

**GENERAL PROVISIONS
 FOR
 THE SALE OF GOVERNMENT PROPERTY
 UNDER
 U. S. DEPARTMENT OF ENERGY
 PRIME CONTRACT NO. DE-AC09-96SR18500**

**WESTINGHOUSE SAVANNAH RIVER COMPANY, LLC
 SAVANNAH RIVER SITE
 AIKEN, SC 29808**

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*Change Bar indicates text of Article has changed from
 Revision 3*

** Incorporated by reference to appropriate FAR clause
 (see <http://www.arnet.gov/far>) and DEAR clause
 (<http://professionals.pr.doe.gov>)*

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1. DEFINITIONS

As used herein, the following terms shall have the meaning set forth below:

- A. Small Business. A small business concern for the purpose of the sale of Government-owned property, other than timber, is a concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can further qualify under the following small business classification criteria:
 - (1) Manufacturers. Any concern which is primarily engaged in manufacturing is small if its number of employees does not exceed 500 persons: PROVIDED, HOWEVER, That a concern primarily engaged in SIC Industry 2911, Petroleum Refining, is small if its number of employees does not exceed 1000 persons and it does not have more than 30,000 barrels-per day crude-oil capacity from owned or leased facilities.
 - (2) Other Than Manufacturer. Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph) is small if its annual sales

or annual receipts for its preceding 3 fiscal years do not exceed \$5 million.

- (3) Stockpile Purchasers. Any concern primarily engaged in the purchase of materials which are not domestic products is small if its average annual sales or annual receipts for its preceding 3 fiscal years do not exceed \$25 million.

2. INSPECTION

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation.

3. CONDITION AND LOCATION OF PROPERTY

Unless otherwise specifically provided in the Invitation, all property listed therein is offered for sale "as is" and "where is". The description of the property is based on the best information available to WSRC. However, unless otherwise specifically provided in the Invitation, WSRC makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any use or purpose and except as provided in Conditions No. 13 and 15 or other special conditions of the Invitation, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

4. CONSIDERATION OF BIDS

- A. Telegraphic or telephonic bids will not be considered.
- B. The Bidder agrees that his bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (**90 calendar days** if no period be specified by WSRC or by the Bidder, but not less than 10 calendar days in any case) and that during such period his bid will remain firm and irrevocable. WSRC reserves the right to reject any or all bids, including bids under which a Bidder could take unfair advantage of WSRC or other Bidders, to waive any technical defects in bids, and unless otherwise specified by WSRC or by the Bidder, to accept any one item or group of items in the bid, as may be in the best interest of WSRC. Unless otherwise provided in the invitation, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item.

5. FORMS OF BID DEPOSITS AND PAYMENTS

Unless otherwise provided in the Invitation, bid deposits (when required by the Invitation) and payments shall be in U. S. currency or any form of credit instrument other than promissory note, made payable on demand in U. S. currency: Provided, that uncertified personal or business checks must be first

party instruments: PROVIDED FURTHER, That if in connection with any prior sale, the Bidder, Purchase tendered an uncertified personal or business check which was not paid by the drawee for any reason and the bidder, purchase, and the Drawer of the check were so notified in writing by the selling agency, uncertified personal or business checks will not be an acceptable form of bid deposit or payment. Bids submitted after the effective date specified in the written notification referred to which are not accompanied by the proper bid deposit (other than an uncertified personal or business check) will be summarily rejected.

6. BID PRICE DETERMINATION

- A. When bids are solicited on a unit price basis, Bidders will insert their unit prices and total prices in the space provided for each item.
- B. In the event the Bidder inserts a total price on the item but fails to insert a unit price, WSRC will determine the unit priced by dividing the total price by the quantity of the items set out in the Invitation. The unit price so determined shall be used for the purpose of bid evaluation, award and all phases of contract administration.

7. PAYMENT

The Purchaser agrees to pay for property awarded in accordance with the prices represented in the bid, subject to an adjustment made pursuant to other provisions of this Agreement. Payment of the full purchase price, after applying the total bid deposit, if any, must be made within 30 days prior to receipt of material. If an adjustment is made requiring additional payment, such payment must be made immediately upon notice of such adjustment. In the absence of any debts owed to the selling agency, where the total sum becoming due to WSRC from the Purchaser on an agreement awarded under the Invitation is less than the total amount deposited with the bid, the difference will be promptly refunded and also, deposits accompanying bids which are not accepted will be properly refunded to the Bidder. No refunder demands will be made for any amount less than one dollar (\$1).

8. TITLE

Title to the property sold hereunder shall vest in the Purchaser as, and when, removal is effected, excepting only (A) and (B) below:

- A. Upon written notice to the Purchaser while the aforesaid property remains in the possession of the Purchaser, WSRC may reclaim title to the property sold hereunder if WSRC determines:
- (1) that the aforesaid property does contain, or may contain, classified U.S. Government data (in any form), and/or technology sensitive to the national interest, or
 - (2) that the aforesaid property is "Proliferation Sensitive Property", as defined in Article 41 of these General Provisions

WSRC and the Government are not liable to Purchaser for any costs associated with the inadvertent inclusion of such property in the sale. If payment has been made for any such property, the payment shall be refunded to the Purchaser. Any reshipment costs involved will be the responsibility of WSRC. Once notified by WSRC of its intent to reclaim the aforesaid property, the Purchaser agrees to take all reasonable measures to safeguard the aforesaid property until reclaimed by WSRC;

- B. As otherwise provided in the Invitation. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing by a State motor vehicle regulatory agency, a certificate of release will be furnished for each vehicle and piece of equipment.

9. DELIVERY, LOADING, AND REMOVAL OF PROPERTY

- A. Unless otherwise provided on the Invitation, the Purchaser shall be entitled to obtain the property upon full payment therefore with delivery being made only from the exact place where the property is located within the installation. The Purchaser must make all arrangement necessary for packing, removal, and transportation of property. WSRC will not act as liaison in any fashion between the Purchaser and Carrier, nor will WSRC recommend a specific common carrier. Loading will only be performed as set forth in Invitation, and unless otherwise provided in the Invitation, loading will not be performed on Saturdays, Sundays, WSRC holidays, or any day that the installation where the property is located is closed. Where it is provided that WSRC will load, WSRC will make the initial placement of the property on conveyance(s) furnished by the Purchaser and the initial placement on the Purchaser's conveyance shall be as determined by WSRC. Unless otherwise provided in the Invitation, WSRC will not block, chock, brace, lash, band, or in any other manner secure the cargo on such conveyance(s) furnished by the Purchaser.
- B. Where it is provided in the Invitation that WSRC not load or that the Purchaser will load, the Purchaser will make all the arrangements and perform all work necessary to effect removal of the property. The Purchaser will make all arrangements and perform all work necessary to effect removal of the property. The Purchaser shall remove the property at his expense within the period of time allowed in the Invitation. If WSRC determines that the failure to remove the property within the period of time originally allowed arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be reduced to writing, and a reasonable extension of time for removal shall be allowed. Such causes may include, but are not restricted to acts of God or of

public enemy, acts of WSRC in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather. If the Purchaser is permitted to remove the property after the expiration of the time originally allowed for removal or any additional time allowed by WSRC pursuant to this clause, WSRC, without limiting any other right which it may have may require the Purchaser to pay a reasonable storage charge. The Purchaser shall reimburse WSRC for any damage to Government property caused during the removal operations by the Purchaser or his authorized representative.

- C. Items purchased under the Invitation will be released only to the Purchaser or his authorized representative. The authorization from the Purchaser to the Custodian of the property will be at the property location before any delivery or release will be made. When property is described as being boxed, packed, crated, skidded, or in containers, WSRC does not warrant that the property, as packaged, is suitable for shipment.
- D. Segregation culling or selection of property for the purpose of effecting partial or increment removals will not be permitted except as specifically authorized and prescribed by WSRC.

10. DEFAULT

If, after the award, the Purchaser breaches the agreement by failure to make payment within the time allowed by the Agreement as required by condition No. 7, or by failure to remove the property as required by condition No. 9, then WSRC may send the Purchaser a 15-day written notice of default (calculated from date of mailing), and upon Purchaser's failure to cure such default within that period (or such further period as WSRC may allow), the Purchaser shall lose all right, title and interest which he might otherwise have acquired in and to such property as to which a default has occurred. The Purchaser agrees that in the event he fails to pay for the property or remove the same within the prescribed period(s) of time, WSRC at its election and upon notice of a default shall be entitled to retain (or collect) as liquidated damages a sum equal to the greater of (a) 20% of the purchase price of the item(s) as to which the default has occurred or (b) \$25 or the purchase price of such item(s) if the purchase price less than \$25: PROVIDED, That in Bids, the amount to be charged if the minimum charge provided for in "b" above is applicable, shall be determined by the total purchase price reflected in the award documents: PROVIDED FURTHER, That maximum sum which may be recovered by WSRC as damages for failure of the Purchaser to pay for and remove the property shall be the formula amount. When WSRC exercises this election, it shall specifically apprise the Purchaser, either in its original notice of default (or in separate subsequent written notice), that upon the

expiration of the period prescribed for curing the default, the formula amount will be retained (or collected) by WSRC as liquidated damages. However, if the property was sold on a "per lot" basis and the Purchaser removes a portion of the lot but fails to remove the balance, no portion of the purchase price will be refunded. If the Purchaser otherwise fails in the performance of his obligations, WSRC may exercise such rights and may pursue such remedies as are provided by law or under the Agreement.

11. SETOFF OF REFUNDS

The Bidder or Purchaser agrees that the selling agency may use all or a portion of any bid deposit or refund due him to satisfy, in whole or in part, any debts arising out of prior transactions with selling agency.

12. INTEREST

Notwithstanding any other provision of this Agreement, unless paid within 30 calendar days from the date of first written demand, all amounts that become payable by the Purchaser to WSRC under this Agreement shall bear interest at the rate of 10% per annum from the date of first written demand until paid. Irrespective of the amount of the indebtedness, a minimum interest charge of five dollars (\$5) shall be due WSRC on any amount exceeding \$100 not paid within 30 calendar days from the date of first written demand. Interest on debts of \$100 or less will not be collected if such debts are liquidated without resort to litigation.

13. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT

Except for term subcontracts, when property is sold by a unit other than "weight", WSRC reserves the right to vary the quantity tendered or delivered to the Purchaser by 50%; when the property is sold by "weight", WSRC reserves the right to vary the quantity tendered or delivered to the Purchaser by 50%; when the property is sold by "weight" WSRC reserves the right to vary the weight tendered to the Purchaser by 50%. The purchase price will be adjusted upwards or downwards in accordance with the unit price and on the basis of the quantity or weight actually delivered. Unless otherwise specifically provided in the Invitation, no adjustment for such variation will be made when property is sold on a "price for the lot" basis.

14. WEIGHTING, SWITCHING, AND SPOTTING

Where weighting is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all expense of weighing the property (unless WSRC scales are available on the premises). All switching and spotting charges shall be paid by the Purchaser unless performed with Government-owned or Government-operated locomotives on Government property. When

removal is by truck, weighing shall be under the supervision of WSRC and at its option on: (a) Government scales, (b) certified scales, or (c) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales, or other means acceptable to the railroad for freight purposes.

15. RISK OF LOSS

Unless otherwise provided in the Invitation, WSRC will be responsible for the care and protection of the property subsequent to it being available for inspection and prior to its removal. Any loss, damage, or destruction occurring during such period will be adjusted by WSRC to the extent it was not caused directly or indirectly by the Purchaser, its agents, or employees. With respect to loss only, in the event the property is offered for sale by the "lot", no adjustment will be authorized under this provision unless WSRC is notified of the loss prior to removal from the installation of any portion of the lot with respect to which the loss is claimed.

16. LIMITATION ON LIABILITY

Except for reasonable packing, loading, and transportation costs when a return of property at WSRC cost is authorized, the measure of the WSRC /Government liability in any case where liability of the Purchaser has been established shall not exceed refund of such portion of the purchase price as WSRC may have received.

17. ORAL STATEMENTS AND MODIFICATIONS

Any oral statement or representation by any representative of WSRC, changing or supplementing the Invitation or Agreement or any Condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser.

18. COVENANT AGAINST CONTINGENT FEES

Purchaser warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Purchaser for the purpose of doing business. For breach of this warranty, WSRC shall have the right to annul this Agreement without liability or, at its option, to recover from the Purchaser the amount of such commission, percentage, brokerage, or contingent fee, in addition to the consideration herein set forth.

19. OFFICIALS NOT TO BENEFIT

No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, unless it be made with a corporation for its general benefit.

20. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

- A. By submission of this bid or proposal, the Bidder certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, that in connection with this sale: (1) the prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other bidder or with any competitor; (2) unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and (3) no attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.
- B. Each person signing this bid or proposal certifies that: (1) they are the person in the Bidder's organization responsible within that organization for the decision as to the prices being bid or offered therein and that they have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3), above; or (2)(i) they are not the person in the Bidder's organization responsible within that organization for the decision as to the prices being bid or offered herein but that they have been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3), above, and as their agent does hereby so certify; and (ii) they have not participated, and will not participate, in any action contrary to (a) (1) through (a) (3), above.
- C. This certification is not applicable to a foreign Bidder submitting a bid or proposal for an Agreement which requires performance or delivery outside the United States, its possessions, and Puerto Rico.
- D. A bid or proposal will not be considered for award where (a) (1), (a) (3), or (b), above, has been deleted or modified. Where (a) (2), above, has been deleted or modified, the bid or proposal will not be considered for award unless the Bidder furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances disclosure and the head of the selling agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

21. ASSIGNMENTS OF AGREEMENTS

Any Agreement awarded under the Invitation is subject to the provisions of 41 U.S.C. 15 which generally precludes assignment of such Agreement.

22. CLAIMS LIABILITY

The Bidder or Purchaser agrees to save WSRC and the Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Bidder or Purchaser, its agents, servants or employees, while in, upon or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save WSRC and the Government harmless from and on account of damages of any kind which WSRC and the Government may suffer as the result of the acts of the Bidder or Purchaser, its agents, servants, or employees while in or about the said sites.

23. WITHDRAWAL OF PROPERTY AFTER AWARD

WSRC reserves the right to withdraw for its use any or all of the property covered by this Agreement, if a bona fide requirement for the property develops or exists prior to actual removal of the property from WSRC control. In the event of a withdrawal under this condition, WSRC shall be liable only for the refund of the Agreement price of the withdrawn property or such portion of the Agreement price as it may have received.

24. BIDDER'S WARRANTY OF CAPACITY

The Bidder warrants that they are not: (a) under 18 years of age; (b) an employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of that agency from purchasing property sold hereunder; (c) an agent or immediate member of the household of the employee in (b), above. For breach of this warranty, WSRC shall have the right to annul this Agreement without liability.

25. TIE-IN AND ALL OR-NONE BIDS

Except as otherwise specifically provided, qualified, tie-in, all-or-none or combination bids will not be acceptable and will be rejected as non responsive. This includes bids conditioned upon the acceptance or non acceptance bids on other items, except as otherwise specifically provided in the invitation.

26. STORAGE CHARGES/LATE REMOVAL CHARGES

In accordance with Condition No. 9, General Sale Terms and Conditions entitled "Delivery, Loading and removal of Property", if the Purchaser is

permitted to remove the property after the expiration of the period prescribed herein for the removal or after the expiration of such additional time as WSRC may have granted, pursuant to Condition No. 9, WSRC will require the Purchaser to pay for storage/liquidated damages for such late removal. Unless otherwise specifically provided for elsewhere in the Invitation for Bids, storage charges/liquidated damages for property stored indoors will be completed and assessed at the rate of six cents (\$.06) per hundred pounds or fraction thereof, or .132 per hundred kilogram or fraction thereof per line item for each day or fraction thereof (including day of removal) for quantities or weights of property which have not been timely removed. Storage rates or liquidated damages for outdoor storage will be fifty percent (50%) of indoor rates. Provided, however, that with respect to term sales, WSRC will require the Purchaser to pay storage charges or liquidated damages at the rate of 1/10th of 1% (.001) of the estimated total Agreement price for each day that the Purchaser is late in removing the property. In the event the Agreement term exceeds one year, the total Agreement price for the purpose of computing storage charges/liquidated damages under this clause shall be limited to the estimated Agreement price for one year period. Five dollars (\$5) will be the Minimum charge at each holding activity cited in the Agreement. Unless removal is required on such days, storage charges/liquidated damages will not be assessed for Saturdays, Sundays, WSRC holidays, or any day that the installation at which the property is located is closed. The estimated weights when given in item descriptions will be used in computing storage charges/liquidated damages. In the event the property is sold by weight, adjustment for storage charges/liquidated damages will be made in accordance with the actual weight delivered. In all instances where storage charges/ liquidated damages are assessed. Payment therefore must be made by the Purchaser prior to the removal of the property unless otherwise authorized by WSRC. In no event, however, will storage charges/liquidated damages exceed 20% of the Agreement price of the property as to which the delay occurred, except that in those instances where 20% of the Agreement price is less than the minimum storage charge/liquidated damages the minimum charge will be assessed.

27. GUARANTEED DESCRIPTIONS

Notwithstanding any other provisions of this Invitation for Bids to the contrary, and subject to the limitations and conditions set out in subparagraphs a and b below, all of which are of the essence, WSRC guarantees to the original purchaser of the property that the property delivered or offered for delivery under any Agreement resulting from this Invitation for Bids will be as described in the Invitation for Bids.

- A. That if a misdescription is determined to exist prior to removal of the property from WSRC control, that the sole and exclusive remedy available to the Purchaser will be a refund of the purchase price of the property as to which such misdescription exists, or such portion thereof as WSRC may have received.
- B. That if a misdescription is determined to exist after removal of the property from WSRC control then WSRC will make an adjustment in the purchase price paid for the property commensurate with the market value of the property actually received, provided, however, that:
 - (1) No adjustment will be made for shortages of property offered for sale by the "lot", and
 - (2) No adjustment will be made unless the Purchaser mails or otherwise furnishes to WSRC a written notice, within 30 calendar days from date of removal of the property, that the property is misdescribed and holds the property, sufficiently intact to permit identification by WSRC, PROVIDED FURTHER THAT WSRC DOES NOT WARRANT OR GUARANTEE ANY OF THE FOLLOWING:
 - (i) That the item description contains all specific characteristics or performance data pertaining to the item described.
 - (ii) The stated condition of the property, the total cost of the property, the estimated total weight, the estimated shipping dimensions, suggested uses of the property and the property's fitness for any use or purpose.
 - (iii) Estimates as to the "weight" of the property offered for sale by the "unit" or by the "lot"
 - (iv) Estimates as to the number of units of property offered for sale by "weight"
 - (v) In the event WSRC uses a manufacturer's part or reference number or a Federal Stock Number in addition to detailed descriptive data in the item description, the descriptive data applicable to such part or reference number or Federal Stock Number is not guaranteed if it is inconsistent with the detailed descriptive data applicable to the item description.
 - (vi) To the extent property is described solely by noun nomenclature, manufacturer's part or reference number and Federal Stock Number, the descriptive data applicable to

the Federal Stock Number is not guaranteed if it is inconsistent with the descriptive data applicable to the manufacturer's part or reference number.

- (vii) In no event will the term "or interchangeable" following a manufacturer's part or reference number be construed to guarantee that the property described consists of the part reference number in whole or in part. Only functional interchangeability with the part or reference number is guaranteed.

C. Notwithstanding any of the exceptions stated in subparagraphs B. (2) (i) through (vii) above, however, WSRC will accept return of any property determined to have been misdescribed, to a location specified by WSRC at the Purchaser's expense, and refund to the Purchaser the purchase price or such portion thereof as WSRC may have received, provided timely notice of the misdescription has been furnished to WSRC in accordance with the requirements of subparagraph B.(2) above.

D. The foregoing guarantee is in lieu of all other guarantees, express or implied, and all other obligations on the part of WSRC to deliver or offer for delivery property as described in the Invitation for Bids and shall not entitle the Purchaser to any payment of loss of profits or any other money damages, special, direct, indirect, or consequential; nor shall any recovery of any kind against WSRC under this provision be greater in amount than refund of the purchase price of the specific material found to have been misdescribed.

28. DEMURRAGE AND OTHER STANDBY COSTS

Where it is provided in the Invitation for Bids that WSRC will load, it is agreed and understood that WSRC shall not be liable of any costs, direct or indirect, which may be incurred by a Purchaser as result of WSRC failure to load property in a timely manner. The sole and exclusive remedy for such a failure shall be an appropriate extension of the approval period.

29. RADIOACTIVE MATERIAL

Purchasers are warned that some property purchased hereunder such as, but not limited to, switches, circuit breakers, knobs, controls, pointers, instrument dials, markers, etc., may be capable of emitting ionized radiation in varying degrees. Various electron tubes may also be capable of emitting ionized radiation in varying degrees. WSRC assumes no liability for damages to the property of the Purchaser or for personal injuries, disabilities or death to the Purchaser or the Purchaser's employees or to any other person

arising from or incident to the purchase of this material nor its use or disposition. The Purchaser shall hold WSRC harmless from any or all such demands, suits, actions, or claims of whatsoever nature arising from or out of the purchase of this material. As a safety precaution, the Purchaser should also warn the future possessor or user of this property that it may be capable emitting ionized radiation.

30. FORM OF BID DEPOSITS AND PAYMENTS

A. Unless otherwise provided in the Invitation, bid deposits (when required by Invitation) and payments shall be in U. S. currency or cashier's check, certified check, bank draft, postal money order, travelers check, or telegraphic money order made payable in U. S. dollars to the Treasurer of the United States.

B. A check which is certified for payment for a limited period of time must be valid for at least 20 days after the date specified herein for the bid opening, if the check is submitted as a bid deposit, and for at least 20 days after the date the check is received by WSRC, if the check is offered as payment on account. Bank draft (i.e., checks drawn by one bank on another) need not be certified.

31. REPRESENTATION OF NONCOLLUSION

Bidder represents that the price or prices bid, the item or items bid upon, and the quantity of any item on which they bid have been arrived at unilaterally and without collusion. Bidder further represents that the intention to bid these prices, items, and quantities, and the contents of the bid submitted have not been communicated by the Bidder or any employee or agent of the Bidder to any person not an employee or agent of the Bidder, and will not be communicated to any such person before public disclosure of the bid by WSRC.

32. DISPOSAL

A. Purchaser shall recycle, reclaim, reuse, or dispose of material as defined in the Scope of Work at the particular facility or facilities, referred to in the Sales Agreement. Seller shall utilize those general storage, treatment recycling, reclamation, reuse and disposal methods specified in the Sales Agreement; however, as between the parties, Seller shall be solely responsible for determining the specific times and techniques for storage, processing, treatment recycling, reclamation, reuse, and disposal of the material. However, such processing, treatment recycling, reclamation, reuse, and disposal shall occur within a reasonable time, not to exceed the time specified, if any, in the Sales Agreement.

B. Commodities purchased at this auction/sale are subject to U.S. Government export controls under Code of Federal Regulations Titles 10,

15, 22, and 31. Any export of these commodities contrary to U.S. law is prohibited and will require U.S. Export Agency approval.

- C. Purchaser shall not use, distribute or sell any of the material as defined in the Scope of Work or any component or residue thereof, specified in the Sales Agreement.
- D. If the Sales Agreement specifies that Purchaser may use, distribute or sell any of the material as defined in the Scope of Work or components or residue thereof, Seller agrees to indemnify and save harmless the Government and WSRC, their present and future officers or directors (or officials), employees and agents, from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits and costs and expenses incidental thereto (including, cost of defense, settlement and reasonable attorney's fees) which any or all of them may hereafter suffer, incur, be responsible for or pay out as a result of bodily injuries (including death) to any person, damage (including loss of use) to any property (public or private) contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency caused by or arising out of the use, distribution or sale of the material as defined in the Scope Of Work.

33. TERM

This Agreement shall commence on the date written herein and shall continue in full force and effect for a period of one (1) year.

34. RIGHT TO TERMINATE

WSRC may terminate this Agreement or any individual Purchase Order, with respect to performance remaining, if, at any time after execution of the Agreement, the Facility specified in any Purchase Order fails to obtain, or maintain as valid, any license permit or approval required to allow lawful acceptance and storage, treatment, processing recycling, reclamation, reuse, or disposal of the material as defined in the Scope of Work.

35. PURCHASER

A. Purchaser warrants and represents to WSRC that:

- (1) Purchaser understands the currently known hazards and risks which are presented to human beings, property and the environment in the handling, transportation, storage, treatment, processing, recycling, reclamation, reuse and disposal of the materials defined in the Scope of Work described by WSRC in the Invitation For Bids.

- (2) Purchaser is engaged in the business of transportation, storage, recycling, reclamation, reuse, and disposal of the materials defined in the Scope of Work, and has developed the requisite expertise for the handling, transportation, storage, treatment, processing, recycling, reclamation, and reuse and disposal of such; and,
- (3) Purchaser will handle, transport, store, treat, process recycling, reclamation, recycle, reuse, and dispose of the materials defined in the Scope of Work in a safe and workmanlike manner and in full compliance with all valid and applicable statutes, ordinances, orders, rules and regulations of the federal, state and local governments in whose jurisdictions such activities are performed under this Agreement; and,
- (4) Any and all vehicles or vessels, of the materials defined in the Scope of Work containers and personnel to be provided by Purchaser in the performance of this Agreement have obtained or will obtain prior to performance all permits, licenses, certificates, or approvals required to comply with valid and applicable statutes, ordinances, orders, rules and regulations of the federal, state and local governments; and,
- (5) The Purchaser's Facility (or Facilities) described in any Purchase Order has been issued, as of the date of execution of the Agreement, all permits, licenses, certificates or approvals, required by valid and applicable statutes, ordinances, orders, rules and regulations of the federal, state and local governments in which such Facility is located, necessary to allow such Facility to accept and store, treat, process, recycle, reclaim, reuse and dispose of the material as defined in the Scope of Work as described by WSRC in the Invitation For Bids. In addition, if required by federal, state or local law, regulation or ordinance, Purchaser has filed with the appropriate governmental agency a notification of hazardous waste activity and/or an application to operate a hazardous waste storage, treatment or disposal facility and the storage, treatment or disposal facility described in any Purchase Order has achieved "interim status" as defined by federal and applicable state laws and regulations. Purchaser shall provide WSRC with reasonable advance notice if any such permit, license, certificate or approval is to expire and not be renewed during the term of the Agreement, or becomes the subject

of judicial or administrative action seeking revocation or suspension. Such notice shall also be provided if Purchaser determines not to seek any necessary permit, license, certificate or approval which becomes required after execution of the Agreement.

- B. If during the term of this Agreement, Purchaser determines not to renew any existing permit, license, certificate or approval or not to seek any necessary permit, license, certificate or approval which becomes required after execution of the Agreement, WSRC shall retain all the rights and remedies it may have at law or equity.

36. LOADING AND TRANSPORTATION OF WASTE PRODUCTS

If the Sales Agreement specifies that Purchaser is to provide loading, including but not limited transportation services, Purchaser shall load and/or transport materials as defined in the Scope Of Work to the Facility herein specified. Purchaser shall be responsible for clean up and disposal of any materials as defined in the Scope of Work spilled during such loading or transportation and shall fully indemnify and hold the Government and WSRC harmless therefore.

37. WSRC's RIGHTS OF INSPECTION

WSRC shall have the right, but not the obligation, to inspect and obtain copies of all written licenses, permits or approvals, issued by any governmental entity or agency to Purchaser or its subcontractors which are applicable to the performance of this Agreement; to inspect transportation vehicles or vessels, containers or facilities provided by the Purchaser; and to inspect the handling, loading, transportation, storage, recycling, reclamation, reuse, resale or disposal operations conducted by Purchaser in the performance of this Agreement. Such inspections or lack of inspections shall not operate to relieve Purchaser of its responsibility or liability under this Agreement.

38. INDEPENDENT CONTRACTOR

Purchaser is and shall perform this Agreement as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither Purchaser nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of WSRC.

39. SPECIAL SEALED BID

A. Bid Deposits

All bids must be accompanied by a bid deposit which must be in the possession of WSRC by the time set for bid opening. Bid deposits shall be in the form prescribed in Condition No. 5, General Sale Terms and Conditions. Unless

otherwise provided in the Invitation, a bid deposit of 20% of the estimated total Agreement price is required on sales not exceeding one year; sales exceeding one year's duration will require a bid deposit computed at 20% of the total price estimated for one year's removal of property. Deposit Bond-Annual, sale of Government Personal Property (Standard Form 151) are not acceptable as bid deposits. In accordance with Condition No. 5 of the General Sale Terms and Conditions entitled "Payment", the 20% bid deposit submitted by the Purchaser will be retained by WSRC and applied against the last delivery effected under the Agreement. At the option of the successful Bidder, a Performance Bond may be substituted by the successful Bidder for bid deposit at any time after notification of award of the Agreement. Any bid which is not timely supported by a proper bid deposit may be rejected as non-responsive in the same manner as late bids.

The bid deposit or performance bond shall be held by WSRC for the entire term (3 years) of this Agreement and if a bid deposit is used it will be applied against the last delivery effected under this Agreement in the third year.

B. Modification Or Withdrawal Of Bids

Bids may be modified or withdrawn by written or telegraphic notice and a bid also may be withdrawn in person by the Bidder or authorized representative, provided identity is made known and the Bidder signs a receipt for the bid. Any bid modification which increases the amount of a bid already submitted or which submits bids on items not previously bid on must provide for an increased bid deposit.

C. Consideration Of Late Bids, Modifications, Or Withdrawals

Bids and modifications or withdrawals thereof, must be in the possession of WSRC by the time set for bid opening. Any bid, modification, or withdrawal received after the time set for bid opening will not be considered unless received by WSRC prior to award, was mailed (or telegraphed where authorized) and in fact delivered to the address specified in the Invitation for Bids in sufficient time to have been received by WSRC by the time and date set forth in the Invitation for the bid opening, and, except for delay attributable to personnel of the sales office or their designees, would have been received on time. In no event will hand-carried bids or withdrawals be considered if delivered to WSRC after the exact time and date set for bid opening. However, a modification which makes the terms of the otherwise successful bid more favorable to WSRC will be considered at any time it is received prior to award and may be accepted.

D. Termination

Unless otherwise provided in the Invitation, this Agreement may be terminated by WSRC without cost to WSRC upon 30 days written notice to the Purchaser, to be calculated from the date the notice is mailed.

E. Failure To Perform

In the event the Purchaser fails to make payment as required by Condition No. 7, General Sale Terms and Conditions, or fails to remove the property as required by Condition No. 9, General Sale Terms and Conditions, and fails to cure the default within the time allowed by the notice given in accordance with Condition No. 10, General Sale Terms and Conditions, the Purchaser will lose all right, title and interest which he might otherwise have acquired in and to the property as to which the default occurred and said Condition No. 10, is modified to provided that WSRC shall be entitled to retain or collect as liquidated damages sum equal to 20% of the Agreement price for the quantity estimated to be generated within a 30-day period.

F. Award Of Agreement

The Agreement will be awarded to that responsible Bidder whose bid conforming to the Invitation will be most advantageous to WSRC, price and other factors considered. A written award mailed (or otherwise furnished) to the successful Bidder within the time for acceptance provided in the Invitation shall be deemed to result in a binding Agreement without any further action by either party.

40. EXPORT CONTROL

A. U. S. Government property purchased or acquired under this order may or may not be authorized for export from the U.S. to a foreign country. If export is allowed, the purchaser is solely responsible for obtaining all required clearances or approvals. The purchaser also is required to pass on this information and any other DOE-provided export control guidance if the property is resold (including domestic re-transfers) or otherwise disposed.

B. The use, disposition, export and reexport of the property is subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 USC 2751 et seq.); the Export Administration Act of 1979 (50 USC Appendix 2401 et seq.); DOE Regulations (10 CFR Part 810); International Traffic in Arms Regulations (22 CFR 120 et seq.); Export Administration Regulations (15 CFR 730 et seq.); Foreign Assets Control Regulations (31 CFR 500 et seq.); and the Espionage Act (37 USC 791 et seq.) which among other things, prohibit:

(1) The making of false statement and concealment of any material information

regarding the use or disposition, export or reexport of the property; and

(2) Any use of disposition, export or reexport of the property which is not authorized in accordance with the provisions of this Agreement.

41. PROLIFERATION SENSITIVE PROPERTY ACKNOWLEDGMENT

In the event that proliferation sensitive property, as identified on the U. S. Munitions List (22 CFR 121) or the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 1 (the Trigger List), is inadvertently included in this sale, the purchaser agrees that the part of the sale involving the property is void, and, if such property has been received by the Purchaser, that purchaser will return the property to DOE-Savannah River Operations. (See Article No. 8 regarding title to property). Once notified by WSRC of its intent to reclaim the aforesaid property, the Purchaser agrees to take all reasonable measures to safeguard the property until its return to WSRC.

42. DISPUTES

A. Purchaser shall not be entitled to and neither WSRC nor the Government shall be liable to the Purchaser or its lower-tier suppliers or subcontractors in tort (including negligence), or contract, or otherwise, except as specifically provided in this Agreement.

B. The Parties shall attempt to settle any claim or controversy arising from this Agreement through consultation and negotiations in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and the Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of the State of South Carolina shall apply in the determination of such issues.

C. During the tendency of a dispute, the Purchaser shall proceed diligently with performance of all terms of this Agreement. The Purchaser's consent to so proceed shall

not restrict or otherwise affect the Purchaser's right to contest any claim.

43. SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE

- A. "Contract" means this Agreement or Purchase Order (except in instances when it is not applicable or appropriate), and includes changes and modifications to this Agreement.
- B. "Contractor" means the party to whom this Agreement or Purchase Order is awarded (except in instances when it is not applicable or appropriate).
- C. "Government" means WSRC (except in instances when it is not applicable or appropriate).
- D. "Contracting Officer" means the Procurement Representative of WSRC.
- E. "Lower-Tier Subcontractor" means any party entering into an agreement with the Subcontractor or any lower-tier Subcontractor for the furnishing of supplies or services required for performance of this Subcontract.

This Agreement or Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available.

***44. EQUAL OPPORTUNITY (FEB 1999)**
FAR 52.222-26