

SOLICITATION/CONTRACT/ORDER FOR COMMERICAL ITEMS				1.REQUISITION NUMBER SP0600-09-1211		PAGE 1 OF 33			
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24 & 30									
2.CONTRACT NO.		3.AWARD/EFFECTIVE DATE		4.ORDER NUMBER		5.SOLICITATION NUMBER SP0600-09-R-0310			
7.FOR SOLICITATION INFORMATION CALL:		a.NAME SUSAN MULLIS			b.TELEPHONE NUMBER (No collect calls) 210-925-4845		6.SOLICITATION ISSUE DATE 26 Feb 2009		
9.ISSUED BY		CODE SP0600		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 BUS <input type="checkbox"/> 8(A) NAICS: 325120 SIZE STANDARD: 1000		11.DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE			
DEFENSE ENERGY SUPPORT CENTER (DESC-MK) 1014 BILLY MITCHELL BLVD BLDG 1621 SAN ANTONIO, TX 78226-1859 Email: susan.mullis@dla.mil				13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS(15 CFR 700)		12.DISCOUNT TERMS			
15.DELIVER TO				CODE		16.ADMINISTERED BY			
SEE PART I, B1.09-2 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC APR 2006)				SEE BLOCK 9		CODE SP0600			
17a.CONTRACTOR/OFFEROR		CODE		FACILITY CODE		18a.PAYMENT WILL BE MADE BY			
TELEPHONE NO.						CODE HQ0104			
Defense Finance and Accounting Service Columbus Center ATTN: DFAS/BVDFB (Aerospace Energy) P. O. Box 182317 Columbus, OH 43218-2317 EFT:T									
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b.SUMMIT INVOICES TO ADDRESS SHOWN IN BLOCOK 18a UNLESS BLOCK BELOW IS CHECKED. <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY		22. UNIT		
		SEE PART I, B1.09-2 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC APR 2006)					23. UNIT PRICE		
							24. AMOUNT		
<i>(Use Reverse and/or Attach Additional Sheet as Necessary)</i>									
25.ACCOUNTING AND APPROPRIATION DATA						26.TOTAL AWARD AMOUNT (For Govt. Use Only)			
<input checked="" type="checkbox"/> 27a.SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED <input checked="" type="checkbox"/> ARE NOT ATTACHED.									
<input type="checkbox"/> 27b.CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.									
28.CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.					29.AWARD OF CONTRACT: REFERENCE OFFER <input type="checkbox"/> DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDES ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ALL ITEMS				
30a.SIGNATURE OF OFFEROR/CONTRACTOR					31a.UNITED STATES OF AMERICA(SIGNATURE OF CONTRACTING OFFICER)				
30b.NAME AND TITLE OF SIGNER (Type or Print)			30c.DATE SIGNED		31b.NAME OF CONTRACTING OFFICER (Type or print)			31c.DATE SIGNED	
					SYLVIA T. URIAS-VALLEJO				

PART I – SF 1449 CONTINUED**IMPORTANT NOTICES TO OFFERORS:**

1. The Government plans to award a five-month Firm Fixed-Price Requirements-Type contract(s) for Gaseous Helium (GHe) for the time period specified in the Schedule.
2. All offerors shall comply with the requirements listed in Clause L2.35 PROPOSAL FORMAT AND CONTENT (AEROSPACE ENERGY) (DESC OCT 2008) and all offers will be evaluated in accordance with Clause M2.14 EVALUATION – COMMERCIAL ITEMS (AEROSPACE ENERGY) (DESC OCT 2008).
3. Central Contractor Registration (CCR) is required and is available at www.ccr.gov/index.cfm or (888) 227-2423.
4. For questions regarding Small Business or Small Disadvantage Business affairs, offerors are directed to Mrs. Lula Manley of the DESC Small Business Office at 703-767- 9678 or 800-523-2601.
5. Clause C16-65-6, PROPELLANT PRESSURIZING AGENT, HELIUM, TYPE I, GASEOUS, GRADE A (AEROSPACE ENERGY) (DESC APR 2006), paragraph b., correct address is: ATTN: DESC-QT/QA, BUILDING 1621-K, 1014 BILLY MITCHELL BLVD, SAN ANTONIO, TX 78226-1859.

SOLICITATION FORMAT

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PART I – SF 1449 CONTINUED

B1.09-2 SUPPLIES TO BE FURNISHED (INDEFINITE QUANTITY) (AEROSPACE ENERGY) (DESC APR 2006)

(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) 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) _____.

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

performed at destination.

(9) [X] 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) 0001 _____.

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

(11) [] A copy of the certified weight ticket shall accompany each shipment.

(12) [X] A copy of the Certificate of Analysis shall accompany each shipment.

(13) [] 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)

SCHEDULE

<u>ITEM</u>	<u>SUPPLIES/SERVICES</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL AMOUNT</u>
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**NON-RECURRING
NON-BLM**

		Est. Qty	Unit Price	Total Amount
0001	Pressurizing Agent, Gaseous Helium (Bulk), Type 1, Grade A MIL-PRF-27407C, 29 Nov 06 Hazardous Material NSN 9135-00-890-2011 POP 1 May 2009 – 2 Oct 2009	576 MC	_____	_____
0002	SERVICES, DELIVERY FEE FOR ORIGIN EMERGENCY DELIVERY In support of: NSN 9135-00-890-2011 IAW Clause C900 PARAGRAPH 3.a.ii. POP 1 May 2009 – 2 Oct 2009	0	_____	_____
0003	SERVICES, MANIFOLD MASTER VALVE In support of: NSN 9135-00-890-2011 IAW SOO PARAGRAPH 8. POP 1 May 2009 – 2 Oct 2009	1 EACH	_____	_____
0004	SERVICES, TUBE BRASS VALVE In support of: NSN 9135-00-890-2011 IAW SOO PARAGRAPH 8. POP 1 May 2009 – 2 Oct 2009	1 EACH	_____	_____
0005	SERVICES, BURST DISC SAFETY DEVICE In support of: NSN 9135-00-890-2011 IAW SOO PARAGRAPH 8. POP 1 May 2009 – 2 Oct 2009	1 EACH	_____	_____
0006	SERVICES, MISCELLANEOUS: To be priced and negotiated as required over the life of the contract. In support of: NSN 9135-00-890-2011 IAW SOO PARAGRAPH 8. POP 1 May 2009 – 2 Oct 2009	0	TBN	_____

DESCRIPTION/SPECIFICATIONS**C1.02 DODISS SPECIFICATIONS (DESC OCT 2000)**

Unless otherwise specified, the issues of Federal and Military specifications, standards, and related standardization documents and those non-Government standards adopted for Department of Defense use, which are cited in this solicitation/contract, are those listed in the most recent Department of Defense Index of Specifications and Standards (DODISS) and any applicable supplement. The basic DODISS is issued on July 1st every year; supplementals thereto are issued every other month thereafter, those dates being September 1st, November 1st, January 1st, March 1st, and May 1st.

(DESC 52.246-9FT1)

C16.65-6 PROPELLANT PRESSURIZING AGENT, HELIUM, TYPE I, GASEOUS, GRADE A (AEROSPACE ENERGY) (DESC APR 2006)

(a) Gaseous helium, Type I, Grade A, shall conform to the requirements of MIL-PRF-27407B, dated August 25, 1997.

(b) **REPORTS.** One copy of the quality certificate of analysis shall accompany each shipment shipped under this contract and one copy of the quality certificate of analysis shall be submitted to DESC-BP/BQ within three days after each shipment. Quality certificate of analysis reports shall be in standardized format as outlined in the attached GUIDELINES FOR THE PREPARATION OF PRODUCT ANALYSIS REPORTS. The lab report shall be faxed to the attention of DESC-BP/BQ at **(210) 925-8048** or mailed to the following address:

ATTN: DESC-BP/BQ
 BUILDING 1621-K
 2261 HUGHES AVENUE, SUITE 128
 LACKLAND AFB TX 78236-9828

(DESC 52.246-9FLT)

C900 STATEMENT OF OBJECTIVES/WORK AND/OR SPECIFICATIONS (AEROSPACE ENERGY) (DESC APR 2006)**PART I – REQUIREMENT****GENERAL INFORMATION:****1. DESCRIPTION OF REQUIREMENT**

The Defense Energy Support Center (DESC), Defense Logistics Agency, as the Department of Defense (DoD) Integrated Materiel Manager (IMM) for Aerospace Energy products and related services requires production and delivery of Gaseous Helium (GHe) in support of the National Oceanic and Atmospheric Administration (NOAA)/National Weather Service (NWS) Alaska. The Contractor shall provide all production, raw materials, supplies, management, tools, equipment and labor necessary for the manufacture of the GHe. The Contractor shall provide GHe product FOB Origin into Customer-owned International Organization for Standardization (ISO) containers. The GHe will be used for weather balloons.

2. PRODUCT SPECIFICATION REQUIREMENTS

a. The GHe shall conform to the requirements of Type I, Grade A of specification MIL-PRF-27407C, dated 29 Nov 2006, Propellant Pressurizing Agent, Helium.

b. In addition to the reports required elsewhere within this contract, one copy of a Certificate of Analysis for each sample required by the specification shall be sent to DESC-QA/QT within three days after the analysis of that sample. The analysis report shall be emailed to tech.prop@dla.mil, or faxed to the attention of DESC-QA/QT at (210) 925-8048.

3. DELIVERIES OR PERFORMANCE

a. Delivery lead time:

i. For routine delivery, the Contractor shall have Customer-owned helium ISO container(s) filled and ready for shipment within 3 days after receipt of the Propellants Delivery/Services Task Schedule (PDST) (Form 2908) issued by the DESC Inventory Manager, unless a otherwise specified in the request.

ii. If an emergency delivery is required, the Contractor shall have Customer-owned helium ISO container(s) filled and ready for shipment within twenty-four (24) hours after receipt of a PDST issued by the DESC Inventory Manager.

b. Delivery Hours: FOB Origin deliveries will be scheduled for carrier pick-up during the Contractors normal business hours.

4. PRODUCT DELIVERY INFORMATION

a. The Contractor shall deliver in spec product per paragraph 2 in customer-owned helium ISO containers.

5. QUANTITY DETERMINATION

Quantity determination shall be performed at origin in accordance with Clause F1.36, Determination of Quantity.

6. SECURITY REQUIREMENTS

Contractor(s) shall have the capability to store a maximum of 6 empty Customer-owned ISO containers with their chassis in a secured area.

7. INVENTORY STATUS REPORT

Contractor shall submit an ISO container status report and a chassis status report monthly by fax to (210-925-8722) or by email to the DESC Inventory Manager at (isabel.zamora@dla.mil). For ISO container, the report shall contain the elements in attachment 1. For chassis the report shall contain the elements in attachment 2.

8. MISCELLANEOUS SERVICES

For customer owned ISOs and chassis located at the Contractors facility the contractor shall inspect the ISO and chassis within 7 days of receipt for repairs that will return the ISO and chassis to a serviceable condition or otherwise specified on the assigned delivery order issued by the CO. The inspection shall include but is not limited to all individual cylinders, gauges, manifold components and frame in accordance with the Code of Federal Regulations Title 49. The Contractor shall prepare and submit to the CO via facsimile or email, an itemized list of repairs/replacement and cost to the CO for approval. The Contractor shall not begin repairs until a written authorization is received from the CO. All other repairs or replacement will be on a case-by-case basis to be negotiated (TBN) under the MISCELLANEOUS SERVICES contract line item.

PACKAGING AND HANDLING

D10 PACKAGING REQUIREMENTS (AEROSPACE ENERGY) (DESC APR 2006)

(a) The Contractor shall be responsible for ensuring the hazardous materials shipment is in full compliance with all applicable packaging/packing, marking, labeling, placarding, blocking and bracing, and palletizing and shipping certifications in force and effect on the date of the shipment in accordance with the following applicable rules and regulations for the individual hazard, ultimate destination, and mode of transportation:

- (1) Title 49 of the Code of Federal Regulations (49 CFR) -- Packaging.
- (2) DLAI 4145.3, Preparing Hazardous Materials for Military Air Shipments.
- (3) International Air Transport Association (IATA) -- Dangerous Goods Regulations.
- (4) International Civil Aviation Organization (ICAO) -- Technical Instructions for the Safe Transportation of

Dangerous Goods by Air.

(5) International Maritime Organization (IMO) -- International Maritime Dangerous Goods (IMDG) Code (for overseas shipments by vessel).

- (6) MIL-STD 129, Standard Practice for Military Marking (for military destinations).
- (7) MIL-HDBK 774, Department of Defense Handbook, Palletized Unit Loads (for guidance only).
- (8) ASME MH 1.8, Wood Pallets.

(b) Contractor commercial packaging (ASTM D 3951) shall also be in compliance with the requirements listed.
(DESC 52.223-9F17)

D15 CONTRACTOR SEAL REQUIREMENT (AEROSPACE ENERGY) (DESC OCT 2006)

(a) The Contractor shall place tamper indicating devices (TIDs) such as a seal or cap on the shipping container(s) immediately after filling and sampling. The TIDs shall be placed on the containers in such a manner that pilferage or tampering of the product could only be accomplished by breaking or otherwise destroying the TID. This may require the application of several TIDs on each shipment container.

(b) Where possible, the TID shall be printed with a serial number. The container number and TID number(s) shall be recorded on the certificate of analysis and on the shipping documents. Monthly equipment inventory reports provided to DESC by the Contractor shall include container numbers as well as corresponding TID numbers.

(c) TIDs shall not be removed from a container unless authorized by DESC. If a TID is broken or no longer intact, the Contractor shall contact the Contracting Officer for further instructions. If the Contractor is instructed to place a new TID on

the container, the new TID number (if applicable) shall be noted, along with the container number, as stated in paragraph (b) above.

(DESC 52.211-9FN1)

INSPECTION AND ACCEPTANCE

E1.15 CONTRACTOR INSPECTION RESPONSIBILITIES (AEROSPACE ENERGY) (DESC APR 2006)

(a) QUALITY CONTROL PLAN.

(1) The Contractor shall provide and maintain an inspection system and a written Quality Control Plan (QCP) acceptable to the Government. If the Contractor is ISO certified Q91 (ISO9001) Quality Management Systems, they have the option to offer their Q91 inspection system as their QCP provided their Q91 written plan incorporates all the QCP elements identified below. The QCP shall be established and reviewed for adequacy by the Quality Representative (QR) prior to commencement of production or services.

(2) The QCP shall include--

- (i) A schematic diagram of plant facilities pertinent to the inspection system indicating all inspection points;
- (ii) Sampling procedures.
- (iii) Sample testing methods/procedures;
- (iv) Analytical and measuring equipment calibration program;
- (v) Loading/shipping procedures;
- (vi) Records maintenance and reports preparation/distribution; and
- (vii) Corrective action procedures.

(b) The Contractor shall perform all inspection tests required by the specification/item description of the supplies to be furnished under this contract or shall have such tests performed in a laboratory acceptable to the Government. The Contractor shall notify the QR in sufficient time to permit inspection by the Government. When such tests are performed at origin on supplies to be accepted at destination, documentation that will enable verification of the original test results shall be provided to the Government at the time of acceptance.

(DESC 52.246-9FE2)

E6 CERTIFICATE OF CONFORMANCE (DESC JAN 2004)

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the Material Inspection and Receiving Report (DD Form 250) or other authorized document that is distributed to the payment office (Block 12 of the DD Form 250). A copy shall also be sent with the shipment and to the CAO (Block 10 of the DD Form 250); however, the CAO copy shall only be sent if specifically requested by the Contracting Officer.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

"I certify that on _____ [insert date], the _____ [insert Contractor's name] furnished the supplies or services called for by Contract No. _____ via _____ [Carrier] on _____ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number), and are in the quantity shown on this or on the attached acceptance document."

Date of Execution: _____

Signature: _____

Title: _____

(DESC 52.246-9F01)

E22.01 QUALITY REPRESENTATIVE (DESC JUL 1992)

The Quality Office assigned inspection responsibility under this contract is

TO BE DETERMINED AT TIME OF AWARD

(DESC 52.246-9F35)

E33.10 MANUFACTURING AND FILLING POINTS (AEROSPACE ENERGY) (DESC JUL 2008)

(a) Provide the name, complete addresses and telephone number of the manufacturing and filling points for each product to be furnished, and identify the filling points as primary or secondary.

<u>PRODUCT</u>	<u>NAME, COMPLETE ADDRESS AND TELEPHONE NUMBER OF MANUFACTURING POINT/FILLING POINT</u>
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(b) Suppliers that list primary and alternate manufacturing/filling points for supporting the same requirement shall provide a 30 calendar day notice to the Government prior to offering an initial shipment from an alternate manufacturing/filling point.

(c) For f.o.b. origin shipments, the contract price shall not be adjusted if a Contractor uses a different fill location other than the primary fill point during contract performance. However, if the use of the alternate fill point results in increased costs to the Government, such as transportation costs, the Contractor agrees to reimburse the Government for those increased costs.

(DESC 52.246-9F51)

E35 NONCONFORMING SUPPLIES AND SERVICES (DESC JAN 2004)

(a) The Government may, at its discretion, accept nonconforming supplies or services. In such cases, the Contractor must obtain a deviation or waiver from the Contracting Officer prior to acceptance.

(b) The following procedures shall be used to request a deviation or waiver to the applicable nonconformance(s). A deviation is a request by a Contractor to deviate from the contract requirements after contract award, but prior to initial production of each product (for the duration of the contract). A waiver is a request by a Contractor to deviate from the contract requirements after initial production of each product (on a case-by-case basis or for a set period).

(1) Requests for deviations and waivers shall be submitted by the Contractor to the Contracting Officer with a copy to the Quality Representative (QR). Each request shall provide the following information: Contractor name; contract number; contract line item and product, if applicable; clause number, paragraph and subparagraph, as appropriate; the nature of the request; the reason for the request; the corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and equitable price adjustment offered over the administrative fee. In extraordinary situations, the Contractor may initially submit the request for a waiver, not a deviation, through the cognizant QR to the Contracting Officer or the Contracting Officer's Representative (COR) in the Quality Operations Division (DESC-BQ) of the Defense Energy Support Center (DESC). Extraordinary situation requests shall be submitted formally to the Contracting Officer prior to close of business of the next normal DESC workday (0800 to 1630 hours EST, Monday through Friday, Federal Holidays excluded). As used in this clause, the term extraordinary situation means the matter cannot await resolution until the next normal DESC workday. In addition, if either the Contracting Officer or the COR cannot be reached, the Duty Officer shall be contacted and provided the necessary information to forward to the proper individuals as soon as possible. The Duty Officer's telephone number is **(800) 286-7633** or **(703) 767-8420; (DSN) 427-8420**.

(2) If a deviation or waiver is granted, the contract will be modified to provide an equitable price reduction or other adequate consideration commensurate with the deviation or waiver being granted. If the situation dictates, a deviation or waiver may be granted without prior agreement on price adjustment or other consideration subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such agreement shall be documented on the receiving document or

other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of the Disputes paragraph of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause of this contract.

(3) If a deviation or waiver is granted and the nonconforming supplies are accepted, then in no event will consideration be less than \$250 to cover administrative costs, plus any additional cost of Government reinspection or retest, if necessary.

(4) If a deviation or waiver is granted modifying this contract but the supplies accepted are subsequently determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the deviation or waiver. If, however, this consideration exceeds \$500, a second contract modification shall be issued reducing the Contractor's obligation to \$500 (the administrative cost of issuing the two required modifications).

(c) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to reject or to require correction under the INSPECTION OF SUPPLIES – FIXED-PRICE, INSPECTION AND ACCEPTANCE OF SUPPLIES (SHIPS' BUNKERS), or CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause, then in no event will consideration be less than \$250 to cover administrative costs. This \$250 fee is in addition to—

- (1) Consideration commensurate with the extent of nonconforming supplies; and
- (2) Cost of Government reinspection or retest, if necessary.

The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

(d) Contractors shall be held responsible for payment of any fines or penalties imposed on a receiving activity by an environmental enforcement agency, resulting from the delivery of nonconforming supplies under a DESC contract.

(e) Repeated tender of nonconforming supplies or services, including those with only minor defects, will be discouraged by appropriate actions, including, but not limited to rejecting the supplies or services whenever feasible and documenting the Contractor's performance records.

(DESC 52.246-9FQ5)

DELIVERIES OR PERFORMANCE

F1.36 DETERMINATION OF QUANTITY (PROPELLANTS, CRYOGENICS AND GASES) (AEROSPACE ENERGY) (DESC APR 2006)

(a) **QUANTITY.** The quantity of supplies furnished under this contract shall be determined according to one of the following methods:

(1) **DELIVERIES INTO OR BY PIPELINE.**

(i) **F.O.B. ORIGIN.**

(A) On items requiring delivery at the Contractor's terminal or plant, the quantity shall be determined by a calibrated flow meter.

(B) The **Government** retains the right to have a representative witness quantity measurements performed by the Contractor.

(ii) **F.O.B. DESTINATION.**

(A) At the Government's option, quantity determinations will be made at the receiving activity on the basis of a calibrated flow meter.

(B) The **Contractor** has the right to have a representative witness quantity measurements performed by the Government.

(C) If the Government does not opt to perform quantity determinations at the destination (see schedule), the Contractor shall determine quantity on the basis of a calibrated flow meter.

(D) The **Government** retains the right to have a representative witness quantity measurements performed by the Contractor.

(2) **DELIVERIES BY OTHER THAN PIPELINE.**

(i) **F.O.B. ORIGIN.**

(A) On items requiring delivery at the Contractor's terminal or plant, the quantity shall be determined (at the Contractor's option) on the basis of--

- (a) Calibrated flow meter.
- (b) Weight using calibrated scales.
- (c) Pressure Temperature Fill Charts/Calculations (for gaseous cylinders and tube trailers).

(B) The **Government** retains the right to have a representative witness quantity measurements performed by the Contractor.

(ii) **F.O.B. DESTINATION.**

- basis of—
- (A) At the Government's option, quantity determinations will be made at the receiving activity on the
 - (a) Calibrated flow meter.
 - (b) Weight using calibrated scales.
 - (c) Pressure Temperature Fill Charts/Calculations (for gaseous cylinders and tube trailers).
 - (B) The **Contractor** has the right to have a representative witness quantity measurements performed by the Government.
 - (C) If the Government does not opt to perform quantity determinations at the destination (see Schedule), the Contractor shall determine quantity on the basis of--
 - (a) Calibrated flow meter.
 - (b) Weight using calibrated scales.
 - (c) Pressure Temperature Fill Charts/Calculations (for gaseous cylinders and tube trailers).
 - (D) The **Government** retains the right to have a representative witness quantity measurements performed by the Contractor.

(b) **MEASUREMENT STANDARDS.** Weight scales used in determining net shipping volumes shall be certified as calibrated within the frequency required by local regulation. If no local regulation exists, the frequency of calibration shall be conducted in accordance with weight scale manufacturer recommendation or every six months, whichever is more frequent. All flow meters used in determining product volume shall be calibrated within the frequency required by local regulation (foreign or domestic). If no local regulation exists, then the frequency of calibration shall be that recommended by the meter manufacturer or every six months, whichever is more frequent. Pressure gauges and thermometers used to calculate fill quantities for gaseous cylinders and tube trailers shall be calibrated at least every six months. The net quantity shipped shall be reported on the DD Form 250 or commercial equivalent, whichever is applicable.

(DESC 52.211-9FB6)

F3.04 TRANSPORTATION OF HAZARDOUS MATERIALS (AEROSPACE ENERGY) (DESC APR 2006)

The Contractor shall be responsible for ensuring the transportation of hazardous materials is in full compliance with all applicable rules and regulations below that are in force and effect on the date of the shipment for the individual hazard, ultimate destination, and mode of transportation:

- (a) Title 49 of the Code of Federal Regulations (49 CFR) -- Transportation.
- (b) DLAI 4145.3, Preparing Hazardous Materials for Military Air Shipments.
- (c) International Air Transport Association (IATA) -- Dangerous Goods Regulations.
- (d) International Civil Aviation Organization (ICAO) -- Technical Instructions for the Safe Transportation of Dangerous Goods by Air.
- (e) International Maritime Organization (IMO) -- International Maritime Dangerous Goods (IMDG) Code (for overseas shipments by vessel).

(DESC 52.247-9FJ6)

F7 DELAY OF CARRIER EQUIPMENT (DETENTION) (AEROSPACE ENERGY) (DESC APR 2006)

Detention charges at the Contractor's facility for delay of the carrier's equipment in excess of the carrier's tariff/tender allowable free time is to be documented on the carrier's Transport Equipment Delay Certificate. Both the carrier driver and the Contractor must sign the certificate. Documentation shall include the time and date the carrier driver arrived, the time and date the carrier driver departed, and the reason(s) for the delay. Documentation shall be provided to the carrier driver prior to his departure from the facility.

(DESC 52.247-9FP7)

F21 CONTRACTOR NOTICE REGARDING LATE DELIVERY (DESC APR 1968)

In the event the Contractor encounters difficulty in meeting performance requirements, or when it anticipates difficulty in complying with the contract delivery Schedule or date, it shall immediately notify the Contracting Officer, in writing, giving pertinent details; PROVIDED, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by the Government of any delivery Schedule or date or of any rights or remedies provided by law or under this contract.

(DESC 52.242-9FM1)

CONTRACT ADMINISTRATION DATA**G3.01 PAYMENT DUE DATE (DESC OCT 1988)**

When payment due date falls on a Saturday or Sunday, or on a United States Official Federal holiday, payment will be due and payable on the following workday.

(DESC 52.232-9F45)

G152 SUBMISSION OF INVOICES FOR PAYMENT (AEROSPACE ENERGY) (DESC DEC 2007)

(a) Supporting documentation required for processing payment to the Contractor after delivery of product shall be the original of the DD Form 250, Material Inspection and Receiving Report, or an original of its commercial equivalent. If required by the Schedule, a copy of the certified weight ticket shall accompany each shipment.

(1) **FOR F.O.B. ORIGIN DELIVERIES.** The original DD Form 250 or commercial equivalent shall have been certified by the Government's Quality Assurance Representative (QAR) and have the QAR's typed name, title, mailing address and office phone number included on the document.

(2) **FOR F.O.B. DESTINATION DELIVERIES.** The original DD Form 250 or commercial equivalent shall be provided to the customer/Defense Fuel Support Point (DFSP) to verify receipt of the product at the time of delivery who shall provide the original DD Form 250 or commercial equivalent to a Government representative to certify acceptance of the delivery. For f.o.b. destination deliveries that require f.o.b. origin inspection, the DD Form 250 shall have both the origin QAR's and the customer's/DFSP's signatures.

(3) **FOR C.O.C. DELIVERIES.** The original DD Form 250 or commercial equivalent shall be certified by the Contractor, in accordance with the applicable contract clause, verifying delivery in accordance with contract terms and conditions and the Schedule.

(b) The Contractor shall directly fax the original product invoice along with the original DD Form 250 or commercial equivalent, as described above, within 15 calendar days of delivery, into the Electronic Document Management system at **866-313-2340** or **(614) 693-2630**.

(c) In addition, the Contractor shall concurrently mail a copy of the signed DD Form 250 or commercial equivalent and, if required by the Schedule, a copy of the certified weight ticket to—

DESC-MIC (INVOICE MONITOR)
1014 BILLY MITCHELL BLVD
SAN ANTONIO, TX 78226

FAX: 210-925-8048, ATTN: DESC-MIC (Invoice Monitor)

(d) If the contract involves services such as lease of Contractor-furnished equipment, services of any nature, and/or additional service charges otherwise allowed by the Schedule, such as Delay and Standby, the Contractor shall submit a separate service original invoice to the DESC-MIC Invoice Monitor at the address shown in paragraph (c) above. Unless stipulated otherwise in the contract, all invoices for service will be submitted after the services have been performed. In the case of leased containers, the invoice shall also include the container serial number or other unique identifier as well as information relative to the product that the container supports, i.e., name of the product, NSN, etc.

(DESC 52.232-9FF2)

SPECIAL CONTRACT REQUIREMENTS**H15 TRANSPORTATION REQUIREMENTS FOR F.O.B. ORIGIN SHIPMENTS BY TANK TRUCK, TRUCKLOAD, AND/OR LESS THAN TRUCKLOAD (CYLINDER/DRUM) (AEROSPACE ENERGY) (DESC OCT 2008)**

(a) The address for the Transportation Office (TO) referred to in this clause is—

ATTN: DESC-MIP
BUILDING 1621
1014 BILLY MITCHELL BLVD
SAN ANTONIO, TX 78226-1859
PHONE: (210) 925-1579
FAX: (210) 925-1319

(b) For the purposes of this clause and shipments made under the contract, a cylinder/drum may be considered “truckload” or “less than a truckload.”

(c) Shipments will be made on Commercial Bills of Lading (CBLs) in accordance with appropriate regulations. A CBL will be furnished by the TO in advance of the anticipated shipping date. In the event that a CBL is not provided prior to the shipment and under the direction of the TO, a carrier/contractor bill of lading may be used. The Contractor shall complete and distribute the CBLs as noted on the routing instructions furnished by the TO. The Contractor shall annotate on the CBL the weight/gallons, seal numbers, and signature of the agent. The Contractor shall fax the completed CBL to the TO.

(d) The Contractor is responsible for—

(1) Contacting and scheduling the carrier in for loading, when directed by the TO in the routing instructions;

(2) Inspecting all shipping conveyances prior to loading to insure that product loaded will not be lost or contaminated by the condition of the equipment. Tank truck inspection must be performed by qualified Contractor personnel. Delegation of this responsibility shall not be passed to the tank truck operator/driver; and

(3) Loading of transport equipment shall be in accordance with 49 CFR. The Contractor is liable for reimbursement to the Government for damage to any equipment caused by the failure to load, block, and brace the shipment in accordance with acceptable standards set forth therein.

(4) **DD Form 626, Motor Vehicle Inspection (Transporting Hazardous Materials).** The Contractor is required to fill out the DD Form 626 using one of the options provided below for all shipments of hazardous materials:

(i) The carrier will submit a copy of the vehicle mechanical inspection performed at the carrier's terminal. Annotate in Block 15 of the DD Form 626 that “the carrier performed the vehicle mechanical inspection (Section II) and a copy of the inspection is attached to the DD Form 626” (making sure the shipper knows he/she is to attach the inspection to the DD Form 626). The Contractor is required to sign in Block 16.

(ii) If the carrier does not have a copy of the vehicle mechanical inspection, the Contractor should annotate in Block 15 of the DD Form 626 that “the vehicle mechanical inspection (Section II) was performed by the carrier” and the driver shall sign the DD Form 626.

(iii) A copy of the signed and dated DD Form 626, along with a completed CBL, shall be faxed to the TO.

(5) On the day of shipment, the Contractor shall provide a Report of Shipment within 4 hours of departure or within 2 hours the next day (if contact cannot be made on the day of shipment) to the TO. The Report of Shipment may be made by fax or phone and must include the following information:

- (i) CBL Number.
- (ii) Name of Carrier.
- (iii) Carrier Progressive (Pro) Number.
- (iv) Tractor and Trailer Name.
- (v) Departure Date and Time.

(DESC 52.247-9FJ8)

PART II – CONTRACT CLAUSES

II.03-1 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (OCT 2008) (FAR 52.212-4) IBR

II.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (JUN 2008)

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

[] (3) 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).

- (4) [RESERVED]
- (5) (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.
- (6) (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.
- (7) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).
- (8) (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.
- (9) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
- (10) 52.219-16, Liquidated Damages – Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- (11) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Sep 2005) (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.
- (12) 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).
- (13) 52.219-26, Small Disadvantaged Business Participation Program – Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (14) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).
- (15) 52.219-28, Post Award Small Business Program Rerepresentation (June 2007) (15 U.S.C. 632(a)(2)).
- (16) 52.222-3, Convict Labor (Jun 2003) (E.O. 11755).
- (17) 52.222-19, Child Labor – Cooperation with Authorities and Remedies (Feb 2008) (E.O. 13126).
- (18) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
- (19) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
- (20) 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).
- (21) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- (22) 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).
- (23) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).
- (24) (i) 52.222-50, Combating Trafficking in Persons (Aug 2007) (Applies to all contracts).
 - (ii) Alternate I (Aug 2007) of 52.222-50.

- [] (25) (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)).
- [] (26) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- [] (27) 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.
- [] (28) 52.225-1, Buy American Act – Supplies (Jun 2003) (41 U.S.C. 10a-10d).
- [] (29) (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.
- [] (30) 52.225-5, Trade Agreements (Aug 2007) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- [] (31) 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).
- [] (32) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- [] (33) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- [] (34) 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)).
- [] (35) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- [] (36) 52.232-33, Payment by Electronic Funds Transfer – Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).
- [] (37) 52.232-34, Payment by Electronic Funds Transfer – Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).
- [] (38) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).
- [] (39) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
- [] (40) (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 (Aug 2007) (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) 52.219-8, 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.

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

(iii) 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).

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

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

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

(vii) 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.

(viii) 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.).

(ix) 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.).

(x) 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)

II.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (MAR 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) (APR 2007) (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 (MAR 2007) (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)

ADDENDUM TO I1.03-1 (FAR 52.212-4)

I1.20-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC JAN 2003)

(a) This clause incorporates contract clauses and solicitation provisions by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

(b) The full text of any FAR, DFARS, or DLAD solicitation clause or provision may be accessed electronically at these addresses:

FAR/DFARS: <http://farsite.hill.af.mil>

DLAD: <http://www.dla.mil/j-3/j-336>

(c) **All DESC clauses and provisions are contained in full text in this document.**

(d) **Solicitation Provisions Only.** The offeror is cautioned that the solicitation provisions listed in (e)(1) below may include blocks that must be completed by the offeror and submitted with its quotation or offer. As long as the offeror identifies the solicitation provision by number, the offeror may simply complete those paragraphs requiring fill-in information to submit with its quotation or offer. In addition to the solicitation provisions listed in (e)(1) below, the contract clauses listed in (e)(2) below shall apply to any resultant contract but do not require the submission of additional offer information.

(e) The following FAR/DFARS/DLAD contract clauses and solicitation provisions are hereby incorporated by reference in addition to those listed in the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS and the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS clauses:

(1)

<u>SOLICITATION PROVISION NUMBER</u>	<u>REGULATORY NUMBER</u>	<u>PROVISION TITLE</u>
L2.11-2	FAR 52.215-5	FACSIMILE PROPOSALS (OCT 1997) (c) (210) 925-8048
L5.01-1	DLAD 52.233-9000	AGENCY PROTESTS (APR 2006)

L74 **FAR 52.216-1** **TYPE OF CONTRACT (APR 1984)**
Firm Fixed-Price Requirements-Type Contract

(2)

<u>CONTRACT CLAUSE NUMBER</u>	<u>REGULATORY NUMBER</u>	<u>CLAUSE TITLE</u>
E5	FAR 52.246-2	INSPECTION OF SUPPLIES – FIXED-PRICE (AUG 1996)
F17	FAR 52.247-29	F.O.B. ORIGIN (FEB 2006)
F105	FAR 52.211-19	VARIATION IN QUANTITY (APR 1984) (b) <u>10% Increase</u> <u>10% decrease</u> This increase or decrease shall apply to <u>CLIN 0001</u> .
G9.09	FAR 52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER – CENTRAL CONTRACTOR REGISTRATION (OCT 2003)
I1.07	DFARS 252.204-7004	CENTRAL CONTRACTOR REGISTRATION (ALTERNATE A) (APR 2008/SEP 2007)
I25	FAR 52.227-1	AUTHORIZATION AND CONSENT (DEC 2007)
I84	FAR 52.216-21	REQUIREMENTS (OCT 1995) (f) <u>60 days after expiration of the ordering period.</u>
I198	DFARS 252.243-7001	PRICING OF CONTRACT MODIFICATIONS
I211	FAR 52.216-18	ORDERING (OCT 1995) (b) From Date of Award thru 2 OCT 2009
I350	FAR 52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)

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 reprocurement 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 reprocurement 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)

I190.06 MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS (DESC MAR 2000)

(a) The Contractor agrees to submit to the Contracting Officer, upon request, a Material Safety Data Sheet (MSDS) that meets the requirements of 29 CFR 1910.1200(g) and the latest revision of Federal Standard No. 313 for all requested contract items. MSDSs must cite the contract number, the applicable CAGE code of the manufacturer, and, where so identified, the National Stock Number (NSN).

(b) The data on the MSDSs must be current and complete, reflecting the final composition of the product supplied. Should the description /composition of the product change in any manner from a previously submitted MSDS, the Contractor shall promptly provide a new MSDS to the Contracting Officer.

(DESC 52.223-9F06)

I209.09 EXTENSION PROVISIONS (DESC APR 2003)

(a) The DESC Contracting Officer reserves the right to unilaterally extend this contract on the same terms and conditions one or more times for a total of no more than six months. Notice of contract extension will be furnished to the Contractor 30 days prior to expiration of this contract or any extension thereof. However, nothing in this clause precludes the Contractor from agreeing to an extension of the contract if the DESC Contracting Officer fails to issue the notice within the 30 day time frame.

(b) The foregoing extension may be exercised by the DESC Contracting Officer where continued performance is required until a follow-on contract is awarded or, in the event a follow-on contract has been awarded, until a succeeding Contractor is positioned to commence performance.

(c) Extension of this contract shall be considered to have been accomplished at the time the DESC Contracting Officer provides written notification to the Contractor by facsimile or by mail.

(DESC 52.217-9F20)

PART III – CONTRACT DOCUMENTS AND OTHER ATTACHMENTS

- | | |
|---|--------------|
| (1) Performance Specification MIL-PRF-27707C, Propellant Pressurizing Agent, Helium | Attachment 1 |
| (2) Sample DLA Weekly ISO Container Inventory Report | Attachment 2 |
| (3) Sample DLA Weekly Chassis Inventory Report | Attachment 3 |
| (4) Contractor Past Performance Data Sheet | Attachment 4 |

PART IV – SOLICITATION PROVISIONS**L2.05 INSTRUCTIONS TO OFFERORS – COMMERCIAL ITEMS (JUN 2008)(FAR 52.212-1)****ADDENDUM TO L2.05 [FAR 52.212-1)****L1.02 PROPOSAL ACCEPTANCE PERIOD (DESC NOV 1991)**

(a) **Acceptance period**, as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of proposals.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of 60 calendar days.

(d) If the offeror specifies an acceptance period which is less than that required by the Government, such offer may be rejected.

(e) The offeror agrees to execute all that it has undertaken to do, in compliance with its offer, if such offer is acceptable to the Government and is accepted within the acceptance period stated in (c) above or within any extension thereof that has been agreed to by the offeror.

(DESC 52.215-9FB1)

L2.11-4 E-MAIL PROPOSALS (DESC APR 2005)

- proposals.
- (a) Offerors may submit proposals via e-mail. E-mail proposals are subject to the same rules as paper proposals.
- (b) E-mail receiving data and compatibility characteristics are as follows:
- (1) E-mail address: Susan.Mullis@dla.mil
 - (2) The Defense Energy Support Center accepts attachments in—
 - (i) Adobe Acrobat;
 - (ii) Microsoft Excel;
 - (iii) Microsoft Word; and
 - (iv) Microsoft PowerPoint.
- (c) Initial proposals, modifications and proposal revisions submitted via e-mail must contain a signature.
- (d) Attachments that are not in .pdf file format must be sent password protected for “read only” to ensure the integrity of the data submitted.
- (e) Proposals submitted electronically through a single e-mail must be no more than 15 MB. DESC’s mail server will reject messages larger than 15 MB.
- (f) The DESC e-mail filter will scan the incoming e-mail and attachments for viruses and key words. Abbreviations for terms such as “Analysts” or using “3Xs” as placeholders in a document are found in the filter’s adult content library and may result in the e-mail delivery being delayed. Offerors are encouraged to verify receipt of e-mail offers by contacting the Contracting Officer prior to the solicitation closing time.
- (g) If any portion of an e-mail proposal received by the Contracting Officer is unreadable, the Contracting Officer will immediately notify the offeror and permit the offeror to resubmit the proposal. The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror and the resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complied with the e-mail submissions instructions provided in this paragraph and with the time and format requirements for resubmission prescribed by the Contracting Officer.
- (h) The Government reserves the right to make award solely on the e-mail proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete signed original proposal.

(DESC 52.215-9FA8)

L2.35 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.

(1) In the Schedule, Section B, Supplies or Services and Prices/Costs, offered prices shall be completed for each Contract Line Item Number (CLIN) unless the Schedule notes that multiple awards will be made. In that case, the offeror may select which CLINs or groups of CLINs, such as those applying to a specific customer location, against which to submit an offer;

(2) For each applicable box checked below, unit prices shall be formulated, as specified:

(i) **Product with no Monthly Facility Fee (MFF).** The offeror shall include all fixed, variable and incremental costs to produce and prepare product for Government inspection and acceptance. Include all transportation and shipping costs to deliver the product to the specified customer location if the product CLIN is designation as f.o.b. destination. For this solicitation, the applicable CLIN is 0001.

(ii) **Product with an MFF CLIN.** The offeror shall include only the variable and incremental costs to produce and prepare the product for Government inspection and acceptance in the product CLIN. All fixed costs associated with the facility shall be included in the MFF, to include storage and distribution of Government-owned product, if required by the Statement of Objectives (SOO). For this solicitation, the applicable CLINs are **[Buyer fill in the CLIN(s)]**.

(iii) **Services CLIN(s), such as maintenance and repair of containers.** The offeror shall include all variable and fixed costs associated with the service, as described in the SOO, unless otherwise noted herein that those costs should be included in another CLIN: **[Buyer fill in the CLIN(s)]**. For this solicitation, the applicable Services CLINs are **[Buyer fill in the CLIN(s)]**.

(iv) **Repair Parts Specifically Identified in the Schedule.** Where the Government specifically identifies repair parts which will be reimbursed under the Contract, the offeror shall include in its offered price, on a per unit basis, all costs associated with that repair part, to include the applicable labor costs to install it. For this solicitation, the applicable CLINs are 0003, 0004, 0005.

(v) **Contractor-Provided Tank(s) CLIN(s).** The offeror shall include in each applicable CLIN all fixed and variable costs associated with leasing of a tank or multiple tanks to the Government under the contract. Separate CLINs

have been established for the costs associated with the leasing of the tank(s) as compared to the costs associated with the tank(s) installation and removal. Where the incumbent is offering the same number and size of tanks previously provided under the previous contract, the incumbent need not propose a price for tank(s) installation. However, the incumbent shall propose a price for tank(s) removal. For this solicitation, the applicable CLINs are **[Buyer fill in the CLIN(s)]** _____.

(vi) **Contractor provided equipment CLIN(s).** Where the SOO requires specific contractor-provided equipment for which a separate CLIN has been established for reimbursement under the resultant contract, the offeror shall include all fixed and variable costs associated with providing such equipment, to include but not limited to delivery, installation, calibration, maintenance and repair throughout the contract term, and removal at the expiration of the contract. For this solicitation, the applicable CLINS are **[Buyer fill in the CLIN(s)]** _____.

(vii) **Expedited/Emergency Delivery CLIN(s).** Where the Schedule has a CLIN for Expedited and/or Emergency delivery, as defined in the SOO, the offeror shall include all costs associated with such delivery on a per shipment basis. This encompasses additional labor and transportation costs anticipated to be incurred over and above normal delivery costs. Any product ordered with an Expedited and/or Emergency delivery shall be paid at the unit price of the applicable product CLIN. For this solicitation, the applicable CLIN is **0002**.

(viii) **Hot Fill CLIN(s).** If the solicitation includes a "Hot Fill" CLIN, the offeror shall propose a per Hot Fill Unit Price. Examples of costs that should be included in the offeror's per Hot Fill Unit Price but not limited to these, are additional support personnel required to accomplish the Hot Fill or additional time required at the delivery location in support of the Hot Fill. The per Hot Fill Unit Price shall not include the cost of the product consumed during the Hot Fill since the Contractor will be paid for the amount of product consumed under the applicable product CLIN. For this solicitation, the applicable CLINs are **[Buyer fill in the CLIN(s)]** _____.

(ix) **Additional CLIN(s) not described above to be priced by the offeror.** For this solicitation, the applicable CLINs are **[Buyer fill in the CLIN(s)]** _____.

(x) **Not Separately Priced (NSP) CLIN(s).** For CLINs shown as NSP, the offeror shall include the costs associated with that CLIN in the designated CLIN's unit price. For this solicitation, the applicable Services CLINs are **[Buyer fill in the CLIN(s)]** _____.

(xi) **To Be Negotiated (TBN) CLIN(s).** For those CLINs designated as TBN, the Government will negotiate a unit price on a case-by-case basis, if and when requirements under the CLIN materialize. In order for the Government to add such a requirement to the contract under the TBN CLIN, the unit price must be determined fair and reasonable. For this solicitation, the applicable CLIN is **0006**.

(xii) **Exceptions to the above. Any storage costs associated with storing customer-owned containers or chasses should be included in the unit price for product.**

(3) 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 by completing the fill-in data requested in paragraphs (b)(1)(i) through (b)(1)(iv) and attaching supply commitment letters requested in paragraph (b)(1)(iv). The offeror may submit continuation sheets with this fill-in provision to provide additional technical narrative, however, the complete technical proposal, exclusive of any résumés, drawings, or blueprints, shall not exceed 12 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**) and apply only if the applicable box is checked:

(i) General description of how the offeror will ensure a reliable supply of on-spec product and/or service to meet the Government's requirements as stated in the solicitation.

(A) Production capability per day of proposed fill plant.

[] (B) Plant storage capacity for product offered.

[] (C) If the offeror will be making deliveries to customers, describe type, number and size of containers that will be used for delivery of product to each customer location that the offeror proposes on.

[] (D) If the contract requires maintenance and repair of Government-owned equipment, such as repairs to cylinders or tube trailers, describe how such services will be performed to meet solicitation requirements.

[] (E) Describe the in-process quality control procedures that will ensure the production and delivery of on-spec product.

[] (F) Describe offeror's proposed quality sampling plan that will be implemented to assure individual shipments made under this solicitation meet the product quality requirements stated in the applicable specification or product description.

[] (ii) Description of Contractor-furnished equipment at a location other than the Contractor's facility (e.g., on Government property) such as storage tanks.

[] (A) Describe all Contractor provided equipment to include a description of size, certifications, instrumentation (including alarms), design parameters, etc.

(B) Include a timeline for the purchase, installation, testing and commissioning of the equipment.

(iii) Describe the method for securing delivery container(s) 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.)

(iv) 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 and/or services 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;

(v) This paragraph describes additional information for the Technical Proposal not asked for in above paragraphs.

1: Contractors available business hours:

2: .If contractor facility cannot store up to six empty ISO containers/chassis, how many can they store?

(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)

L54.02 SITE VISIT (AEROSPACE ENERGY) (DESC APR 2006)

(a) It is the responsibility of the offerors to inspect the site where supplies are to be delivered and/or services are to be performed and to obtain all available information about the site necessary to satisfy themselves about general and local

conditions that may affect delivery as well as cost of contract performance, to the extent that the information is reasonably obtainable. Offerors are responsible for any costs incurred for any site inspection and for obtaining information.

(b) In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(c) Offerors who are interested in a site inspection should not contact the customer(s) directly, but forward such request(s), in writing, directly to the DESC Point of Contact for this procurement, shown in Block 7 of the Standard Form 1449.
(DESC 52.237-9F06)

M2.14 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 and apply ONLY if the applicable box is checked:

(1) Acceptability of the narrative describing how the offeror will ensure a reliable supply of on-spec product and/or services to meet the annual estimated quantities in the RFP's Schedule.

(2) Acceptability of the narrative describing any Contractor-furnished equipment at a location other than the Contractor's facility (e.g., on Government property).

(3) Acceptability of method for securing delivery container and/or cargo tank openings with 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.

(4) Acceptability of the offeror's description of where the product(s) will be obtained and any written supply commitments if the offeror is not the producer of the product to be delivered under the contract.

(5) This paragraph describes additional criteria used to evaluate technical capability not described in the above paragraphs, if applicable. ***[Buyer fill in information or indicate N/A.]***

(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) An offeror whose proposal is evaluated as acceptable from both a technical capability perspective as well as for past performance will be considered technically acceptable.

(e) After evaluating technical capability and past performance, the Contracting Officer will award based on the following price evaluation procedure(s) and only apply if the applicable box is checked:

(1) **For F.O.B. Origin product CLINs.** For price evaluation purposes, the evaluated price of each CLIN or subCLIN for product **(CLIN 0001- NOTE: Delivery destination is Port Puget Sound, WA)** to be delivered on an f.o.b. origin basis will be calculated by multiplying the estimated quantity by the proposed unit price of the product. To each CLIN/subCLIN, the Government will add as an "other price-related factor," the Government's estimated costs for transporting the product from the offeror's proposed fill plant, production facility, and/or storage facility, as stated in the offeror's proposal, to the individual customer locations designated in an attachment to the solicitation. The estimated number of shipments shown in the attachment will also apply. The lowest laid down price is calculated by adding the sum of the evaluated prices for each CLIN/subCLIN to the Government's total estimated cost for transportation and the total of all "other price related factors", if any, as described in the paragraph below. Transportation rates are derived from--

(i) For CONUS locations, the Surface Deployment and Distribution Command's (SDDC's) competitively awarded contracts will be used.

(ii) For OCONUS locations, the Government rates for both air and sea transportation will be taken from the DoD's Single Mobility System (SMS) Air Cargo/PAX Cost Calculator.

(2) **For F.O.B. Destination product CLINs.** For price evaluation purposes, the evaluated price of each CLIN or subCLIN for product (AA through ____) **[Buyer fill in the CLIN(s)]** will be calculated by multiplying the estimated quantity by the proposed unit price of the product(s), which should include all costs associated with the offeror's delivery of product to the location specified in the Schedule. F.o.b. destination CLINs are normally individual DESC customer locations, unless otherwise specified.

(3) **Non-product CLINs/subCLINs.** For price evaluation purposes, the following non-product CLINs/subCLINs will be evaluated for award: **0002, 0003, 0004, 0005**. Each non-product CLIN/subCLIN's evaluated price will be calculated by multiplying the estimated quantity by the offered unit price. Offerors who do not propose on all non-product CLINs and subCLINs stated in the Schedule (where one award will be made), or where a group of CLINs/subCLINs will be evaluated for award, or where the Schedule contains specific customer locations to be evaluated and awarded, may not be considered for evaluation and award unless the offeror proposes prices on all applicable CLINs/subCLINs.

(4) This paragraph describes the evaluation process for product or non-product CLINs/subCLINs or additional "other price related factors" not otherwise described in any of the above paragraphs, if applicable. **[Buyer fill in information or indicate N/A.]**

(5) The offered prices for the following CLINs/subCLINs will not be included in the evaluation for award, but will be evaluated for price reasonableness and included as a CLIN/subCLIN in each contract award: **[Buyer fill in the CLIN(s)]** _____.

(6) **Lowest Total Evaluated Price for F.O.B. Origin Requirements.** If Schedule B includes both f.o.b. origin product CLINs as well as non-product CLINs that are to be evaluated in accordance with this provision, the evaluated prices for all the non-product CLINs will be added to the lowest laid down price of all the product CLINs that are otherwise designated as one group, such as in a region, to determine the lowest total evaluated price. Otherwise, only the product CLINs (or those applicable to the designated group) will be added to determine the lowest total evaluated price. If no region or group is designated in the Schedule, all the evaluated prices of all the CLINs in the solicitation will be added together for determination of the lowest total evaluated price.

(7) **Lowest Total Evaluated Price for F.O.B. Destination Requirements.** If Schedule B includes both f.o.b. destination product CLINs as well as non-product CLINs that are to be evaluated in accordance with this provision, the evaluated prices for all the non-product CLINs will be added to the evaluated price(s) of the applicable f.o.b. destination product CLINs to determine the lowest total evaluated price. Otherwise, only the product CLINs applicable to the group or designated customer location will be added to determine the lowest total evaluated price. Where more than one customer location is contained in the Schedule, the lowest total evaluated price shall be all product CLINs and non-product CLINs for a specific customer location, added together.

(8) If Schedule B is for services only and as such does not include any product CLINs, the total evaluated price will be the total of the evaluated prices for all the services CLINs, as designated in paragraph (e)(3) above.

(f) If options are included, the Government will evaluate offered prices by using the same price evaluation procedures as described above, except, as follows: **[Buyer fill in or indicate N/A.]**

The Government may determine that an offered price under an option CLIN is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(g) **BASIS FOR AWARD.** The Contracting Officer will award to the responsible, technically acceptable offeror with the lowest total evaluated price for the designated group of CLINs and/or customer locations, including options, if contained in the solicitation. If group(s) of CLINs or individual customer locations are not otherwise designated in the Schedule, only one contract will be awarded for all the CLINs specified in the Schedule. Where the Government is soliciting for a group of CLINs, such as on a regional basis, as well as for individual customer locations on a f.o.b. destination basis, more than one contract award may be made as price evaluation and award will be made on a customer location by customer location basis.

(h) 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)

OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS

K1.01-10 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (ALTERNATES I/II) (NOV 2007/APR 2002/OCT 2000)

An offeror shall complete only paragraph (l) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (b) through (k) of this provision.

(a) **DEFINITIONS.** As used in this provision--

Emerging small business means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract, the enforcement of which can be accomplished by process of penalties.

Manufactured end product means any end product in Federal Supply Classes (FSC) 1000-9999, except--

(1) FSC 5510, Lumber and Related Basic Wood Materials;

(2) Federal Supply Group (FSG) 87, Agricultural Supplies;

(3) FSG 88, Live Animals;

(4) FSG 89, Food and Related Consumables;

(5) FSC 9410, Crude Grades of Plant Materials;

(6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) FSC 9610, Ores;

(9) FSC 9620, Minerals, Natural and Synthetic; and

(10) FSC 9630, Additive Metal Materials.

Place of manufacture means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) **Service-disabled veteran** means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly-owned business, not less than 51 percent of the stock of which is owned by one or more veterans, and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned business concern means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

Women-owned small business concern means a small business concern--

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) TAXPAYER IDENTIFICATION NUMBER (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) TAXPAYER IDENTIFICATION NUMBER (TIN).

- TIN: _____
- TIN has been applied for.
- TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.

- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of a Federal government;

(4) TYPE OF ORGANIZATION.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other: _____.

(5) COMMON PARENT.

- Offeror is not owned or controlled by a common parent.
- Name and TIN of common parent:
Name _____
TIN _____

(c) Offerors must complete the following representations when the resulting contract is to be performed in the United States or its outlying areas. Check all that apply.

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

- is
- is not

a small business concern.

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

- is
- is not

a veteran-owned small business concern.

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

is
 is not

a service-disabled veteran-owned small business concern.

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

is
 is not

a small disadvantaged business concern as defined in 13 CFR 124.1002.

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

is
 is not

a woman-owned small business concern.

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

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

is

a women owned business concern.

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

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

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

is
 is not

an emerging small business.

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

(A) The offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) The offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following:)

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

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

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

(A) It--

- is
- is not

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

(B) It--

- has
- has not

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

(ii) JOINT VENTURE UNDER THE PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture:

(iii) **ADDRESS.** The offeror represents that its address—

- is
- is not

in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation.

Address, as used in this provision, means the address of the offeror as listed on the Small Business Administration's register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR part 124, subpart B. For joint ventures, **address** refers to the address of the small disadvantaged business concern that is participating in the joint venture.

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

(i) It--

is

is not

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

(ii) It--

is

is not

a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. **(The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:**

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

(11) **(Complete if the offeror represented itself as disadvantaged in paragraph (c)(4) or (c)(9) of this provision.)** The offeror shall check the category in which its ownership falls:

Black American

Hispanic American

Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

Asian-Pacific American (persons with origin from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

Individual/concern, other than one of the preceding.

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

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

(i) It--

has

has not

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

(ii) It--

has

has not

filed all required compliance reports.

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

(i) It--

has developed and has on file

has not developed and does not have on file

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

(ii) It--

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

(e) **CERTIFICATION REGARDING PAYMENTS TO INFLUENCE FEDERAL TRANSACTIONS (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000).** By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMG Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) **TRADE AGREEMENTS CERTIFICATE (JAN 2005) (DFARS 252.225-7020). (Applies only if DFARS clause 252.225-7021, TRADE AGREEMENTS (NOV 2006), is incorporated by reference in this solicitation.) DFARS 252.225-7020 is hereby incorporated by reference in its entirety; only the certification portion is reproduced below.**

(1) For all line items subject to the TRADE AGREEMENTS clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in subparagraph (2) below, is a U.S.-made qualifying country, or designated country end product.

(2) The following supplies are other nondesignated country end products:

(Line item no.)

(Country of origin)

(g) **BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM CERTIFICATE (OCT 2006) (DFARS 252.225-7035). (Applies only if DFARS clause 252.225-7036, BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM (OCT 2006) is incorporated by reference in this solicitation.) DFARS 252.225-7035 is hereby incorporated by reference in its entirety; only the certification portion is reproduced below.**

(1) For all line items subject to the BUY AMERICAN ACT – FREE TRADE AGREEMENTS – BALANCE OF PAYMENTS PROGRAM clause of this solicitation, the offeror certifies that—

- and
 - (i) Each end product, except the end products listed in subparagraph (2) below, is a domestic end product;
 - (ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian and Canadian) end products:

_____	_____
(Line item number)	(Country of origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products:

_____	_____
(Line item number)	(Country of origin)

(iii) The following supplies are other foreign end products including end products manufactured in the United States that do not qualify as domestic end products:

_____	_____
(Line item number)	(Country of origin (if known))

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

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

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

- are
- are not

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

(2) have or
 have not,

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

- are or
- are not

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

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

(1) List End Product.

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

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

(i) The offeror will not supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

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

(j) **PLACE OF MANUFACTURE.** (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly--

(1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) Outside the United States.

(k) **CERTIFICATES REGARDING EXEMPTIONS FROM THE APPLICATION OF THE SERVICE CONTRACT ACT. (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The Contracting Officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]**

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror

does

does not

certify that--

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1). The offeror

does

does not

certify that--

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for those employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies--

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) (1) **Annual Representations and Certifications.** Any changes provided by the offeror in paragraph (j) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for paragraphs _____. **[Offeror to identify the applicable paragraphs at (b) through (k) of this provision that the offeror has completed for the purposes of this solicitation only, if any. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer. Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.]**

(FAR 52.212-3//II)

K1.05 OFFEROR REPRESENTATIONS AND CERTIFICATIONS - COMMERCIAL ITEMS (JUN 2005)

(a) **DEFINITIONS.** As used in this clause--

(1) **Foreign person** means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) **United States** means the 50 States, the District of Columbia, outlying areas, and the outer Continental Shelf as defined in 43 U.S.C. 1331.

(3) **United States person** is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern, as determined under regulations of the President.

