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CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (52.212-4) (OCT 2003)

(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 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 be notified 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 the 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 of Electronic Funds Transfer--Central Contract 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.

(1) *Items accepted*. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment*. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT)*. If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount*. 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.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(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 whistle blower 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; and
(9) The specification.

(t) *Central Contractor Registration (CCR).*

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at *http://www.ccr.gov* or by calling 1-888-227-2423 or 269-961-5757.

(End of clause)

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (52.212-5) (JAN 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233-3, Protest after Award (Aug 1996) (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:

_**X** (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995) (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) (15 U.S.C. 657a).
__ (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) (15 U.S.C.657a).

__ (4)(i) 52.219-5, Very Small Business Set-Aside (June 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).
__ (ii) Alternate I (Mar 1999) of 52.219-5.
__ (ii) Alternate II (June 2003) of 52.219-5.
__ (5)(i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).
__ (ii) Alternate I (Oct 1995) of 52.219-6.
__ (6)(i) 52.219-7 Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).
__ (ii) Alternate I (Oct 1995) of 52.219-7.
__ (7) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637 (d)(2) and (3)).
__ (8) (i) 52.219-9, Small Business Subcontracting Plan (Jan 2002) (15 U.S.C. 637(d)(4)).
__ (ii) Alternate I (Oct 2001) of 52-219-9.
__ (iii) Alternate II (Oct 2001) of 52-219-9.
X_ (9) 52.219-11, Special 8(a) Contract Conditions (Feb 1990).
X_ (10) 52.219-12, Special 8(a) Subcontract Conditions (Feb 1990).
X_ (11) 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
X_ (12) 52.219-17, Section 8(a) Award (Dec 1996).
__ (10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003) (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 (June 2003) of 52.219-23.
__ (13) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
__ (14) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
X (15) 52-222-3, Convict Labor (June 2003) (E.O. 11755).
X (16) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2004) (E.O. 13126).
X (17) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).
X (18) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
X (19) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).
X (20) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
X (21) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).
__ (22)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii).
___ (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
X (23) 52.225-1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a - 10d).
___ (24)(i) 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act (Jan 2004) (41 U.S.C. 10a - 10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).
___ (ii) Alternate I (Jan 2004) of 52.225-3.
___ (iii) Alternate II (Jan 2004) of 52.225-3.
_X (25) 52.225-5, Trade Agreements (Jan 2004) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
___ (26) 52.225-13, Restriction on Certain Foreign Purchases (Oct 2003) (E.o.s, proclamations, and statues administered by the Office of Foreign Assets Control of the Department of the Treasury).
___.(27) 52.225-15, Sanctioned European Union Country End Products (Feb 2000) (E.O. 12849).
___ (28) 52.225-16, Sanctioned European Union Country Services (Feb 2000) (E.O. 12849).

___ (29) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307 (f)).
___ (30) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307 (f)).
___ (31) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).
_**X** (32) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).
___ (33) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).
___ (34) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
___ (35)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003) (46 U.S.C. 1241).
___ (ii) Alternate I (Apr 1984) 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:

___ (1) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, et seq.) [Subcontracts for certain commercial services may be exempt from coverage if they meet the criteria in NASA Procurement Information Circular 00-19, "Class Deviation--Applicability of the Service Contract Act for the Acquisition of Certain Commercial Services"].
___ (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) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c) 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)

ADDENDUM 1- SCHEDULE AND ADDITIONAL PROVISIONS

A.1.1. SUPPLIES AND/OR SERVICES TO BE FURNISHED

The Contractor shall provide all Advanced Technical services and supplies in accordance with Attachment A – CLIN List of Deliverables, Attachment B- Statement of Work, and as described in Addendum 2, at the following prices: Refer to Attachment D, and the SEWP Database of Record, in accordance with B.1.22.1.

(End of Text)

A.1.2. PROCEDURES FOR ORDERS

Supplies or services to be furnished under this contract shall be specified by the issuance of firm fixed price delivery orders from any Government agency. Such orders may be issued from the effective date of the contract through the ordering period. Delivery orders may not specify performance beyond the end of the contract ordering period with the exception of undelivered previously ordered items and items covered under warranty periods.

The issuing Contracting Officer may negotiate additional terms and conditions for a specific order. (e.g. The ordering Agency IT security policies, procedures and requirements or leasing of SEWP equipment may be included in individual orders.) This contract shall prevail in the event of conflict with any order.

Delivery orders will identify the exact destination for shipment and warranties, which is limited to the United States and its possessions. Shipments to United States Government installations located outside the US and its possessions are per mutual agreement between the ordering Government Agency and Contractor.

Delivery orders may be unilaterally modified by the issuing Contracting Officer. Modifications to the Delivery Orders shall include the same information set forth in the Delivery Order, as applicable. Any configuration change modifications to orders shall be issued by the issuing Contracting Officer prior to shipment, but not later than 21 days from the effective date of the original order. Administrative modifications are not affected by the requirements of this paragraph.

The firm-fixed price for each delivery order may not be increased except when authorized by a modification to the delivery order. If the Contractor decreases the price of any item ordered, they shall notify the issuing Contracting Officer.

The price of each item in a delivery order shall be the price in the SEWP database of record on the date the issuing Contracting Officer signs the order or the date of the order field if the signature date is not present.

Authorized contractor's placing SEWP orders must follow the procedures in A.1.2.2.

(End of Text)

A.1.2.1. PROCEDURES FOR ISSUING ELECTRONIC ORDERS

Any Electronic generated order; such as EDI orders, by an external agency shall be submitted directly to the Scientific and Engineering Workstation Procurement Business Operations Workstation Laboratory (SEWP BOWL) whose functions are described in Addendum 2, Attachment B.

(End of Text)

A.1.2.2. PROCEDURES FOR ISSUING PAPER ORDERS

Ordering Procedures:

Delivery orders issued shall include, but not be limited to the following information:

(1) Date of order
(2) Contractor SEWP contract number
(3) Order Number (must be a unique ordering Agency order number)
(4) Appropriation and accounting data
(5) Contract Line Item Numbers for equipment/services
(6) Description of end item(s) to be delivered and/or services to be performed
(7) Complete delivery address and Point of Contact (POC) name and telephone number.
(8) Delivery due dates and period of performance for services
(9) The firm fixed price of the order
(10) The ordering Agency billing address
(11) Signature of Ordering Contracting Officer

(End of Text)

A.1.3. INDEFINITE QUANTITY (52.216-22) (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not guaranteed to be purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum. The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after the end of the warranty period.

(End of Provision)

A.1.4. MINIMUM AND MAXIMUM QUANTITIES

Category B Supporting Equipment

As referred to in the "Indefinite Quantity" clause of this contract, the minimum amount ordered shall be $5,000 per contract.

The Government guarantees to issue one or more orders for a total amount not less than the minimum. There will be no further obligation on the part of the Government to issue additional orders thereafter.

The maximum value of each contract resulting from this RFP shall not exceed $3,000,000.

(End of Text)

A.1.5. PRICING FOR WARRANTIES

A separate extended warranty CLIN for products shall be included in the pricing schedule, if an extended warranty is offered for the product or add-on by the OEM, or is offered by the offeror to any of its commercial customers.

(End of Text)

A.1.6. DISCOUNTS FOR TECHNOLOGY EQUIPMENT

The Contractor shall offer a discount which will be applied against a commercial list price. The discount(s) proposed will be applied to all Technology Equipment purchases for the life of the contract(s). The Government requires that all items be available to order throughout the life of this contract, if available from the Original Equipment Manufacturer (OEM).

The price of all CLINs on the SEWP contract must be equal to or less than the price for the same offering on the Contractor’s current commercial price list or GSA Schedule. The Contractor shall notify the SEWP Contracting Officer and the ordering Agency Contracting Officer, within seven working days, of changes to commercial prices and GSA prices below the offering price listed in this contract. If the Contractor's current GSA Schedule Contract price list, or the Contractor's current commercial price list is lower than the above discounted price, the Government retains the right to order at the lesser amount.

Category B - PRODUCT CLASSIFICATIONS

All items offered under the contract, whether mandatory products, additional technology or available components shall be associated with a Product Classification group, Classification Description and an associated price discount. (**NOTE**: See Attachment D; Pricing Exhibits for Category D information)

Product Classification	Classification Description	Classification Discount
System Upgrade		

System Accessory		
System Network Interface		
Interface cards		
Interface accessories		
System Memory		
Memory accessory		
Storage Device		
Storage Accessory		
Storage Media		
Software		
Communication Devices		
Client System		
Client System Upgrade		
Client System Accessory		
Portable System		
Portable System Upgrade		
Portable System Accessory		
Power Related Technology		
Power Related Accessories		
Display device		
Display device accessory		
Display device upgrade		
Input/Output device		
Input/Output device accessory		
Output device		
Output device accessory		
Input device		
Input device accessory		
Hardcopy output device		
Hardcopy output accessory		
Hardcopy Supplies		
Hardcopy output upgrade		
Hardcopy input device		
Hardcopy input accessory		
Hardcopy input upgrade		
Networking Equipment		
Network Accessory		
Network Cables		
Network Card		
Computer Security Technology		
Computer Security Accessories		
Cabinets / enclosures		
Cabinets / enclosures accessories		
Data Acquisition Technology		
Digital Image Tools		

Digital Image Accessories		
Cables / Wiring		
Monthly Maintenance		
Extended Warranty		
Mission Critical Warranty		
System Service Fee		
Documentation		
Training		
Analysts		
Installation		
System support		

These discounts shall remain constant over the life of the contract, and the applicable product classification discount shall be used when adding new equipment to the contract.

Training and Documentation

Training and Documentation (both on-line and hardcopy) CLINS may be provided if the training and documentation directly relates to the product CLINs provided on the contract.

Product/Equipment Restrictions

Agencies may purchase products using the products CLINs on the contract provided that the products directly support the associated services purchased on that delivery order and provided that the products do not exceed 30% of the price of the associated services. Products shall not be purchased separately.

(End of Text)

A.1.7. ACCEPTANCE--MULTIPLE LOCATIONS

The issuing Contracting Officer or authorized Government representative, as identified on the order, will accomplish acceptance as specified on each order.

The issuing Contracting Officer may designate other Government agents as authorized representatives. The Contractor will be notified by a written notice or by a copy of the delegation letter if other agents are authorized.

Acceptance shall be deemed to have occurred constructively--for the sole purpose of computing an interest penalty that might be due the Contractor under the Prompt Payment Act--on the 7th day after the Contractor has delivered the supplies or services in accordance with the terms and conditions of the contract. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the date of the actual acceptance.

(End of Text)

A.1.8. EFFECTIVE ORDERING PERIOD

Contract: The effective ordering period (exclusive of deliveries) for this contract shall be a base period of one year with 4 one-year options or until the maximum Not-to-Exceed amount of $3 million is reached, whichever occurs first.

Delivery Orders: The period of performance for each delivery order placed against this contract shall be from the date the order is issued through the last day of warranty coverage.

(End of Text)

A.1.9. EQUIPMENT SHIPPING INSTRUCTIONS--NON CENTRAL RECEIVING

Shipment of the equipment under this contract shall be to the end user listed on the applicable Delivery Order. Delivery Orders will identify the exact destination for shipment including receiving point of contract and telephone number.

At the time of each delivery, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series for NASA orders), or other agency designated delivery form with the delivered item. Compliance with this clause is necessary to assure verification of delivery and acceptance and prompt payment.

If any the shipping addresses are to NASA Installations, delivery personnel must first stop at the designated Central Receiving office to provide a copy of the receiving report (DD 250) to Receiving personnel before making delivery to the on-site location(s). Failure to provide the DD 250 to Receiving) may result in reduction or non-payment by the Government of any interest penalty under the Prompt Payment Act.

(End of Text)

A.1.10. MATERIAL INSPECTION AND RECEIVING REPORT (1852.246-72) (Aug 2003)

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in _3_ copies, an original and 2 copies.

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 18-46.672-1. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words "CONTAINS DD FORM 250" on the package.

(End of clause)

A.1.11. TIME OF DELIVERY

The Government requires all product/equipment deliveries to be made in accordance to the following schedule(s):

1. Standard Delivery: Items shall be delivered within 30 days of receipt and processing of the Delivery Order at the SEWP BOWL, for non-credit card orders, and within 30 days of placement of credit card orders.

2. Expedited Delivery: An expedited delivery schedule of less than 30 days delivery, mutually agreed upon by the Ordering Agency and Contractor, may be added to Delivery Orders.

3. Non-standard Delivery: A delivery schedule other than the 30 day standard delivery time may be proposed on an individual CLIN (item) basis. Upon acceptance by the Government, the non-standard delivery schedule for that item shall be included in the CLIN database. Non-standard delivery shall not exceed 45 days.

If an item cannot be delivered within the delivery time for that item, the Contractor shall notify the issuing Contracting Officer and the SEWP BOWL within two business days of receipt of order of the expected delivery date for the ordered item(s). Upon notification, the Ordering Agency may choose to cancel the order or request due consideration for the delay.

(End of Text)

A.1.12. PARTIAL SHIPMENTS

A partial shipment is any shipment that does not include all items specified in the order.

Partial shipments will not be accepted unless authorized on the delivery order or by the issuing Contracting Officer prior to the time of delivery. The Government reserves the right to return partial shipments to the Contractor, transportation charges collect.

(End of Text)

A.1.13. INDIVIDUALS AUTHORIZED TO ISSUE ORDERS

Any Government Contracting Officer is authorized to place orders against the contract.

(End of Text)

A.1.14. OPTION TO EXTEND THE TERM OF THE CONTRACT (52.217-9) (Mar 2000)

a) The Government may extend the term of this contract by written notice to the Contractor prior to the expiration of the effective ordering period; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30_ days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

(End of clause)

A.1.15. EXTENDED WARRANTY FOR EQUIPMENT

The Contractor shall provide extended warranty which can be purchased and begin at anytime during the standard commercial warranty period up to and including the end of the commercial warranty period. This extended warranty shall provide coverage for 36months after its initial start date, regardless of the commercial warranty period. The extended warranty shall provide coverage for five days a week (Monday through Friday) and for eight (8) hours a day during business hours, with a next day response time. This warranty is in accordance with Addendum 2, Attachment B, Section B.1.5.

At the Government's discretion, the Government may order, at any time during a warranty period, monthly maintenance at the Discounted Monthly Extended Warranty amount in accordance with Addendum 2, Attachment D, Pricing Exhibit, in lieu of the extended warranty.

(End of Text)

A.1.16. MISSION CRITICAL WARRANTY – NASA SITES

The Contractor shall make mission critical warranties available for NASA sites. Mission Critical warranties may be made available to other Federal Agencies upon mutual agreement between the Contractor and the issuing Contracting Officer.

In addition to both the standard commercial warranty and the extended warranty, the offeror shall provide mission critical warranty which provides coverage with a 2 hour response time. This mission critical warranty shall be ordered in no less than 1month increments and may be orderable through the life of the contract. This mission critical warranty shall be one unique CLIN per contract and used on an as needed basis. This unique CLIN represents a percentage increase from the monthly maintenance discounted price for each product. This mission critical warranty is in accordance with Addendum 2, Attachment B, Section B.1.5.

(End of Text)

A.1.17. ELECTRONIC DATA INTERCHANGE

Electronic Data Interchange (EDI) and other electronic reporting activities shall apply in accordance with Addendum 2, Attachment C.

(End of Text)

A.1.18. OTHER FEDERAL AGENCY UTILIZATION

Other Federal Agencies, and authorized Contractors, will be allowed to utilize this contract, on a non-mandatory basis, to satisfy Information Technology (IT) requirements. ***

(End of Text)

*****NOTE!** Governments are not authorized to use this contract unless mandated by Congress. Also, see Clause A.1.13 Note for GWAC information.

A.1.19. CERTIFICATE OF MAINTAINABILITY

A "Certificate of Maintainability" is not required for equipment acquired and maintained under said contract unless it is specifically requested by the issuing Contracting Officer. If it is requested, the Contractor shall issue the certification within twenty working days.

The certificate shall state that preventive maintenance in accordance with the specifications of the Original Equipment Manufacturer (OEM) has been performed and that the equipment is performing in accordance with the OEM's specifications such that the OEM (or the OEM's successor in interest) commits that it would assume maintenance of the equipment (or the OEM certifies that the equipment is eligible for maintenance, including but not limited to repair or inspection charges) if such maintenance were assumed effective the date after the Contractor's performance ceases. The Certificate of Maintainability shall also state that the equipment is at the most current OEM's revision level. The Contractor is responsible for bearing all costs associated with obtaining such certification at no charge to the Government.

Should the Contractor fail to issue the required Certificate of Maintainability in accordance with this clause, or should any equipment fail to perform in accordance with the certification, the Contractor shall be liable to the Government for any reasonable costs incurred by the Government for the purpose of bringing the equipment up to the required maintainable level.

If equipment is acquired under this contract without maintenance, the Contractor shall issue a Certificate of Maintainability for such equipment if requested by the issuing Contracting Officer. The certificate shall list each item delivered by a component identification number (i.e. serial number) and state that the equipment is in such condition that the OEM (or the OEM's successor in interest) commits that it would assume maintenance of the equipment (or the OEM certifies that the equipment is eligible for maintenance). All charges required to obtain the requisite performance of the equipment, shall be borne by the Contractor. The fact that the equipment may have been acquired with a warranty does not relieve the Contractor of its obligations under this subparagraph.

(End of Text)

A.1.20. SUBSTITUTE/ENHANCEMENTS FOR SPECIALIZED EQUIPMENT/SOFTWARE TO ACCOMMODATE USERS WITH DISABILITIES

The Contractor is encouraged to offer equipment or software which becomes available after contract award and offers improvements in technology which better suits the needs of users with disabilities. If the Government elects to do so, it may evaluate the equipment/software, and substitute the equipment for the equipment covered in the contract but not yet delivered. Any such proposal should contain the general information required by the “Technology Refreshment” article in this Section.

When substitution of such specialized technology is made without charge to the Government, or as a planned part of the contract (e.g. planned upgrade), manuals and publications as required by the contract shall be provided to all addresses (in the stated quantities) affected by the change without charge to the Government (unless other payment arrangements are made by the ordering agency).

(End of Text)

A.1.21. TECHNOLOGY REFRESHMENT

The Government shall have the right to require, at any time, that the Contractor offer under this contract hardware and software components available to the Contractor's commercial customers. In this way the Government seeks to ensure that it can obtain the benefits of new design enhancements and technological updates or advances for equipment currently on the contract. When requested or offered, the Contractor shall provide, within 30 calendar days of receipt of request, a refreshment proposal including the components so identified at the technology discount as indicated Clause A.1.6.

In the event that the Contractor is no longer able to provide the products proposed (because they are no longer being manufactured, for example), the Contractor may, with the Government's approval, remove the products from the contract. For products in the mandatory deliverable lists, the Contractor shall provide substitute products which shall have the functional capabilities of the products originally provided and shall meet or exceed the original products' rated performance characteristics, at the appropriate discount as indicated in Clause A.1.6.

Any new technology which will upgrade, extend or enhance the components shall be considered if the Contractor submits a proposal outlining the proposed technology. Included in this proposal shall be pricing data (i.e., current published commercial price list) and other technical information as listed below. With the receipt of a proposal from the Contractor, the Government shall have the right to approve any or all of the proposed CLINs and to unilaterally modify the contract to provide for ordering of the new technology. The criteria for acceptance of the new technology proposal is as follows:

1) For mandatory deliverable items, each item must satisfy all original mandatory requirements in the technical specifications of this contract.

2) Each item must correspond with an appropriate existing contract product class code and its corresponding price discount.

At a minimum, the technology proposal shall include the following header information:

- TR Number (unique tracking number)
- Description of the proposed TR
- Contract Number
- Contact Name
- Contact Phone Number
- Contact E-mail address

At a minimum, the technology proposal shall include the following information for each product proposed:

- Contract Line Item Number (CLIN) (unique for this contract)
- Name of Original Equipment Manufacturer
- Business size of Original Equipment Manufacturer
- Original Equipment Manufacturer’s Model Number
- Class Code
- Base/Mandatory/Available Component Flag
- Full Item Description
- List Price

- SEWP Price

Technology refreshments can only be instituted through a formal signed contract modification.

(End of Text)

A.1.22. DELIVERY ORDER LIMITATIONS

I. Order limitations:

a) Minimum order – When the Government requires supplies or services covered by this contract in an amount of less than $2,500, the Contractor is not obligated to furnish those supplies or services under the contract.

b) Maximum order – The Contractor is not obligated to honor--
   (1) Any order for a single line item in excess of $500 thousand;
   (2) Any order for a combination of items in excess of $1 million;
   (3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

c.) The Contractor shall honor any order exceeding the maximum order limitations above, unless that order is returned to the ordering office within 10 business days after issuance, with written notice stating the Contractor's intent not to accept the order and the reasons. The Contractor shall state their policy in accepting orders above the maximum order limitation and below the minimum order limitation in their ordering guide.

II. Monthly Aggregate Order Maximum for Paragraph I above:

The Contractor is not obligated to honor any combination of orders under paragraphs (a) and (b) above totaling more than $1 million per month.

(End of Text)

A.1.23 FAIR OPPORTUNITY

Any orders issued under the 8(a) set-a-side contracts are not subject to fair consideration requirements at the individual order level. No documentation for the order selection is required to be submitted with the order or maintained by the end user or contractor.

The SEWP BOWL promotes market research procedures through, utilizing WWW search capabilities and other appropriate market research measures, including the SEWP Online Search tools and RFQ tools. The SEWP BOWL will utilize Technology Refreshment and Contractor provided reports in accordance with Addendum 2, Attachment C, to provide the database of record of all available CLINS, descriptions, product features and prices for all items available through all SEWP contracts, along with past performance data, and shall provide search tools based to search across contracts.

The Contractor shall not market, quote or otherwise offer for sale, under this contract, any products not listed in the SEWP database, until the said products are included in the SEWP database, and available to all Government end-users for market research.

(End of Text)

A.1.24. DD 250 USAGE

The Contractor may utilize a DD 250 in lieu of an invoice.

(End of Text)

A.1.25. F.O.B. DESTINATION (52.247-34) (NOV 1991)

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located, and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight". When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall--

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of Clause)

A.1.26. DELIVERY AND OTHER CHARGES

All deliverable line item prices shall be inclusive of all charges, except for additive delivery changes for delivers outside the US and its possessions. This includes all miscellaneous charges/fees as well as

standard shipping and delivery charges (see A.1.11 TIME OF DELIVERY) to United States Government installations CONUS.

Items returned prior to the Government's acceptance are not subject to restocking fees or other charges.

(End of Text)

A.1.27. COMMERCIAL COMPUTER SOFTWARE - RESTRICTED RIGHTS (52.227-19) (JUN 1987)

(a) As used in this clause, "restricted computer software" means any computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted.

(b) Notwithstanding any provisions to the contrary contained in the Contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this purchase order/contract, and irrespective of whether any such agreement has been proposed prior to or after issuance of this purchase order/contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Contractor agrees that the Government shall have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any restricted computer software delivered under this purchase order/contract. The terms and provisions of this contract, including any commercial lease or license agreement, shall be subject to paragraph (c) of this clause and shall comply with Federal laws and the Federal Acquisition Regulation.

(c) (1) The restricted computer software delivered under this contract may not be used, reproduced or disclosed by the Government except as provided in subparagraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The restricted computer software may be--

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer may be transferred;

(ii) Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this purchase order/contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subContractors, subject to the same restrictions set forth in this purchase order/contract; and

(vi) Used or copied for use in or transferred to a replacement computer.

(3) If the restricted computer software delivered under this purchase order/contract is published and copyrighted, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in subparagraph (c)(2) of this clause unless expressly stated otherwise in this purchase order/contract.

(4) To the extent feasible the Contractor shall affix a Notice substantially as follows to any restricted computer software delivered under this purchase order/contract; or, if the Contractor does not, the Government has the right to do so: "Notice - Notwithstanding any other lease or license

agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract (or purchase Order) No. _____ ."

(d) If any restricted computer software is delivered under this contract with the copyright notice of 17 U.S.C. 401, it will be presumed to be published and copyrighted and licensed to the Government in accordance with subparagraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice: "Unpublished - rights reserved under the copyright laws of the United States."

(End of Clause)

A.1.28. EXPORT LICENSES (1852.225-70) (FEB 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at any Government installation, where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of Clause)

A.1.29. CONTRACTOR COLLECTION OF AGENCY ADMINISTRATIVE HANDLING FEE

An Agency Administrative Handling Fee, not to exceed 3/4 % of the total price of the delivery order, shall be applied to all Federal Agency orders and Federal Agency authorized contractor orders under the Scientific & Engineering Workstation Procurement (SEWP) III contracts. The SEWP III website will post the Agency Administrative Handling Fee percentage, and the Contractor shall be notified via email by the Science and Engineering Workstation Procurement (SEWP) Business Operations Workstation Laboratory (BOWL). The handling fee's collection shall be done in accordance with the procedures outlined below.

Contractor Responsibilities:

(a) Each contract shall include a CLIN called SEWPZ which will be referenced by customers on all orders where the handling fee applies. This CLIN should be an editable CLIN.

(b) In providing quotations to agencies, the Contractor shall be responsible for referencing the CLIN with the applicable dollar amount. The CLIN may be rounded to the nearest dollar amount.

(c) The CLIN will apply to all such orders. These include, but are not limited to, original orders, modifications to orders, product orders, and service orders. On modifications that reduce the fixed price of orders, a credit for the handling fee may be expressed as a negative CLIN or mutually acceptable price reduction, with notation that the price reduction reflects a credit for the handling fee.

(d) The Contractor shall invoice the ordering agency for the entire amount of the order (including the handling fee). When invoicing for monthly services, Contractors should include the CLIN on the first monthly invoice. It should reflect the handling fee for the entire period of service. The same is true for partial shipments. The Contractor should include the CLIN, reflecting the handling fee for the entire order, on the invoice coinciding with the first shipment.

(e) Quarterly, the Contractor shall be responsible for sending a payment to NASA/Goddard Space Flight Center, SEWP, Code 290, reflecting the total administrative handling fee collected during that period. The Contractor will be only responsible for forwarding payment on handling fees actually collected. The Contractor shall determine the timing of the quarterly payment. The payment is to be made by check payable to NASA/Goddard Space Flight Center, at the following address: NASA/Goddard Space Flight Center, SEWP Program, Mail Code 290, Attention: Deputy Program Manager, Greenbelt, MD 20771.

(f) Coinciding with the payment, the Contractor must send a "Agency Administrative Handling Fees Collected" report to the SEWP Program Office, Mail Code 290, Attention: Deputy Program Manager, Greenbelt, MD 20771. The report must list the SEWP Control Number and/or Agency Order number, the Total Order Amount, and the administrative handling fee collected for each order reflected in the total payment. The report must be sorted by SEWP Control Number or by Agency Order number. The report must have totals for the Total Order Amount and the Agency Administrative Handling Fee Collected. This report must be submitted on hard copy and electronically. Electronic reports should be submitted as described in Attachment D, Contractor /Government Communications Requirements, Section D.5.

(g) In the event that an agency does not pay the applicable handling fee to the Contractor, the Contractor shall not be held responsible for ensuring the agency pays the handling fee. If this occurs, the Contractor shall notify the Contracting Officer's Technical Representative, the SEWP Manager.

Ordering Agency Responsibilities:

(a) The ordering agency is responsible for correctly calculating the Agency Administrative Handling Fee. The Contractor will not hold or reject an order because of an incorrectly calculated handling fee. In this case, the Contractor must inform the ordering agency that a modification to the order is required to correct the handling fee amount.

(End of Text)

A.1.30. OMBUDSMAN (1852.215-84) (Oct 2003) – ALTERNATE l (JUNE 2000)

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore,

before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, the Deputy Center Director, NASA/GSFC, Greenbelt, MD, 20771. Telephone: 301-286-5066. Facsimile: 301-286-1714. E-mail: William.F.Townsend.1@gsfc.nasa.gov. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202-358-0445, facsimile 202-358-3083, e-mail james.a.balinskas@nasa.gov. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the contracting officer or as specified elsewhere in this document.

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

(End of Clause)

A.1.31. MAJOR BREACH OF SAFETY OR SECURITY (1852.223-75) (FEB 2002

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) the public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; equipment or property damage from vandalism greater than $250,000 or theft greater than $250,000.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

A.1.32. CONTRACTOR PERFORMANCE ASSESSMENT

The Contractor's performance under this contract shall be assessed annually in accordance with the requirements of FAR subpart 42.15, and the policy and procedures specified in the NFS subparts 1842.1502 and 1842.1503. End users of products and services shall be periodically contacted to provide input for this assessment.

(End of Text)

A.1.33. NASA 8 PERCENT GOAL (1852.219-76) (JUL 1997)

(a) Definitions.
"Historically Black Colleges or University", as used in this clause means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.
"Minority institutions", as used in this clause, means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which for the purposes of this clause includes a Hispanic-serving institution of higher education as defined in section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).
"Small disadvantaged business concern", as used in this clause, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.
"Women-owned small business concern", as used in this clause, means a small business concern (1) 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 (2) whose management and daily business operations are controlled by one or more women.
(b) The NASA Administrator is required by statute to establish annually a goal to make available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns, at least 8 percent of NASA's procurement dollars under prime contracts or subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained.
(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to such entities to the fullest extent consistent with efficient contract performance.
(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

(End of Clause)

A.1.34. SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (1852.204-76) (JULY 2002)

(a) The Contractor shall be responsible for Information Technology security for all systems connected to a NASA network or operated by the Contractor for NASA, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor must have physical or electronic access to NASA’s sensitive information contained

in unclassified systems that directly support the mission of the Agency. This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

(1) Computer control of spacecraft, satellites, or aircraft or their payloads;

(2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the contractor's copy be corrupted; and

(3) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.) and the Government Information Security Reform Act of 2000. The plan shall meet IT security requirements in accordance with Federal and NASA policies and procedures that include, but are not limited to:

(1) OMB Circular A-130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology; and

(3) Chapter 3 of NPG 1620.1, NASA Security Procedures and Guidelines.

(c) Within _30__days after contract award, the contractor shall submit for NASA approval an IT Security Plan. This plan must be consistent with and further detail the approach contained in the offeror's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(d)(1) Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2) of this clause. Those Contractor personnel with non-privileged access do not require personnel screening. NASA shall provide screening using standard personnel screening National Agency Check (NAC) forms listed in paragraph (d)(3) of this clause, unless contractor screening in accordance with paragraph (d)(4) is approved. The Contractor shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after contract award or assignment of an individual to a position requiring screening. The forms may be obtained from the CCS. At the option of the government, interim access may be granted pending completion of the NAC.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT-1 has the highest level of risk):

(i) **IT-1** -- Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) **IT-2 --** Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of "level 1" data whose cost to replace exceeds one million dollars.

(iii) **IT-3 --** Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the contractor for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT-1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions;

(ii) IT-2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT-3: NASA Form 531, Name Check, and FC 258.

(4) The Contracting Officer may allow the Contractor to conduct its own screening of individuals requiring privileged access or limited privileged access provided the Contractor can demonstrate that the procedures used by the Contractor are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of contractor personnel may be waived by the Contracting Officer for those individuals who have proof of --

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Contractor, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Contracting Officer under paragraph (d)(4) of this clause.

(e) The Contractor shall ensure that its employees, in performance of the contract, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The contractor may use web-based training available from NASA to meet this requirement.

(f) The Contractor shall afford NASA, including the Office of Inspector General, access to the Contractor's and subcontractors' facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime.

(g) The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(End of clause)

A.1.35. SAFETY AND HEALTH (SHORT FORM) (18-52.223-72) (APR 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the Changes clause of this contract;

provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the contractor fails to promptly take the necessary corrective action.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that exceed the micro-purchase threshold.

(End of clause)

[END OF ADDENDUM 1]

ADDENDUM 2 - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

A.2.1. LIST OF ATTACHMENTS

The following attachments constitute part of this contract:

Attachment	Description	Number of Pages
A	LIST OF DELIVERABLES	2
B	STATEMENT OF WORK	14
C	CONTRACTOR/GOVERNMENT COMMUNICATIONS REQUIREMENTS	5
D	PRICING EXHIBITS	23
E	SECURITY PLAN (to be proposed)	TBD

(End of clause)

[END OF ADDENDUM 2]

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE	PAGE	OF	PAGES
	1		1

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
Three (3)	MAY 11 2005		

6. ISSUED BY CODE 210.4

NASA Goddard Space Flight Center
Attn: Benjamin Hall, Mission Enabling Procurement Office
Greenbelt, MD 20771

7. ADMINISTERED BY (If other than Item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No. Street, county, State and ZIP: Code)

Eyak Technology, LLC
Attn: Jeremy Nusbaum
1881 Campus Commons Drive, Suite 105
Reston, VA 20191

CODE FACILITY CODE

(4) 9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO. NNG04DA32B

10B. DATED (SEE ITEM 13) 5/11/2004

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 one (1) copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATA SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and data specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

B/NC: GBW PPC: PF

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(4) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, 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:

X D. OTHER (Specify type of modification and authority)
(Unilateral) FAR Clause A.1.14., OPTION TO EXTEND THE TERM OF THE CONTRACT (52.217-9) (MAR 2000)

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

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

This modification exercises Options 1, 2, 3 and 4 for an additional four years of performance (5/11/2005 – 5/10/2009). The maximum contract value of $3 million remains unchanged.

- END OF MODIFICATION 3 -

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

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
		Ray James Sisneros	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)		BY (Signature of Contracting Officer)	MAY 9 2005