

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS**  
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1 REQUISITION NUMBER: 770-7-001002  
 2 CONTRACT NO: HSEM-500-2007-000081  
 3 AWARD EFFECTIVE DATE: 12/22/2006  
 4 ORDER NUMBER: 0001  
 5 SOLICITATION NUMBER: [Blank]  
 6 SOLICITATION ISSUE DATE: [Blank]

7. FOR SOLICITATION INFORMATION CALL: [Arrow] NAME: Anginna Sims  
 TELEPHONE NUMBER: 410-786-2129  
 OFFER DUE DATE/LOCAL TIME: [Blank]

9 ISSUED BY: CODE: DITC  
 CMS, CAGM, AGG, DITC  
 7500 SECURITY BLVD., MS: C2-21-18  
 BALTIMORE MD 21244-1850  
 10 THIS ACQUISITION IS:  
 UNRESTRICTED OR X SET ASIDE 100.00% FOR  
 SMALL BUSINESS EMERGING SMALL BUSINESS  
 NAICS: 423430 HUBZONE SMALL BUSINESS  
 SIZE STANDARD: 100 X SERVICE-DISABLED VETERAN OWNED SMALL BUSINESS (8(A))

11 DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED SEE SCHEDULE  
 12 DISCOUNT TERMS: Net 30  
 13a THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 705)  
 13b RATING: [Blank]  
 14 METHOD OF SOLICITATION: RFP [Blank] IFB [Blank] RFP [Blank]

15 DELIVER TO: CODE: N/A  
 Not Applicable  
 16 ADMINISTERED BY: CODE: AGG/ATS  
 Anginna T. Sims  
 Contract Specialist  
 410-786-2129

17a CONTRACTOR OFFEROR: CODE: 3045965583 FACILITY CODE: [Blank]  
 HMS Technologies, Inc  
 Attn: Kirkpatrick, William  
 208 West Burke Street  
 Martinsburg WV 25401  
 12a PAYMENT WILL BE MADE BY: CODE: ACCT  
 DHHS, CMS, OFM, FSG  
 Div. of Financial Operations,  
 P.O. Box 7520  
 Baltimore MD 21207-0520  
 TELEPHONE NO: 304-896-5583 x 203

17b CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER  
 18a SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 16a UNLESS BLOCK BELOW IS CHECKED SEE ADDENDUM

19 ITEM NO	20 SCHEDULE OF SUPPLIES/SERVICES	21 QUANTITY	22 UNIT	23 UNIT PRICE	24 AMOUNT
0001	Tax ID Number: 26-0078599 DUNS Number: 145965872 This order is being issued to acquire the CA software products included in the attached listing of software products and pricing. Period of Performance: 01/01/2007 to 12/31/2007 CA Software Continued ... (Use Reverse and/or Attach Additional Sheets as Necessary)				3,288,202.00

25 ACCOUNTING AND APPROPRIATION DATA: 75870010-7570511-257R  
 26 TOTAL AWARD AMOUNT (For Govt Use Only): \$3,288,202.00

27a SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED ADDENDA ARE ARE NOT ATTACHED  
 27b CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED ADDENDA ARE ARE NOT ATTACHED

X 28 CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES 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 REF DATED [Blank] YOUR OFFER ON SOLICITATION (BLOCK 5) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS OFFER

30a SIGNATURE OF OFFEROR/CONTRACTOR: [Signature]  
 31a UNITED STATES OF AMERICA SIGNATURE OF CONTRACTING OFFICER: [Signature]  
 30b NAME AND TITLE OF OFFEROR (Type or print): William J. Kirkpatrick, U.P. Product Solutions  
 30c DATE SIGNED: 22 Dec 06  
 31b NAME OF CONTRACTING OFFICER (Type or print): DONALD KNOBE  
 31c DATE SIGNED: 12/22/06

**Schedule of Supplies and Services**

	<u>1/1/07-12/31/07</u>	<u>1/1/08-12/31/08</u>	<u>1/1/09-12/31/09</u>
Solution Set A, B, C, D, E, F & G	\$3,288,202	\$3,501,005	\$3,541,759

See pages 4-6 for the list of software products.

**Period of Performance**

The period of performance for this contract shall be from January 1, 2007 through December 31, 2007, with two optional periods running through December 31, 2009.

Base Period:	January 1, 2007 – December 31, 2007
Option 1:	January 1, 2008 – December 31, 2008
Option 2:	January 1, 2009 – December 31, 2009

**Government Points of Contact**

Project Officer: Corey Stevenson, (410) 786-8098, corey.stevenson@cms.hhs.gov  
Contracting Officer: Donald Knode, (410) 786-1046, donald.knode@cms.hhs.gov  
Contract Specialist: Anginna Sims, (410) 786-2129, anginna.sims@cms.hhs.gov

Current Baltimore Data Center  
 Solution Set

<b>Product Set A</b>	<b>TOTAL MIPS 1790 IBM 2086-230 (170) IBM 2084-304 (1620)</b>
EZTR..00200	ADVANTAGE CA-EASYTRIEVE PLUS REPORT GENERATOR
EZTOOL00200	ADVANTAGE CA-EASYTRIEVE PLUS REPORT GENERATOR TOOLKIT
ENDV..00200	ALLFUSION ENDEVOR CHANGE MANAGER
ENDVCM00200	ALLFUSION ENDEVOR CHANGE MANAGER AUTOMATED CONFIGURATION OPTION
ENDVEP00200	ALLFUSION ENDEVOR CHANGE MANAGER EXTENDED PROCESSORS OPTION
ENDVES00200	ALLFUSION ENDEVOR CHANGE MANAGER INTERFACE FOR EXTERNAL SECURITY
ENDVQE00200	ALLFUSION ENDEVOR CHANGE MANAGER QUICK EDIT OPTION
ONE...00200	BRIGHTSTOR CA-1 TAPE MGMT
APCDOC00200	UNICENTER CA-APCDOC AUTOMATED JOB DOCUMENTATION
OUTD..00200	UNICENTER CA-DELIVER OUTPUT MGMT
MTIMGA00200	UNICENTER CA-MIA TAPE SHARING
MTIMIE00200	UNICENTER CA-MII DATA SHARING
OUTV..00200	UNICENTER CA-VIEW OUTPUT ARCHIVAL AND VIEWING
OUTVER00200	UNICENTER CA-VIEW OUTPUT ARCHIVAL AND VIEWING EXTENDED RETENTION OPTION
MICSBT00200	UNICENTER NEUMICS RESOURCE MGMT
MICSAC00200	UNICENTER NEUMICS RESOURCE MGMT ACCOUNTING AND CHARGEBACK OPTION
MICSIA00200	UNICENTER NEUMICS RESOURCE MGMT ANALYZER OPTION FOR CA-IDMS
MICSCI00200	UNICENTER NEUMICS RESOURCE MGMT ANALYZER OPTION FOR CICS
MICS2A00200	UNICENTER NEUMICS RESOURCE MGMT ANALYZER OPTION FOR DB2
MICSSN00200	UNICENTER NEUMICS RESOURCE MGMT NETWORK ANALYZER OPTION
MICSDA00200	UNICENTER NEUMICS RESOURCE MGMT SPACE ANALYZER OPTION
OUTVFI00200	UNICENTER VIEW TSO/SPF/ISPF INTERFACE (Included in OUTV..00200)
<b>Product Set B</b>	<b>TOTAL MIPS 2990 IBM 2084-308 (2990)</b>
ONE...00200	BRIGHTSTOR CA-1 TAPE MGMT
ENDVCM00200	ALLFUSION ENDEVOR CHANGE MANAGER AUTOMATED CONFIGURATION OPTION
ENDVEP00200	ALLFUSION ENDEVOR CHANGE MANAGER EXTENDED PROCESSORS OPTION
ENDVES00200	ALLFUSION ENDEVOR CHANGE MANAGER INTERFACE FOR EXTERNAL SECURITY
ENDV..00200	ALLFUSION ENDEVOR CHANGE MANAGER
ENDVQE00200	ALLFUSION ENDEVOR CHANGE MANAGER QUICK EDIT OPTION
MTIMGA00200	UNICENTER CA-MIA TAPE SHARING
MTIMIE00200	UNICENTER CA-MII DATA SHARING
<b>Product Set C</b>	<b>TOTAL MIPS 4780 IBM 2086-230 (170) IBM 2084-304 (1620) IBM 2084-308 (2990)</b>
ENDVDM00200	ALLFUSION ENDEVOR CHANGE MANAGER PARALLEL DEVELOPMENT OPTION
PVLACI00200	UNICENTER CA/OPS/MVS EVENT MGMT AND AUTOMATION INTERFACE FOR CICS
PVLA2.00200	UNICENTER CA/OPS/MVS EVENT MGMT AND AUTOMATION OPTION FOR JES2

PVLAMS00200

UNICENTER CA/OPS/MVS EVENT MGMT AND AUTOMATION MULTI-SYSTEM FACILITY

<b>Product Set D</b>	TOTAL MIPS 170 IBM 2086-230 (170)
IDADSB00200	ADVANTAGE CA-ADS BATCH OPTION
IDADS00200	ADVANTAGE CA-ADS FOR CA-IDMS
IDCORE00200	ADVANTAGE CA-IDMS/DB DATABASE
CULPID00200	ADVANTAGE CA-IDMS DATABASE CULPRIT OPTION
IDDICT00200	ADVANTAGE CA-IDMS DATABASE DICTIONARY LOADER OPTION
IDMSEA00200	ADVANTAGE CA-IDMS SQL OPTION (NON SCHEDULED ITEM)
IDDML00200	ADVANTAGE CA-IDMS DATABASE DML ONLINE OPTION
IDIMDC00200	ADVANTAGE CA-IDMS/DC TRANSACTION SERVER OPTION
IDMSDM00200	ADVANTAGE CA-IDMS DATABASE DICTIONARY MIGRATOR OPTION
IDOLQR00200	ADVANTAGE OLQ ONLINE QUERY FOR CA-IDMS
IDPMON00200	ADVANTAGE CA-IDMS DATABASE PERFORMANCE MONITOR OPTION
<b>Product Set E - DISTRIBUTED PROGRAMS VARYING QUANTITY</b>	
REPEND00200	ADVANTAGE REPOSITORY EXCHANGE FOR ENDEVOR (1 copy)
REPORA00200	ADVANTAGE REPOSITORY EXCHANGE FOR ORACLE (1 copy)
REPSCA00200	ADVANTAGE REPOSITORY EXCHANGE FOR ASSEMBLER (1 copy)
REPSCC00200	ADVANTAGE REPOSITORY EXCHANGE FOR COBOL (1 copy)
REPSCJ00200	ADVANTAGE REPOSITORY EXCHANGE FOR JCL (1 copy)
REPSHO00200	ADVANTAGE REPOSITORY DATA SHOPPER OPTION FOR WINDOWS (Tier 7 unlimited users)
ERWIN499000	ALLFUSION ERWIN DATA MODELER (60 users)
MDLMAR99000	ALLFUSION MODEL MANAGER (40 users)
	eTRUST CA-EXAMINE EXTERNAL TRAVEL VERSION (3 CPU's)
	eTRUST CA CLEANUP for RACF (3 CPU's)
	BRIGHTSTOR TAPE ENCRYPTION (3 CPU's)
<b>Product Set F</b>	TOTAL MIPS 1620 IBM 2084-304 (1620)
PLATRE00200	ADVANTAGE REPOSITORY

<b>Product Set G</b>	<b>QUANTITY 1 WINDOWS DESKTOP</b>

UAPT..20100

UNICENTER AUTOMATION POINT

# COPY

**SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS**  
 OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1 REQUISITION NUMBER: n/a  
 PAGE OF: 1 of 17  
 2 CONTRACT NO: HHSM-500-2007-000061  
 3 AWARD EFFECTIVE DATE: 01/01/2007  
 4 ORDER NUMBER:  
 5 SOLICITATION NUMBER:  
 6 SOLICITATION ISSUE DATE:

7. FOR SOLICITATION INFORMATION CALL: NAME: Anginna Sims  
 TELEPHONE NUMBER (No collect calls): 410-766-2129  
 8 OFFER DUE DATE LOCAL TIME:

9 ISSUED BY: CODE: DITC  
 CMS, OAGM, AGG, DITC  
 7500 SECURITY BLVD., MS: C2-21-15  
 BALTIMORE MD 21244-1650  
 10 THIS ACQUISITION IS:  
 UNRESTRICTED OR  SET ASIDE 100.00 % FOR:  
 SMALL BUSINESS  EMERGING SMALL BUSINESS  
 HUBBONE SMALL BUSINESS  
 SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (S(A))  
 NAICS: 423430  
 SIZE STANDARD: 100

11 DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED: SEE SCHEDULE  
 12 DISCOUNT TERMS: Net 30  
 13 THIS CONTRACT IS A RATED ORDER UNDER DFAS (15 CFR 700)  
 13D RATING:  
 14 METHOD OF SOLICITATION:  RFP  IFB  RFP

15 DELIVER TO: CODE:  
 Ctrs for Medicare & Medicaid Svcs  
 Warehouse - North Building  
 7500 Security Blvd  
 Baltimore MD 21244-1850  
 16 ADMINISTERED BY: CODE: AGG/ATS  
 Anginna T. Sims  
 Contract Specialist  
 410-766-2129

17a CONTRACTOR/OFFEROR: CODE: 3045965583 FACILITY CODE:  
 HMS Technologies, Inc  
 Attn: Kirkpatrick, William  
 206 West Burke Street  
 Martinsburg WV 25401  
 17b PAYMENT WILL BE MADE BY: CODE: ACCT  
 DHHS, CMS, OFM, FSG  
 Div. of Financial Operations,  
 P.O. Box 7520  
 Baltimore MD 21207-0520  
 TELEPHONE NO: 304-596-5583 x 203

17c CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER  
 17d SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 16a UNLESS BLOCK BELOW IS CHECKED: SEE ADDENDUM

19 ITEM NO	20 SCHEDULE OF SUPPLIES/SERVICES	21 QUANTITY	22 UNIT	23 UNIT PRICE	24 AMOUNT
	Tax ID Number: 26-0078599 DUNS Number: 145965872 This indefinite delivery / indefinite quantity contract is being issued to acquire the Computer Associates software products as listed. See individual orders for pricing.  See continuing pages. Delivery: 12/31/2009 Period of Performance: 01/01/2007 to 12/31/2007 Continued ... (Use Reverse and/or Attach Additional Sheets as Necessary)				

25 ACCOUNTING AND APPROPRIATION DATA: n/a  
 26 TOTAL AWARD AMOUNT (For Govt Use Only): \$0.00

27a SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4 FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDEND  ARE  ARE NOT ATTACHED  
 X 27b CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4 FAR 52.212-5 IS ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED

X 28 CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES 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 REF: OFFER DATED: YOUR OFFER ON SOLICITATION (BLOCK 5) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS.

30a SIGNATURE OF OFFEROR/CONTRACTOR:   
 30b NAME AND TITLE OF SIGNER (Type or print): William J. Kirkpatrick, U.P. Product Support  
 30c DATE SIGNED: 22 Dec 06  
 31a UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER):   
 31b NAME OF CONTRACTING OFFICER (Type or print): DONALD KNODE  
 31c DATE SIGNED: 12/22/06

19 ITEM NO.	20 SCHEDULE OF SUPPLIES/SERVICES	21 QUANTITY	22 UNIT	23 UNIT PRICE	24 AMOUNT
0001	Line item for task orders Obligated Amount: \$0.00				

32a. QUANTITY IN COLUMN 21 HAS BEEN		ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS	
RECEIVED	INSPECTED	NOTED:	
32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
		32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE	
33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT
PARTIAL      FINAL			COMPLETE      PARTIAL      FINAL
37. CHECK NUMBER			
38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY ( <i>Print</i> )	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE	42b. RECEIVED AT ( <i>Location</i> )
		42c. DATE REC'D ( <i>YY/MM/DD</i> )	42d. TOTAL CONTAINERS

**Purpose**

This indefinite delivery / indefinite quantity contract is being issued to acquire Computer Associates software. See the individual orders for product listing and pricing.

**Invoicing and Payment****Submission of Invoices and Payment Office**

(1) Once each month, following the effective date of this contract, the Contractor may submit to the Government a proper invoice (or public voucher)

(2) Invoices shall be submitted as follows:

(a) Original and four (4) copies shall be submitted to the address below:

Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
OFM/Division of Accounting  
PO BOX 7520  
Baltimore, Maryland 21207-0520

For Overnight Delivery:

Department of Health and Human Services  
Centers for Medicare & Medicaid Services  
OFM/Division of Accounting  
7500 Security Blvd., Mailstop C3-11-03  
Baltimore, Maryland 21244-1850

(b) Content of Proper Invoice/Voucher

- i Contractor's name and invoice date.
- ii Contract number or other authorization for delivery of property and/or services.
- iii Description, cost or price and quantity of services actually delivered or rendered during the period claimed with extensions for total monthly claimed
- iv Labor shall be identified by positions/category and individual's name performing the hours
- v Cumulative total column for contract to date
- vi Shipping and payment terms
- vii Documentation or information (logs, receipts, ect.) that support any other direct costs. The Government reserves the right to incorporate the inclusion of personnel time sheets any time after award and throughout the period of performance
- viii Name, title, phone number and complete mailing address of responsible official to whom payment is to be sent.

**Invoice Payment**

- (1) Reimbursement for invoices submitted under this contract shall be made no later than thirty (30) days after receipt of the invoice from the contractor in the copies requested at the paying office designated above.
- (2) Payment will be authorized after the Division of Accounting has audited the invoice in accordance with Federal regulations. This audit includes certification of the invoice by the Project Officer and verification that the invoice amount is consistent with the payment schedule set forth under Section B, Price and Payment. Any discrepancies determines as a result of the audit could delay the processing of the invoice and may result in the invoice being returned to the contractor for corrections. Inquiries relating to payments should be directed to the Chief, Payment Management Branch, Administrative Payments Unit, telephone number (410) 786-5419 (no collect calls will be accepted).

**Interest on Overdue Payment**

- (1) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85.31 U.S.C. 1801) is applicable to payments under this contract and requires payment of contractors discounts.

- (2) Determination of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

#### Method of Payment

- (1) Payment under this contract will only be made by the Government by electronic funds transfer through the Central Contractor Registration ([www.ccr.gov](http://www.ccr.gov)).
  - (2) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures; or a different method of payment, notification of such change and the required information must be received by the appropriate Government official 30 days prior to the date such change is to become effective.
  - (3) The documents furnishing the information must be dated and contain the signature, title, and telephone number of the Contractor's official authorized to provide it, as well as the Contractor's name and contract number.
  - (4) Any changes shall be furnished to CMS, Division of Accounting, Chief, Accounting Operations Branch, 7500 Security Boulevard, Baltimore, Maryland 21244. It is the Contractor's responsibility to furnish the changes promptly to avoid payment to erroneous addresses or bank accounts, or delays in payments otherwise properly due.
- (a) Invoices shall be prepared and submitted in accordance with Section (g) - Invoice of Clause 52.212-4 and sent to the following address:

Department of Health and Human Services  
Centers for Medicare and Medicaid Services  
OFM/Division of Accounting Operations  
P.O. Box 7520  
Baltimore, MD 21207-0520

- (b) If overnight delivery is desired:

Department of Health and Human Services  
Centers for Medicare and Medicaid Services  
OFM/Division of Accounting Operations  
7500 Security Boulevard/C3-11-03  
Baltimore, MD 21244-1850

- (c) Additionally, please submit one (1) copy to the Project Officer.

#### **Government Project Officer**

Corey Stevenson is hereby designated as the Project Officer. The Project Officer's responsibilities shall include continuous monitoring of the Contractor's compliance with all substantive project objectives.

#### **Contractor's Project Director**

Bill Kirkpatrick will serve as Project Director. It will be his/her responsibility to obtain the staff necessary and direct the work for the conduct of this project. The Government reserves the right to approve any necessary successor to be designated as Project Director.

#### **Government Points of Contact**

Project Officer: Corey Stevenson, (410) 786-8098, [corey.stevenson@cms.hhs.gov](mailto:corey.stevenson@cms.hhs.gov)  
Contracting Officer: Donald Knode, (410) 786-1046, [donald.knode@cms.hhs.gov](mailto:donald.knode@cms.hhs.gov)  
Contract Specialist: Anginna Sims, (410) 786-2129, [anginna.sims@cms.hhs.gov](mailto:anginna.sims@cms.hhs.gov)

**SPECIAL PROVISIONS****1 - HIPAA Business Associate Provision II****Definitions:**

All terms used herein and not otherwise defined shall have the same meaning as in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA," 42 U.S.C. sec. 1320d) and the corresponding implementing regulations. Provisions governing the Contractor's duties and obligations under the Privacy Act (including data use agreements) are covered elsewhere in the contract.

"Business Associate" shall mean the Contractor.

"Covered Entity" shall mean CMS' Medicare Fee for Service program and/or Medicare's Prescription Drug Discount Care and Transitional Assistance Programs.

"Secretary" shall mean the Secretary of the Department of Health and Human Services or the Secretary's designee.

**Obligations and Activities of Business Associate**

- (a) Business Associate agrees to not use or disclose Protected Health Information ("PHI"), as defined in 45 C.F.R. § 160.103, created or received by Business Associate from or on behalf of Covered Entity other than as permitted or required by this Contract or as required by law.
- (b) Business Associate agrees to use safeguards to prevent use or disclosure of PHI created or received by Business Associate from or on behalf of Covered Entity other than as provided for by this Contract. Furthermore, Business Associate agrees to use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information ("E PHI"), as defined in 45 C.F.R. 160.103, it creates, receives, maintains or transmits on behalf of the Covered Entity to prevent use or disclosure of such E PHI.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Contract.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure involving PHI it receives/maintains from/on behalf of the Covered Entity that is not provided for by this Contract of which it becomes aware. Furthermore, Business Associate agrees to report to Covered Entity any security incident involving E PHI of which it becomes aware.
- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Contract to Business Associate with respect to such information. Furthermore, Business Associate agrees to ensure that its agents and subcontractors implement reasonable and appropriate safeguards for the PHI received from or on behalf of the Business Associate.
- (f) Business Associate agrees to provide access, at the request of Covered Entity, to PHI received by Business Associate in the course of contract performance, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- (g) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 upon request of Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to Covered Entity, or to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the various rules implementing the HIPAA.
- (i) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

(j) Business Associate agrees to provide to Covered Entity, or an individual identified by the Covered Entity, information collected under this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

#### **Permitted Uses and Disclosures by Business Associate**

Except as otherwise limited in this Contract, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for purposes of the performance of this Contract, if such use or disclosure of PHI would not violate the HIPAA Privacy or Security Rules if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.

#### **Obligations of Covered Entity**

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

#### **Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy or Security Rules.

#### **Term of Provision**

(a) The term of this Provision shall be effective as of **January 1, 2007**, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

- (b) Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
- (1) Provide an opportunity for Business Associate to cure the breach or end the violation consistent with the termination terms of this Contract. Covered Entity may terminate this Contract for default if the Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - (2) Consistent with the terms of this Contract, terminate this Contract for default if Business Associate has breached a material term of this Contract and cure is not possible; or
  - (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon such notice that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

#### **Miscellaneous**

- (a) A reference in this Contract to a section in the Rules issued under HIPAA means the section as in effect or as amended.
- (b) The Parties agree to take such action as is necessary to amend this Contract from time to time as is necessary for Covered Entity to comply with the requirements of the Rules issued under HIPAA.
- (c) The respective rights and obligations of Business Associate under paragraph (c) of the section entitled "term of Provision" shall survive the termination of this Contract.
- (d) Any ambiguity in this Contract shall be resolved to permit Covered Entity to comply with the Rules implemented under HIPAA.

## 2 - SECTION 508 – ACCESSIBILITY OF ELECTRONIC AND INFORMATION TECHNOLOGY

- A. This contract is subject to Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as amended by the workforce Investment Act of 1998 (P.L. 105-220). Specifically, subsection 508(a)(1) requires that when the Federal Government procures Electronic and Information Technology (EIT), the EIT must allow Federal employees and individuals of the public with disabilities comparable access to and use of information and data that is provided to Federal employees and individuals of the public without disabilities.
- B. The EIT accessibility standards at 36 CFR Part 1194 were developed by the Architectural and Transportation Barriers Compliance Board ("Access Board") and apply to contracts and task/delivery orders, awarded under indefinite quantity contracts on or after June 25, 2001.
- C. Each Electronic and Information Technology (EIT) product or service furnished under this contract shall comply with the Electronic and Information Technology Accessibility Standards (36 CFR 1194), as specified in the contract, as a minimum. If the Contracting Officer determines any furnished product or service is not in compliance with the contract, the Contracting Officer will promptly inform the Contractor in writing. The Contractor shall, without charge to the Government, repair or replace the non-compliant products or services within the period of time to be specified by the Government in writing. If such repair or replacement is not completed within the time specified, the Government shall have the following recourses:
1. Cancellation of the contract, delivery or task order, purchase or line item without termination liabilities; or
  2. In the case of custom Electronic and Information Technology (EIT) being developed by a contractor for the Government, the Government shall have the right to have any necessary changes made or repairs performed by itself or by another firm for the noncompliant EIT, with the contractor liable for reimbursement to the Government for any expenses incurred thereby.
- D. The contractor must ensure that all EIT products that are less than fully compliant with the accessibility standards are provided pursuant to extensive market research and are the most current compliant products or services available to satisfy the contract requirements.
- E. For every EIT product or service accepted under this contact by the Government that does not comply with 36 CFR 1194, the contractor shall, at the discretion of the Government, make every effort to replace or upgrade it with a compliant equivalent product or service, if commercially available and cost neutral, on either a contract specified refresh cycle for the product or service, or on a contract effective option/renewal date; whichever shall occur first.

## 3 - REHABILITATION ACT, SECTION 508, ACCESSIBILITY STANDARDS

The contractor shall comply with the Rehabilitation Action, Section 508, Accessibility Standards as referenced below.

Federal Government Standards  
 Rehabilitation Act, Section 508, Accessibility Standards  
 29 U.S.C. 794d (rehabilitation Act as amended)  
 36 CFR 1194 (508 standards)  
[www.access-board.gov/sec508/508standards.htm](http://www.access-board.gov/sec508/508standards.htm) (508 standards)  
[www.section508.gov](http://www.section508.gov) (website)  
 FAR 39.2 (Section 508)  
[www.access-board.gov/sec508/guide.htm](http://www.access-board.gov/sec508/guide.htm) (guide for standards)

**CONTRACT CLAUSES FAC 2005-14**

**52.203-6 Restrictions on Subcontractor Sales to the Government (Sept 2006) – Alternate 1 (Oct 1995)**

**52.204-7 Central Contractor Registration (July 2006)**

**52.212-4 Contract Terms and Conditions—Commercial Items (Sept 2005)**

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights—

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

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

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

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

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on

Government bill of lading;

- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in

this contract.

(x) *Electronic funds transfer (EFT) banking information.*

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

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

(i) *Payment.*—

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

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

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

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

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

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

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

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

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 3701, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
  - (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
  - (3) The clause at 52.212-5.
  - (4) Addenda to this solicitation or contract, including any license agreements for computer software.
  - (5) Solicitation provisions if this is a solicitation.
  - (6) Other paragraphs of this clause.
  - (7) The Standard Form 1449.
  - (8) Other documents, exhibits, and attachments.
  - (9) The specification.
- (t) Central Contractor Registration (CCR).

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

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

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

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

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

**52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—  
COMMERCIAL ITEMS. (NOV 2006)**

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

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

*[Contracting Officer check as appropriate.]*

(1) **52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995)**  
**(41 U.S.C. 253g and 10 U.S.C. 2402).**

(2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999) (15 U.S.C. 657a).

(3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JULY 2005) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

(4) [Reserved]

(5)(i) **52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).**

(ii) **Alternate I (Oct 1995) of 52.219-6.**

(iii) Alternate II (Mar 2004) of 52.219-6.

(6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).

(ii) Alternate I (Oct 1995) of 52.219-7.

(iii) Alternate II (Mar 2004) of 52.219-7.

(7) **52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)).**

(8)(i) 52.219-9, Small Business Subcontracting Plan (Sept 2006) (15 U.S.C. 637(d)(4)).

(ii) Alternate I (Oct 2001) of 52.219-9.

(iii) Alternate II (Oct 2001) of 52.219-9.

(9) **52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).**

(10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEPT 2005) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

(ii) Alternate I (June 2003) of 52.219-23.

(11) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

(12) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

(13) **52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (May 2004).**

(14) 52.222-3, Convict Labor (June 2003) (E.O. 11755).

(15) **52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jan 2006) (E.O. 13126).**

(16) **52.222-21, Prohibition of Segregated Facilities (Feb 1999).**

(17) **52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).**

(18) **52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).**

(19) **52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).**

(20) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(21) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(22)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).

(ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

(23) 52.225-1, Buy American Act—Supplies (June 2003) (41 U.S.C. 10a-10d).

(24)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (Nov 2006) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L 108-77, 108-78, 108-286, 109-53 and 109-169).

(ii) Alternate I (Jan 2004) of 52.225-3.

(iii) Alternate II (Jan 2004) of 52.225-3.

(25) 52.225-5, Trade Agreements (Nov 2006) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

(26) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(27) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (42 U.S.C. 5150).

(28) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (42 U.S.C. 5150).

(29) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

(30) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

(31) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).

(32) 52.232-34, Payment by Electronic Funds Transfer— Other than Central Contractor Registration (May 1999) (31 U.S.C. 3332).

(33) 52.232-36, Payment by Third Party (May 1999) (31 U.S.C. 3332).

(34) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

(35)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

(ii) Alternate I (Apr 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) 52.222-41, Service Contract Act of 1965, as Amended (July 2005) (41 U.S.C. 351, *et seq.*).

(2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

(3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (Nov 2006) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

(4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Feb 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vii) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$550,000

(\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

(v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201).

(vi) 52.222-41, Service Contract Act of 1965, as Amended (July 2005), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

(vii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

#### **52.216-18 Ordering (Oct 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from January 1, 2007 through December 31, 2009.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

#### **52.216-22 Indefinite Quantity (Oct 1995)**

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

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

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

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after December 31, 2009.

(End of clause)

#### **52.217-9 Option to Extend the Term of the Contract (Mar 2000)**

#### **52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004)**

The below table should be used to calculate future upgrade/capacity increases.

Item No.	Solution Set	Per MIP Price	Per MIP Maint. Fee
000-001	Solution Set A	\$4231	\$836
000-002	Solution Set B	\$1591	\$308
000-003	Solution Set C	\$557	\$108
000-004	Solution Set D	\$5294	\$1120
000-005	Solution Set E	N/A	N/A
000-006	Solution Set F	\$364	\$103
000-007	Solution Set G	N/A	N/A
000-008 EXAM2E00200	CA Examine (Per CPU)- External Version for OIG Audit	\$37,278	\$7456
000-009	eTrust Cleanup (Per CPU)	\$41,803	\$10,500
000-010	Tape Encryption (Per Tape System/Data Center	\$120,393	\$34,020

CA 7, CA 11, Autosys

Item No.	Product	Per MIP Price	Per MIP Maint. Fee
SEVEN.00200	CA 7	\$722	\$147
ELEVEN00200	CA 11	\$245	\$ 51
Item No.	Product	Per Instance Fee	Per MIP Maint. Fee
ATSBAS99000	CA Autosys Event Processor	\$7234	\$1434
ATSYAO99000	CA Autosys Adapter for Oracle	\$16,722	\$3413
ATSYAP99000	CA Autosys Adapter for PeopleSoft	\$16,722	\$3413
ATSYHA99000	CA Autosys High Availability Option	\$5017	\$1024
ATSAGT99000	Remote Agent	\$4014	\$819
ATSXPT99000	Xpert Agent	\$1405	\$287

## CA Standards List

Item No.	Product	Per MIP Price	Per MIP Maint. Fee
ENDBAS2002	Allfusion Endeavor CM	\$375	\$65
ENDPRO002	Allfusion Endeavor CM Extended Processors Option	\$203	\$35
ENDESI002	Allfusion Endeavor CM Interface for External Security	\$40	\$7
ENDACM002	Allfusion Endeavor CM Automated Configuration Option	\$123	\$22
ENDQEO002	Allfusion Endeavor CM Quick Edit Option	\$123	\$22
CA1BAS002	Brightstor CA 1 Tape Mgmt	\$284	\$58

## CA Non-Standards List

Item No.	Product	Per MIP Price	Per MIP Maint. Fee
DADSPL002	Advantage CA-DADS Plus for CICS	\$97	\$28
INTABT002	Advantage CA-Interrest Batch	\$221	\$62
INTCIC002	Advantage CA Interrest for CICS	\$307	\$87
SYMBAS002	Advantage CA SYMDUMP for CICS	\$199	\$57
INSBAS002	UNICENTER CA INSIGHT PERFORMANCE MONITOR FOR DB2	\$240	\$49
OP2BAS002	ALLFUSION CA OPTIMIZER 2	\$587	\$120
PVABAS002	ALLFUSION CA PANVALET	\$274	\$69
PVASPF002	ALLFUSION CA PANVALET ISPF OPTION	\$165	\$41
PVATSO002	ALLFUSION CA PANVALET TSO OPTION	\$64	\$16
ENDFTS002	ALLFUSION ENDEVOR CHANGE MANAGER FOOTPRINT SYNCHRONIZATION OPTION	\$119	\$21
ENDPAN002	ALLFUSION ENDEVOR CHANGE MANAGER INTERFACE FOR PANVALET OPTION	\$41	\$8
ENDPDM002	ALLFUSION ENDEVOR CHANGE MANAGER PARALLEL DEVELOPMENT OPTION	\$165	\$29
VNTBAS002	BRIGHTSTOR CA VANTAGE STORAGE RESOURCE MANAGER	\$119	\$34
CMPBAS002	BRIGHTSTOR CA COMPRESS DATA COMPRESSION	\$237	\$68
EXAMIN002	ETRUST CA EXAMINE AUDITING	\$210	\$43
JCLBAS002	UNICENTER CA JCLCHECK UTILITY	\$227	\$46

OPSESI002	UNICENTER CA/OPS/MVS EVENT MGMT AND AUTOMATION ESI INTERFACE	\$37	\$8
NETSPY002	UNICENTER NETMASTER NETSPY	\$285	\$68
REMCON002	UNICENTER CA REMOTE CONSOLE	\$115	\$29
SPLBAS002	UNICENTER CA SPOOL PRINT MANAGEMENT	\$183	\$43
SYSBAS002	UNICENTER CA SYSVIEW REALTIME PERFORMANCE MONITOR	\$274	\$69
SYSCIC002	UNICENTER CA SYSVIEW REAL TIME PERFORMANCE MGMT OPTION FOR CICS	\$171	\$44
SYSMQ002	UNICENTER CA-SYSVIEW REALTIME PERFORMANCE MGMT OPTION FOR WEBSHERE MQ	\$171	\$44
VIETAP002	UNICENTER CA-VIEW OUTPUT ARCHIVAL AND VIEWING TAPE VIEWING OPTION	\$113	\$29
SLNMAS002	UNICENTER NETMASTER NETWORK MANAGEMENT FOR SNA	\$420	\$119
MIMMIA002	UNICENTER CA-MIA TAPE SHARING	\$180	\$42
MIMMII002	UNICENTER CA-MII DATA SHARING	\$265	\$58
OPSJE2002	UNICENTER CA/OPS/MVS EVENT MGMT AND AUTOMATION OPTION FOR JES2	\$294	\$60
OPSMF002	UNICENTER CA/OPS/MVS EVENT MGMT AND AUTOMATION MULTI- SYSTEM FACILITY	\$48	\$10
DLVBAS002	UNICENTER CA-DELIVER OUTPUT MGMT	\$283	\$71
OPSCIC002	UNICENTER CA/OPS/MVS EVENT MGMT AND AUTOMATION INTERFACE FOR CICS	\$51	\$11
VIEBAS002	UNICENTER CA-VIEW OUTPUT ARCHIVAL AND VIEWING	\$184	\$47

**MINIMUM AND MAXIMUM AMOUNTS**

During the contract period of performance, including any contract renewal periods, the Government shall place orders totaling:

a minimum of 4780 MIPS; and,

a maximum amount not to exceed 10,000 MIPS.

**DISCOUNT TABLES**

Pricing for orders referencing this IDIQ, shall be in accordance with the pricing table set forth below.

**Mainframe MIPS Capacity Upgrade Discounts**

# MIPS	Discount off GSA
1-300	0%
301-750	5%
751-1000	10%
1001-1500	15%
1501-2500	20%
2501 +	25%

**New Product Purchase Discounts**

New Product Purchase Value/Per Occurrence	Discount off GSA
<\$100K	0%
\$100,001 - \$250,000	5%
\$250,001 - \$500,000	10%
\$500,001 - \$1,000,000	15%
>\$1M - \$2M	20%
>\$2M+	25%

**Contract Term Discounts (For Capacity & New Product)**

Contract Term	Additional Discount
2yr. Contract	2%
3yr. Contract	5%
5yr. Contract	7%

New product discounts apply to products not currently licensed by CMS and/or purchase of additional licenses of non-mainframe products.

CMS may acquire CA products to replace competing technology at 90% of the annual price currently paid for such competing technology. Such discount is only available for license counts up to that licensed from competitors and for like functionality. Pricing for additional copies/licenses shall be negotiated on a case by case basis which shall be at least equal to the pricing set forth in the tables above. In order for CMS to take advantage of such pricing, CMS shall provide written confirmation of the annual pricing currently paid for competing software products.

The above discounts only apply to CA technology. Discounts for non-CA technology resold by CA on the referenced GSA Schedule shall be negotiated individually by the parties on each delivery order.

Upon acquisition of new Computer Programs/Technology by CA, CA and CMS shall negotiate in good faith discount structures for the respective Computer Program(s) if discounts are different than those offered above.

Additional discounts of up to 45% may be obtained when procuring New Product Enterprise Licenses for up to 10,000 MIPS combining both the current Baltimore Data Center and the EDC's.