

SECTION H - SPECIAL CONTRACT REQUIREMENTS**H.1 DTAR 1052.219-72 SECTION 8(A) DIRECT AWARDS (MAR 2002)**

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

510 L Street, Suite 310, Anchorage, Alaska 99501-1952

(b) The contracting officer is responsible for administering the purchase order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The contracting officer shall also coordinate with SBA prior to processing any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) to notify the contracting officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and,

(2) to adhere to the requirements of FAR 52.219-14, Limitations on Subcontracting.

H.2 PUBLICIZING AWARDS

Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any news release or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

H.3 ORDERING PROCEDURES-SERVICES

NOTE: The following clause is inactive at this time and shall remain dormant until such time as the Contracting Officer provides notice to the contractor that a task/delivery order process is available to customers outside BCBP. This contract is not an IDIQ contract.

Ordering of services under this contract shall be accomplished as follows:

1. The Contracting Officer (CO) will forward a task order request to the Contractor which will describe technical requirements for deliverable products, performance standards, acceptable criteria, performance schedules, estimated level of effort, etc. in sufficient detail to permit accurate estimation of cost, work, hours, etc.
2. Within ten (10) working days after receipt of the task order the Contractor will submit a written proposal responding to the Government's requirement. The contractor's proposal shall contain, as a minimum, the following:
 - a. Task Requirements. A narrative description of the Contractor's understanding of the functions required to satisfy the requirements. The Contractor's proposal shall also state the purpose of the task order to ensure the Contractor's understanding of the requirement.
 - b. Proposal Solution. A narrative description of the Contractor's proposed solution -- plans for performance, technical approach, and any problems envisioned.
 - c. Assumptions. The proposal shall identify any assumptions on the Contractor's part used in developing the proposal and costs.
 - d. Milestones and Deliverables. Definition of milestones, deliverables, and schedule for them. Include a statement of the Contractor's understanding of acceptance criteria.
 - e. Work Breakdown Structure (WBS). A detailed WBS, with labor hours by skill category that will be applied to each milestone and deliverable, and the price applicable to each milestone or deliverable.
 - f. Staffing Schedule. A staffing schedule by individual Contractor skill level employee.
3. After the Contracting Officer's Technical Representative (COTR) has completed an evaluation of the Contractor's proposal, the CO may conduct discussions with the Contractor to resolve any outstanding issues. Following any required discussions with the Contractor, the CO will issue a written task order incorporating the Contractor's technical and cost proposal as accepted. All task orders issued under this contract shall conform to the provisions of the contract clause in Section I entitled "Ordering."
4. The only office authorized to issue task orders under this contract is the U.S. Customs Service, Office of Finance, Procurement Division. Oral orders under this contract are not authorized.

H.4 SECURITY BACKGROUND DATA

Contractors hired for work within the United States or its territories and possessions who require unescorted access to the Department of Homeland Security owned or controlled facilities, information systems, security items or products and/or sensitive but unclassified information shall be U.S. citizens.

All personnel employed by the Contractor or responsible to the Contractor who require unescorted access for the performance of work hereunder shall either currently possess or be able to favorably pass a full field five year employment background investigation. The Contractor shall submit within ten (10) working days after award of this contract a list containing the full name, social security number, and date of birth of those people who claim to have successfully passed a background investigation by the U.S. Customs Service, or submit such information and documentation as may be required by the Government to have a background investigation performed for all personnel. The information must be correct and be reviewed by a Customs Security Official for completeness. Normally, this shall consist of SF-85P, "Questionnaire for Public Trust Positions;" TDF 67-32.5, "Authorization for Release of Information;" -258, "Fingerprint Chart;" and a Financial Statement. Failure of any Contractor personnel to pass a background

investigation shall be cause for the candidate's dismissal from the project and replacement by a similar or equally qualified candidate as determined and approved by the Contracting Officer. This policy also applies to any personnel hired as replacements during the term of the contract.

The Contractor shall notify the Contracting Officer's Technical Representative (COTR) and Contracting Officer via phone, FAX, or electronic transmission, no later than one work day after any personnel changes occur. Written confirmation is required for phone notification. This includes, but is not limited to, name changes, resignations, terminations, and reassignments (i.e., to another contract).

H.5 ORGANIZATIONAL CONFLICTS OF INTEREST

1. The Contractor warrants that, to the best of its knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in Federal Acquisition Regulation (FAR) Subpart 9.5, or that the Contractor has disclosed all such relevant information in writing to the Contracting Officer.
2. The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer no later than three working days after discovery. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.
3. Remedies. The U.S. Customs Service may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware, or should have been aware, of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.
4. The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including this paragraph 4., in any subcontract or consultant agreement hereunder.

H.6 GOVERNMENT PROPERTY

The Contractor will be provided with items of property for performance of this contract in accordance with the Section I Government Property clauses and paragraph C.5 of the Statement of Objectives.

H.7 DISCLOSURE OF INFORMATION

Any information made available to the Contractor by the Government shall be used only for the purpose of carrying out the provisions of this contract and shall not be divulged or made known in any manner to any persons except as may be necessary in the performance of the contract.

In performance of this contract, the Contractor assumes responsibility for protection of the confidentiality of Government records and shall ensure that all work performed by its subcontractors shall be under the supervision of the Contractor or the Contractor's responsible employees.

Each officer or employee of the Contractor or any of its subcontractors to whom any Government record may be made available or disclosed shall be notified in writing by the Contractor that information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein. Further disclosure of any such information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions imposed by 18

U.S.C. 641. That section provides, in pertinent part, that whoever knowingly converts to their use or the use of another, or without authority, sells, conveys, or disposes of any record of the United States or whoever receives the same with intent to convert it to their use or gain, knowing it to have been converted, shall be guilty of a crime punishable by a fine of up to \$10,000, or imprisoned up to ten years, or both.

H.8 INDEMNIFICATION

The Government will not be responsible or held liable for any loss, damage, personal injury, or loss of life of Contractor personnel, not caused by the fault, negligence, or wrongful omission of the Government, its agents or its employees. The Contractor shall be liable and will indemnify and hold harmless the Government, its agents and employees, against all action so or claims for damages to persons, property, including death not caused by the fault, negligence, wrongful act, or wrongful omission of the Government, its agents or employees. The Contractor shall be liable and will indemnify and hold harmless the Government, its agents, and employees against all action or claims for all damages to persons or property, including death arising or resulting from the fault, negligence, wrongful act, or wrongful act, or wrongful omission of the Contractor personnel in accordance with the Federal Tort Claim Act (28 U.S.C. 2671-2680).

H.9 INCREMENTAL FUNDING

This contract shall be subject to incremental funding with \$15,000,000 presently made available for performance under this contract. It is estimated that funds presently available are sufficient to permit the Contractor's performance through December 31, 2003. In accordance with the Limitation of Funds clause in Section I, no legal liability on the part of the Government for payment of money in excess of \$15,000,000 shall arise unless and until additional funds are made available by the Contracting Officer through a modification to this contract.

H.10 TRAVEL

Travel and per diem rates for reimbursement purposes shall be in accordance with acceptable accounting procedures and Federal Acquisition Regulation (FAR) 31.205-46.

The Contractor shall be reimbursed by the Government for travel costs required in performance of this contract provided such travel has the prior approval of the Contracting Officer. Requests for travel shall be in writing and shall include the dates, locations, and estimated costs of the travel.

No profit will be paid on travel costs.

H.11 TYPE OF SERVICE

1. The Government and the Contractor understand and agree that the services delivered by the Contractor to the Government are non-personal services. The parties also recognize and agree that no employer-employee or master-servant relationship exists or will exist between the Government and the Contractor. The Contractor and the Contractor's employees are not employees of the Federal Government and are not eligible for entitlement and benefits given federal employees.

2. Contractor personnel under this contract shall not:

a. Be placed in a position where there is an appearance that they are employed by the Government or are under the supervision, direction, or evaluation of any Government employee.

- b. Be placed in a position of command, supervision, administration or control over Government personnel or personnel of other Government contractors, or become a part of the government organization.
- c. Be used in administration or supervision of Government procurement activities.

H.12 CONTRACTOR SUPERVISION

The Government will not supervise or direct the Contractor's employees. Similarly, the Contractor's employees shall not supervise, direct or evaluate the Government's employees or employees employed by other contractors. The Contractor's employees shall not become an integrated part of any Government organization, nor shall they administer or control any Government procurement activities.

H.13 EMPLOYEE RELATIONSHIP

1. The services to be performed under this contract do not require the Contractor or his employees to exercise personal judgement and discretion on behalf of the Government, but rather, the Contractor's employees will act and exercise personal judgement and discretion on behalf of the Contractor.
2. Rules, regulations, directives and requirements which are issued by the Bureau of Customs and Border Protection under their responsibility for good order, administration and security are applicable to all personnel who enter the installation or who travel on Government transportation. This is not to be construed or interpreted to establish any degree of Government control which is inconsistent with a non-personal services contract.

H.14 POST AWARD EVALUATION OF CONTRACTOR PERFORMANCE (DEC. 2000)

a. Contractor Performance Evaluations

Interim and final evaluations of contractor performance will be prepared on this contract in accordance with FAR Subpart 42.15. A final performance evaluation will be prepared at the time of completion of work. In addition to the final evaluation, interim evaluations will be prepared annually to coincide with the anniversary date of the contract. (If evaluations are to be conducted more or less frequently than annually, modify this sentence as appropriate.)

Interim and final evaluations will be provided to the contractor as soon as practicable after completion of the evaluation. The contractor will be permitted thirty days to review the document and to submit additional information or a rebutting statement. Any disagreement between the parties regarding an evaluation will be referred to an individual one level above the Contracting Officer, whose decision will be final.

Copies of the evaluations, Contractor responses, and review comments, if any, will be retained as part of the contract file, and may be used to support future award decisions.

b. Electronic Access to Contractor Performance Evaluations

Contractors that have Internet capability may access evaluations through a secure Web site for review and comments by completing the registration form that can be obtained at the following address:

http://ocm.od.nih.gov/cdmp/cps_contractor.htm

The registration process requires the contractor to identify an individual that will serve as a primary contact and who will be authorized access to the evaluation for review and comment. In addition, the contractor will be required to identify

an alternate contact who will be responsible for notifying the cognizant contracting official in the event the primary contact is unavailable to process the evaluation within the required 30-day time frame.

H.15 NOTIFICATION TO SBA REGARDING CONTRACT TERMINATION AND NOVATION PROCEEDINGS

In accordance with FAR 19.812, SBA delegates the responsibility for administering the contract except for novation agreements and advance payments; provided that advance notice is given to the SBA before issuing a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract. The Contracting Officer shall coordinate contract termination and novation proceedings with the SBA prior to initiating action.

NOTE: The following clause is inactive at this time and shall remain dormant until such time as the Contracting Officer provides notice to the contractor that a task/delivery order process is available to customers outside BCBP. This contract is not an IDIQ contract.

H.16 USE OF CONTRACT Tc-03-036 BY THE DEPARTMENT OF HOMELAND SECURITY

The High Technology Enforcement Equipment (HTEE) Integrated Logistics Support (ILS) program contract will require frequent modifications to accommodate changes in requirements and users throughout the term of the contract and to support other DHS components or Government agencies as required. These changes may substantially increase the volume of service and/or materials required under the contract as the agency evolves to meet the security needs of the nation and as required to maintain any prospective additional volume of HTEE resulting from the addition of any other Government users.

H.17 ESTIMATED COST AND AWARD FEE

- A. The total estimated cost for full performance of this contract is (b) (4) exclusive of the contractor's award fee
- B. As consideration for its work under the contract, the contractor shall receive the following:
1. Reimbursement for costs as provided in Section I, Allowable Cost and Payment (FAR 52.216-7).
 2. A base fee of (b) (4) not to exceed (b) (4) in accordance with Schedule B.
 3. All or a portion of an award fee pool of (b) (4) if earned, not to exceed (b) (4) in accordance with Schedule B and payable in accordance with the provisions of the clause, Payment of Award Fee, in Section H.

H.18 PAYMENT OF AWARD FEE

- A. Beginning on the first day of the base period of the contract, the Government will evaluate the Contractor's performance on a twice-yearly basis in accordance with the Performance Measures/Award Fee Plans (Attachments J.3 and J.4) for a determination of the award fee earned by the Contractor. The first evaluation period is considered a transition period and will commence with the date of the contract and extend for six months. This evaluation period

shall use the performance measures and award fee plan in Attachment J.3. After the six month transition period, the performance measures and award fee plan at J.4 shall be effective for the remainder of the contract or until modified by mutual agreement. The maximum award fee for each contract performance period will be divided into equal portions allocable to each award fee period for possible award. The dollar amount earned by the Contractor will be in direct proportion to the score of the Contractor's performance evaluation for the award fee period. The maximum award fee for the term of the contract is (b) (4).

- B. The Contractor agrees that the evaluation of Contractor performance and the determination as to the amount of award fee earned will be made by the Fee Determining Official, in accordance with the appropriate Performance Measures and Award Fee Plans and said determination will not be subject to the terms of Section I clause entitled "Disputes" (FAR 52.233-1). The Contractor will be advised in writing by the Contracting Officer, within 25 working days from the end of the performance evaluation period of the determination for the amount of award fee earned. The performance measures and award fee plan may be modified by mutual agreement at any time during the contract period. Any modified plan will become effective not earlier than the following evaluation period.
- C. Upon receipt of the notification in paragraph B of this clause, the Contractor may submit an invoice for the payment of the total award fee earned under this clause for the period evaluated. That portion of the award fee pool unearned during any evaluation period will not be added to the maximum award fee pool available for the subsequent award fee period(s).
- D. In the event this contract is terminated in its entirety for the convenience of the Government prior to the completion of an award fee period, the Government will make an adjustment in the maximum amount of the award fee that may be earned for the period, up to the effective date of the termination. This adjustment will be proportionate to the base fee established for said performance period. Concurrent with or subsequent to the aforesaid adjustment, the Government will make a determination of the amount of the award fee, if any, earned by the Contractor for the period up to the date of termination.

H.19 REDUCTION OF SURPLUS FUNDING

- A. If, during the period of performance of the contract, or any extension hereto:
 1. The contractor has reason to believe that the total cost to the Government for the performance of the contract, exclusive of any fee, will be substantially less than the estimated cost, thereby creating a potential funding surplus, and the contractor so notifies the Contracting Officer, or
 2. The Contracting Officer can reasonably project, or has knowledge, that the cost of performance will be less than the estimated cost;

then, it is understood and agreed that the estimated cost and applicable fees of the contract may be reduced.

- B. Reduction of the estimated cost, i.e. funding surplus, shall be accomplished by supplemental agreement to the contract.

H.20 FEE RECOMMENDATION

- A. Within ten working days of the end of each evaluation period, the Contractor shall submit to the Contracting Officer's Technical Representative (COTR) a self evaluation plan. In the plan, the contractor shall set forth his evaluation of his performance and proposed award fee, using the contract performance measures as his guideline. The Contractor shall use this opportunity to point out exceptional performance or extenuating circumstances that may have adversely affected his performance.
- B. After receipt of the Contractor's self evaluation, the Government shall perform its evaluation, taking into account the Contractor's self evaluation and comments. A Performance Evaluation Board (PEB/Fee Determination Official) will conduct a review of activities and documentation and will rate the contractor's performance utilizing the appropriate

scale presented in Attachment J.3 or J.4, Performance Measures/Award Fee Plan. The award fee will be based upon the contractor's level of performance of the performance requirements as described therein.

- C. The Fee Determining Official will review the performance evaluation and the fee recommendation by the Performance Evaluation Board and make a final determination of fee. The Fee Determining Official for the contract is the Director, Technology Support Branch.
- D. The Contractor will be advised in writing by the Contracting Officer, within 25 working days from the end of the performance evaluation period of the determination for the amount of award fee earned (see H.18).

H.21 COMPLIANCE REQUIREMENTS

- A. The contractor shall not transport, store, destroy, sell, or otherwise dispose of property in violation of Federal, state, or local laws governing the transportation, storage, or disposition of property.
- B. The contractor shall comply with all appropriate existing and future Federal, state, and local laws, rules, regulations, directives, procedures, and guidelines prescribing the requirements for the custody, management, and disposition of property.

H.22 GOVERNMENT RIGHT IN AUTOMATED AND MANUAL SYSTEMS, PROCEDURES AND DOCUMENTATION

- A. All systems (both automated and manual), forms, manuals, files, records, procedures, documents, software, and other operational material developed or produced at government expense by the contractor for conducting the business of this contract, becomes the property of the government. All such systems, procedures, and documentation will be designed, developed, and prepared for ultimate transfer to the government or a subsequent contractor fully operational with minimal transition downtime. In the event this contract is terminated for any reason, all systems, procedures, and documentation will be transferred to Customs or a new contractor.
- B. Pursuant to FAR clause 52.227-14, Rights in Data - General (Alternate IV), unless the contractor specified otherwise in its proposal, the government considers that it has unlimited rights to all data of whatever nature first produced in support of this contract.

H.23 ADDITIONAL INSTRUCTIONS - INCURRENCE OF COSTS

In accordance with FAR 31.201-3, there is no presumption of reasonableness attached to the incurrence of costs by a contractor. Only reasonable costs, as determined under the FAR, will be considered for payment. Costs incurred by the contractor as a result of its own negligence (including that of its officers, employees, and subcontractors) will not be allowed.

H.24 COST MANAGEMENT

The Contractor's budget shall reflect accurate funding projections. Contractor cost management measures shall maintain a control of costs so that overall budget overruns are avoided. The Contractor shall ensure that minor, monthly category overruns are well justified and do not exceed the total amount budgeted for the performance period. Cost variance reports shall provide an accurate assessment of the budget versus the status of actual expenditures.

H.25 GENERAL AND ADMINISTRATIVE RATE CEILING

The negotiated General and Administrative Expense (G&A) rate for this contract is (b) (4). In accordance with FAR 42.707(b)(2), the parties hereby agree to place a ceiling limitation on these rates as follows:

- (1) The government will not be obligated to pay any additional amount should the final indirect cost rates exceed the ceiling rates, and
- (2) In the event the final indirect cost rates are less than the ceiling rates, the ceiling rates will be reduced to conform with the lower rates, and payment will be returned to the government.