

APPENDIX C
DACA31-03-R-0001
FEDERAL ACQUISITION REGULATION (FAR) AND DEFENSE FEDERAL
ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES

RFQ PROVISIONS AND CONTRACT CLAUSES IAW FAR & DFARS PART 12

This RFQ incorporates clauses 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. Also, the full text of a clause may be accessed electronically at <http://www.arnet.gov>. Clauses 52.212-1, 52.212-2 and 52.212-4 have been tailored.

52.212-1 Instructions to Offerors – Commercial Items (Oct 2000)

(a) The North American Industry Classification System (NAICS) code is 233110 (SIC 6552) and small business size standard is \$5M. The small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) Submission of Statements of Qualifications (SOQ). Submit signed and dated SOQ to the address in paragraph 1.2.2 of the RFQ at or before the exact time specified in this paragraph. SOQ may be submitted on letterhead stationery and as a minimum must show

- (1) The RFQ number (DACA31-03-R-0001)
- (2) The time specified in the solicitation for receipt SOQ;
- (3) The name, address, and telephone number of the prospective developer;
- (4) The SOQ in sufficient detail to evaluate compliance with the requirements in the solicitation.
- (5) "Remit to" address, if different than mailing address;
- (6) A completed copy of the representations and certifications at FAR 52.212-3;
- (7) Acknowledgment of Solicitation Amendments;
- (8) Past performance information, in sufficient detail to evaluate the signed and dated SOQ, must be in compliance with the requirements in the solicitation.

(9) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Late submissions, modifications, revisions, and withdrawals of offer.

(1) Offerors are responsible for submitting their Statement of Qualifications, modifications, revisions, or withdrawals, so as to reach the address specified for the receipt of information at or before the exact time specified in Paragraph (Section) 4.1.1(a)

(2)(i) Any offer, modification, revision, or withdrawal of an offer received after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made and the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition and

(A) if it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified in Paragraph (Section) 4.1.1(a); or

(B) there is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) if this solicitation is a request for qualification, it was the only offer received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the location identified in Paragraph (Section) 4.1.1 includes the time/date stamp of the receiving office on the offer wrapper, other documentary evidence of receipt maintained by the receiving office, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the receiving office by the exact time specified in the solicitation, and urgent

Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(d) Contract award. The Government intends to evaluate each Statement of Qualifications and make award without discussions with offerors. Therefore, the initial Statement of Qualifications should comply with requirements in the solicitation and focus on the facts that are most relevant to the evaluation factors. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all Statements of Qualifications if such action is in the public interest; and waive informalities and minor irregularities in Statements of Qualifications received.

(End of provision)

52.212-2 Evaluation -- Commercial Items (Jan. 1999)

(a) The Government will award a contract resulting from this solicitation to the developer whose qualifications conforming to the solicitation will be most advantageous to the Government, all factors considered. The factors are located in Section 4.0 titled "Contractor Selection Process."

(b) The term of the contract will be addressed during the CDMP.

(c) A written notice of award or acceptance of an 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.

(End of provision)

52.212-3--Offeror Representations and Certifications -- Commercial Items (Jul 2002)

(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 or penalties.

"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 of which are controlled by one or more service-disabled veterans or, in the case of a 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 which 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 United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the 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 inside the United States, its

territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. 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 women-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 four 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 four designated industry groups (DIGs).) Offeror represents as follows:

(A) 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) 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):

Number of Employees	Average Annual Gross Revenues
<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 Ventures 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)(7)(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: _____.]

(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.

(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 Parts 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.

(f) Buy American Act Certificate.

(Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](#), Buy American Act - Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act - Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line Item No.:	Country of Origin:
_____	_____ (List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g) (1) Buy American Act -- North American Free Trade Agreement -- Israeli Trade Act - Certificate.

(Applies only if the clause at FAR [52.225-3](#), Buy American Act -- North American Free Trade Agreement -- Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act -- North American Free Trade Agreement -- Israeli Trade Act" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act -- North American Free Trade Agreement -- Israeli Trade Act":

NAFTA Country or Israeli End Products

Line Item No.:	Country of Origin:
_____	_____ (List as necessary)

(iii) The offeror shall list those supplies that are foreign end

products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act -- North American Free Trade Agreement -- Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products

Line Item No.:	Country of Origin:
_____	_____
	(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1) Are, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) Have, have not, within the 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

(3) Are, 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) Listed End Product

Listed End Product	Listed Countries 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 any 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 it has 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.

(End of Provision)

52.212-4 -- Contract Terms and Conditions -- Commercial Items (Feb 2002)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights –

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to

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

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C.601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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

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

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

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

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

(8) Name, title, and phone number of person to be notified in event of defective invoice;

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

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

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

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

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

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

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

(i) Payment. (1) Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth

in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903) OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(i)(2) The Contractor shall be paid a fixed sum of \$350,000 following completion of Phase 1 project planning. No other payments shall be due to the Contractor in consideration for its performance under this contract. The Contractor will be deemed to have completed Phase 1 providing it delivers to the government a Community Development and Management Plan containing at least components, in substantially completed form, referenced in Section 2.1 of this RFQ. Payment alone does not obligate the Government to implement phase 2 with contractor.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

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

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(End of Clause)

52.212-5--Contract Terms and Conditions Required to Implement Statutes or Executive Orders -- Commercial Items (May 2002)

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

(1) 52.222-3, Convict Labor (E.O.11755).

(2) 52.233-3, Protest after Award (31 U.S.C.3553).

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

[Contracting Officer must check as appropriate.]

(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).

X (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](#).

X (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).

X (11) [52.222-21](#), Prohibition of Segregated Facilities (Feb 1999).

X (12) [52.222-26](#), Equal Opportunity (E.O.11246).

X (13) [52.222-35](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C.4212).

X (14) [52.222-36](#), Affirmative Action for Workers with Disabilities (29 U.S.C.793).

X (15) [52.222-37](#), Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (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 – Supplies (41 U.S.C.10a-10d).

___ (19)(i) [52.225-3](#), Buy American Act -- North American Free Trade Agreement -- Israeli Trade Act (41 U.S.C.10a-10d, 19 U.S.C.3301 note, 19 U.S.C.2112 note).

___(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).

X (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).

X (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](#), Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C.4212);

(3) [52.222-36](#), Affirmative Action for Workers with Disabilities (29 U.S.C.793);

(4) [52.247-64](#), Preference for Privately-Owned U.S.- Flag Commercial Vessels (46 U.S.C.1241) (flow down not required for subcontracts awarded beginning May 1, 1996); and

(5) [52.222-41](#), Service Contract Act of 1965, As Amended (41 U.S.C.351, et seq.).

(End of Clause)

252.212-7000 Offeror Representations and Certifications - Commercial Items (Nov 1995)

(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 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 which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) Certification. By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec. 2407(a) prohibits a United States person from taking.

(c) Representation of Extent of Transportation by Sea. (This representation does not apply to solicitations for the direct purchase of ocean transportation services).

(1) The Offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term "supplies" is defined in the Transportation of Supplies by Sea clause of this solicitation.

(2) Representation. The Offeror represents that it:

_____ Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

_____ Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(3) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense Federal Acquisition Regulation Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (JUL 2002)

(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 provisions of law or Executive Orders applicable to acquisitions of commercial items or components.

52.203-3 Gratuities (APR 1984) (10 U.S.C. 2207)

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive Orders applicable to acquisitions of commercial items or components.

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

252.206-7000 Domestic Source Restriction (DEC 1991) (10 U.S.C. 2304).

252.219-7003 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

252.219-7004 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

252.225-7001 Buy American Act and Balance of Payments Program (MAR 1998) (41 U.S.C. 10a-10d, E.O. 10582).

252.225-7007 Buy American Act -- Trade Agreements -- Balance of Payments Program (SEP 2001) (41 U.S.C. 10a-10d, 19 U.S.C. 2501-2518, and 19 U.S.C. 3301 note).

252.225-7012 Preference for Certain Domestic Commodities. (AUG 2002) (10 U.S.C. 2241 note).

252.225-7014 Preference for Domestic Specialty Metals (MAR 1998) (10 U.S.C. 2241 note).

252.225-7015 Preference for Domestic Hand or Measuring Tools (DEC 1991) (10 U.S.C. 2241 note).

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (DEC 2000) (Alternate I) (DEC 2000) (Section 8064 of Pub.L.106-259)

252.225-7021 Trade Agreements (SEP 2001) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).

 252.225-7027 Restriction on Contingent Fees for Foreign Military Sales (MAR 1998) (22 U.S.C. 2779).

 252.225-7028 Exclusionary Policies and Practices of Foreign Governments (DEC 1991) (22 U.S.C. 2755).

 252.225-7029 Preference for U.S. or Canadian Air Circuit Breakers (AUG 1998) (10 U.S.C. 2534(a)(3)).

 252.225-7036 Buy American Act -- North American Free Trade Agreement Implementation Act—Balance of Payments Program (MAR 1998) (Alternate I) (SEP 1999) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).

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

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

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

 X 252.247-7023 Transportation of Supplies by Sea (MAY 2002)
 (Alternate I) (MAR 2000)
 (Alternate II) (MAR 2000) (10 U.S.C. 2631)

 X 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 (52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (MAR 1998) (10 U.S.C. 2533a)

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

252.247-7024

Notification of Transportation of Supplies by Sea (MAR
2000) (10 U.S.C. 2631).

(End of Clause)
