S.C 2501, et seq., 19 U.S.C. 3301 note).

(33) 52.225-13, Restriction on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(34) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

(35) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

(36) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

(37) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

(38) 52.232-33, Payment by Electronic Funds Transfer – Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

(39) 52.232-34, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

(40) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

(41) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

(42) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

(ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, 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:

[Contracting Officer shall check as appropriate.]

(1) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et seq.).

(2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

(3) 52.222-43, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

(4) 52.222-44, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

(5) 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (Nov 2007) (41 U.S.C. 351, et seq.).

(6) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements (Nov 2007) (41 U.S.C. 351, et seq.).

[] (7) 52.237-11, Accepting and Dispensing of \$1 Coin (Sep 2008) (31 U.S.C. 5112(p)(1)).

(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) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph, in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 (41 U.S.C. 251 note)).

(ii) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(iii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(iv) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (Sep 2006) (38 U.S.C. 4212).

(v) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).

(vi) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vii) 52.222-41, Service Contract Act of 1965 (Nov 2007) (41 U.S.C. 351, et. seq.).

(viii) 52.222-50, Combating Trafficking in Persons (Aug 2007) (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause 52.222-50.

(ix) 52.222-54, Employment Eligibility Verification (Jan 2009).

(x) 52.225-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment – Requirements (Nov 2007) (41 U.S.C. 351, et seq.).

(xi) 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services – Requirements (Nov 2007) (41 U.S.C. 351, et seq.).

(xii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(FAR 52.212-5)

G. Clause **I1.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (MAR 2008)** is hereby deleted in its entirety. Clause **I1.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (NOV 2008)** is hereby incorporated as follows:

I1.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (NOV 2008)

(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.

(1) 252.205-7000, Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

(2) 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (APR 2007) (15 U.S.C. 637).

(3) 252.219-7004, Small Business Subcontracting Plan (Test Program) (AUG 2008) (15 U.S.C. 637 note).

(4) 252.225-7001, Buy American Act and Balance of Payments Program (JUN 2005) (41 U.S.C. 10a-10d, E.O. 10582).

(5) 252.225-7012, Preference for Certain Domestic Commodities (MAR 2008) (10 U.S.C. 2533a).

(6) 252.225-7014, Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a).

(7) 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).

(8) 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings (MAR 2006); (Section 8065 of Public Law 107-117 and the same restriction in subsequent DoD appropriations acts).

(9) 252.225-7021, Trade Agreements (NOV 2008) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

(10) 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).

(11) 252.225-7028, Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).

(12) (i) 252.225-7036, Buy American Act – Free Trade Agreements – Balance of Payments Program (MAR 2007) 41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

(ii) Alternate I (OCT 2006) of 252.225-7036.

(13) 252.225-7038, Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).

(14) 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Pub. L. 107-248) and similar sections in subsequent DoD appropriations acts).

(15) 252.227-7015, Technical Data – Commercial Items (NOV 1995) (10 U.S.C. 2320).

(16) 252.227-7037, Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

(17) 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).

(18) 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108-375).

(19) 252.243-7002, Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

(20) (i) 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(ii) Alternate I (MAR 2000) of 252.247-7023.

(iii) Alternate II (MAR 2000) of 252.247-7023.

(iv) Alternate III (MAY 2002) of 252.247-7023.

(21) 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:

(1) 252.225-7014, Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a).

(2) 252.237-7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pubic Law 108-375).

(3) 252.247-7023, Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631).

(4) 252.247-7024, Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(DFARS 252.212-7001)

H. The following clauses incorporated by reference in **Clause I1.20-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC JAN 2003)** are hereby changed as follows:

I211

FAR 52-216-18

ORDERING (OCT 1995)

a) 01 APR 2009 THROUGH 31 MAR 2014, IF ALL
OPTIONS ARE EXERCISED, THE ORDERING
PERIOD WILL GO THROUGH 31 MAR 2019

I. The period of performance for Period One through Option Five are hereby changed as follows:

PERIOD ONE
01 APR 2009 – 31 MAR 2010

PERIOD TWO
01 APR 2010 – 31 MAR 2011

PERIOD THREE
01 APR 2011 – 31 MAR 2012

PERIOD FOUR
01 APR 2012 – 31 MAR 2013

PERIOD FIVE
01 APR 2013 - 31 MAR 2014

OPTION ONE
01 APR 2014 – 31 MAR 2015

OPTION TWO
01 APR 2015 – 31 MAR 2016

OPTION THREE
01 APR 2016 – 31 MAR 2017

OPTION FOUR
01 APR 2017 – 31 MAR 2018

OPTION FIVE
01 APR 2018 – 31 MAR 2019

J. As a result of paragraph G above, Schedule B is hereby incorporated by attachment.