

| | | | | | | |
|--|---|-----------------------------|---|--|---------------------------------|------------|
| SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30</i> | | | | 1. REQUISITION NO. | PAGE 1 OF | |
| 2. CONTRACT NO. DE-AM03-01SF22325 | 3. AWARD/EFFECTIVE DATE June 27, 2001 | 4. ORDER NO. | 5. SOLICITATION NO. DE-RP03-01SF22325 | 6. SOLICITATION ISSUE DATE June 14, 2001 | | |
| 7. FOR SOLICITATION INFORMATION CALL | | | a. NAME | b. TELEPHONE NO. (No collect calls) | 8. OFFER DUE DATE/LOCAL TIME | |
| 9. ISSUED BY U.S. Department of Energy Oakland Operations Office 1301 Clay Street Oakland, CA 94612 | | | 10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input checked="" type="checkbox"/> SET ASIDE: 100% FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. BUSINESS <input checked="" type="checkbox"/> 8(A) SIC: 5045 NAICS: 421430 SIZE STD: 500 | 11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING | 12. DISCOUNT TERMS N/A | |
| 15. DELIVER TO To be provided on individual Delivery Orders. | | | 16. ADMINISTERED BY Gloria Castro (510) 637-1872 gloria.castro@oak.doe.gov | | | |
| 17a. CONTRACTOR/OFFEROR Network Management Corporation 4708 Roseville Road, Suite 114 North Highlands, CA 95660 TIN: 94-3247387 TELEPHONE NO.: 916-332-5841 | | | 18a. PAYMENT WILL BE MADE BY To be provided on individual Delivery Orders. | | | |
| <input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER | | | 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM | | | |
| 19. ITEM NO. | 20. SCHEDULE OF SUPPLIES/SERVICES | | 21. QUANTITY | 22. UNIT | 23. UNIT PRICE | 24. AMOUNT |
| | See Attachment A. This is an Indefinite Delivery Indefinite Quantity Contract. See Attachment B for description. This Acquisition is Set Aside 100% for 8 (a). <i>(Attach Additional Sheets as Necessary)</i> | | | | | |
| 25. ACCOUNTING AND APPROPRIATION DATA To be provided on individual Delivery Orders. | | | | 26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$43,000,000 (Maximum Not-to-Exceed) | | |
| <input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED. | | | | | | |
| <input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED. | | | | | | |
| 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>2</u> 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. <input type="checkbox"/> | | | | 29. AWARD OF CONTRACT: REFERENCE <u>NETWORK MANAGEMENT CORPORATION OFFER DATED JUNE 21, 2001</u> . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: ALL <input type="checkbox"/> | | |
| 30a. SIGNATURE OF OFFEROR/CONTRACTOR | | | 31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) | | | |
| 30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) JIM ROUNSVILLE, PRESIDENT | | 30c. DATE SIGNED 6/27/01 | 31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) STEPHEN LAW | | 31c. DATE SIGNED 6/27/01 | |
| 32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED | | | 33. SHIP NUMBER <input type="checkbox"/> PARTIAL | 34. VOUCHER NUMBER | 35. AMOUNT VERIFIED CORRECT FOR | |
| 32b. SIGNATURE OF AUTHORIZED GOVT REPRESENTATIVE | | 32c. DATE | 36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> | | 37. CHECK NUMBER | |
| 41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT | | | 38. S/R ACCOUNT NO. | 39. S/R VOUCHER NO. | 40. PAID BY | |
| 41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER | | 41c. DATE | 42a. RECEIVED BY (Print) | | 42b. RECEIVED AT (Location) | |
| | | | 42c. DATE REC'D (YY/MM/DD) | 42d. TOTAL CONTAINERS | | |

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

OMB No.: 9000-0136
Expires: 09/30/98

STANDARD FORM 1449 (10-95) BACK

LIST OF ATTACHMENTS

| <u>ATTACHMENT</u> | <u>DESCRIPTION</u> | <u>PAGES</u> |
|--------------------------|--|---------------------|
| A | SCHEDULE OF SUPPLIES/ SERVICES | 4 |
| B | DESCRIPTION/SPECIFICATIONS OF SUPPLIES/SERVICES | 2 |
| C | REPORTING REQUIREMENTS CHECKLIST | 2 |
| D | COMMERCIAL ITEM CLAUSES | 2 |
| E | SPECIAL CLAUSES | 4 |

**ATTACHMENT A
SCHEDULE OF SUPPLIES/SERVICES**

| <u>ITEM</u> | <u>SUPPLIES/SERVICES</u> | <u>QTY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>AMOUNT</u> |
|-------------|--|------------|-------------|--|------------------------|
| 01A | Microsoft Enterprise Agreement- Version One (1), Full Platform Enterprise Agreement in accordance with (IAW) Attachment B, Paragraph 1.0 (Price valid through 6/28/01 for quantity range 450 – 19,999) FOB: Destination | 1 | Year | \$236.41 | To be determined (TBD) |
| 01B | Microsoft Enterprise Agreement- Version One (1), Full Platform Enterprise Agreement in accordance with (IAW) Attachment B, Paragraph 1.0 (Price valid through 6/28/01 for quantity range 20,000 – 70,000) FOB: Destination | 1 | Year | \$225.10 | TBD |
| 01C | Microsoft Enterprise Agreement- Version One (1), Full Platform Enterprise Agreement in accordance with (IAW) Attachment B, Paragraph 1.0 (Price valid 6/29/01-10/30/01 for quantity range 1 – 19,999) FOB: Destination | 1 | Year | \$251.77 | TBD |
| 01D | Microsoft Enterprise Agreement- Version One (1), Full Platform Enterprise Agreement in accordance with (IAW) Attachment B, Paragraph 1.0 (Price valid 6/29/01-10/30/01 for quantity range 20,000 – 70,000) FOB: Destination | 1 | Year | \$238.43 | TBD |
| 01E | Option Year One | 1 | Year | Unit price determined by base year price | |
| 01F | Option Year Two | 1 | Year | Unit price determined by based year price | |

| <u>ITEM</u> | <u>SUPPLIES/SERVICES</u> | <u>QTY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>AMOUNT</u> |
|-------------|---|------------|-------------|---|----------------|
| 02A | Microsoft Enterprise Agreement- Version Two (2), Two-Pool (Operating System (O/S) Upgrade Plus Office Professional) IAW Attachment B, Paragraph 2.0 (Price valid through 6/28/01 for quantity range 1 – 19,999) | 1 | Year | \$175.72 | TBD |
| | FOB: Destination | | | | |
| 02B | Microsoft Enterprise Agreement- Version Two (2), Two-Pool (Operating System (O/S) Upgrade Plus Office Professional) IAW Attachment B, Paragraph 2.0 (Price valid through 6/28/01 for quantity range 20,000 – 70,000) | 1 | Year | \$167.54 | TBD |
| | FOB: Destination | | | | |
| 02C | Microsoft Enterprise Agreement- Version Two (2), Two-Pool (Operating System (O/S) Upgrade Plus Office Professional) IAW Attachment B, Paragraph 2.0 (Price valid 6/29/01 – 10/30/01 for quantity range 1 – 19,999) | 1 | Year | \$191.18 | TBD |
| | FOB: Destination | | | | |
| 02D | Microsoft Enterprise Agreement- Version Two (2), Two-Pool (Operating System (O/S) Upgrade Plus Office Professional) IAW Attachment B, Paragraph 2.0 (Price valid 6/29/01 – 10/30/01 for quantity range 20,000 – 70,000) | 1 | Year | \$180.91 | TBD |
| | FOB: Destination | | | | |
| 02E | Option Year One | 1 | Year | Unit price determined by base year price | |
| 02F | Option Year Two | 1 | Year | Unit price determined by base year price | |
| 03A | Microsoft Enterprise Agreement- Version Three (3), Two-Pool (O/S Upgrade Plus Office Standard) IAW Attachment B, Paragraph 3.0 1 Lot = 13,000 seats (Base Year Price valid through 6/28/01) | 1 Lot | Year | \$1,830,613.63 | \$1,830,613.63 |
| | FOB: Destination | | | | |

| <u>ITEM</u> | <u>SUPPLIES/SERVICES</u> | <u>QTY</u> | <u>UNIT</u> | <u>UNIT PRICE</u> | <u>AMOUNT</u> |
|-------------|--|------------|-------------|-------------------|----------------|
| 03B | Microsoft Enterprise Agreement- Version Three (3), Two-Pool (O/S Upgrade Plus Office Standard) IAW Attachment B, Paragraph 3.0 1 Lot = 13,000 seats (Option Year One Price valid on or before 6/28/02 only if Base Year Purchased) | 1 Lot | Year | \$1,784,360.43 | \$1,784,360.43 |
| | FOB: Destination | | | | |
| 03C | Microsoft Enterprise Agreement- Version Three (3), Two-Pool (O/S Upgrade Plus Office Standard) IAW Attachment B, Paragraph 3.0 1 Lot = 13,000 seats (Option Year Two Price valid on or before 6/28/03 only if Base Year and Option Year One Purchased) | 1 Lot | Year | \$555,042.45 | \$555,042.45 |
| | FOB: Destination | | | | |
| 04A | Microsoft Enterprise Agreement- Version Four (4), Two-Pool Plus Client Access Licenses (CAL) IAW Attachment B, Paragraph 4.0 1 Lot = 7,500 seats (Base Year Quarter Price valid through 6/28/01) | 1 Lot | Quarter | \$292,938.96 | \$292,938.96 |
| | FOB: Destination | | | | |
| 04B | Microsoft Enterprise Agreement- Version Four (4), Two-Pool Plus Client Access Licenses (CAL) IAW Attachment B, Paragraph 4.0 1 Lot = 13,000 seats (Option Year One Quarter Price valid on or before 6/28/02 only if Base Year Purchased) | 1 Lot | Quarter | \$292,938.96 | \$292,938.96 |
| | FOB: Destination | | | | |
| 04C | Microsoft Enterprise Agreement- Version Four (4), Two-Pool Plus Client Access Licenses (CAL) IAW Attachment B, Paragraph 4.0 1 Lot = 13,000 seats (Option Year Two Quarter Price valid on or before 6/28/03 only if Base Year and Option Year One Purchased) | 1 Lot | Quarter | \$292,938.96 | \$292,938.96 |
| | FOB: Destination | | | | |

* CLIN 01 through 03. The Unit of Issue is established as the right to use the agreement for a period of a **year**. As determined by the contractor on an individual delivery order basis and to the extent the contractor's licensing arrangement with Microsoft does permit unit pricing / invoicing and payment on a quarterly basis, the Government may issue delivery orders on a quarterly unit pricing (year price divided by four).

** CLIN 04. The Unit of Issue is established as the right to use the agreement for a period of three months (**Quarter** of a year). Therefore the unit price shall be the price of the agreement for one quarter.

*** Minimum/Maximum Quantity: Total Minimum Ordered Quantity is 450 units for the first year. Total Maximum Ordered Quantity is an aggregate of 70,000 units per year based on per year pricing and includes total quantities ordered for all CLINs. All delivery orders (DO) must be issued prior to October 30, 2001. DO may be modified after October 30, 2001, but no new DO will be authorized or issued after this date.

| | | | | |
|----|---|---|-----|-----------------------------|
| 05 | Value Added Services IAW Attachment B, Paragraph 5.0 | 1 | LOT | Not Separately Priced (NSP) |
|----|---|---|-----|-----------------------------|

Performance Period: July 1, 2001 through June 30, 2004

| | | | | |
|----|--|---|-----|-----|
| 06 | Reports IAW Attachment B, Paragraph 6.0 and Attachment C, Reporting Requirements Checklist | 1 | LOT | NSP |
|----|--|---|-----|-----|

ATTACHMENT B
DESCRIPTION/SPECIFICATIONS OF SUPPLIES/SERVICES

This is an Indefinite Delivery/Indefinite Quantity Contract for which all Department of Energy activities and organizations are eligible to place delivery orders directly for Microsoft Enterprise Agreement Versions listed below. All participating activities and organizations are required to obtain an Authorization Number by e-mail or telephone prior to placing their orders. The Contractor is not obligated to accept any order(s) that do not contain a valid Authorization Number.

1.0 VERSION ONE – FULL PLATFORM ENTERPRISE AGREEMENT

The following products are included in Version One:

- (a) Windows Desktop Operating System Upgrade *for all Qualified Desktops licensed for either Windows 9.x or Windows NT Workstation or their successor products*, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement;
- (b) Microsoft Office Professional, which includes the following application software programs, also commercially offered as standalone products: Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Microsoft Access and Microsoft Outlook, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement; and
- (c) Microsoft BackOffice Client Access License, which includes client access to the following servers, also commercially offered as standalone products: Microsoft Windows NT Server Standard or Enterprise Edition, Microsoft SQL Server Standard or Enterprise Edition, Microsoft Exchange Server Standard or Enterprise Edition, Microsoft SNA Server, and Microsoft Systems Management Server, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement. (The BackOffice Client Access License does not include the licenses for each of the servers.)

2.0 VERSION TWO – TWO-POOL (Operating System (O/S) Upgrade plus Office Professional) ENTERPRISE AGREEMENT

The following products are included in Version Two:

- (a) Windows Desktop Operating System Upgrade *for all Qualified Desktops licensed for either Windows 9.x or Windows NT Workstation or their successor products*, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement; and
- (b) Microsoft Office Professional, which includes the following application software programs, also commercially offered as standalone products: Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Microsoft Access and Microsoft Outlook, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement.

3.0 VERSION THREE – WESTINGHOUSE SAVANNAH RIVER COMPANY TWO-POOL (O/S Upgrade plus Office Standard) CUSTOMIZED ENTERPRISE AGREEMENT

The following products are included in Version Three:

- (a) Windows Desktop Operating System Upgrade *for all Qualified Desktops licensed for either Windows 9.x or Windows NT Workstation or their successor products*, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement; and
- (b) Microsoft Office Standard, which includes the following application software programs, also commercially offered as standalone products: Microsoft Word, Microsoft Excel, Microsoft PowerPoint, and Microsoft Outlook, as well as the most current version that becomes commercially available during years one and two for the three-year term of the Enterprise Agreement.

4.0 VERSION FOUR – LAWRENCE LIVERMORE NATIONAL LABORATORY TWO-POOL PLUS CLIENT ACCESS LICENSE (CAL) CUSTOMIZED ENTERPRISE AGREEMENT

The following products are included in Version Four:

- (a) Windows Desktop Operating System Upgrade *for all Qualified Desktops licensed for either Windows 9.x or Windows NT Workstation or their successor products*, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement;
- (b) Rights to Microsoft Office Professional, which includes the following application software programs, also commercially offered as standalone products: Microsoft Word, Microsoft Excel, Microsoft PowerPoint, Microsoft Access and Microsoft Outlook, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement; and
- (c) Rights to add Windows 2000 Client Access Licenses, as well as the most current version that becomes commercially available during the three-year term of the Enterprise Agreement.

5.0 VALUE ADDED SERVICES

The Contractor shall provide the following value added services under the Microsoft Enterprise License Agreement:

- (a) Manage Software distribution through Thin Client Web Based Services.
- (b) A Single Point of Contact and/or staff members dedicated to managing the Department of Energy's Enterprise Agreement Accounts.
- (c) 1-800/888 Telephone Number dedicated to the Department of Energy Account.
- (d) Desktop Computers and Servers added to the Enterprise during the agreement terms, receive Enterprise Product Coverage.
- (e) True-Up price determined at beginning of agreement facilitating long term budget planning.
- (f) Assist with License Tracking on a site by site basis consistent with the Enterprise Agreement Terms and Conditions.
- (g) Assist with True-Up requirements.

6.0 REPORTING REQUIREMENTS

The Contractor shall provide quarterly reports of the number of units used per quarter, by site, and aggregate amount as required by Attachment C, Reporting Requirements Checklist.

REPORTING REQUIREMENTS CHECKLIST

PURPOSE

The checklist identifies and communicates additional reporting requirements which are not otherwise set forth in DOE contractual agreement. It will be included as part of the contractual agreements. The checklist will be completed for each contract or financial incentives agreement. If necessary, special instructions may be appended to modify the checklist to adapt it to specific situations.

INSTRUCTIONS

- Item 1.** Enter the title of the project as indicated in the procurement request, contract, interagency agreement, initiating memorandum, or official award, as appropriate.
- Item 2.** Enter the identification number of the procurement request, contract award, or financial incentives agreement, as appropriate.
- Item 3.** Enter the name and address of the participant.
- Item 4.** Check spaces to indicate plans and reports selected. For each reporting requirement selected, indicate the frequency of delivery using one of the frequency codes from Item 5. The addressees to whom reports will be sent and the total number of copies required will be referenced in an attached coded distribution list.
- Note: Frequency codes represent specific reporting frequencies for each selected report. The frequencies are recommended in the solicitation and negotiated prior to award. The number of copies required and the addressees are similarly finalized prior to award.
- Item 5.** This item lists the possible frequency codes to be applied in the selection of reporting requirements.
- Item 6.** Attach special instructions as necessary. Check the appropriate box(es).
- Item 7.** Signature of person preparing checklist and the date prepared.
- Item 8.** Signature of person reviewing the checklist and date reviewed.

Report Addressees

- A. U.S. Department of Energy
Oakland Operations Office
1301 Clay Street, Room 700N
Oakland, CA 94612-5208
ATTN: Dru Burks

- B. U.S. Department of Energy
Oakland Operations Office
1301 Clay Street, Room 700N
Oakland, CA 94612-5208
ATTN: Gloria Castro

- C. U.S. Department of Energy, Headquarters
Office of the Chief Information Officer
19901 Germantown Road
Germantown, MD 20874-1290
ATTN: Carol Blackston
Director, Software Standards

ATTACHMENT D
COMMERCIAL ITEMS CLAUSES
Through FAC 97-27

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-- Commercial Items. (May 2001)

(a) The Contractor shall comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755).
- (2) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components:

[Contracting Officer shall check as appropriate.]

- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).
- (2) 52.219-3, Notice of Total HUBZone Small Business Set-Aside (Jan 1999).
- (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer).
- (4)(i) 52.219-5, Very Small Business Set-Aside (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).
- (ii) Alternate I to 52.219-5.
- (iii) Alternate II to 52.219-5.
- (5) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3)).
- (6) 52.219-9, Small Business Subcontracting Plan (15 U.S.C. 637(d)(4)).
- (7) 52.219-14, Limitations on Subcontracting (15 U.S.C. 637(a)(14)).
- (8)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- (ii) Alternate I of 52.219-23.
- (9) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (10) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- (11) 52.222-21, Prohibition of Segregated Facilities (Feb 1999)
- (12) 52.222-26, Equal Opportunity (E.O. 11246).
- (13) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- (14) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).
- (15) 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- (16) 52.222-19, Child labor - Cooperation with Authorities and Remedies (E.O. 13126).
- (17)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).
- (ii) Alternate I of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- (18) 52.225-1, Buy American Act--Balance of Payments Program--Supplies (41 U.S.C. 10a - 10d).
- (19)(i) 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program (41 U.S.C. 10a - 10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).
- (ii) Alternate I of 52.225-3.
- (iii) Alternate II of 52.225-3.
- (20) 52.225-5, Trade Agreements (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- (21) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).
- (22) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).
- (23) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).
- (24) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (31 U.S.C. 3332).
- (25) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (31 U.S.C. 3332).

- ___ (26) 52.232-36, Payment by Third Party (31 U.S.C. 3332).
- ___ (27) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
- ___ (28)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).
- ___ (ii) Alternate I of 52.247-64.

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

[Contracting Officer check as appropriate.]

- ___ (1) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).
- ___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (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) (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 (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- ___ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
- (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components--

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);
- (3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);
- (4) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996); and
- (5) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

___ *Alternate I (Feb 2000).* As prescribed in 12.301(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to "paragraphs (a), (b), (c), or (d) of this clause" in the redesignated paragraph (d) to read "paragraphs (a), (b), and (c) of this clause".

ATTACHMENT E SPECIAL CLAUSES

E.01 MINIMUM, ESTIMATED AND MAXIMUM QUANTITIES

Upon the receipt of delivery orders issued by an authorized DOE Contracting Officer, or other Authorized Official, the contractor shall deliver the ordered products within the following minimums and maximums: a minimum quantity of 450 units for one quarter, and a Total Maximum Ordered Quantity of 70,000 for 12 quarters and includes total quantities ordered for all four CLINs. A unit of issue (Quarter) is defined as the right to use one license agreement for a period of three months (quarter of a year). In the interest of minimizing the tracking burden imposed upon the contractor, the Contracting Officer and the requiring activity, no individual line item quantity requirements are included in the contract.

E.02 INDEFINITE QUANTITY (FAR 52.216-22)(APR 1984)

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ordering clause. The Contractor shall furnish to the Government, when and if-ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".
- (c) Except for any limitations on quantities in the Delivery Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the expiration date of the contract's period of performance.

E.03 DELIVERY ORDER AUTHORIZATION AND CONTRACT CEILING

Delivery Orders issued under this contract shall be authorized only by a DOE Contracting Officer or other Authorized Official. Also, the maximum aggregate dollar amount of all Delivery Orders issued under this contract shall not exceed the amount in Block 26 of the Standard Form 1449 of the contract. There is no minimum delivery order amount (see Clause E.05 below). Tracking for this requirement is the reason for inclusion of an Authorization Number requirement in all Delivery Orders (see Clause E.06 below).

E.04 ORDERING (FAR 52.216-18) (APR 1984)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by the individuals or activities designated in the Schedule. Such orders may be issued from date of contract award through the expiration date of the contract's period of performance.
- (b) All delivery orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order and this contract, the contract shall control.
- (c) If mailed, a delivery order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally or by written telecommunications only if authorized in the Schedule.

E.05 DELIVERY ORDER LIMITATIONS (FAR 52.216-19) (APR 1984)

- (a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than the Guaranteed Minimum Quantity, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.
- (b) Maximum order. The Contractor is not obligated to honor-
 - (1) Any order for a single item in excess of maximum quantity contained in Clause E.01 or
 - (2) Any order for a combination of items in excess of the maximum quantity contained in Clause E.01 or
 - (3) A series of orders from the same ordering office within 5 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.
- (c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum order limitations in paragraph (b) above.
- (d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 5 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

E.06 ORDERING ACTIVITIES

Supplies or services to be furnished under this contract shall be ordered by issuance of written delivery orders issued by a DOE Contracting Officer or other Authorized Official. This contract is available to all DOE activities and organizations. DOE activities and organizations desiring to order products through this contract shall obtain an Authorization Number from one of the following:

Gloria Castro, Contract Specialist
Phone: (510) 637-1872
E-mail: gloria.castro@oak.doe.gov

Stephen Law, Contracting Officer
Phone: (510) 637-1906
E-mail: stephen.law@oak.doe.gov

FAX No.: (510) 637-2004

The request should be e-mailed, but may be telephonic and accompanied by a FAX copy of the schedule of products and quantities to be included in the Delivery Order. This Authorization Number shall be stated on the Delivery Order. The Contractor shall not accept any Delivery Order without the Authorization Number included. Availability of the Authorization Number shall also provide confirmation to the Contractor that the ordering activity is eligible to use this contract.

At a minimum, each Delivery order shall contain the information set forth below:

- (a) Contract Number and Delivery Order Number
- (b) Date of Delivery Order
- (c) Products ordered in the format specified in the Schedule, Attachment A
- (a) Required delivery location; also individual(s) authorized to accept delivery, if such a designation is desired
- (e) Required delivery date
- (f) Authorization Number (see above)
- (g) Delivery Order point of contact including name, telephone number and FAX number, if available)
- (h) Billing instructions
- (i) Accounting and appropriation data

A copy of each Delivery Order and of each subsequent modification thereto, shall be provided upon issuance by the ordering activity to the following address for tracking purposes:

U. S. Department of Energy
Oakland Operations Office
Contracts, Acquisition and Property Division
1301 Clay Street, Room 700N
Oakland, CA 94612

ATTN: Gloria Castro, Contract Specialist

E.07 WARRANTY OF SUPPLIES

Warranty coverage shall be the standard commercial warranty as established by the product manufacturer for each ordered item, to include additional coverage where provided by the Contractor.

E.08 MARKING (MAY 1996)

- (a) Each package, report or other deliverable shall be accompanied by a letter or other document which:
- (1) Identifies the contract by number under which the item is being delivered.
 - (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
 - (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.
- (b) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required in (a) above shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

E.09 PACKAGING (MAY 1996)

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).

E.10 WARRANTY MARKING

The Contractor shall ensure that all deliverables are accompanied by, product literature which includes warranty terms and conditions, and the Contractor's point of contact information for inquiries.

E.14 PERIOD OF PERFORMANCE (APR 1984)

The period of performance for this contract shall be 36 months from the date of the contract. The Government has the right to issue delivery orders throughout this period. This may involve performance beyond the contract completion date, including reports. Delivery order issuance is restricted as stated in Attachment A.

E.15 NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (FAR 52.219-18)(JUNE 1999)

- (a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

- (1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and
 - (2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.
- (b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.
- (c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.
- (d) (1) Agreement. A small business concern submitted an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This subparagraph does not apply in connection with construction or service contracts.
- (2) The Contractor will notify the Department of Energy Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

E.16 SECTION 8(a) DIRECT AWARDS

- (a) This contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to a Memorandum of Understanding between the Small Business Administration (SBA) and the Department of Energy (DOE). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

U. S. Small Business Administration
San Francisco District Office
455 Market Street, 6th Floor
San Francisco, CA 94105-2445

- (b) DOE is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, DOE shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. DOE shall also coordinate with SBA prior to processing any novation agreement. DOE may assign contract administration functions to a contract administration office.
- (c) The Contractor agrees:
- (1) to notify the Contracting Officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), where the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), Transfer of Ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership or control.
 - (2) to adhere to the requirements of 52.219-14, Limitations on Subcontracting.

E.17 OPTION FOR INCREASED QUANTITY -- SEPARATELY PRICED LINE ITEM (FAR 52.217-7)(MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within sixty (60) days. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.