

CONFORMED COPY – INCLUDES CHANGES THRU MODIFICATION P00008

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24 & 30				1. REQUISITION NUMBER	PAGE 1 OF 16
2. CONTRACT NO. N00104-08-A-ZF31	3. AWARD/EFFECTIVE DATE SEE BLOCK 31c	4. ORDER NUMBER	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL:	a. NAME		b. TELEPHONE NUMBER (No collect calls)	8. OFFER DUE DATE/ LOCAL TIME	
9. ISSUED BY DEPARTMENT OF THE NAVY NAVSUP WEAPON SYSTEMS SUPPORT 5450 CARLISLE PIKE P. O. BOX 2020 MECHANICSBURG, PA 17055-0788 POC: TERRI BAXTER, CODE 0272.15 PHONE: (717) 605-2003 EMAIL: TERRI.BAXTER@NAVY.MIL			10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: SIZE STANDARD:		
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS Net 30	<input type="checkbox"/> 13a. THIS CONTACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP
15. DELIVER TO SPECIFIED ON EACH ORDER		16. ADMINISTERED BY BASIC AGREEMENT – SAME AS BLOCK 9 ORDERS – AS CITED ON EACH INDIVIDUAL ORDER	17a. CONTRACTOR/ OFFEROR IMMIXTECHNOLOGY, INC. 8444 WEST PARK DRIVE, SUITE 200 MCLEAN, VA 22102-5112 POC: David J. Stewart PHONE: (703) 752-0665 EMAIL: David_Stewart@immixgroup.com		
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18a. PAYMENT WILL BE MADE BY SPECIFIED ON EACH ORDER			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUMMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK CHECKED. <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE
	SEE ATTACHMENT A – PRODUCTS AND PRICING GSA SCHEDULE GS-35F-0265X APPLIES				
25. ACCOUNTING AND APPROPRIATION DATA N/A – SPECIFIED ON EACH ORDER				26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.					
<input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.					
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPY TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.			29. AWARD OF CONTRACT: REFERENCE OFFER <input type="checkbox"/> DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDES ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:		
30a. SIGNATURE OF OFFEROR/CONTRACTOR /S/			31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) /S/		
30b. NAME AND TITLE OF SIGNER (Type or Print)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print)		31c. DATE SIGNED
DAVID J. STEWART, VP		08/15/08	R. L. KLINGER, CONTRACTING OFFICER		08/15/08

**Blanket Purchase Agreement
DoD Enterprise Software Agreement (ESA)**

In the spirit of the Federal Acquisition Streamlining Act, the Department of Defense (DoD) and immixTechnology, Inc., enter into an agreement to further reduce the administrative costs of acquiring commercial items from the General Service Administration (GSA) Federal Supply Schedule (FSS) Contract GS-35F-0265X,

FSS Contract Blanket Purchase Agreements (BPAs) reduce contracting and open market costs such as: search for sources, the development of technical documents, solicitations, and the evaluation of bids and offers.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the Government that works better and costs less.

The Enterprise Software Initiative (ESI) is a joint DoD project to develop and implement a DoD enterprise process. This BPA is issued in the spirit of the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

The following products and services are available under this BPA:

- SIN 132-32 – Term Software Licenses
- SIN 132-33 – Perpetual Software Licenses
- SIN 132-34 – Software Maintenance & Support
- SIN 132-50 – Training Services
- SIN 132-52 – Electronic Commerce (EC) Services

Attachments to this agreement are as follows:

- Attachment A – BPA Product & Price List
- Attachment B – Addendum License Agreement
- Attachment C – BPA Discount Schedule
- Attachment D – PowerSteering GSA Services Catalog
- Attachment E – Report of Sales Format
- Attachment F – Fees and Payments
- Attachment G –ITEC Direct – Standard Format

A. TERMS AND CONDITIONS

1. Pursuant to GSA FSS Contract Number GS-35F-0265X, immixTechnology, Inc., agrees to the following terms of a BPA with the NAVSUP Weapon Systems Support – Mechanicsburg, PA. All orders placed against this BPA are subject to the terms and conditions of the GSA FSS Contract. The items on this BPA are set forth in Attachment A. License terms and conditions applicable to products acquired under this BPA are defined in the immixGroup, Inc. GSA FSS Contract Number GS-35F-0265X terms and conditions for PowerSteering Software products ([immixGroup GSA Schedule](#)) and the Addendum License Terms and Conditions included as Attachment B. The Order of Precedence for resolving any inconsistency shall be first, the terms of this BPA, and second, GSA FSS Contract Number GS-35F-0265X including the order of precedence provision found at Section C.1(s). The Order of Precedence for resolving any inconsistency between the Commercial License Agreement and the GSA contract terms shall be as specified in the GSA

contract's Commercial Item clause, FAR 52.212-4 (as modified), and the provisions of FAR 52.212-4 specified in FAR 12.302, as required by Federal law, shall prevail over any terms of the commercial license.

2. **Extent of Obligation.** The Government estimates, but does not guarantee, that the volume of purchases through this agreement will be \$25M. The Government is obligated only to the extent of authorized purchases actually made under this BPA.
3. **Funds Obligation.** The BPA does not obligate any funds. Funds will be obligated on each delivery order.
4. **BPA Term.** The BPA expires 5 years after award. This expiration is contingent upon the Contractor maintaining a GSA FSS Schedule. The subject BPA is based on the Contractor's current GSA 70 schedule contract # GS-35F-0265X. In the event that the current GSA 70 schedule contract is cancelled or expires and a new GSA 70 schedule contract is awarded, this BPA shall automatically transfer to the new GSA 70 schedule contract to the extent the new schedule contract includes the same scope and items as the cancelled or expired GSA contract. The BPA will be reviewed annually to ensure that it still represents a "best value".
5. **Pricing Terms.** The unit prices under this BPA are based on GSA FSS Contract pricing currently in effect at the time individual Delivery Orders are placed. GSA prices shall only escalate in accordance with the GSA Economic Price Adjustment (EPA) clause. If the GSA Contract unit prices are subject to an EPA increase, the same discount relationship (discount percentage off GSA Contract price) shall be maintained during the term of this BPA. The prices will be reviewed annually, or as required, to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee shall be included in the prices. The contractor shall be responsible for the payment of all fees that are included in the product pricing (i.e. GSA IFF, ACT), as calculated on the customer orders, in accordance with Attachment F. Spot discounting is encouraged in negotiating orders. Factors for consideration for Enterprise licensing discounts include, among others, program scope, support needs, user count, license term, and/or finance requirements.
6. **Discount Terms and Conditions.** Attachment A provides the BPA products and prices (inclusive of all industrial and ACT funding fees) as of the effective date of this BPA. Volume level price discounts are provided in Attachment C and are discussed in paragraph 6.1 below. All discounts provided will be applied to the then current BPA price in effect at time of order placement.
 - 6.1 **Aggregate Transactional Discount Structure:**

Software orders placed against this BPA shall be discounted in accordance with the discount schedules of Attachment C herein. Two types of aggregate discounts are offered based on volume per transaction and type of license purchased as described below. Products excluded from determining the BPA discount include maintenance and support renewals, training, other support services and open market items not offered through the GSA Contract. Excluded products can be part of any single delivery order but are not counted toward the aggregate transactional order amount for purposes of establishing a discount level. Attachment C provides the percentage of discounts and purchase volume levels for each type of license discount.

 - 6.1.1 Transactional Discounts for Subscription Licenses (SIN 132-32): A transactional discount is applicable to the total BPA price of any combination of Subscription Licenses and PowerStart Implementation ONLY placed under a single Delivery Order in accordance with Attachment C.

6.1.2 Transactional Discounts for Perpetual Licenses (SIN 132-33): A transactional discount is applicable to the total BPA price of any combination of Perpetual Licenses, PowerStart Implementation, Maintenance and Support, and Hosting Services placed under a single Delivery Order in accordance with Attachment C.

NOTES:

- a. PowerStart Implement is a one-time purchase that is only required with the initial purchase of Subscription and Perpetual Licenses.
- b. 1st Year Maintenance and Support is required with the purchase of Perpetual Licenses.

7. Price Reduction.

7.1 **Most Favored Customer Prices.** The prices under this BPA shall be at least as low as the catalog prices of any other immixTechnology, Inc. contract vehicles where immixTechnology serves as a Prime contractor offering like terms and conditions for the products specified on Attachment A to the Federal government. If at any time the prices under said immixTechnology contract vehicles become lower than the prices in this BPA, this BPA will be modified to include the lower prices

7.2 **SmartBUY Transition.** OMB has recently announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring software. The GSA is the designated Executive Agent for SmartBUY. The initiative will establish software enterprise licensing on a government-wide basis. If during the term of this ESA, immixTechnology, Inc. enters into a government-wide agreement with the GSA under the SmartBUY Initiative, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD, immixTechnology, Inc. will not preclude the DoD from licensing products or purchasing services under a SmartBUY agreement.

8. **License Agreement.** Software licenses available for purchase under this BPA are shown in Attachment A and include PowerSteering Annual Subscription Licenses (SIN 132-32) and PowerSteering Perpetual Licenses (SIN 132-33) subject to the provisions of PowerSteering Software licensing terms and conditions provided in the immixTechnology GSA FSS Contract Number GS-35F-0265X, ([immixGroup GSA Schedule](#)) and the Addendum license terms and conditions shown in Attachment B. Additional products may be added in future modifications to the GSA FSS Contract and shall be available for purchase under this BPA upon proof of inclusion to the GSA FSS Contract. If there is a conflict between the terms of the PS Commercial License Agreement ([Master License Agreement](#)) and the Addendum terms and conditions of Attachment B, the Addendum terms and conditions of Attachment B shall prevail.

8.1 **PowerSteering Annual Subscription License (SIN 132-32)** provides a single named user with a one-year subscription to PowerSteering's Software-as-a-Service (SaaS) solution. Licensee's access to and use of PowerSteering's Software-as-a-Service (SaaS) annual subscription shall at no time exceed the number of Authorized users which Licensee has licensed to use. No additional hardware or software is required, except for PowerStart Implementation (see below note). Your subscription includes hosting by PowerSteering, periodic maintenance updates (i.e. Version 6.1 to 6.2 to 6.3), upgrades to all new product releases (i.e. Version 6.0 to Version 7.0) and [Help-Desk Support](#).

NOTE: If this is a customer's "initial" license purchase, customer is required to purchase PowerStart Implementation, which is available for purchase as set forth in Attachment A and further described in Attachment C herein. PowerStart is a one-time fee and is not required with the purchase of additional licenses at a later date.

8.2 **PowerSteering Perpetual License (SIN 132-33)** provides a single named user with perpetual use rights upon payment of applicable license fee. A perpetual license only includes [Help-Desk Support](#). Customers purchasing a perpetual license must also purchase the 1st Year Maintenance and Support and PowerStart Implementation (see below note). The customer is generally responsible for installing the product on their own internal server(s) and hosting the application for their user community, unless otherwise hosted by PowerSteering upon payment of applicable hosting fee. Refer to Attachment D for a description of other PowerSteering GSA Service Offerings

NOTE: The purchase of 1st Year Maintenance and Support is required with the purchase of a perpetual license. If this is a customer’s “initial” license purchase, customer is also required to purchase PowerStart Implementation. Both products are available for purchase as set forth in Attachment A and further described in Attachment C herein. PowerStart is a one-time fee and is not required with the purchase of additional licenses at a later date.

Below is a Comparison between Subscription and Perpetual Licenses:

	<u>Subscription</u>	<u>Perpetual</u>
Usage Term	One-Year	Forever
Maintenance & Support Included?	Yes	No *
Help-Desk Support Included?	Yes	Yes
New Releases Included?	Yes	No *
Hosting Included?	Yes	No *
PowerStart Implementation Required?	Yes*	Yes *
Additional Hardware Required?	No	Yes **
Minimum Order Quantity	1 Unit	1000 Units

* = Available for Purchase as set forth on Attachment A

** = If Self-Hosted

8.3 **Proof of License.** Any delivery order issued hereunder will serve as proof of purchase.

9. **Software Delivery.** The software is currently available for delivery as follows:

9.1 Perpetual Licenses or Subscription Licenses, **hosted by PowerSteering**, do not require delivery via a hard copy CD/Media since it will be hosted on PowerSteering servers. PowerSteering will create a new context (instance) of the software for the customer to use. As part of the PowerStart Implementation process required for all new customers, PowerSteering’s consulting team will contact the customer, explain the process and set up an introductory Kickoff Session.

9.2 Perpetual Licenses or Subscription licenses, **hosted by the customer**, PowerSteering will:

- a. Ship customer a hard copy CD/Media or post it to an FTP site and walk customer through the install via a Webex, or
- b. Deliver and install a CD on-site for customer. PowerSteering technician would need to come on-site to perform the installation. Length of service to get an account up and running depends upon the complexity of the customer environment. This is done as a precursor to your PowerStart Implementation that is required with the purchase of your initial license. Travel Expenses are not included for on-site installations.

NOTE: When a customer places an order for a Subscription or Perpetual license (minimum quantity: 1,000 units) through the immixGroup, PowerSteering Software will deliver at no additional cost:

- An email (or letter) confirming receipt of your order with instructions describing how PowerSteering will coordinate the delivery of:
 - a. An Installation CD or FTP (File Transfer Protocol) location where installation files may be downloaded (self-hosted licenses) and the hyperlink/URL to your respective number of licenses hosted by PowerSteering.
 - b. The name and contact information of your PowerSteering Account Manager who will assist with the installation.
 - c. A temporary user name & password to gain access to the system.
 - d. Our Help Desk phone number and email address should there be any questions.

10. Maintenance and Support. Maintenance and Support services (SIN 132-34) are available for purchase as set forth on Attachment A and are subject to the terms and conditions defined in the immixGroup, Inc. GSA FSS Contract Number GS-35F-0265X commercial terms and conditions for PowerSteering Software products ([immixGroup GSA Schedule](#)) the Addendum License Terms and Conditions included as Attachment B and as described below.

10.1 Subscription Licenses:

- a. Maintenance and Support coverage is included with the purchase of an annual Subscription License and includes "updates" (meaning interim releases of the Software incorporating standard improvements, patches, error corrections and enhancements, i.e. Version 6.1 to 6.2 to 6.3), "upgrades" (meaning full product releases of the Software containing significant new functionality, i.e. Version 6.0 to Version 7.0) and [Help-Desk Support](#).

10.2 Perpetual Licenses:

- a. The purchase of 1st Year Maintenance and Support coverage is required with the purchase of a perpetual license and is available for purchase as set forth in Attachment A. Maintenance and Support coverage includes "updates" (meaning interim releases of the Software incorporating standard improvements, patches, error corrections and enhancements, i.e. Version 6.1 to 6.2 to 6.3), "upgrades" (meaning full product releases of the Software containing significant new functionality, i.e. Version 6.0 to Version 7.0) and [Help-Desk Support](#).
- b. Subsequent renewal maintenance and support coverage for perpetual licenses is optional, but highly recommended. Pricing and applicable BPA discounts for subsequent renewal maintenance and support coverage are based on the same transactional discount percentage that was applied to the original perpetual software license purchase order. For example: If the original purchase order qualified for a 10% BPA transactional discount, that same 10% discount will be applied to the then current BPA price for maintenance and support purchased in subsequent renewals periods.

Note: Customers who bought licenses before the establishment of this BPA are eligible to use the BPA for their renewal maintenance and support requirements and may be granted a spot discount that is based on the then current BPA transactional order value of their original license procurement.

- c. Accumulation of Licenses – Accumulation of licenses pertains to customer's who purchase additional licenses at a later date, that are being added to their original number of licenses and will be maintained under a consolidated purchase order. The license price and transactional discount percentage applied to the additional licenses will be determined by the total accumulated number of licenses per the pricing structure as set forth on Attachment A and the BPA discount schedule set forth on Attachment C. This transactional discount will then apply to any subsequent purchase of renewal maintenance and support coverage.
- d. Reinstatement Fee – If a customer allows their Maintenance and Support coverage to lapse, a reinstatement fee will be applied as the followings: Maintenance lapsed for less than 12 months will be subject to a prorated reinstatement fee equal to the period of overdue maintenance. For maintenance lapsed greater than 12 months, customer must pay an amount equal to 12 months to cover the lapsed maintenance period. Once the maintenance is brought current, the subsequent period of maintenance will be available for purchase.

11. **Support Products and Services.** Additional Support Products and Services are available for purchase as set forth under Attachment A and shall comply with the terms and conditions stated in [immixGroup GSA Schedule](#) (SIN 132-34) and applicable FAR and DFARS regulations. Refer to Attachment D for a detailed description of the available support products and services. Additional spot discounting may be available on a case by case basis.

12. **Training.** Training products are available for purchase as set forth under Attachment A and shall comply with the terms and conditions stated in [immixGroup GSA Schedule](#) (SIN 132-50) and applicable FAR and DFARS regulations. Refer to Attachment D for a detailed description of available training products. Additional spot discounting may be available on a case by case basis.

13. **Technology Improvement.** The Government may solicit and the BPA holder is encouraged to propose independently, technology improvements to the BPA. Proposals shall be submitted by the BPA holder and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule. Discounts shall be at the same or greater discount level as the original BPA product prices.

14. **Substitution and Technology Refreshment.** If at any time during the life of this BPA, the original manufacturer of the equipment (includes software, hardware and firmware) schedules the products for discontinuation, improvement and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with paragraph 7.1 of this BPA for most favored prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Proposals shall be submitted to the Contracting Officer within seven (7) days of the BPA holder's awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.

B. AUTHORIZED USERS AND POINTS OF CONTACT

1. **Authorized Users.** The BPA is open for ordering by all Department of Defense (DoD) Components. For the purposes of this agreement, a DoD component is defined as: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, the U. S. Coast Guard, NATO, the Intelligence Community and FMS with a Letter of Authorization. GSA or other applicable ordering organizations/agencies are authorized to place orders under this BPA on behalf of DoD end users and must comply with DFARS 208.7400. This BPA is also open to DoD Contractors

authorized to order in accordance with the FAR Part 51. Government contractors performing work for a DoD end user (as defined above) may place Delivery Orders under this BPA on behalf of and for the benefit of the DoD entity if authorized by their cognizant Contracting Officer in accordance with the requirements of FAR 51 and/or DFARS 251 as appropriate.

2. **BPA Points of Contact:**

a. **Contracting Office:**

Point of Contact:

NAVSUP Weapon Systems Support
Code 0272.15, Building 407
5450 Carlisle Pike
Mechanicsburg, PA 17055-0788

POC: Terri Baxter
Phone: (717) 605-2003
Fax: (717) 605-4600
Email: Terri.Baxter@navy.mil

Procuring Contracting Officer (PCO):

NAVSUP Weapon Systems Support
Code 0272.9, Building 407
5450 Carlisle Pike
Mechanicsburg, PA 17055-0788

PCO: Shawn Mitchell
Phone: (717) 605-4046
Fax: (717) 605-4600
Email: Shawn.R.Mitchell@navy.mil

b. **Program Management:**

Software Product Manager (SPM):

DON IT Umbrella Program Management Office
SPAWAR Systems Center Pacific
Code 55390
53560 Hull Street
San Diego, CA 92152-5001

SPM: Thao Vu
Phone: (619) 553-1065
Fax: (619) 524-9678
Email: Thao.Vu@navy.mil

or Alternate Point of Contact:

DON IT Umbrella Program Management Office
SPAWAR Systems Center Pacific
Code 55390
53560 Hull Street
San Diego, CA 92152-5001

POC: LaToya Lowery
Phone: (619) 553-9618
Fax: (619) 524-9678
Email: LaToya.Lowery@navy.mil

c. **Customer Point of Contact:** (To be specified on each order.)

C. ORDERING

1. DFARS Section 208.74 directs DoD software buyers and requiring officials to check the DoD ESI website for DoD inventory or an ESA before using another method of acquisition. These steps for the buyer are summarized from the DFARS:

- a. Check the Enterprise Agreement Summary Table to determine if software rights or maintenance have already been purchased and are available from DoD inventory. If they are available, purchase the designated software from DoD inventory and reimburse the SPM.
- b. If the required software rights or maintenance are not available from inventory or from an ESA, you may use an alternate method of acquisition, subject to laws and policy.

- c. If the required software rights or maintenance are not available from inventory but are available from an ESA, you must follow the procedure in the DFARS Section 208.74.
- d. If you must obtain the software or software maintenance outside the DoD ESA, you may seek a waiver from a management official designated by your DoD Component.

This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at <http://www.esi.mil> and is publicly accessible.

2. Delivery Orders. The scope of this effort is worldwide. Delivery requirements and administration will be stipulated on Delivery Orders. Ordering via this BPA is decentralized. Orders are prepared by an authorized Government Ordering Officer, in accordance with the terms and conditions of this BPA and the GSA Schedule, or prime contractor authorized by a Government Contracting Officer in accordance with FAR Part 51. Orders may be placed by EDI, credit card, facsimile, on an authorized form such as a Standard Form (SF) 1449 or Department of Defense (DD) Form 1155.

Notice to Ordering Offices: This is a single award BPA established non-competitively against GSA Schedule. It is the responsibility of the Ordering Officer to --

- a. Comply with the ordering procedures of FAR 8.4 and DFARS 208.4
- b. Obtain competition and/or execute brand name or limited source justifications as applicable;
- c. Ensure compliance with all fiscal laws prior to issuing an order under this BPA;
- d. Incorporate into the order any regulatory and statutory requirements that are applicable to the agency for which the order is placed, if pertinent requirements are not already included in this BPA; and,
- e. Ensure the vendor selected for the order represents the best value and the lowest overall cost alternative.

3. Users' Ordering Guide. The Contractor shall develop a Users' Ordering Guide in coordination with the Government that will be posted to the Contractor web site and various Government sites. The Ordering Guide shall be submitted to the SPM and PCO within thirty (30) days of BPA issuance and made available on the Contractor's home page upon written approval. This guide shall be continuously updated as required. The guide shall contain all information necessary for geographically dispersed activities to place orders, including, as a minimum:

- a. URL where a complete list of products available, with appropriate contract line item numbers (CLINs) and associated prices can be found
- b. Government and Contractor Points of Contact
- c. Description of the ordering process
- d. Program Terms and Conditions
- e. License Terms and Conditions
- f. Information such as CAGE, DUNS, TIN, Business Size, etc. necessary to complete a Contract Action Report (CAR) in the FPDS-NG system
- g. Range of discounts
- h. Links to DoD ESI and the Government web sites

4. **E-Commerce Site.** It is the intention of the Government to use existing and future capability of the DoD Standard Procurement System, Electronic Data Interchange (EDI) capability, Government procurement card, and vendor electronic ordering capability to create a paper-less ordering, invoicing and payment process. During the term of the BPA, the Contractor shall participate to achieve this objective.

On-line ordering can also be accomplished at <http://www.itec-direct.navy.mil>. ITEC Direct is the Navy's World Wide Web accessible shopping and order processing tool. The following requirements apply to this BPA:

- a. This BPA may be placed in the Department of the Navy's (DON) ITEC Direct system as part of the DON Information Technology Electronic Commerce (ITEC) Direct Project. If placed in ITEC Direct, the contractor shall insure that the data and information obtained through ITEC Direct is current, accurate, complete, in the standard format enabling expedient data loading and relevant to the acquisition vehicle. The standard format is provided in Attachment G.
- b. The Contractor shall maintain a database of prices with the required and relevant information and links to technical specifications to be accessible by ITEC Direct in a distributed database environment.
- c. The Contractor shall maintain coordinated and integrated hypertext links to ITEC Direct from their World Wide Web site(s) to the ITEC Direct site and shall insure the integrity of any data and information posted on their web sites or in the ITEC Direct web site for their acquisition vehicle. This effort may require the Contractor to adapt their practices so that electronic commerce can be conducted through ITEC Direct to the vendor.
- d. The Contractor shall provide EC/EDI capabilities and accept and respond to secure on-line orders and customer requests consistent with the terms of this acquisition vehicle.
- e. The Contractor shall use its commercially reasonable business efforts to adapt its business processes as the ITEC Direct technical requirements, environment and architecture evolve.

This BPA may also be loaded into publicly accessible electronic catalog systems of other DoD agencies.

5. **Delivery Schedule.** 30 Days after receipt of order (ARO) as per GSA Schedule GS-35F-0265X.

6. **Delivery Notice.** Unless otherwise agreed to, all deliveries ordered under this BPA must be accompanied by a delivery notice, ticket or sales slips that must contain at a minimum the following information:

- a. Name of Contractor
- b. GSA Contract Number
- c. BPA Number
- d. Product Description/Model numbers
- e. Delivery order number
- f. Date of purchase
- g. Quantity, unit price and extension of each item (unit prices need not be shown when incompatible with the use of automated systems; provided that the invoice is itemized to show the information)
- h. Date of shipment

7. **Suspension.** There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA.) If a suspension is announced, the Contractor shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

D. INVOICING AND PAYMENT

1. **Invoicing.** The requirements of a proper invoice are as specified below as required by FAR 52.212-4 in the Federal Supply Schedule contract. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>. The contractor shall submit an original invoice and three copies (or electronic invoice, if authorized), to the address specified on the delivery orders issued against the BPA. An invoice must include --

- a. Name and address of the Contractor;
- b. Invoice date and number;
- c. Contract number, contract line item number and, if applicable, the order number;
- d. Description, quantity, unit of measure, unit price and extended price of the items delivered;
- e. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- f. Terms of any prompt payment discount offered;
- g. Name and address of official to whom payment is to be sent;
- h. Name, title, and phone number of the person to be notified in event of defective invoice;
- i. Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract; and
- j. Electronic funds transfer (EFT) banking information.

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.

2. **Fast Payment Procedure.** The provisions of FAR 52.213-1 FAST PAYMENT PROCEDURE (MAY 2006) are incorporated in this BPA by reference and pertain to Credit Card purchases or other applicable order deliveries. Fast Payment procedures may be used when the conditions of FAR 13.402 are met and the delivery order authorizes Fast Payment. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>.

3. **Precedence.** The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of the BPA and the Contractor's invoice, the provisions of the BPA will take precedence.

E. BPA MANAGEMENT AND OVERSIGHT

1. **BPA Administration.** The Contractor must provide centralized administration, in the form of a Program Manager, in support of all work performed under this BPA. The Program Manager, at a minimum, is required to participate in periodic program management reviews (which may require travel to a Government named site). Additional functions could include customer service, educating the sales force and submission of monthly and quarterly reports.

2. **Report of Sales.** A Report of Sales as described herein shall accompany the remittance of the ACT Fees to enable verification of the fee amounts rendered. Submission of the Report of Sales shall be submitted to the SPM and the PCO in electronic format within fifteen (15) days following the completion of the monthly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the

standard format shown in Attachment E. Negative reports are required. The SPM or PCO shall provide written approval of each report. At the end of each calendar quarter, the written approval provided to the contractor will be accompanied by a request to remit ACT fees. The SPM or PCO will provide copies of the Report of Sales on a quarterly basis to the DoD Components participating in fee sharing.

3. **United Nations Standard Products and Services Code.** The United Nations Standard Products and Services Code (UNSPSC) is a required field of the Report of Sales found in Attachment E. The UNSPSC code permits software asset management through a standard coding structure. The UNSPSC is a coding system used to classify both products and services for use throughout the global marketplace. The management and development of the UNSPSC Code is coordinated by GS1 US. The current version is available free as a download at <http://www.unspsc.org>.

4. **Records.** The Contractor shall maintain archival copies of all orders for the life of the BPA. Copies shall be made available to the Government upon request.

5. **Program Management Reviews (PMR).** The Contractor shall participate in regular reviews of the progress of the BPA. Reviews shall be held at least twice yearly as scheduled by the Software Product Manager. During these reviews the Contractor shall report on among other things, status of BPA sales, sales leakage, marketing and any outstanding issues concerning the BPA. PMR agenda and presentation format shall be provided prior to each PMR. Travel expenses are the responsibility of the contractor.

6. **Sales Leakage.** The goals of the ESI Program can only be realized through cooperation between the Government and the Contractor to direct appropriate sales through the ESI vehicles. The Contractor shall use reasonable efforts to ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred procurement vehicle for the products within. The Contractor shall also establish a process to regularly audit sales to Government buyers, determine where sales outside the ESI vehicle are occurring, and take reasonable and appropriate action to direct further sales through the ESI vehicle. Results of these audits will be presented as an agenda item during PMRs.

7. **Marketing.** The Contractor shall dedicate reasonable resources to this effort and work to market and advertise this agreement. Desired actions include: advertising resultant vehicles on the contractor's Internet site and advertising the agreement at relevant trade shows, participation in DoD Component sponsored events and news media geared to Government/DoD IT people.

8. **Enterprise Integration Toolkit.** The Enterprise Integration Toolkit is a program developed by the Assistant Deputy Under Secretary of Defense (L&MR) Logistics Systems Management (LSM) to assist DoD Program Managers, Contracting Officers and members of the Integrated Project Team (IPT) in the acquisition and implementation of Commercial Off The Shelf (COTS) Business Systems software.

The Toolkit provides guidance, processes and tools to define program needs and determine how to best meet these needs through an external acquisition via a three-tiered Roadmap to guide the entire life-cycle from problem definition to solution roll-out. It provides a collection of best practice tools adopted from the commercial industry, and includes more than 100 best practice templates, guides, checklists, and samples.

Because the Toolkit is not vendor specific and may be applied across a variety of COTS software package implementations, including this BPA, the Contractor, shall be familiar with the Toolkit and include as part of the Marketing effort required above, a description of the Toolkit for their customers, and a link to the Enterprise Toolkit web site at: <http://www.eitoolkit.com>.

F. Standards.

1. **YEAR 2000 Compliance.** All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.
2. **DISR Compliance.** All products offered shall comply with appropriate standards enumerated in the DoD IT Standards Repository (DISR). The DISR is maintained by the DoD Executive Agent for IT Standards, and the mandated compendium can be obtained from Mr. Dave Brown 703-681-2645; dave.brown@disa.mil. The DoD IT standards management tool, DISRonline is available for use by CAC-equipped authorized parties and can be accessed for account requests at <https://disronline.csd.disa.mil/a/>.
3. **Common Security Configurations.** The provider of information technology (IT), at no additional cost to the Government, shall ensure applications are fully functional and operate correctly as intended on systems using the Federal Desktop Core Configuration (FDCC). The FDCC includes Internet Explorer 7 configured to operate on Windows XP and Vista (in Protected Mode on Vista). IAW OMB memorandum M-07-18, "Ensuring New Acquisitions Include Common Security Configurations," a virtual machine has been established to provide IT providers access to FDCC Windows XP and Vista images. These virtual machine images can be found at: <http://nvd.nist.gov/fdcc/index.cfm>. The National Institute of Standards and Technology (NIST) also established a Security Content Automation Protocol (S-CAP) to help IT providers make self-assessments of their products. IT providers must use S-CAP validated tools, as they become available, to certify their products do not alter the virtual machine configurations. Links to the S-CAP tools, and additional information about the S-CAP process can be found at: <http://nvd.nist.gov/scap.cfm>
4. **Net-Centricity.** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint warfighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI vendor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at http://www.defenselink.mil/cio-nii/docs/NetCentric_Checklist_v2-1-3_.pdf, to provide information on the Net-Centric posture of their IT products and services.
5. **Section 508 of the Rehabilitation Act Compliance.** All products provided under this BPA must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site www.section508.gov. The Contractor's Section 508 compliancy information can be found at: <http://www.powersteeringsoftware.com/product-capabilities>.
6. **Additional Clauses.** Orders issued against this BPA are subject to the clauses included in the underlying GSA Schedule and the additional DFARS clauses listed below that are incorporated by reference in this BPA. Ordering Offices should consider the requirements of DFARS and the FAR supplement of the end user component, as it applies to commercial item acquisition and use of GSA schedules, in determining what additional clauses may be required for incorporation in the delivery order issued by the Ordering Office.

The following FAR/DFARS clauses and provisions are hereby incorporated by reference with the same force and effect as if it was given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>
<http://acquisition.gov/comp/far/index.html>
<http://farsite.hill.af.mil/>

- 252.204-7000 Disclosure of Information (DEC 1991)
- 252.204-7004 Alternate A (SEP 2007) - substitute paragraph (a) of this clause for paragraph (a) of the clause at FAR 52.204-7 -Central Contractor Registration (JUL 2006)
- 252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (DEC 2006)
- 252.232-7009 Mandatory Payment by Governmentwide Commercial Purchase Card (DEC 2006)
- 252.232-7010 Levies on Contract Payments (DEC 2006)
- 252.246-7000 Material Inspection and Receiving Report (MAR 2008)
- 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (MAR 2008)

(a) The Contractor agrees to comply with the following Federal Acquisition Regulation (FAR) clause, which, if checked, is included in this contract by reference to implement a provision of law applicable to acquisitions of commercial items or components.

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

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

- 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).
- 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) (APR 2007) (15 U.S.C. 637).
- 252.219-7004 Small Business Subcontracting Plan (Test Program) (APR 2007) (15 U.S.C. 637 note).
- 252.225-7001 Buy American Act and Balance of Payments Program (JUN 2005) (41 U.S.C. 10a-10d, E.O. 10582).
- 252.225-7012 Preference for Certain Domestic Commodities (MAR 2008) (10 U.S.C. 2533a).
- 252.225-7014 Preference for Domestic Specialty Metals (JUN 2005) (10 U.S.C. 2533a).

<input type="checkbox"/>	252.225-7015	Restriction on Acquisition of Hand or Measuring Tools (JUN 2005) (10 U.S.C. 2533a).
<input type="checkbox"/>	252.225-7016	Restriction on Acquisition of Ball and Roller Bearings (MAR 2006) (Section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts).
<input checked="" type="checkbox"/>	252.225-7021	Trade Agreements (MAR 2007) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
<input checked="" type="checkbox"/>	252.225-7027	Restriction on Contingent Fees for Foreign Military Sales (APR 2003) (22 U.S.C. 2779).
<input checked="" type="checkbox"/>	252.225-7028	Exclusionary Policies and Practices of Foreign Governments (APR 2003) (22 U.S.C. 2755).
<input checked="" type="checkbox"/>	252.225-7036	Buy American Act--Free Trade Agreements--Balance of Payments Program (MAR 2007) (___ Alternate I) (OCT 2006) (41 U.S.C. 10a-10d and 19 U.S.C. 3301 note).
<input type="checkbox"/>	252.225-7038	Restriction on Acquisition of Air Circuit Breakers (JUN 2005) (10 U.S.C. 2534(a)(3)).
<input checked="" type="checkbox"/>	252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107-248 and similar sections in subsequent DoD appropriations acts).
<input checked="" type="checkbox"/>	252.227-7015	Technical Data--Commercial Items (NOV 1995) (10 U.S.C. 2320).
<input checked="" type="checkbox"/>	252.227-7037	Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).
<input checked="" type="checkbox"/>	252.232-7003	Electronic Submission of Payment Requests and Receiving Reports (MAR 2008) (10 U.S.C. 2227).
<input type="checkbox"/>	252.237-7019	Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375).
<input checked="" type="checkbox"/>	252.243-7002	Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).
<input checked="" type="checkbox"/>	252.247-7023	Transportation of Supplies by Sea (MAY 2002) (___ Alternate I) (MAR 2000) (___ Alternate II) (MAR 2000) (<input checked="" type="checkbox"/> Alternate III) (MAY 2002) (10 U.S.C. 2631).
<input checked="" type="checkbox"/>	252.247-7024	Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

(c) In addition to the clauses listed in paragraph (e) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items clause of this contract (FAR 52.212-5), the Contractor shall include the terms of the following clauses, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

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|--------------|--|
| 252.225-7014 | Preference for Domestic Specialty Metals, Alternate I (APR 2003) (10 U.S.C. 2533a). |
| 252.237-7019 | Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Pub. L. 108-375). |
| 252.247-7023 | Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631). |
| 252.247-7024 | Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631). |