

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

2. CONTRACT NO. DABV01-04-Q-0092			3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		1. REQUISITION NUMBER		PAGE 1 OF		
7. FOR SOLICITATION INFORMATION CALL:			a. NAME RICHARD M. NALWASKY, LCDR USN			b. TELEPHONE NUMBER (No collect calls) 703-343-9218			6. SOLICITATION ISSUE DATE 07/17/2004		
9. ISSUED BY CPA Contracting Activity Republican Presidential Compound Baghdad, Iraq APO AE 09316			CODE W914NS		10. THIS ACQUISITION IS ☒ UNRESTRICTED ☐ SET ASIDE: % FOR ☐ SMALL BUSINESS ☐ HUBZONE SMALL BUSINESS ☐ 8(A) NAICS: SIZE STANDARD:			11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED ☐ SEE SCHEDULE ☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION ☒ RFQ ☐ IFB ☐ RFP		12. DISCOUNT TERMS	
15. DELIVER TO See SF 1449 Continuation			CODE		16. ADMINISTERED BY Same As Block 9			CODE			
17a. CONTRACTOR/OFFEROR			CODE		FACILITY CODE		18a. PAYMENT WILL BE MADE BY			CODE	
							USACE Finance Center 5722 Integrity Drive Millington, TN 38054-5005				
TELEPHONE NO. ☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER									18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM		
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES				21. QUANTITY	22. UNIT	23. UNIT PRICE		24. AMOUNT		
	-----See Section B for CLINs----- <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>										
25. ACCOUNTING AND APPROPRIATION DATA								26. TOTAL AWARD AMOUNT (For Govt. Use Only)			
☐ 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	
☒ 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> 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						31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)					
30b. NAME AND TITLE OF SIGNER (Type or print)			30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or print) RICHARD M. NALWASKY, LCDR USN			31c. DATE SIGNED			

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
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32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED
 ☐ INSPECTED
 ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS 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	37. CHECK NUMBER
☐ PARTIAL ☐ FINAL			☐ COMPLETE ☐ PARTIAL ☐ FINAL	
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		42b. RECEIVED AT (<i>Location</i>)		
		42c. DATE REC'D (<i>YY/MM/DD</i>)		42d. TOTAL CONTAINERS

SECTION D - Packaging – Marking**DABV01-04-M-2225****Packing/Marking Instructions:**

1. All shipments *shall* be marked “Iraq Reconstruction Program” and “Shipment in transit for Humanitarian Purposes”
2. The contract number DABV01-04-M-2225 and “Hartha Power Plant” shall be clearly and visibly printed on each package, bundle, pallet or container.

SECTION F – Delivery**Delivery Date: 04 Mar 2004****Terms of Sale:** DDU/CIF Baghdad Iraq**Deliver to:****MOE Rehab Company Warehouse at Rashidia****Location:** Highway # 2 North of Baghdad on the East side of the Tigris River. (Rashidia) rehabilitation company / after sha’ab check point (Diala way)**LAT/LON:** Lat N 33° 26’ 42.26” Lon E 44° 24’ 00.26”**POC:** Mrs.Kifayah abdulhussain Iraqi local telefax : +964-1-4420026**Email:** Tariq498@hotmail.com**CPA Contact:** Mr. A.T. Al-Tamimi, Cell : 1-914-360-6071**Com:** 1-781-276-2912, DSN: 1-318-239-2912, E-Mail : altamimia.irq@orha.centcom.mil**SECTION G - Contract Administration****Payment:**

Payment shall be made via a bank to bank transfer within 30 days after receipt of a proper invoice.

Invoicing:

Submit invoices via email to Invoicing@orha.centcom.mil. See paragraph #18 for additional invoicing instructions.

If the vendor requests a check we will need to know the name of the individual who will pick up the check. That person will then bring the check down to the Central Bank of Iraq (CBI) for payment with two documents that the Comptroller will supply. **An additional note is the check can only be cashed at the CBI.** The vendor can also request a wire transfer.

If the vendor requests a wire transfer the following information from the vendor’s bank applies. If the bank is not located in the U.S., a corresponding U.S. bank is required so that payment can be routed via the New York Federal Reserve to the US corresponding

bank and then to the bank in the country that is requested. The bank information should include a SWIFT code for the final destination bank and the US corresponding bank, the name of the account holder and the account number for the final destination bank. If the vendor's bank is a U.S. bank, only the U.S. bank SWIFT code, the account name and the account number are needed.

IDENTIFICATION OF CORRESPONDENCE: All correspondence and data submitted by the contractor under this contract shall reference the contract number.

SECTION I - CLAUSES

Standard Terms and Conditions for Solicitations and Contracts in Excess of \$5,000 Applicable to Vested and Seized Iraqi Property and Development Fund for Iraq

Solicitation Terms and Conditions

1. – 12. **Reserved.**

Contract Terms and Conditions

13. Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Contracting Officer reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Contracting Officer may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. The Contracting Officer must exercise the post-acceptance rights:

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

14. Assignment. The Contractor shall not assign, transfer, or make any other disposition of this Contract, or any part thereof, without the prior written consent of the Contracting Officer.

15. Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

16. Disputes. This contract is not subject to the Contract Disputes Act of 1978, as amended (41 U.S. Code, Sections 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 United States Federal Acquisition Regulation Clause 52.233-1, Disputes, which is incorporated herein by reference except that appeals from final decisions of a Contracting Officer may only be appealed to the U.S. Armed Services Board of Contract Appeals (ASBCA). The decision of the ASBCA shall be final. The contractor shall proceed

diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

17. 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 Governmental activity 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.

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

- a. Name and address of the Contractor.
- b. Invoice date and number.
- c. Contract number, contract line item number, and, if applicable, the order number.
- d. Description, quantity, unit of measure, unit price, and extended price of the items delivered.
- e. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on a bill of lading.
- f. Terms of any discount for prompt payment offered.
- g. Name, title, and phone number of person to notify in event of defective notice.

19. Patent Indemnity. The Contractor shall indemnify the Government agency involved in this contract and its officers, employees, and agents against liability, including costs, for actual or alleged direct or indirect contributory infringement of, or inducement to infringe, any patent, trademark, or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

20. Payment. Payment shall be made for items accepted by the Contracting Officer that have been delivered to the delivery destinations set forth in this contract. 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 electronics fund transfer payment is made.

21. 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 pay to the Contracting Officer upon:

- a. Delivery of the supplies to a carrier, if transportation is f.o.b. origin.

b. Delivery of the supplies to the Contracting Officer or a representative at a destination specified in the contract, if transportation is f.o.b. destination.

22. **Taxes.** The contract price includes all applicable taxes and duties.

23. **Termination for Convenience.** The Contracting Officer reserves the right to terminate this contract, or any part hereof, for the sole convenience of the Government activity. 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 Contracting Officer using its standard record keeping system, have resulted from the termination. The Contracting Officer, upon reasonable advanced notice, may inspect the financial records relating to this Contract including the amounts paid to subcontractors and the locations where any portion of the Contractor's performance occurs. The Contracting Officer may review the Contractor's financial statements upon request.

24. **Termination for Cause.** The Contracting Officer 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 Contracting Officer, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government agency shall not be liable to the Contractor for any amount of supplies or services not accepted, and the Contractor shall be liable for any and all rights and remedies provided by law. If it is determined that the Contracting Officer improperly terminated this contract for cause, such termination shall be deemed a termination for convenience.

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

26. **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.

27. **Immunities.** Except as provided in this contract, the Government of Iraq or its agents, including the CPA or other governmental agencies, have not waived any of their privileges or immunities.

28. **Legal Status.** The Contractor is an independent contractor. The Contractor's employees will not be considered government employees for any purpose. The Contractor is solely responsible for compensation agreements with employees.

29. **Contractor's Responsibility for Employees.** The Contractor is responsible for the professional and technical competence of its employees and will select reliable

individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct. The Contracting Officer may require that the Contractor remove from the job employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

30. Subcontracting. Except as authorized in this contract, the Contractor may not subcontract any portion of the performance of this Contract to another without the prior written consent of the Contracting Officer. The terms of any subcontract will be subject to and conform with the provisions of this Contract.

31. Indemnification. The Contractor shall defend, indemnify, and hold harmless all government entities involved in this contract, together with the entities' officers, agents, and employees from and against all suits, claims, or liabilities of any kind arising out of acts or omissions of the Contractor, its employees, or the Contractor's subcontractors.

32. Insurance. The Contractor represents and warrants that it shall maintain appropriate insurance including general commercial liability and workers compensation coverage in an adequate amount to cover third parties claims arising from or in connection with this Contract. Upon request, the Contractor will provide satisfactory evidence of the insurance required under this article.

33. Use of Names and Symbols. Except as required by this Contract, the Contractor will not advertise or otherwise makes public the fact that it is a contractor to the governmental entity in this Contract, nor will the Contractor use the name or emblem of the governmental entity for commercial purposes.

34. Limitation of Liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the governmental entity for consequential damages resulting from any defect or deficiencies in accepted items.

35. Inconsistency between English Version and Translation of Contract. In the event of inconsistency between any terms of this contract and any transaction into another language, the English language meaning shall control.

36. Correspondence in English. The Contractor shall ensure that all contract correspondence that is addressed to the governmental entity awarding this contract is submitted in English or with an English translation.

37. Conflicts of Interest. The Contractor warrants that no governmental official has received or will be offered by the Contractor any direct or indirect benefit in connection with or arising from the award of this contract. The Contractor agrees that any breach of this provision is a breach of an essential term of this Contract.

38. Order of Precedence (except for Construction Contracts). Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- a. The schedule of supplies/services.
- b. The Assignments, Disputes, Payments, Invoice, Other Compliances clauses of this contract.
- c. Addenda to this solicitation or contract, including any license agreements for computer software.
- d. Solicitation provisions (if this is a solicitation)
- e. The other standard clauses in this contract.
- f. Other documents, exhibits, and attachments.
- g. The specification (the narrative description of the work)

39. **Other Compliances.** The Contractor shall comply with all applicable laws, rules, and regulations applicable to its performance under this contract.

40. **Source of Funds.** The obligation under this contract is made with Iraqi Funds, as defined in CPA Memorandum Number 4, dated 19 August 2003. No funds, appropriated or other, of any Coalition country are or will be obligated under this contract.

41-54. **Reserved.**

55. **Alternate Disputes Resolution.** The parties to this contract agree that swift, inexpensive and amicable resolution of disagreements is in our mutual interest. The parties further agree that Alternative Dispute Resolution (ADR) can contribute significantly to the shared goal of resolving disagreements swiftly and efficiently. Therefore, the parties agree to the non-binding use of ADR in an effort to seek final disposition of disagreements within the time periods set forth below. These time periods are guidelines only and may be altered to fit particular controversies.

<u>Amount in Controversy</u>	<u>Suggested Resolution Period After Receipt of Written Notice</u>
\$250,000 or less	Not to exceed 60 days
\$250,001-\$1M	Not to exceed 90 days
Over \$1M	Not to exceed 180 days

The parties agree that any of the following ADR methods may be used at any time during contract performance; mediation, early neutral evaluation, mini-trial, Executive Dispute Resolution Committee consisting of principals of the owner and the builder, Dispute Resolution Board made up of impartial third parties (each party shall select one member and the third shall be selected by the two designated members), and any other non-binding procedure. The parties further agree that the use of ADR is entirely voluntary and nothing in this provision shall affect the rights of either party under the clause entitled "disputes," FAR 52.233-1.

56. **De-Baathification of Iraqi Society.**

(a) The contractor shall not employ or subcontract with any persons determined under procedures promulgated by the Iraqi Governing Council to be full members of the Baath Party or affiliated with the organizations set forth at section 2(2) of CPA Memorandum

No. 7, Delegation of Authority Under De-Ba'athification Order No. 1, dated November 4, 2003 and therefore prohibited from continued or future employment (hereafter referred to as "prohibited person"). Contractors shall coordinate with the Ministry of Justice to determine whether particular individuals are "prohibited persons".

(b) If during contract performance, a person employed by the contractor or subcontractor is determined to be a prohibited person under procedures promulgated by the Iraqi Governing Council, the contractor shall, as appropriate:

- (1) Terminate the employment of the prohibited person.
- (2) Terminate the subcontract with the prohibited person as soon as possible consistent with satisfying contract requirements.

(c) The contractor shall not display the image or likeness of Saddam Hussein or other readily identifiable members of the former regime or symbols of the Baath Party or the former regime in government buildings or public spaces.

(d) Flowdown. The contractor shall include a comparable clause in all subcontracts and require all subcontractors to flow down the clause.

(e) The Coalition Provisional Authority Order Number 1, dated 16 May 2003, subject: De-Ba'athification of Iraqi Society and the corresponding implementation plan and delegations of authority can be found at <http://cpa-iraq.org>