

## SOLICITATION / CONTRACT / ORDER FOR COMMERCIAL ITEMS

OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30

1. REQUISITION NUMBER

073P0230148

PAGE 1 OF 74

2. CONTRACT NO. 50PAPT201021		3. AWARD/EFFECTIVE DATE 06/27/2002		4. ORDER NUMBER		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME				b. TELEPHONE NUMBER (No collect calls)		8. OFFER DUE DATE/ LOCAL TIME	
ED BY		CODE		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: 0.00% FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISAV. BUSINESS <input type="checkbox"/> 8(A) SIC: 3643 SIZE STANDARD: 101-250		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS 10 days % 20 days % 30 days % days %	
Office of Procurement 2011 Crystal Drive  CRYSTAL CITY, VA 22202  TEL: ( ) - ext.  FAX: ( ) - ext.						<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)			
15. DELIVER TO		CODE 000PA		16. ADMINISTERED BY		CODE 000PA		13b. RATING	
Office of Procurement - U.S. Patent and Trademark Office, 2011 Crystal Drive, Suite 810  Arlington, VA 22202 Attn: Brenda Carswell				Office of Procurement - U.S. Patent and Trademark Office, 2011 Crystal Drive, Suite 810  Arlington, VA 22202				14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
17a. CONTRACTOR/ OFFEROR		CODE *		FACILITY CODE		18a. PAYMENT WILL BE MADE BY		CODE *	
M.C. Dean 3725 Concorde Parkway, Suite 100 Chantilly, VA 20153  TELEPHONE NO. (703) 961-5453 ext.						Office of Finance - U.S. Patent & Trademark Office, 2011 Crystal Drive, Suite 802 Arlington, VA 22202			
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN <input type="checkbox"/> 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	
		(Attach Additional Sheets as Necessary)							
ACCOUNTING AND APPROPRIATION DATA 2002 - - A - 073200 - - 2570 - - 013205 - 073200 - - - - -								26. TOTAL AWARD AMOUNT (For Gvt. Use Only) \$ 2,804,000.00	
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									
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 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 DATED YOUR OFFER ON SOLICITATION (BLOCK) <input type="checkbox"/> INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		OFFER	
30a. SIGNATURE OF OFFEROR/CONTRACTOR						31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
James A. Brabham						Janet Carlson			
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or print)		31c. DATE SIGNED			
James A. Brabham VPSvs		8/16/2002		Janet Carlson		06/27/2002			
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		34. VOUCHER NUMBER		35. AMOUNT VERIFIED CORRECT FOR	
				PARTIAL FINAL					
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE		32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER			
				38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER		40. PAID BY	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				42a. RECEIVED BY (Print)					
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42b. RECEIVED AT (Location)					
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS			

<b>Line Item Summary</b>	<b>Document Number</b> 50PAPT201021	<b>Title</b> fiber network	<b>Page</b> 2 of 74
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Total Funding: \$2,804,000.00										
<b>FYs</b>	<b>Fund</b>	<b>Budget Org</b>	<b>Sub</b>	<b>Object Class</b>	<b>Sub</b>	<b>Program</b>	<b>Cost Org</b>	<b>Sub</b>	<b>Proj/Job No.</b>	<b>Sub Reporting Category</b>
2002	A	073200		2570		013205	073200			
<div> <div> Closed FYs Cancelled Fund </div> </div>										

Line Item Number	Description	Delivery Date (Start Date to End Date)	Quantity	Unit of Issue	Unit Price	Total Cost (Includes Discounts)
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0001		07/01/2002 (07/01/2002 to 06/01/2005)	1.00		\$2,804,000.000	\$ 2,804,000.00
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Ref Req No: 073P0230148

Total Cost: \$2,804,000.00

**Contract Level  
Funding Summary**

Document Number  
50PAPT201021

Title  
fiber network

Page  
3 of 74

2002 - - A - 073200 - - 2570 - - 013205 - 073200 - - - - -  
\_\_\_\_\_,000.00

Reference Requisition: 073P0230148

**Total Funding: \$2,804,000.00**

**SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS****Period of performance July 1, 2002 through June 30, 2009 including 3 year base period and 7 options****Base Year 1 July 1, 2002 through June 30, 2003**

0001 Installation of connections from Crystal City to Carlyle

Quantity	Unit price	Total Price
1 Lot	\$480,000	\$480,000

0002 Monthly recurring charge after connection is installed. Up to two (2) months may be charged in the first base year depending on installation schedule.

Quantity	Unit Price	Total Price
2 Months	\$68,000	\$136,000

0003AA\* Optional Dark Fiber. For location B, move the redundant path fiber for your dark fiber proposal from the 400 Dulany Street manhole (MHOE) to the 600 Dulany Street Manhole (MHOA) and maintain diversity between the paths. MHOA may not be available until after August 2003.

Quantity	Unit price	Total Price
1 Each	\$18,000	\$18,000

0003AB\*Optional Managed Lambda. For location B, move the redundant path fiber for your managed lambda proposal from the 400 Dulany Street manhole (MHOE) to the 600 Delaney Street Manhole and maintain diversity between the paths. Move the CPE equipment from 400 Dulany Street temporary data center to 600 Dulany Street permanent data center. MHOA may not be available until after August 2003.

Quantity	Unit price	Total Price
1 Each	N/A	

0004AA\* Optional Dark Fiber. For location A, move or extend the fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. The identification of the other location may be later than August 2003.

Quantity	Unit price	Total Price
1 Each	\$438,000	\$438,000

0004AB\* Optional Managed Lambda. For location A, move or extend fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. Move the CPE equipment from 2121 Crystal Drive to the new location with 0.5 miles. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total Price
1 Each	N/A	

Base Year 2 July 1, 2003 through June 30, 2004

0005 Monthly recurring charge

Quantity	Unit price	Total price
12 Months	\$68,000	\$816,000

0006AA\* Optional Dark Fiber. For location B, move the redundant path fiber for your managed lambda proposal from the 400 Dulany Street manhole (MHOE) to the 600 Delaney Street Manhole and maintain diversity between the paths. Move the CPE equipment from 400 Dulany Street temporary data center to 600 Dulany Street permanent data center. MHOA may not be available until after August 2003.

Quantity	Unit Price	Total price
1 Each	\$18,000	\$18,000

0006AB\* Optional Managed Lambda. For location B, move the redundant path fiber for your managed lambda proposal from the 400 Dulany Street manhole (MHOE) to the 600 Delaney Street Manhole and maintain diversity between the paths. Move the CPE equipment from 400 Dulany Street temporary data center to 600 Dulany Street permanent data center. MHOA may not be available until after August 2003.

Quantity	Unit Price	Total Price
1 Each	N/A	

0007AA\* Optional Dark Fiber. For location A, move or extend the fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total Price
1 Each	\$438,000	\$438,000

0007AB\* Optional Managed Lambda. For location A, move or extend fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. Move the CPE equipment from 2121 Crystal Drive to the new location with 0.5 miles. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total Price
1 Each	N/A	

Base Year 3 July 1, 2004 through June 30, 2005

0008 Monthly recurring charge

Quantity	Unit Price	Total price
12 Months	\$68,000	\$816,000

0009AA\* Optional Dark Fiber. For location B, move the redundant path fiber for your managed lambda proposal from the 400 Dulany Street manhole (MHOE) to the 600 Delaney Street Manhole and maintain diversity between the paths. Move the CPE equipment from 400 Dulany Street temporary data center to 600 Dulany Street permanent data center. MHOA may not be available until after August 2003.

Quantity	Unit Price	Total Price
1 Each	\$18,000	\$18,000

0009AB\* Optional Managed Lambda. For location B, move the redundant path fiber for your managed lambda proposal from the 400 Dulany Street manhole (MHOE) to the 600 Delaney Street Manhole and maintain diversity between the paths. Move the CPE equipment from 400 Dulany Street temporary data center to 600 Dulany Street permanent data center. MHOA may not be available until after August 2003.

Quantity	Unit Price	Total Price
1 Each	N/A	

0010AA\* Optional Dark Fiber. For location A, move or extend the fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total Price
1 Each	\$438,000	\$438,000

0010AB\* Optional Managed Lambda. For location A, move or extend fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. Move the CPE equipment from 2121 Crystal Drive to the new location with 0.5 miles. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total Price
1 Each	N/A	

Option Year 1 July 1, 2005 through June 30, 2006

0011 Monthly recurring charge

Quantity	Unit price	Total Price
12 Months	\$68,000	\$816,000

0012AA\* Optional Dark Fiber. For location B, move the redundant path fiber for your dark fiber proposal from the 400 Dulany Street manhole (MHOE) to the 600 Dulany Street Manhole (MHOA) and maintain diversity between the paths. MHOA may not be available until after August 2003.

Quantity	Unit Price	Total Price
1 Each	\$18,000	\$18,000

0012AB\* Optional Managed Lambda. For location B, move the redundant path fiber for your managed lambda proposal from the 400 Dulany Street manhole (MHOE) to the 600 Delaney Street Manhole and maintain diversity between the paths. Move the CPE equipment from 400 Dulany Street temporary data center to 600 Dulany Street permanent data center. MHOA may not be available until after August 2003.

Quantity	Unit Price	Total price
1 Each	N/A	

0013AA\* Optional Dark Fiber. For location A, move or extend the fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total Price
1 Each	\$438,000	\$438,000

0013AB\* Optional Managed Lambda. For location A, move or extend fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. Move the CPE equipment from 2121 Crystal Drive to the new location with 0.5 miles. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total Price
1 Each	N/A	

Option Year 2 July 1, 2006 through June 30, 2007

0014 Monthly recurring charge

Quantity	Unit Price	Total Price
12 Months	\$68,000	\$816,000

0015AA\* Optional Dark Fiber. For location B, move the redundant path fiber for your dark fiber proposal from the 400 Dulany Street manhole (MHOE) to the 600 Dulany Street Manhole (MHOA) and maintain diversity between the paths. MHOA may not be available until after August 2003.

Quantity	Unit Price	Total Price
1 Each	\$18,000	\$18,000

0015AB\* Optional Managed Lambda. For location B, move the redundant path fiber for your managed lambda proposal from the 400 Dulany Street manhole (MHOE) to the 600 Delaney Street Manhole and maintain diversity between the paths. Move the CPE equipment from 400 Dulany Street temporary data center to 600 Dulany Street permanent data center. MHOA may not be available until after August 2003.

Quantity	Unit Price	Total Price
1 Each	N/A	

0016AA\* Optional Dark Fiber. For location A, move or extend the fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total Price
1 Each	\$438,000	\$438,000

0016AB\* Optional Managed Lambda. For location A, move or extend fiber for both paths at 2121 Crystal Drive to another location within 0.5 miles and maintain diversity between the paths. Move the CPE equipment from 2121 Crystal Drive to the new location with 0.5 miles. The identification of the other location may be later than August 2003.

Quantity	Unit Price	Total price
1 Each	N/A	

Option Year 3 July 1, 2007 through June 30, 2008

0017 Monthly recurring charge

<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
<b>12 Months</b>	<b>\$68,000</b>	<b>\$816,000</b>

Option Year 4 July 1, 2008 through June 30, 2009

0018 Monthly recurring charge

<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
<b>12 Months</b>	<b>\$68,000</b>	<b>\$816,000</b>

Option Year 5 July 1, 2010 through June 30, 2011

0019 Monthly recurring charge

<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
<b>12 Months</b>	<b>\$68,000</b>	<b>\$816,000</b>

Option Year 6 July 1, 2011 through June 30, 2012

0020 Monthly recurring charge

<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
<b>12 Months</b>	<b>\$68,000</b>	<b>\$816,000</b>

Option Year 7 July 1, 2008 through June 30, 2009

0021 Monthly recurring charge

<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>
<b>12 Months</b>	<b>\$68,000</b>	<b>\$816,000</b>

\*NOTE: Vendors should submit a price for either AA or BB depending on the offered solution. The Government may choose to exercise the optional CLINs once, multiple times, or not at all.

## SECTION C – STATEMENT OF WORK

The US Patent and Trademark Office (USPTO) requires pricing on multiple solutions for dark fiber or lambdas via Dense Wave Division Multiplexing (DWDM) between two sites in Northern Virginia. The installation schedules identified are critical requirements to support USPTO operations during the upcoming move. Offers won't be considered which can't meet these scheduled delivery dates. The two locations of the USPTO sites are:

### Location A

US Patent and Trademark Office  
11<sup>th</sup> Floor Computer Room  
2121 Crystal Drive  
Arlington, VA 22202

### Location B

US Patent and Trademark Office  
Concourse Floor Main Distribution Frame Room  
400 Dulany Street (Building E)  
Alexandria, VA 22314  
(new construction)

The USPTO is looking for proposals on four specific solutions:

- #1 - A single point-to-point dark fiber path
- 2 - Two fully-redundant and fully-diverse dark fiber paths
- #3 - A single point-to-point managed-lambda path
- #4 - Two fully-redundant and fully-diverse managed-lambda paths

Path terminations will occur inside each building. A vendor may provide a proposal for one or all of the requested solutions. However, each proposal should be separate from any other proposal, to allow the USPTO an opportunity to consider each solution and proposal separately and independently.

For proposals #2 and #4, the proposed solution must be fault tolerant, provide redundant and fully diverse (conduit & manhole diversity) paths, and provide diverse entrances into the building at Location A and into the USPTO manhole at Location B. At Location B, the path from the USPTO manhole and the Main Distribution Frame Room is fixed.

The requirements for dark fiber are:

- Two strands of dark fiber via one path and two strands of dark fiber via another path (fully diverse) from Location A to Location B (this path is needed by August 2003).

The requirements for lambda via DWDM are:

- Two 10 Gigabit Ethernet interfaces and two Fibre Channel interfaces on protected lambdas from Location A to Location B (required by August 2003).

## **SECTION F – DELIVERIES OR PERFORMANCE**

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**Installation of the Dark Fiber or Managed-Lambda connections must be completed and ready for use by July 1, 2003.**

## SECTION I – CONTRACT CLAUSES

### 52.212-4 Contract Terms and Conditions-Commercial Items.

(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 re-performance 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.*

(1) 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-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) 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 by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

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

(2) 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.* 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) and 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.

(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.**

(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).

\_\_\_ (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, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (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 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).

\_\_\_ (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).

X\_ (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, 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)

## **SECTION K – REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS**

### **32.212-3 Offeror Representations and Certifications-Commercial Items.**

(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 its stock 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) N/A [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)(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: \_\_\_\_\_.]

(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 place of ownership, 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 on 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) N/A

(g) N/A

(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 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

(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) N/A

(End of provision)

*Alternate I (Apr 2002)*. As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has 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 origins 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.

*Alternate II (Oct 2000)*. As prescribed in 12.301(b)(2), add the following paragraph (c)(9)(iii) to the basic provision:

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## SECTION L – INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

### 2.212-1 Instructions to Offerors-Commercial Items.

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, 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 offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show-

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3;
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

11) If the offer is not submitted on the SF 1449, include 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) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.*

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, 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 for receipt of offers; 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 proposals, it was the only proposal 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 Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, 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 Government office designated for receipt of offers 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.

*g) Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. 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 offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

*(h) Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

*(i) Availability of requirements documents cited in the solicitation.*

(1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to-

GSA	Federal	Supply	Service	Specifications	Section
Suite					8100
470	East		L'Enfant	Plaza,	SW
Washington, DC 20407					
Telephone			(202)		619-8925
Facsimile (202) 619-8978.					

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in

this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the-

Department Building 700 Philadelphia, PA 19111-5094	of	Defense 4,	Single Robbins	Stock Section	Point	(DoDSSP) D Avenue
Telephone Facsimile (215) 697-1462.			(215)			697-2667/2179

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained-

(A) By telephone at (215) 697-2667/2179; or

(B) Through the DoDSSP Internet site at <http://assist.daps.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Data Universal Numbering System (DUNS) Number*. (Applies to offers exceeding \$25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1-800-333-0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at [globalinfo@mail.dnb.com](mailto:globalinfo@mail.dnb.com).

**For each proposal, please provide the following information:**

#### **Technical:**

- A geographical map depicting the actual path proposed. Indicate on the map whether all, or some, of the path is aerial or buried. For proposals #2 and #4, the map should clearly indicate the diversity of proposed paths (conduit and manholes) from Locations A and B.
- The network security, network topology & infrastructure, support & service, Service Level Agreements, and fiber protection.
- An installation schedule for the installation, as well as required installation leadtimes for ordering the optional CLINs.
- Identify any known or anticipated right-of-way problems.
- If proposal is part of an existing GSA contract or schedule, provide the contract and schedule number under consideration. If other government contracts are considered, provide name of government agency currently using contract, contract number, and name/telephone number of Contracting Officer at government agency.

#### **Past Performance:**

- Provide previous installations and references, including as a minimum.
  1. Experience in managing and performing similar size requirements;

This section shall demonstrate the Offeror's experience and ability to provide skilled personnel and ability to manage requirements, which are the same, or similar to those addressed in the Section C of the RFP.

2. List of current or previous contracts; (excluded from five (5) page limitation)

The Offeror shall provide current points of contact (Contracting Officer and COTR), point of contacts' telephone number, fax number, email addresses (if available), contract title (if applicable), contract number, contract type, period of performance, dollar amount, and description of the work performed for at least three (3) Government and/or commercial contracts. The Offeror should provide information on any problems encountered on the identified contracts and the corrective action taken.

Any information found to be unreliable may result in a negative rating to the offeror. If a prime contractor is not able to provide three (3) references, the offeror shall certify that the references provided are all of the references available as of the date of submission. False information provided concerning references or offeror certifications will result in the USPTO not considering an offeror for award of any resulting contracts. If an offeror cannot provide requisite number of references, a certification so stating is required.

**Notes:** \*The USPTO reserves the right to determine which contracts submitted by the Offeror is relevant to the requirements and to utilize only those references.

\* In the conduct of its past performance evaluation of Offerors, the USPTO may use a variety of information sources in addition to information provided by the Offeror. These sources may include, but are not limited to, technical reports, commercial or any available published information, and information derived from present or past Government or commercial customers of the Offeror. The USPTO may use past performance information obtained from sources other than those identified by the Offeror. Those Offerors who have no relevant past performance history will not be evaluated either favorably or unfavorably on past performance.

\* By providing the USPTO the above contacts, the Offeror is certifying that it has contacted the referenced individuals and given permission for the USPTO to contact said individuals. In the event that USPTO cannot contact the referenced individuals within a reasonable time frame, the past performance reference may not be considered.

**Pricing:**

Differentiate between non-recurring costs (NRC) and monthly recurring costs (MRC) (using commercial and/or government pricing). The NRC should be included in the Contract Line Item Number (CLIN) 0001 pricing. The proposal should differentiate costs for feasibility and engineering studies versus costs for construction and installation, however the price for CLIN 0001 should include all NRC. The MRC charges can't commence before the dark fiber or lambdas via Dense Wave Division Multiplexing are installed and operational.

For all options provide NRC and MRC for a three-year base period contract and seven option years.

The month and year when the first MRC is expected to be paid by the USPTO (connection is installed and operational). Provide a monthly schedule of all prices for both the base and option years.

**Additionally, provide any terms, conditions, disclaimers, and/or limitations connected with the proposal.**

All questions regarding this notice should be submitted to Brenda Carswell, via e-mail at [Brenda.carswell@uspto.gov](mailto:Brenda.carswell@uspto.gov), or via telephone at 703/305-9127. All responses to any questions received will be posted on the USPTO's web site, located at [www.uspto.gov](http://www.uspto.gov).

**All proposal documents shall be received no later than 3:00 p.m., Eastern Standard Time (EST), Wednesday, June 14, 2002. If proposals were submitted in response to the RFQ, only the additional information or changes to the original proposal need to be submitted.**

**IMPORTANT:** Depending on the mode of delivery, Offerors' responses should be addressed as follows:

<u>U.S. Postal Service</u>	<u>Handcarried, Courier, or Non-USPS Mail Service</u>
U.S. Patent and Trademark Office	U.S. Patent and Trademark Office
Attn:	Attn:
Office of Procurement	Office of Procurement
Box 6	2011 Crystal Drive, Suite 810
Washington, DC 20231	Arlington, VA 22202

When proposals are hand-carried or sent by courier service, the Offeror assumes the full responsibility for insuring that the proposals are received by the date and time specified above.

## **L.1 INCURRING COSTS**

The USPTO shall not be obligated to pay any cost incurred by the Offeror in the preparation and submission of a proposal in response to the solicitation. The Offeror is advised that the Contracting Officer is the only person who can legally obligate the USPTO for the expenditure of public funds in connection with this procurement.

## **L.2 NEWS RELEASES**

Offerors shall make no news releases pertaining to the solicitation or subsequent contract award without prior agency approvals and then only in coordination with the Contracting Officer.

## **L.3 PERIOD FOR ACCEPTANCE OF OFFERS**

In compliance with the solicitation, the Offeror agrees, if this offer is accepted within 60 calendar days from the date specified in the solicitation for receipt of proposals, to furnish any or all items upon which prices are bid.

## SECTION M – EVALUATION FACTORS FOR AWARD

### 52.212-2 Evaluation-Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

Evaluation-Commercial Items (Jan 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

In order of importance: Technical capability to meet the Government requirement, past performance and price.

Technical and past performance, when combined, are twice as important as price

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s). \*See Below

(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.

Since the Government will probably only exercise the optional CLINs once (if at all), for purposes of price evaluation the Government will use the average of the proposed prices for the each of the optional CLINs as follows:

#### **Depending on offered solution –**

Average of CLINs 0003AA, 0006AA, 0009AA, 0012AA, and 0015AA if proposing a Dark Fiber solution

Or CLINs 0003AB, 0006AB, 0009AB, 0012AB, 0015AB if proposing a Managed Lambda solution

#### **And**

Average of CLINs 0004AA, 0007AA, 0010AA, 0013AA, and 0016AA if proposing a Dark Fiber solution

Or CLINs 0004AB, 0007AB, 0010AB, 0013AB, 0016AB if proposing a Managed Lambda solution

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<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>			1. CONTRACT ID CODE		PAGE OF PAGES 1 2		
2. AMENDMENT/MODIFICATION NO. 0001		3. EFFECTIVE DATE 06/13/02		4. REQUISITION/PURCHASE REQ. NO. 51PAPT200004		5. PROJECT NO. (If applicable)	
6. ISSUED BY Office of Procurement Suite 810 1111 Crystal Drive Arlington VA 22202		7. ADMINISTERED BY (If other than Item 6) Same as Block 6		CODE			
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				(X) 9A. AMENDMENT OF SOLICITATION NO. 52PAPT21021		9B. DATED (SEE ITEM 11) 06/10/02	
				10A. MODIFICATION OF CONTRACT/ORDER NO.		10B. DATED (SEE ITEM 11)	
CODE		FACILITY CODE					

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☒ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:  
 (a) By completing Items 8 and 15, and returning 3 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

**12. ACCOUNTING AND APPROPRIATION DATA (If required)****13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

**E. IMPORTANT:** Contractor ☐ is not, ☒ is required to sign this document and return 3 copies to the issuing office.

**14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)**  
 The solicitation is hereby amended to reflect the changes in optional CLIN descriptions and method for price evaluation of the optional CLINs as described on the next page.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Harry D. Gatanas, President & CEO		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Janet M. Carlson	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 6/14/02	16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED