

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE J	PAGE OF PAGES 1   26
2. AMENDMENT/MODIFICATION NO. P00093	3. EFFECTIVE DATE 10-Mar-2010	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO.(If applicable)
6. ISSUED BY NCRCC - ITEC4 2461 EISENHOWER AVENUE ALEXANDRIA VA 22331-1700	CODE W91QUZ	7. ADMINISTERED BY (If other than item 6) DCMA TWIN CITIES BH WHIPPLE FEDERAL BLDG ROOM 1150 1 FEDERAL DRIVE FT. SNELLING MN 55111-4007		CODE S2401A
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) INTERMEC TECHNOLOGIES CORPORATION 6001 36TH AVE W EVERETT WA 98203-1264			9A. AMENDMENT OF SOLICITATION NO.	
			9B. DATED (SEE ITEM 11)	
			X 10A. MOD. OF CONTRACT/ORDER NO. W91QUZ-04-D-0009	
			X 10B. DATED (SEE ITEM 13) 22-Jun-2004	
CODE 33825	FACILITY CODE 33825			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.				
<p>Offer 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:</p> <p>(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment 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 date specified.</p>				
12. ACCOUNTING AND APPROPRIATION DATA (If required)				
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.				
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.				
X B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).				
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:				
D. OTHER (Specify type of modification and authority)				
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> 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.) Modification Control Number: nanfu101425 The purpose of this modification is to incorporate administrative changes to Part C-1-1 of this contract. See Page 2				
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) JAMES E. JOHNSON / CONTRACTING OFFICER TEL: 703-325-3430 EMAIL: james.johnson27@conus.army.mil	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	
			16C. DATE SIGNED 10-Mar-2010	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

**SUMMARY OF CHANGES**

SECTION SF 30 - BLOCK 14 CONTINUATION PAGE

The following have been added by full text:

ADDITIONAL INFORMATION

The following have been added by full text:

ADDITIONAL INFORMATION

Contract Specialist: Nonya Nichols

Commercial Telephone: (703)325-3303, DSN: 221-3303

E-mail: [nonya.j.nichols@us.army.mil](mailto:nonya.j.nichols@us.army.mil)

A. The purpose of this modification is to incorporate the following administrative changes to the contract.

1. Changes the name of the Contracting Officer at Part C-1-1 paragraph (n) **Delivery Orders/Credit Card Orders/Task Orders** to read:

From : Cathy A. Golden  
ACA ITEC4  
ATTN: SFCA-IT-A (Golden)  
2461 Eisenhower Avenue  
Alexandria, Virginia 22331-1700  
PHONE NUMBER: (703) 325-8936

To: **The name and e-mail address for the AIT-III Contracting Officer will be provided by separate cover.**

2. Changes the e-mail addresses of the Contracting Officer at Part C-1-1 paragraph (w) **Mandatory Use Of Contractor to Government Electronic Mail sub-paragraph (9)** to read:

From: The Contracting Officer's e-mail address is : [cathy.a.golden@us.army.mil](mailto:cathy.a.golden@us.army.mil)  
The Contracting Officer's Representative's e-mail address is: [marie.finley@us.army.mil](mailto:marie.finley@us.army.mil)

To :The e-mail addresses for the AIT-III Contracting Officer, Contracting Specialist, and Contracting Officer's Representative will be provided by separate cover.

3. Change the Emil address of the point of contact at Part C-1-1 paragraph (y) **Past Performance Input from field Activities** to read:

From: Past Performance input shall be forward to: E-mail: [cathy.a.golden@us.army.mil](mailto:cathy.a.golden@us.army.mil)

To: Past Performance input shall be forwarded to the Contracting Officer. The name email address of the Contracting Officer will be provided by separate cover.

B. As a result of this modification, there is no change to the total amount obligated under the contract.

## PART C-1

In accordance with FAR 12.302, Tailoring of Provisions and Clauses for the Acquisition of Commercial Items, FAR Clause 52.212-4 is tailored as follows to reflect special contract terms and conditions that are unique for this contract. This tailored clause supersedes the version of FAR Clause 52.212-4. Sentences that include tailored portions are identified in **BOLD**.

## 52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS (MAR 2009)

**(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. **Inspection and acceptance of supplies furnished under this contract shall be made at origin by representatives of the Defense Contract Management Command. Inspection and acceptance of services shall be made by the using activity as stated on each delivery or task order. Inspection and acceptance of Incidental Materials for Technical Engineering services shall be made at the using activity as stated on each delivery order or task order.**

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

**(c) Changes.** **The Government reserves the right to issue unilateral modifications to effect administrative changes to delivery orders and task orders. Further, the Procuring Contracting Officer (PCO) may issue unilateral modifications to effect administrative changes to the contract. All other changes in the terms and conditions of this contract may be made only by the PCO through 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 or any excusable delay, setting for the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

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

(1) Name and address of the Contractor;

- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Contractors are encouraged to assign an identification number to each invoice.

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

**(i) Payment.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

**(j) Risk of loss. 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 delivery of the supplies to the Government at the destination, except when loss or damage is due to the negligence of the Government.**

**(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, or for any portion of the contract minimum guaranteed amount remaining at the time of termination, 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. **Additional warranties requirements are discussed in Part D-1.**

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

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

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

**(s) Order of precedence.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(End of clause)

#### PART C-1-1 ADDENDUM TO FAR 52.212-4 SPECIAL PROVISIONS

**(a) Contract Life.** The total contract life, subject to exercise of FAR Clause 52.217-9, Option to Extend the Term of the Contract, is 120 months from the date specified in the written notice to proceed. The contract includes a five-year base period, with one five-year option. The following is the breakout for the base period and the option period.

Base Period: 19 July 2004 through 18 July 2009

Option Period: 19 July 2009 through 18 July 2014

**(b) Contractor's Proposal.** The Contractor's Proposal dated April 1, 2004, as amended, is hereby incorporated into the contract.

**(c) Type of Contract.** This is an indefinite-delivery/indefinite-quantity (ID/IQ) contract with firm-fixed-price (FFP) contract line item numbers (CLINs).

**(d) Minimum and Maximum Amount.** The guaranteed minimum amount is \$100,000.00. No combination of delivery orders, credit card orders and task orders shall exceed a maximum amount of \$238,600,000.00.

**(e) Delivery Requirements.** The Contractor shall start accepting orders within 10 days from the date of the written notice to proceed. The Contractor shall tender hardware and software items for inspection and acceptance by DCMA. The Contractor shall deliver hardware and software items to the destination specified in the order within 45 days after date of order for all orders (SF 1449). In the event a Certificate of Conformance is authorized for use, the Contractor shall deliver hardware and software items to the destination specified in the order within 45 days after the date of the order. However, see FAR Clause 52.211-15, Defense Priority and Allocation Requirements, under the heading "Clauses Incorporated by Reference". The Contracting Officer issuing the order may arrange for a longer delivery period. Partial delivery is authorized, unless specified otherwise on the Delivery Order. The period of performance shall be stated on each Task Order for Technical Engineering Services, Training Services, and Maintenance Services. Orders shall be mailed or notice of award furnished to contractor no later than date of order (FAR 11.403). All delivery and performance schedules include the three-day Contractor review time for acceptance or rejection of orders.

**(f) Ordering Period.** All ordering after the Base Period is subject to the Government's Option to Extend the Term of the Contract. Also, any period during which there is a suspension of performance as a result of a bid protest shall not constitute part of the Ordering Period.

1. Hardware, software, and documentation, if required, will be ordered for 60 months from the date specified in the written notice to proceed.
2. Training and technical engineering services, if required, will be ordered for 60 months from the date specified in the written notice to proceed.
3. Maintenance, if required, will be ordered from the date the warranty expires through the remaining life of the contract.
4. Consumables, if required, will be ordered for 12 months from date specified in the written notice to proceed.
5. Program Management, if required, will be ordered for 120 months from date specified in the written notice to proceed.

**(g) Post Award Conference.** The Contractor agrees to attend a Post Award Conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5.

**(h) Notice To Proceed.** The Contractor shall take no actions on this contract, or incur any costs, without the Contracting Officer's official written notice to proceed. It is anticipated that this notice to proceed will generally be issued when the Contracting Officer determines that there is no threat of protest. The base year of this contract shall begin as specified in the notice to proceed. It is anticipated that performance will not begin prior to June 2004.

**(i) Current Technology Substitutions and Additions.**

1. Changes within the general scope of the contract may be proposed for the purpose of substitutions, or additions to assure that state-of-the-art, commercial items are readily available for ordering under this contract.

(a) Product substitutions are replacements of CLIN list items that have been officially announced as either out of production or no longer supported by the original equipment manufacturer (OEM). Substituted items shall be at the same or greater performance for the same or lesser price of the CLIN List items being replaced. Substitutions are not subject to price increases.

(b) Additions provide for new functionality not available on contract that can be determined to be within the general scope of the contract. A new Contract Line Item Number (CLIN) or Sub-line Item Number (SLIN) will be added to the contract for the addition of the new item. Prices will be negotiated.

2. The offer of product substitution or addition shall include information sufficient to determine that the proposal satisfies the terms and conditions of the contract and, in particular, this provision. The proposal shall, as a minimum, include the following information:

(a) A comparative description, in detail, of the difference between the existing contract item and the proposed product substitution and a specific analysis of the comparative advantages and disadvantages of each. For additions, the proposal shall provide a complete description of the new item and a correlative analysis of how the new item will benefit the Government.

(b) Specific items contained in the Contract that are proposed to be changed if the proposal is accepted (e.g., if new equipment is offered to replace currently installed, will the old be exchanged for the new, and on what basis).

(c) A statement as to how the changes will affect performance, costs, etc., if accepted, and an item-by-item summary of any "street pricing" of the items including a reference to the source of the "street price" and GSA Schedule pricing, if any, to include GSA Schedule Number. The contractor may be required to provide a minimum of three competitive quotes.

(d) If applicable, an evaluation of the effects the change would have on Life Cycle Costs such as Government Furnished Property (GFP), maintenance, personnel, site modification, and energy.

(e) An analysis of a timeframe in which the change should be instituted so as to obtain maximum benefit to the Government for the remainder of the Contract.

3. It is the contractor's responsibility to manage and propose substitutions, and additions in a timely manner allowing sufficient time for government approval (review times will vary depending upon the complexity and newness of the item) and to provide, without a lapse in availability, Government approved products throughout the entire ordering period of the contract. The Contractor shall not be reimbursed the cost associated with the preparation of a proposal for the technology changes described above. The decision as to the acceptability of such a proposal shall be at the sole and exclusive discretion of the Contracting Officer and is not subject to the Disputes clause of this Contract.

**(j) Proposal Response Time.** If the Government issues a Request for Proposal (RFP) for a technology change or any other type of change to the contract in accordance with C-1 (c), the Contractor shall submit a proposal within 20 calendar days of RFP date, unless the RFP specifies a later RFP due date. Regardless of which party initiates a proposed contract change, should the Government request supplemental information to analyze the contractor's proposal, the Contractor shall provide the additional information within 7 calendar days of the request, unless the Government's request specifies a later due date.

**(k) Only New Equipment.** Only new equipment shall be delivered under this contract. The Contracting Officer will not grant approval for used equipment.

**(l) Reconditioned Components.** All equipment provided by the Contractor under this Contract may not be used or reconditioned; however components of such equipment may be reconditioned provided such components are drawn from stockage which does not differentiate between new and reconditioned components.

**(m) Insurance.** In accordance with the clause "Insurance - Work on a Government Installation (Jan 1997)(FAR 52.228.5)" and this schedule, the Contractor shall acquire and maintain during the entire performance period of this contract insurance of at least the following kinds and minimum amounts set forth below:

Workman's Compensation and Employer's Liability Insurance in accordance with the amounts specified by the laws of the states in which the work is to be performed under this contract. In the absence of such state laws, an amount of \$100,000 shall be required and maintained.

General Liability Insurance: Bodily injury liability in the minimum amount of \$500,000 per occurrence.

Automobile Liability Insurance in the amount of \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.

**(n) Delivery Orders/Credit Card Orders/Task Orders.**

Ordering will be decentralized. Orders may be placed by any Contracting Officer or credit card holder in the Department of Defense, Coast Guard, and other Federal agencies. Only warranted Contracting Officers or other authorized Credit Card holders are authorized to place orders hereunder. Any request for deviation from the terms of this contract must be submitted to the following Contracting Officer, **(The name and e-mail address for AIT-III Contracting Officer will be provided by separate cover.)**

No CBD Synopsis, J&A, or brand-name justifications are required to place orders under this ID/IQ contract. These requirements were met under the authority of FAR Part 6 and through the competitive award of this contract.

All delivery orders, credit card orders, and task orders issued hereunder are subject to the terms and conditions of this contract. The contract shall control in the event of conflict with any delivery order or task order.

Delivery Orders (for supplies and software) and Task Orders for Services shall be issued as separate documents, since inspection and acceptance of supplies and software will be performed at origin by DCMA and inspection and acceptance of Services will be performed at destination by the using activity. Task orders for Technical Engineering Services (TES) shall include only TES, and associated Travel Expense and Incidental Materials.

A SF 1449 or Credit Card form shall be issued for each order.

In addition to any other data that may be called for in the contract, the following information shall be specified in each order as applicable:

1. Date of order
2. Contract and order number (Note: Delivery order numbering shall be in accordance with DFARS 204.7004 – Only the issuing office (ACA-ITEC4) is authorized to use the numbers 0001-9999).
3. Point of contact (name), commercial telephone and facsimile number, and e-mail address
4. Contracting Officer's commercial telephone number and e-mail address
5. Description of the supplies to be provided, quantity, and unit price (TO INCLUDE THE CONTRACT LINE ITEM NUMBER (CLIN) AND/OR SUBCONTRACT LINE ITEM NUMBER (SLIN) FROM Schedule of Supplies/Services. DFAS needs the CLIN/SLIN numbers to be reflected on the SF 1449s (or Credit Card form) in order to do initial entry of orders into their automated payment system. When the Contractor submits a request for payment, DFAS will compare the request for payment of CLIN/SLINs with the order CLIN/SLINs. Use of item numbers in Block 19 on the SF 1449 and not CLIN/SLIN numbers will result in payment delays and excessive administrative costs to both the Contractor and the Government).
6. Delivery date for supplies and performance period for Technical Engineering Services and Training (see Delivery Requirements, Part C-1-1).
7. Place of delivery or performance to include consignee.
8. Packaging, packing, and shipping instructions, if any.
9. Accounting and appropriation data and Contract Accounting Classification Reference Number (ACRN). (DFAS requires an ACRN(s) on all orders.)

10. Invoice and payment instructions to the extent not covered by the contract.

11. Any other pertinent information.

Each delivery order and task order issued under this contract via appropriate form in compliance with FAR 12.204 shall be forwarded to the appropriate Service/Agency Centralized Order Processing Office (COPO) for verification and validation. All U.S. Marine Corps credit card orders for \$25,000 or more shall be submitted to the appropriate COPO for verification and validation. All other Service/Agency credit card orders shall be processed in accordance with the Service/Agency procedures.

The COPOs will assign a unique control number (UCN) as designated by the Product Manager – Automatic Identification Technology (PM AIT) to each delivery order and task order for tracking purposes only.

The COPOs will forward the order to the Contractor. Distribution of orders shall be made by the contract ordering offices, in accordance with FAR 4.2, DFARS 204.2, and agency procedures.

Issuance of an order shall be defined as the date order is awarded (see also Delivery Requirements in Part C-1-1).

**(o) Task Order – Technical Engineering Services.**

1. Upon receipt of a Technical Engineering Services Request for Proposal, which includes a description of the task(s) to be performed; the Contractor shall submit a price proposal as soon as possible, but not more than fifteen workdays after receipt of the request unless so agreed to by the Procuring Contracting Officer. The Contractor's proposal shall contain sufficient detail to enable the Government to determine the acceptability of the proposal and shall include, as a minimum:

- a. a brief description of the technical approach which demonstrates the Contractor's understanding of the task(s);
- b. Proposed timeline schedule;
- c. Proposed labor categories from the Master CLIN listing and the number of hours for each category;
- d. Proposed Incidental Materials including price and description of each item (see paragraph "Incidental Materials" in this Part) and;
- e. Travel costs.

2. The Government will negotiate a total firm-fixed price for the labor portion of the effort. The task order will show the negotiated total firm-fixed price for the labor portion of the effort at CLIN 0052.

**(p) Commercial Software Licenses.**

1. Commercial Software and commercial software documentation delivered under this contract shall be subject to the terms of this clause and the governing commercial products license, to the extent the latter is consistent with Federal law and FAR 12.212. Notwithstanding the foregoing, the commercial product license shall apply only if a copy of the license is provided with the delivered product. In the event of conflict between this clause and the commercial software product license, this clause's sub paragraphs 1 through 6 shall govern.

2. All software shall be licensed and priced for use on a single computer or for use on any computer at a particular site.

3. The license shall be in the name of the U.S. Government.

4. The license shall be perpetual (also referred to as a nonexclusive, paid-up, world-wide license).

5. Software and Software documentation shall be provided with license rights no less than rights provided with the software and the software documentation when sold to the public.

6. The license shall apply to any software changes or new releases.

7. Notwithstanding the foregoing, the Government's rights to software developed per the Statement of Work, Part D-1, paragraph 11.3, Software Development Services, shall be governed by DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

**(q) Maintenance.**

1. Special Funding of Per Incident Maintenance.

(a) The Contracting Officer may issue a Task Order that funds per incident maintenance, including the Premium (CLIN 0099 and 00129) for on-call maintenance Outside the Official Hours of Operation or the charge for warranty service Outside the Official Hours of Operation for up to one year. The Task Order shall state the users or activities that may request per incident maintenance under the order. The user or activity shall identify the applicable Task Order number when it requests on-call per incident maintenance or mail-in/carry-in per incident maintenance.

(b) The contractor shall submit an invoice for payment against the Task Order only for per incident maintenance performed during that billing period. The contractor shall provide written notice to the Contracting Officer and the Task Order point of contact when 75 percent of the funds obligated on the order have been expended. The Contracting Officer may modify the Task Order to increase or decrease the amount of the order based on remaining requirements for per incident maintenance during the period of performance of the order.

(c) The Contracting Officer may, by written notice, decrease funding for per maintenance under the Task Order thirty (30) days after receipt of the notice by the Contractor, or sooner if mutually agreeable to the parties.

2. Discontinuance of Monthly Maintenance. The Contracting Officer may, by written notice, discontinue monthly maintenance under this contract, at no cost to the Government, thirty (30) days after receipt by the Contractor of such notice, or sooner if mutually agreeable to the parties.

3. Non-chargeable Maintenance Items. There shall be no additional maintenance charges for remedial maintenance occasioned by the recurrence of the same malfunction within 48 hours of the user's receipt of the repaired component.

**(r) Incidental Materials.** Incidental Materials shall only include those items/materials necessary to the completion of the installation service ordered in accordance with the Technical Engineering Services in Part D-1. The price for the items/materials shall be negotiated on a firm-fixed price basis for each task order, if required. The total negotiated price for incidental materials for each task order shall not exceed \$50,000.

**(s) Travel Expense.** Travel and per-diem shall be negotiated on a firm-fixed price basis for each delivery order or task order, if required. The negotiated prices shall not exceed the rates then authorized for Government personnel in the Federal Joint Travel Regulations or other applicable regulation.

**(t) Government-Wide Commercial Credit Card.** The following describes the procedures to be used for ordering items under this contract by using the Federal Government-wide purchase card. This option to order by use of the Government-wide purchase card is strictly an alternative method of ordering by the Government and may be used in place of ordering by other order forms that comply with FAR 12.204. The Government reserves the right to unilaterally terminate the use of the credit card at any time.

1. All ordering offices may use the Government-wide purchase card, commonly referred to as the Government "credit card," as an alternative method of ordering and paying for purchases made under this contract. Purchase card orders are subject to all terms and conditions of this contract, unless otherwise stated in this provision or another provision in this contract.

2. The purchase card is specifically designed for use by the Federal Government. The purchase card is like a typical commercial credit card. However, the authorization limitations of the purchase card are more specific, i.e., only for a particular contract, monthly limitations, certain categories of products or services, etc. The purchase card will be exclusively used for official Government purchases in accordance with the prices, terms, and conditions of this

contract. The purchase card order limitation shall be the micro-purchase threshold in-effect in the Federal Acquisition Regulation (FAR), Part 13, on the date the order is placed by an authorized cardholder. With respect to ordering authority, any authorized user of this contract who is an appointed, recognized Government-wide Purchase Card holder may use the purchase card as a means of purchasing items on this contract. For purchase card orders only, this waives the requirement for use of other forms that comply with FAR 12.204. All appointed, recognized Government-wide Purchase Card holders are subject to and responsible for complying with all the rules, regulations, and limits that come with his/her purchase card.

3. Credit limits for the purchase card are dictated by each using activity major command. These credit limits for the purchase card are the responsibility of the credit card holder and the approving office.

4. The contractor shall accept firm-fixed-price credit card orders under the contract made by use of an authorized purchase card.

5. For purchase card orders only, the warranty begins on the day the order is shipped.

**(u) Continued Performance During Support of Crisis Situations, Contingency or Exercise.**

1. Overview.

(A) The requirements of this Contract have been identified by the U.S. Government as being essential to the mission and operational readiness of the U.S. Armed Services operating worldwide; therefore, the Contractor may be required to perform this Contract during crisis situations (including war or a state of emergency), contingencies or exercises in the identified area of operations, also known as theatre of operations, subject to the requirements and provisions listed below.

(B) The Contractor shall be responsible for performing all requirements of this Contract notwithstanding crisis situations, contingencies or exercises, including but not limited to the existence of any state of war, whether declared or undeclared, or state of emergency, by the United States or the host nation, commencement of hostilities, internal strife, rioting, civil disturbances, or activities of any type which would endanger the welfare and security of U.S. Forces in the host nation. Failure by the Contractor to perform may subject the Contractor to a termination of this Contract for cause. If a crisis situation, contingency, or exercise is determined, an equitable adjustment may be negotiated.

(C) Crisis situations and contingency operations shall be determined by the overseas theater Commander-in-Chief, or when Defense Readiness Condition (DEFCON) Three (3) is declared for that area.

(D) Contractor personnel and dependents may be integrated into Government contingency plans, and afforded the same rights, privileges, protection, and priority as U.S. Government personnel. The Government may provide security, housing, and messing facilities for Contractor personnel and dependents should conditions warrant.

(E) In the event Contractor employees are deployed or hired into the area of operations in support of a crisis situation, contingency or exercise, the following items and conditions will apply:

2. Management.

(A) The Contractor shall ensure that all Contractor employees, including sub-Contractors, will comply with all guidance, instructions, and general orders applicable to U.S. Armed Forces and DOD civilians and issued by the Theater Commander or his/her representative. This will include any and all guidance and instructions issued based upon the need to ensure mission accomplishment, force protection and safety.

(B) Service and Department of Defense directives, policies, and procedures. The Contractor shall ensure compliance with all federal statutes, judicial interpretations and international agreements (e.g., Status of Forces Agreements, Host Nation Support Agreements, etc.) applicable to U.S. Armed Forces or U.S. citizens in the area of

operations. The Contracting Officer will resolve disputes. Host Nation laws and existing Status of Forces Agreements may take precedence over contract requirements.

(C) The Contractor shall take reasonable steps to ensure the professional conduct of its employees and sub-Contractors.

(D) The Contractor shall promptly resolve, to the satisfaction of the Contracting Officer, all Contractor employee performance and conduct problems identified by the cognizant Contracting Officer or Contracting Officer's Representative.

(E) The Contracting Officer may direct the Contractor, at the Contractor's expense, to remove or replace any Contractor employee failing to adhere to instructions and general orders issued by the Theater Commander or his/her designated representative.

3. Accounting for Personnel. As directed by the Contracting Officer or Contracting Officer's representative and based on instructions of the Theater Commander, the Contractor shall report its employees, including third country nationals, entering and/or leaving the area of operations by name, citizenship, location, Social Security number (SSN) or other official identity document number.

#### 4. Risk Assessment and Mitigation.

(A) The Contractor shall ensure physical and medical evaluations are conducted on all its deployable and/or mission essential employees to ensure they are medically fit and capable of enduring the rigors of deployment in support of a military operation.

(B) If a Contractor employee departs an area of operations without Contractor permission, the Contractor shall ensure continued performance in accordance with the terms and conditions of the contract. If the Contractor replaces an employee who departs without permission, the replacement is at Contractor expense and must be in place within five days or as directed by the Contracting Officer.

(C) The Contractor shall prepare plans for support of military operations as required by contract or as directed by the Contracting Officer.

(D) For badging and access purposes, the Contractor shall provide the Contracting Officer or Contracting Officer's Representative a list of all employees (including qualified subcontractors and/or local vendors being used in the area of operations) with all required identification and documentation information.

(E) As required by the operational situation, the Government will relocate Contractor personnel (who are citizens of the United States, aliens resident in the United States or third country nationals, not resident in the host nation) to a safe area or evacuate them from the area of operations. The U.S. State Department has responsibility for evacuation of non-essential personnel.

(F) The Contractor shall brief its employees regarding the potential danger, stress, physical hardships and field living conditions.

(G) The Contractor shall require all its employees to acknowledge in writing that they understand the danger, stress, physical hardships and field living conditions that are possible if the employee deploys in support of military operations.

(H) The Contractor shall designate a point of contact for all of its plans and operations and establish an operations center to plan and control the Contractor deployment process and resolve operational issues with the deployed force.

5. Force Protection. While performing duties in accordance with the terms and conditions of the contract, the Service will provide force protection to Contractor employees commensurate with that given to Service/Agency (e.g. Army, Navy, Air Force, Marine, Defense Logistics Agency (DLA)) civilians in the operations area.

#### 6. Vehicle and Equipment Operation.

(A) The Contractor shall ensure employees possess the required civilian licenses to operate the equipment necessary to perform contract requirements in the theater of operations in accordance with the statement of work.

(B) Before operating any military owned or leased equipment, the Contractor employee shall provide proof of license (issued by an appropriate Governmental authority) to the Contracting Officer or Contracting Officer's Representative.

(C) The Government, at its discretion, may train and license Contractor employees to operate military owned or leased equipment.

(D) The Contractor and its employees shall be held jointly and severably liable for all damages resulting from the unsafe or negligent operation of military owned or leased equipment.

#### 7. On-Call Duty or Extended Hours.

(A) The Contractor shall be available to work "on-call" to perform mission essential tasks as directed by the Contracting Officer.

(B) The Contracting Officer, or Contracting Officer's Representative, will identify the parameters of "on-call" duty.

(C) The Contractor shall be available to work extended hours to perform mission essential tasks as directed by the Contracting Officer.

(D) The Contracting Officer may negotiate an equitable adjustment to the contract/task order concerning extended hours, surges, and overtime requirements.

8. Clothing and Equipment Issue. The Contractor shall ensure that Contractor employees possess the necessary personal clothing and safety equipment to execute contract performance in the theater of operations in accordance with the statement of work. Clothing should be distinctive and unique and not imply that the Contractor is a military member, while at the same time not adversely affecting the Government's tactical position in the field.

9. Legal Assistance. The Contractor shall ensure its personnel deploying to or in a theater of operations are furnished the opportunity and assisted with making wills as well as with any necessary powers of attorney prior to deployment processing and/or deployment.

#### 10. Medical

(A) The Contractor shall be responsible for providing employees who meet the physical standards and medical requirements for job performance in the designated theater of operations.

(B) When applicable, the Government may provide to Contractor employees deployed in a theater of operations emergency medical and dental care commensurate with the care provided to Department of Defense civilian deployed in the theater of operations.

(C) Deploying civilian Contractor personnel shall carry with them a minimum of a 90-day supply of any medication they require.

#### 11. Passports, Visas and Customs.

(A) The Contractor is responsible for obtaining all passports, visas, or other documents necessary to enter and/or exit any area(s) identified by the Contracting Officer for Contractor employees.

(B) All Contractor employees shall be subject to the customs processing procedures, laws, agreements and duties of the country to which they are deploying and the procedures, laws, and duties of the United States upon re-entry.

(C) The Contracting Officer will determine and stipulate the allowability and allocability of payment for entry/exit duties on personal items in possession of Contractor employees per U.S. Customs Service rates and restrictions.

(D) The Contractor shall register all personnel with the appropriate U.S. Embassy or Consulate.

12. Living Under Field Conditions. If requested by the Contractor, the Government may provide to Contractor employees deployed in the theater of operations the equivalent field living conditions, subsistence, emergency medical and dental care, sanitary facilities, mail delivery, laundry service, and other available support afforded to Government employees and military personnel in the theater of operations. If the above support is negotiated in the contract, at any level, the Government will receive consideration.

13. Morale, Welfare, and Recreation. The Government will provide to Contractor employees deployed in the theater of operations morale, welfare, and recreation services commensurate with that provided to Department of Defense civilians and military personnel deployed in the theater of operations.

14. Status of Forces Agreement.

(A) The Contracting Officer will inform the Contractor of the existence of all relevant Status of Forces Agreements (SOFA) and other similar documents, and provide copies upon request.

(B) The Contractor shall be responsible for obtaining all necessary legal advice concerning the content, meaning, application, etc. of any applicable SOFAs, and similar agreements.

(C) The Contractor shall adhere to all relevant provisions of the applicable SOFAs and other similar related agreements.

(D) The Contractor shall be responsible for providing the Government with the required documentation to acquire invited Contractor or technical expert status, if required by SOFA.

15. Tour of Duty/Hours of Work

(A) The Contracting Officer, or Contracting Officer's Representative, will provide the Contractor with the anticipated duration of the deployment.

(B) The Contractor, at his/her own expense, may rotate Contractor employees into and out of the theater provided there is not degradation in mission. The Contractor shall coordinate personnel changes with the Contracting Officer.

(C) The Contracting Officer will provide the Contractor with the anticipated work schedule.

(D) The Contracting Officer, or Contracting Officer's Representative, may modify the work schedule to ensure the Government's ability to continue to execute its mission.

16. Health and Life Insurance. The Contractor shall ensure that health and life insurance benefits provided to its deploying employees are in effect in the theater of operations and allow traveling in military vehicles. Insurance is available under the Defense Base Act administered by the Department of Labor.

17. Next of Kin Notification. Before deployment, the Contractor shall ensure that each Contractor employee completes a DD Form 93, Record of Emergency Data Card, and returns the completed form to the designated Government official.

18. Return Procedures.

(A) Upon notification of redeployment, the Contracting Officer will authorize Contractor employee travel from the theater of operations to the designated CONUS Replacement Center (CRC) or individual deployment site.

(B) The Contractor shall ensure that all Government-issued clothing and equipment provided to the Contractor or the Contractor's employees are returned to Government control upon completion of the deployment.

(C) The Contractor shall provide the Contracting Officer with documentation, annotated by the receiving Government official, of all clothing and equipment returns.

#### 19. Special Legal Considerations.

(A) Public Law 106-523. Military Extraterritorial Jurisdiction Act of 2000: Amended Title 18, US Code, to establish Federal Jurisdiction over certain criminal offenses committed outside the United States by persons employed by or accompanying the Armed Forces, or by members of the Armed Forces who are released or separated from active duty prior to being identified and prosecuted for the commission of such offenses, and for other purposes.

(B) Applicability: This Act applies to anyone who engages in conduct outside the U.S. that would constitute an offense punishable by imprisonment for more than one year, the same as if the offense had been committed within the jurisdiction of the U.S. The person must be employed by or accompanying the Armed Forces outside the U.S.

#### **(v) Notice: Year 2000 Provisions (Commercial Items).**

1. The Contractor warrants that any Information Technology including, but not limited to, hardware, software, firmware, and middleware delivered under this contract, whether operating alone or combined as a system, shall accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

2. Should a warranted item fail to meet the requirements set out in the foregoing paragraph, the contractor agrees to correct or replace the item at no cost to the Government. The parties agree that this correction or replacement shall not act as a limitation of remedies and that the Government may seek such additional remedies as may be available through this contract or at law or equity rights and remedies set forth in any other warranty for this item.

#### **(w) Mandatory Use Of Contractor To Government Electronic Mail.**

1. Unless exempted by the Procuring Contracting Officer in writing, communications after contract award shall be transmitted via electronic mail (e-mail). This shall include all communication between the Government and the contractor except Contract Awards, Contract Modifications, Proposals, Procurement Sensitive Information, Classified Information and Proprietary Information. Return receipt will be used if a commercial application is available.

2. The format for all communication shall be compatible with the following:

Microsoft Office

Excel

3. Files larger than 2 megabytes must use alternate means of transmission such as Zip Compression/Inflation, File Transfer Protocol, Winfax or any Fax Modem. (Note: This includes both the text message and the attachment). If an attachment is in binary format, the number of bytes for the attachment increases by 33%. Large items can be put on disk and mailed with the Contracting Officer's approval.

4. A copy of all communications, with the exception of technical reports, shall be provided to the contract specialist.

5. The following examples include, but are not limited to, the types of communication that shall be transmitted via e-mail:

Routine Letters

Requests for Proposals under the contract  
Price Issues (except contractor pricing data)  
Contract Data Requirements List Submittals  
Contract Data Requirements List Comments  
Approvals/Disapproval's by the Government  
Technical Evaluations of Contract Items  
Clarifications  
Configuration Control  
Drawings (not to exceed ½ megabyte)  
Revised Shipping Instructions  
Change Order Directions

6. In order to be contractually binding, all Government communications must be sent from the Contracting Officer's e-mail address and contain the /s/ symbol above the Contracting Officer's signature block. The contractor shall designate the personnel with signature authority who can contractually bind the contractor. All binding contractor communication shall be sent from the signature authority's e-mail address.

7. The Government reserves the right to upgrade to a more advanced commercial application at any time during the life of the contract.

8. Upon award, the Contractor shall provide the Contracting Officer with a list of e-mail addresses for all administrative and technical personnel assigned to this contract. If known, the contractor shall also furnish the e-mail addresses of the Administrative Contracting Officer, DFAS and DCAA cognizant personnel.

9. The e-mail addresses for the AIT-III Contracting Officer, Contracting Specialist and Contracting Officer's Representative will be provided by separate cover.

10. The contract number and project name "AIT-III" shall be included in the subject line on all electronic mail communications.

**(x) Mandatory Use of Government to Government Electronic Mail Date.**

1. Unless exempted by the Procuring Contracting Officer in writing, communication after contract award between Government agencies shall be transmitted via electronic mail (e-mail).

2. The following examples include, but are not limited to, the types of communication that shall be transmitted via e-mail:

Instructions to Contract Ordering Officer  
Instructions to Administrative Contracting Officer  
Instructions to other Defense Contract Management Command personnel  
Instructions to Defense Finance Administration Services  
Instructions to Defense Contract Audit Agency

3. See paragraph titled "Mandatory Use of Contractor to Government Electronic Mail" for further guidance.

4. The contract number and project name "AIT-III" shall be included in the subject line on all electronic mail communications.

**(y) Past Performance Input from field Activities.**

All ordering offices shall provide Past Performance Input through the COPOs to the Procuring Contracting Officer (PCO) beginning 12 months from date of contract award and every 12 months thereafter, through the end of the contract. The COPOs shall provide the assessment input to the PCO at the e-mail address below. Assessment input shall be required for all delivery/task orders exceeding \$100,000. Out of cycle or "Addendum" reports may be submitted if an extraordinary event happens prior to the 12 month interval or if it is necessary to report a meaningful occurrence during the period between physical completion of the contract and contract closeout. The Regulatory requirement for contractor assessment and format (Non-System Contracts Performance Element) can be obtained from the Army Federal Acquisition Regulation Supplement (AFARS), Part 5142.15.

Past Performance input shall be forward to the Contracting Officer. The name and email address of the Contracting Officer will be provided by separate cover.

**(z) Separately Orderable Maintenance Replacement Items.** The Government intends to monitor and assess modes of failure and the failure rates of AIT-III hardware. After making this assessment, the Government will make a determination with regard to the feasibility of the Government performing all AIT-III hardware maintenance using organic capabilities. In the event the Government determines it is desirable to perform all AIT-III maintenance functions in-house, the Government reserves the right to negotiate with the Contractor for necessary hardware replacement parts and Government-designated personnel maintenance training in accordance with commercial practice in these areas.

**(aa) Government Contractors' Use of Contract.** If it is in the Government's interest, and if supplies or services required in the performance of a Government contract are available under this contract, Government contracting officers may authorize contractors to order items or services from the contract under the authority and procedures set out in FAR Part 51, including placing limitations on the orders (51.102(e)(4)). However, Government contracting officers shall not grant such authorization without the prior approval of the Procuring Contracting Officer. Before issuing an order, the Government contractor shall forward the order through the Government contracting officer granting the authorization and the Procuring Contracting Officer for this contract. Title to all property acquired by a Government contractor under such an authorization shall vest in the Government unless otherwise specified in the Government contractor's contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization. Authorized ordering contractors may use their standard commercial ordering formats to place orders under this contract and the orders shall reference the Contract Number.

**(ab) SOFA Contract Clause.**

**INVITED CONTRACTOR OR TECHNICAL REPRESENTATIVE STATUS  
UNDER U.S. - REPUBLIC OF KOREA (ROK)**

Invited Contractor (IC) and Technical Representative (TR) status shall be governed by the U.S.-ROK Status of Forces Agreement (SOFA) as implemented by United States Forces Korea (USFK) Reg 700-19, which can be found under the "publications" tab on the US Forces Korea homepage <http://www.usfk.mil>

(1) Definitions. As used in this clause—

"U.S. – ROK Status of Forces Agreement" (SOFA) means the Mutual Defense Treaty between the Republic of Korea and the U.S. of America, Regarding Facilities and Areas and the Status of U.S. Armed Forces in the Republic of Korea, as amended

"Combatant Commander" means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161. In Korea, the Combatant Commander is the Commander, United States Pacific Command.

“United States Forces Korea” (USFK) means the subordinate unified command through which US forces would be sent to the Combined Forces Command fighting components.

“Commander, United States Forces Korea” (COMUSK) means the commander of all U.S. forces present in Korea. In the Republic of Korea, COMUSK also serves as Commander, Combined Forces Command (CDR CFC) and Commander, United Nations Command (CDR UNC).

“USFK, Assistant Chief of Staff, Acquisition Management” (USFK/FKAQ) means the principal staff office to USFK for all acquisition matters and administrator of the U.S.-ROK SOFA as applied to US and Third Country contractors under the Invited Contractor (IC) and Technical Representative (TR) Program (USFK Reg 700-19).

“Responsible Officer (RO)” means a senior DOD employee (such as a military E5 and above or civilian GS-7 and above), appointed by the USFK Sponsoring Agency (SA), who is directly responsible for determining and administering appropriate logistics support for IC/TRs during contract performance in the ROK.

(2) IC or TR status under the SOFA is subject to the written approval of USFK, Assistant Chief of Staff, Acquisition Management (FKAQ), Unit #15237, APO AP 96205-5237.

(3) The contracting officer will coordinate with HQ USFK/FKAQ, IAW FAR 25.8, and USFK Reg 700-19. FKAQ will determine the appropriate contractor status under the SOFA and notify the contracting officer of that determination.

(4) Subject to the above determination, the contractor, including its employees and lawful dependents, may be accorded such privileges and exemptions under conditions and limitations as specified in the SOFA and USFK Reg 700-19. These privileges and exemptions may be furnished during the performance period of the contract, subject to their availability and continued SOFA status. Logistics support privileges are provided on an as-available basis to properly authorized individuals. Some logistics support may be issued as Government Furnished Property or transferred on a reimbursable basis.

(5) The contractor warrants and shall ensure that collectively, and individually, its officials and employees performing under this contract will not perform any contract, service, or other business activity in the ROK, except under U.S. Government contracts and that performance is IAW the SOFA.

(6) The contractor’s direct employment of any Korean-National labor for performance of this contract shall be governed by ROK labor law and USFK regulation(s) pertaining to the direct employment and personnel administration of Korean National personnel.

(7) The authorities of the ROK have the right to exercise jurisdiction over invited contractors and technical representatives, including contractor officials, employees and their dependents, for offenses committed in the ROK and punishable by the laws of the ROK. In recognition of the role of such persons in the defense of the ROK, they will be subject to the provisions of Article XXII, SOFA, related Agreed Minutes and Understandings. In those cases in which the authorities of the ROK decide not to exercise jurisdiction, they shall notify the U.S. military authorities as soon as possible. Upon such notification, the military authorities will have the right to exercise jurisdiction as is conferred by the laws of the U.S.

(8) Invited contractors and technical representatives agree to cooperate fully with the USFK Sponsoring Agency (SA) and Responsible Officer (RO) on all matters pertaining to logistics support and theater training requirements. Contractors will provide the assigned SA prompt and accurate reports of changes in employee status as required by USFK Reg 700-19.

(9) Theater Specific Training. Training Requirements for IC/TR personnel shall be conducted in accordance with USFK Reg 350-2 Theater Specific Required Training for all Arriving Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to USFK. IC/TR personnel shall comply with requirements of USFK Reg 350-2.

(10) Except for contractor air crews flying Air Mobility Command missions, all U.S. contractors performing work on USAF classified contracts will report to the nearest Security Forces Information Security Section for the geographical area where the contract is to be performed to receive information concerning local security requirements.

(11) Invited Contractor and Technical Representative status may be withdrawn by USFK/FKAQ upon:

(a) Completion or termination of the contract.

(b) Determination that the contractor or its employees are engaged in business activities in the ROK other than those pertaining to U.S. armed forces.

(c) Determination that the contractor or its employees are engaged in practices in contravention to Korean law or USFK regulations.

(12) It is agreed that the withdrawal of invited contractor or technical representative status, or the withdrawal of, or failure to provide any of the privileges associated therewith by the U.S. and USFK, shall not constitute grounds for excusable delay by the contractor in the performance of the contract and will not justify or excuse the contractor defaulting in the performance of this contract. Furthermore, it is agreed that withdrawal of SOFA status for reasons outlined in USFK Reg 700-19, Section II, paragraph 6 shall not serve as a basis for the contractor filing any claims against the U.S. or USFK. Under no circumstance shall the withdrawal of SOFA Status or privileges be considered or construed as a breach of contract by the U.S. Government.

(13) Support.

(a) Unless the terms and conditions of this contract place the responsibility with another party, the COMUSK will develop a security plan to provide protection, through military means, of Contractor personnel engaged in the theater of operations when sufficient or legitimate civilian authority does not exist.

(b)(i) All Contractor personnel engaged in the theater of operations are authorized resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical or emergency dental treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(c) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the theater of operations under this contract.

(14) Compliance with laws and regulations. The Contractor shall comply with, and shall ensure that its personnel supporting U.S Armed Forces in the Republic of Korea as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(a) United States, host country, and third country national laws;

(b) Treaties and international agreements;

(c) United States regulations, directives, instructions, policies, and procedures; and

(d) Orders, directives, and instructions issued by the COMUSK relating to force protection, security, health, safety, or relations and interaction with local nationals. Included in this list are force protection advisories, health advisories, area (i.e. "off-limits"), prostitution and human trafficking and curfew restrictions.

(15) Vehicle or equipment licenses. IAW USFK Regulation 190-1, Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the theater of operations. All contractor employees/dependents must have either a Korean driver's license or a valid international driver's license to legally drive on Korean roads, and must have a USFK driver's license to legally drive on USFK installations. Contractor employees/dependents will first obtain a Korean driver's license or a valid international driver's license then obtain a USFK driver's license.

(16) Evacuation.

(a) If the COMUSK orders a non-mandatory or mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national contractor personnel.

(b) Non-combatant Evacuation Operations (NEO).

(i) The contractor shall designate a representative to provide contractor personnel and dependents information to the servicing NEO warden as required by direction of the Responsible Officer.

(ii) If contract period of performance in the Republic of Korea is greater than six months, non emergency essential contractor personnel and all IC/TR dependents shall participate in at least one USFK sponsored NEO exercise per year.

(17) Next of kin notification and personnel recovery.

(a) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is missing, captured, or abducted.

(b) In the case of missing, captured, or abducted contractor personnel, the Government will assist in personnel recovery actions in accordance with DOD Directive 2310.2, Personnel Recovery.

(c) IC/TR personnel shall accomplish Personnel Recovery/Survival, Evasion, Resistance and Escape (PR/SERE) training in accordance with USFK Reg 525-40, Personnel Recovery Procedures and USFK Reg 350-2 Theater Specific Required Training for all Arriving Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to USFK.

(18) Mortuary affairs. Mortuary affairs for contractor personnel who die while providing support in the theater of operations to U.S. Armed Forces will be handled in accordance with DOD Directive 1300.22, Mortuary Affairs Policy and Army Regulation 638-2, Care and Disposition of Remains and Disposition of Personal Effects.

(19) USFK Responsible Officer (RO). The USFK appointed RO will ensure all IC/TR personnel complete all applicable training as outlined in this clause.

(End of Clause)

**(ac) Contingency Conditions Clause.**

**CONTINUANCE OF PERFORMANCE DURING ANY STATE OF EMERGENCY  
IN THE REPUBLIC OF KOREA (ROK)**

Invited Contractor (IC) and Technical Representative (TR) status shall be governed by the U.S.-ROK Status of Forces Agreement (SOFA) as implemented by United States Forces Korea (USFK) Reg 700-19, which can be found under the “publications” tab on the US Forces Korea homepage <http://www.usfk.mil>

(1) Definitions. As used in this clause—

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“Combatant Commander” means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161. In Korea, the Combatant Commander is the Commander, United States Pacific Command.

“United States Forces Korea” (USFK) means the subordinate unified command through which US forces would be sent to the Combined Forces Command fighting components.

COMUSK means the commander of all U.S. forces present in Korea. In the Republic of Korea, COMUSK also serves as Commander, Combined Forces Command (CDR CFC) and Commander, United Nations Command (CDR UNC).

“USFK, Assistant Chief of Staff, Acquisition Management” (USFK/FKAQ) means the principal staff office to USFK for all acquisition matters and administrator of the U.S.-ROK SOFA as applied to US and Third Country contractors under the Invited Contractor (IC) and Technical Representative (TR) Program (USFK Reg 700-19).

“Responsible Officer” (RO) means A senior DOD employee (such as a military E5 and above or civilian GS-7 and above), appointed by the USFK Sponsoring Agency (SA), who is directly responsible for determining and administering appropriate logistics support for IC/TRs during contract performance in the ROK.

“Theater of operations” means an area defined by the combatant commander for the conduct or support of specified operations.

“Uniform Code of Military Justice” means 10 U.S.C. Chapter 47

(2) General.

(a) This clause applies when contractor personnel deploy with or otherwise provide support in the theater of operations (specifically, the Korean Theater of Operations) to U.S. military forces deployed/located outside the United States in—

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations or exercises designated by the Combatant Commander.

(b) Contract performance in support of U.S. military forces may require work in dangerous or austere conditions. The Contractor accepts the risks associated with required contract performance in such operations. ?The contractor

will require all its employees to acknowledge in writing that they understand the danger, stress, physical hardships and field living conditions that are possible if the employee deploys in support of military operations.

(c) Contractor personnel are not combatants and shall not undertake any role that would jeopardize their status. Contractor personnel shall not use force or otherwise directly participate in acts likely to cause actual harm to enemy armed forces.

(3) Support.

(a) Unless the terms and conditions of this contract place the responsibility with another party, the COMUSK will develop a security plan to provide protection, through military means, of Contractor personnel engaged in the theater of operations when sufficient or legitimate civilian authority does not exist.

(b)(i) All Contractor personnel engaged in the theater of operations are authorized resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(c) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the theater of operations under this contract.

(4) Compliance with laws and regulations. The Contractor shall comply with, and shall ensure that its personnel supporting U.S. Armed Forces in the Republic of Korea as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

(a) United States, host country, and third country national laws;

(i) The Military Extraterritorial Jurisdiction Act may apply to contractor personnel if contractor personnel commit crimes outside the United States.

(ii) Under the War Crimes Act, United States citizens (including contractor personnel) who commit war crimes may be subject to federal criminal jurisdiction.

(iii) When Congress formally declares war, contractor personnel authorized to accompany the force may be subject to the Uniform Code of Military Justice.

(b) Treaties and international agreements;

(c) United States regulations, directives, instructions, policies, and procedures; and

(d) Orders, directives, and instructions issued by the COMUSK relating to force protection, security, health, safety, or relations and interaction with local nationals. Included in this list are force protection advisories, health advisories, area (i.e. "off-limits"), prostitution and human trafficking and curfew restrictions.

(5) Pre-deployment/departure requirements. The Contractor shall ensure that the following requirements are met prior to deploying/locating personnel in support of U.S. military forces in the Republic of Korea. Specific requirements for each category may be specified in the statement of work or elsewhere in the contract.

(a) All required security and background checks are complete and acceptable.

(b) All contractor personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. In the Republic of Korea, all contractor employees subject to this clause shall comply with the same DoD immunization requirements applicable to Emergency Essential DoD civilians—INCLUDING ANTHRAX IMMUNIZATION. The Government will provide, at no cost to the Contractor, any Korean theater-specific immunizations and/or medications not available to the general public.

(c) Contractor personnel have all necessary passports, visas, and other documents required to enter and exit a theater of operations and have a Geneva Conventions identification card from the deployment center or CONUS personnel office—if, applicable.

(d) Country and theater clearance is obtained for contractor personnel. Clearance requirements are in DOD Directive 4500.54, Official Temporary Duty Abroad, DOD 4500.54-G, DOD Foreign Clearance Guide, and USFK Reg 1-40, United States Forces Korea Travel Clearance Guide. Contractor personnel are considered non-DOD personnel traveling under DOD sponsorship.

(6) Processing and departure points. Deployed contractor personnel shall—

(a) Under contingency conditions or under other conditions as specified by the Contracting Officer, process through the deployment center designated in the contract, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of contractor personnel and to ensure that all deployment requirements are met;

(b) Use the point of departure and transportation mode directed by the Contracting Officer; and

(c) If processing through a deployment center, process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC will validate personnel accountability, ensure that specific theater of operations entrance requirements are met, and brief contractor personnel on theater-specific policies and procedures.

(7) Personnel data list.

(a) The Contractor shall establish and maintain with the designated Government official a current list of all contractor personnel that deploy with or otherwise provide support in the theater of operations to U.S. military forces as specified in paragraph (b)(1) of this clause. The Synchronized Predeployment and Operational Tracker (SPOT) is the designated automated system to use for this effort. This accountability requirement is separate and distinct from the personnel accountability requirement listed in the U.S.–ROK SOFA's Invited Contractor/Technical Representative Program (as promulgated in USFK Regulation 700-19).

(b) The Contractor shall ensure that all employees on the list have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official.

(8) Contractor personnel.

(a) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this clause. Contractors shall replace designated personnel within 72 hours, or at the Contracting Officer's direction. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(b) The Contractor shall have a plan on file showing how the Contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer and USFK Sponsoring Agency (see USFK Reg 700-19) upon request. The plan shall—

(i) Identify all personnel who are subject to U.S. or Republic of Korea military mobilization;

(ii) Identify any exemptions thereto;

(iii) Detail how the position would be filled if the individual were mobilized; and

(iv) Identify all personnel who occupy a position that the Contracting Officer has designated as mission essential.

(9) Military clothing and protective equipment.

(a) Contractor personnel supporting a force deployed outside the United States as specified in paragraph (b)(i) of this clause are prohibited from wearing military clothing unless specifically authorized in writing by the COMUSK. If authorized to wear military clothing, contractor personnel must wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures and the Geneva Conventions.

(b) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective clothing.

(c) The deployment center, the Combatant Commander, or the Sponsoring Agency shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of contractor personnel.

(d) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(10) Weapons.

(a) If the Contractor requests that its personnel performing in the theater of operations be authorized to carry weapons, the request shall be made through the Contracting Officer to the COMUSK. The COMUSK will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons will be allowed.

(b) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the COMUSK regarding possession, use, safety, and accountability of weapons and ammunition.

(iv) The use of deadly force by persons subject to this clause shall be made only in self-defense, except:

(v) Persons subject to this clause who primarily provide private security are authorized to use deadly force only as defined in the terms and conditions of this contract in accordance with USFK regulations and policies (especially, USFK Regulation 190-50).

(vi) Liability for the use of any weapon by persons subject to this clause is solely the responsibility of the individual person and the contractor.

(c) Upon redeployment or revocation by the COMUSK of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(11) Evacuation.

(a) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(12) Theater Specific Training. Training Requirements for IC/TR personnel shall be conducted in accordance with USFK Reg 350-2 Theater Specific Required Training for all Arriving Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to USFK.

(13) USFK Responsible Officer (RO). The USFK appointed RO will ensure all IC/TR personnel complete all applicable training as outlined in this clause.

(14) Changes. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(15) Subcontracts. The Contractor shall incorporate the substance of this clause, including this paragraph, in all subcontracts that require subcontractor personnel to be available to deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed/stationed outside the United States in—

(a) Contingency operations;

(b) Humanitarian or peacekeeping operations; or

(c) Other military operations or exercises designated by the Combatant Commander.

(16) The Contracting Officer will discern any additional GFE, GFP or logistical support necessary to facilitate the performance of the enhanced requirement or necessary for the protection of contractor personnel. These items will be furnished to the Contractor at the sole discretion of the Contracting Officer and may be provided only on a reimbursable basis.

(End of clause)

**(ad) Logistic Support (ROK Only)**

1. Logistic support, corporate and individual, may be provided to USFK invited contractors and technical representatives only in accordance with the U.S. ROK SOFA, USFK regulations, subject to availability, and on a reimbursable basis. Based upon eligibility, individuals may be provided the below listed logistic support based on Individually Sponsored Status (unless specifically excluded by the terms of the contract).

(a) SOFA status for contractor employee (excludes employee's dependents).

(b) Duty-free importation privileges in accordance with SOFA and USFK regulations.

(c) DD Form 1173 (Uniformed Services Identification and Privilege Card).

(d) USFK Form 73 (USFK Ration Control Plate) family size – one (for employee only).

(e) PX or BX privileges family size—one.

(f) Commissary privileges (only authorized if contractor employee is going to be in the ROK for more than 60 days; family size—one).

(g) Class VI store privileges (family size—one).

(h) Purchase of gasoline and Petroleum, Oil, and Lubricants (POL) products at PX or BX facilities.

(i) Military postal service privileges for personal mail only (Army post office and fleet post office).

(j) Military banking and credit union privileges.

(k) Motor vehicle operator's permit.

(l) Registration of one privately owned vehicle per family.

(m) Registration of pets and firearms.

(n) Medical services on a reimbursable basis.

(o) Dental services for emergency care only on a reimbursable basis.

(p) Mortuary services on a reimbursable basis.

2. To be individually sponsored for ration control purposes, the contractor employee must be in a paid status of 30 hours or more per week on this contract, and be other than local hire AND perform in ROK less than 1 year. If paid status is 29 or less hours per week on this contract, no support will be authorized.

(a) No support for dependents is authorized.

(b) Local hire is defined as a U.S. or third-country national employee who is ordinarily resident in the U.S. but was hired in the ROK and has no transportation agreement with the employer.

3. Corporation Logistic Support. USFK may provide logistic support to corporations that have been designated as invited contractors or technical representatives by HQ USFK, ACofS, Acquisition as follows:

(a) SOFA status exemptions. (See paragraph entitled "Technical Representative SOFA benefits (ROK ONLY), above).

(b) Use of postal facilities for corporate mail is not authorized.

(c) All other corporate logistic support (fuel purchases and registration of company-owned vehicles authorized) must be coordinated between the contracting office and the USFK sponsoring agency and approved by the USFK sponsoring agency before contract performance in ROK.

(End of Summary of Changes)