

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER	PAGE 1 OF 22
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER PR-020048	5. SOLICITATION NUMBER GS00GA020048	6. SOLICITATION ISSUE DATE 5/15/02	
7. FOR SOLICITATION INFORMATION CALL: ▶		a. NAME CAROL A. FARRELL	b. TELEPHONE NUMBER (No collect calls) 202/219-1204	8. OFFER DUE DATE/ LOCAL TIME 6/14/02 4:30 E.D.T.	
9. ISSUED BY GS BOARD OF CONTRACT APPEALS 1800 F STREET, NW ROOM 7022 WASHINGTON, DC 20405		CODE	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: SIZE STANDARD:	11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	12. DISCOUNT TERMS
15. DELIVER TO GS BOARD OF CONTACT APPEALS 1800 F STREET, NW ROOM 7022 WASHINGTON, DC 20405		CODE	16. ADMINISTERED BY CODE		
17a. CONTRACTOR/OFFEROR	CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY CODE		
TELEPHONE NO.		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	ELECTRONIC FILING OF DOCUMENTS WITH THE GENERAL SERVICES BOARD OF CONTRACT APPEALS SEE ATTACHED SOLICITATION (B-1) STATEMENT OF WORK <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>				
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA		<input checked="" type="checkbox"/> ARE		<input type="checkbox"/> ARE NOT ATTACHED	
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA		<input type="checkbox"/> ARE		<input type="checkbox"/> ARE NOT ATTACHED	
<input checked="" type="checkbox"/> 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.		<input type="checkbox"/> 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)		31c. DATE SIGNED	
		CAROL A. FARRELL			

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

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
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NUMBER	39. S/R VOUCHER NUMBER	40. PAID BY
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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

**SOLICITATION NUMBER GS00GA020048
ELECTRONIC FILING OF DOCUMENTS WITH THE GENERAL SERVICES
BOARD OF CONTRACT APPEALS (GSBCA)**

SOLICITATION FORMAT:

(A) Standard Form (SF) 1449.....1

(B) Schedule of Services
(B-1) Statement of Work (SF 1449, Block 20)4

(C) Contract Clauses
**(C-1) FAR 52.212-4, Contract Terms and Conditions–Commercial
Items (SF 1449, Block 27a)..... 13**
**(C-2) FAR 52.212-5, Contract Terms and Conditions Required
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(D) Solicitation provisions
**(D-1) FAR 52.212-1, Instructions to Offerors–Commercial Items
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**(D-3) FAR 52.212-3, Offeror Representations and
Certifications–Commercial Items 21**
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(B) Schedule of Services**(B-1) Statement of Work (SF 1449, Block 20)****(B-1) Statement of Work**

The General Services Board of Contract Appeals (GSBCA) is an independent quasi-judicial tribunal which adjudicates disputes between civilian agencies of the federal government and their contractors. The Board additionally provides alternative dispute resolution services, such as mediation, to assist in the settlement of disputes involving federal government contracts. The Board also settles disputes between common carriers and the government over transportation charges, and between federal employees and their agencies regarding employee claims for travel and relocation expenses.

The GSBCA intends to award on a competitive basis a contract for the provision of services which will permit electronic filing of documents in cases before the Board. The Board intends to make electronic filing voluntary, not mandatory, for parties to its cases. This contract will not involve the expenditure of any appropriated funds by the Board. The vendor which is awarded the contract will supply hosting and support services which will include, but not be limited to, internet site hosting, user security, file backup, documentation, web page customization (as required), and notification related to electronic filings.

- I. The Board will consider only those proposals which meet ALL of the following requirements:
 - A. Current provision under license, through a computerized system, of electronic filing services to at least one judicial or quasi-judicial tribunal.
 - B. Provision of an internet website which is accessible through popular web browsers 24 hours per day, 7 days per week, with the following exceptions: (1) Website may be inaccessible for periods of no more than 5 consecutive minutes and no more than 15 total minutes per week. (2) Website may be inaccessible for servicing for longer periods, as may be agreed between the vendor and the Board, at times other than standard business hours. (For the purposes of this statement of work, "standard business hours" are 9 a.m. to 9 p.m. Eastern Time on all Mondays through Fridays except for legal public holidays. The term "legal public holidays" has the meaning given it in 5 U.S.C. § 6103, as well as any other days which are declared holidays by the President or the Congress.)

- C. Acceptance of filings in Microsoft Word, Corel WordPerfect, and Rich Text Formats.
- D. Conversion of filings to uneditable PDF (Portable Document Format) upon upload by vendor.
- E. Acceptance of exhibits in uneditable PDF as attachments to filings.
- F. Assurance that all filings are themselves secure (i.e., screened – and cleaned, if necessary – of malicious code, viruses, etc.) and secure from tampering.
- G. Provision by the system of the following capabilities:
 - 1. Ensures that only registered users may file documents electronically with the Board, and allows such users to file such documents.
 - 2. Allows the Clerk of the Board to accept or reject filings.
 - 3. Automatically serves on all parties to a case, and the judge to whom the case is assigned and the judge's legal staff assistant, notice that the Clerk has accepted a filing; automatically serves on the filer notice that the Clerk has rejected a filing. Retains proof of filing and service.
 - 4. Allows the Board and the parties to view, download, and print filed documents.
 - 5. Allows the Board and the parties to download filings in an editable format for internal use.
 - 6. Provides some search capability on information related to each filing.
 - 7. Allows the public access to all non-protected documents filed electronically through the system.
 - 8. Retains all filings and exhibits in each case, regardless of date of filing, for at least six years after the Board has informed the vendor that it considers the case closed.
 - 9. Allows the Board to upload to the system filings made in hard copy by parties which do not choose to file documents electronically.

10. Allows the Board to make an electronic copy of all filings on the system in Board cases, whenever the Board wishes to make such a copy.
 - H. Provision of an on-line tutorial for Board members and employees and registered users.
 - I. Provision of technical support, at least during standard business hours (see definition in requirement A), to Board members and employees and registered users.
 - J. Provision of assistance to Board personnel in amending the Board's procedures and practices to incorporate electronic filing of documents.
 - K. Prior to initiating operation of the system, (1) provision of training to Board personnel (including judges, attorneys, legal staff assistants, clerk, and information technology staff) in operation of the system, and (2) assisting the Board in conducting, in conjunction with counsel selected by the Board, a demonstration of the full capabilities of the system as to all phases of a case.
 - L. The vendor will not charge the Board for costs of start-up or of using the system.
 - M. The vendor's system must be in compliance with or be capable of being brought into compliance with Section 508 of the Rehabilitation Act Amendments of 1998 (29 U.S.C. § 794d) and the Electronic and Information Technology Accessibility Standard for web-based intranet and internet information and applications for agencies in the federal government, which is published by the Architectural and Transportation Barriers Compliance Board in 36 CFR 1194.22 (2001).
- II. The vendor's proposal must explain how it meets each of the above requirements and provide appropriate documentation which supports the explanation. In particular, the vendor shall provide the following information:
- As to requirement A: List all judicial and quasi-judicial tribunals for which the vendor currently provides electronic filing services, the extent of services to each of those tribunals, and the length of time for which those services have been provided. List at least three references, and state a point of contact (with

address, e-mail address, and telephone number) at each of these entities. If vendor provides electronic filing services to three or fewer tribunals, all of those tribunals must be listed as references. If the vendor provides electronic filing services to more than three tribunals, at least three of the references must be tribunals.

- As to requirement B: Explain the hardware/software/telecommunications redundancy built into the system which is designed to eliminate periods of time when the system is not accessible. Describe all instances when the system was unavailable to users for more than 5 minutes in the past twelve months.
- As to requirement F: Explain how filings are protected from tampering by the public and the vendor's staff. Describe all instances since the date of the system's inception in which the system was the object of hacker incursion. List by job title all employees who would have permission to modify or delete a filing. Describe the system logs that maintain a history of modification or deletion of filings.
- As to requirements F and G.5: Explain the technical qualities of the system which allow filings to remain protected from tampering at the same time that the Board and the parties may download those filings in an editable format for internal use.
- As to requirement G.1: Describe how the system ensures that only registered users may file documents electronically, and how the system ensures that the individual purporting to be making the filing is who he says he is.
- As to requirements G.1 and L: Describe the procedures through which an individual, contractor, attorney, law firm, or Government counsel's office would (a) become a registered user of the system and (b) arrange to pay to the vendor the charges which would be imposed by the vendor for use of the system.
- As to requirement G.6: Explain the search capabilities available in the system. Specifically, address whether and how full-text search of filings is accomplished, and the frequency of update of the indexes that support full-text search.

- As to requirement L: Provide a schedule of charges the vendor, if awarded the contract, would impose on users of the system other than Board personnel. List the per-page and/or per-filing charges (if any) which would be imposed on parties to cases before the Board for filing, downloading, and printing of documents. List the charges (if any) which would be imposed on parties for providing notice of service. List the per-page and/or per-filing charges (if any) which would be imposed on members of the public for downloading and printing of documents. Provide a compilation of charges for these services (1) which are listed in the vendor's catalog and/or (2) which are made under agreements with each of the references stated in response to requirement A.

- As to requirement M: The vendor must test for compliance via the program called Bobby WorldWide. On its website, WWW.CAST.ORG/BOBBY, Bobby WorldWide is described as a tool for web page authors. It helps them identify changes to their pages so users with disabilities can more easily use their web pages. For example, a blind user will be aided by adding a sound track to a movie, and a hard-of-hearing user will be aided by a written transcript of a sound file on a web page. Bobby WorldWide will recommend that these be added if they do not already exist. Bobby WorldWide evaluation is done on-line, without charge for the testing.

The vendor must make one of the following two certifications:

- (a) Vendor has reviewed the Bobby WorldWide site and is compliant with the standard prescribed in 36 CFR 1194.22 and will remain in compliance with that standard as it may be changed in the future.

- (b) Vendor has reviewed the Bobby WorldWide site and, although not currently compliant, will, if selected for award and as a condition to award, within 15 days of being notified that it is the otherwise successful offeror, render its system compliant with the standard prescribed in 36 CFR 1194.22 and will remain in compliance with that standard as it may be changed in the future.

As evidence of compliance, the offeror must provide representative samples of all web pages that will be available to registered users and the general public. Each sample web page must have a minimum Priority 1 compliance or higher to be accepted by the Government.

- III. The vendor's proposal may provide features additional to those stated as mandatory requirements. In describing additional features, the proposal may discuss the following matters:
- A. List all formats (e.g., JPG, GIF) in which exhibits are accepted by the system. If filing is limited to PDF format, describe the conversion services (and related charges, if any) that the vendor has available to assist filers in converting their exhibits to PDF format. Describe how the system would indicate that exhibits were mailed (via United States Postal Service), sent by delivery service (e.g., United Parcel Service), or faxed.
 - B. Describe features which would enable the Board to designate particular filings (including all filings in a particular case) for access restricted to the Board and the parties, and which would enable the Board and the parties to make such filings subject to this restriction. Explain the technical qualities of the system which enable the system to implement this restriction.
 - C. Describe features which would enable the Clerk of the Board to designate which filings (including all filings in a particular case) will be provided automatically, upon acceptance by the Clerk, to any particular judge or employee of the Board.
 - D. Describe other additional features included in the proposal.
- IV. Below is a description of three typical cases which are handled by the Board. The vendor's proposal shall explain (a) the charges which would be imposed on each party to make each of the filings in each case electronically through the proposed system and (b) the total charges which would be imposed on each party to make such filings.

Case A [typical case]:

1. Contractor files notice of appeal of contracting officer's decision (2 pages)
2. Board issues docketing notice (2 pages)
3. Board issues docketing order (2 pages)
4. Agency files notice of appearance by counsel (1 page)
5. Contractor files complaint (5 pages)
6. Agency files appeal file (1-page cover letter and 500 pages of exhibits)
7. Board issues scheduling order (2 pages)

8. Contractor files supplemental appeal file (1-page cover letter and 100 pages of exhibits)
9. Agency files answer (5 pages)
10. Board issues memorandum of conference and scheduling order (3 pages)
11. Contractor files copy of letter to agency regarding discovery (15 pages)
12. Agency files copy of letter to contractor regarding discovery (15 pages)
13. Agency files motion to compel production of documents (20 pages, including attachments)
14. Contractor files opposition to motion to compel (5 pages)
15. Board issues memorandum of conference and order resolving motion to compel (3 pages)
16. Agency files motion for summary relief (30 pages, including attachments)
17. Contractor files opposition to motion for summary relief (20 pages, including attachments)
18. Agency files reply to opposition (7 pages)
19. Board issues decision on motion for summary relief (10 pages)
20. Board issues scheduling order (2 pages)
21. Board issues prehearing order/notice of hearing (5 pages)
22. Contractor files witness list, exhibit list, and prehearing brief (30 pages, plus 200 pages of exhibits)
23. Agency files witness list, exhibit list, and prehearing brief (30 pages, plus 50 pages of exhibits)
24. Board issues memorandum of conference (3 pages)
25. Court reporter provides to Board transcript of hearing (750 pages)
26. Board issues order regarding briefs (2 pages)
27. Contractor files posthearing brief (50 pages)
28. Agency files posthearing brief (35 pages)
29. Board issues order regarding reply briefs (2 pages)
30. Contractor files request for extension of time in which to file reply briefs (2 pages)
31. Board issues amended order regarding reply briefs (2 pages)
32. Contractor files reply brief (20 pages)
33. Agency files reply brief (12 pages)
34. Board issues order closing record (1 page)
35. Board issues decision (20 pages)

Case B [small case]:

1. Contractor files notice of appeal of contracting officer's decision (2 pages)
2. Board issues docketing notice (2 pages)
3. Board issues docketing order (2 pages)
4. Agency files notice of appearance by counsel (1 page)
5. Contractor files complaint (3 pages)
6. Agency files appeal file (1-page cover letter and 100 pages of exhibits)
7. Board issues scheduling order (2 pages)
8. Agency files answer (3 pages)
9. Board issues memorandum of conference and scheduling order (3 pages)
10. Contractor files brief (7 pages, plus 50 pages of exhibits)
11. Agency files brief (10 pages, plus 20 pages of exhibits)
12. Contractor files reply brief (5 pages)
13. Board issues order closing record (1 page)
14. Board issues decision (5 pages)

Case C [unusually large and complex case]:

1. Contractor files notice of appeal of contracting officer's decision (10 pages)
2. Board issues docketing notice (2 pages)
3. Board issues docketing order (2 pages)
4. Agency files notice of appearance by counsel (1 page)
5. Contractor files complaint (20 pages)
6. Agency files appeal file (1-page cover letter and 5000 pages of exhibits)
7. Board issues scheduling order (2 pages)
8. Contractor files supplemental appeal file (1-page cover letter and 1500 pages of exhibits)
9. Agency files answer (25 pages)
10. Board issues memorandum of conference and scheduling order (3 pages)
11. Contractor files copy of letter to Government counsel regarding discovery (150 pages)
12. Agency files copy of letter to contractor regarding discovery (150 pages)

13. Agency files motion to compel production of documents (50 pages, including attachments)
14. Contractor files opposition to motion to compel (50 pages, including attachments)
15. Board issues memorandum of conference and order resolving motion to compel (5 pages)
16. Contractor files motion for summary relief in part (75 pages, including attachments)
17. Agency files opposition to motion for summary relief and cross-motion for summary relief (200 pages, including attachments)
18. Contractor files reply to opposition and cross-motion (25 pages)
19. Board issues decision on motion for summary relief (20 pages)
20. Board issues scheduling order (2 pages)
21. Board issues prehearing order/notice of hearing (5 pages)
22. Agency files request for rescheduling of hearing (3 pages)
23. Contractor files opposition to request (3 pages)
24. Board issues order resolving request for rescheduling (2 pages)
25. Agency files joint motion for suspension of proceedings (1 page)
26. Board issues order granting suspension of proceedings (2 pages)
27. Board issues order on proceedings (2 pages)
28. Agency asks Board to issue subpoena (5 pages)
29. Contractor files objection to issuance of subpoena (5 pages)
30. Contractor files motion to quash subpoena (5 pages)
31. Agency files opposition to motion (5 pages)
32. Board issues order resolving motion to quash subpoena (3 pages)
33. Board issues scheduling order (2 pages)
34. Board issues amended prehearing order/notice of hearing (5 pages)
35. Contractor files witness list, exhibit list, and prehearing brief (30 pages, plus 500 pages of exhibits)
36. Agency files witness list, exhibit list, and prehearing brief (30 pages, plus 250 pages of exhibits)
37. Board issues memorandum of conference (3 pages)
38. Court reporter provides to Board transcript of hearing (1500 pages)
39. Board issues order regarding briefs (2 pages)
40. Contractor files posthearing brief (100 pages)
41. Agency files posthearing brief (75 pages)
42. Board issues order regarding reply briefs (2 pages)
43. Contractor files reply brief (50 pages)
44. Agency files reply brief (35 pages)
45. Board issues order closing record (1 page)

46. Board issues decision (35 pages)
47. Contractor files motion for reconsideration (15 pages)
48. Agency files cross-motion for reconsideration (12 pages)
49. Contractor files reply to cross-motion (10 pages)
50. Board issues decision on motions for reconsideration (10 pages)
51. Court of Appeals directs Board to compile certified list of filings pertinent to appeal of Board's decision (2 pages)
52. Board submits to Court of Appeals certified list of filings pertinent to appeal of Board's decision (20 pages)

(C) Contract Clauses (SF 1449, Block 27a)

(C-1) FAR 52.212-4, Contract Terms and Conditions–Commercial Items

(C-2) FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items

(C-3) Addendum to these clauses

(C-1) FAR Clause 52.212-4 Contract Terms and Conditions-Commercial Items.*

Contract Terms and Conditions-Commercial Items (Feb 2002)

(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 charge from the contractor.

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

(c) *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.

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

(e) *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.

(f) *Contract term.* 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. The contractor may also terminate the contract for convenience, but only in its entirety and only after it has given the Government at least ninety days' written notice of termination.

(g) *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.

(h) *Title.* To the extent that there may be deliverables in addition to the services sought under this contract, title to these items shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(i) *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.

(j) *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.

(k) *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.

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

(m) *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 (Statement of Work).
- (2) The Disputes, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The attached version of FAR clause 52.212-5.
- (4) Addenda to solicitation clauses and contract clauses in this solicitation..
- (5) Solicitation provisions.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.

(C-2) FAR 52-212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders–Commercial Items.*

Contract Terms and Conditions Required to Implement Statutes or Executive
Orders–Commercial Items (Dec. 2001)

(a) The Contractor shall comply with the following 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 (31 U.S.C. 3553).

(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 or components:

[Note: Of the twenty-eight clauses contained in paragraph (b) of this FAR clause, the contracting officer has checked only one, namely, number 12. It reads as follows:]

X (12) 52.222-26, Equal Opportunity (E.O. 11246).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, which 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 or components:

[Note: Of the clauses contained in this paragraph (c) of this FAR clause, the contracting officer has checked none.]

(d) Notwithstanding the requirements of the clauses in paragraphs (a), (b), or (c) of this clause, the Contractor is not required to include any FAR clause, other than those listed below, in a subcontract for commercial items or commercial components—

(1) 52.222-26, Equal Opportunity (E.O. 11246).

* (C-3) *Addendum*. The Federal Acquisition Regulation (FAR) establishes uniform policies and procedures for acquisition by all executive agencies. FAR 1.101. FAR defines "acquisition" as: "the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease" FAR 2.101. Since the GSA Board of Contract Appeals does not intend to expend any appropriated funds for its contract for electronic filing services, the contract is not subject to the FAR. Nevertheless, the Board is conducting this procurement following, wherever practicable, the FAR procedures for commercial acquisition of supplies and services (FAR Part 12). The FAR clauses called for in Part 12 and set out in this solicitation, therefore, are modified, where appropriate, to reflect the fact that non-appropriated funds will not serve as consideration for the electronic filing services being sought here. Rather, the agreement to provide electronic filing services is supported by the Government's agreement to provide the contractor with a revocable, nonexclusive license to use the GSBCA's docket database.

(D) Solicitation provisions

(D-1) FAR 52.212-1, Instructions to Offerors–Commercial Items (SF 1449, Block 27a)

(D-2) FAR 52.212-2, Evaluation–Commercial Items

(D-3) FAR 52.212-3, Offeror Representations and Certifications–Commercial Items

(D-4) Addendum to these clauses

(D-1) FAR Clause 52.212-1 Instructions to Offerors-Commercial Items.*

Instructions to Offerors-Commercial Items (Oct. 2000)

(a) *Submission of offers.* Submit by e-mail, telefacsimile, or in hard-copy, signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or by e-mail; if an offer is submitted by e-mail or telefacsimile, however, a signed hard-copy certification as to the contents of the offer sent must also be provided. As a minimum, offers must show–

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Applicable fee schedules for services offered;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3, as set out in modified form in solicitation provision D-3;
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers, and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation, may be excluded from consideration.

(b) *Period for acceptance of offers.* The offeror agrees to hold its offer open for 30 days beyond the date specified for receipt of offers. The offeror also agrees to hold the fees in its offer firm for 6 months from the date specified for receipt of offers.

(c) *Late submissions, modifications, revisions, and withdrawals of offers.*

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by 4:30 p.m., Eastern Daylight Time, on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is (A) received before award is made; (B) the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; and (C)–

(I) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(II) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(III) The offer was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Offers may be withdrawn via e-mail or telefacsimile received at any time before the exact time set for receipt of offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(d) *Contract award.* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government also reserves the right to request demonstrations of offered electronic filing services. Demonstrations may be required only of offers which the Government determines meet all requirements listed in part I of the Schedule of Services (Statement of Work). The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(D-2) FAR 52.212-2 Evaluation-Commercial Items.*

Evaluation-Commercial Items (Jan. 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer meets all mandatory requirements of this solicitation and is deemed to be most advantageous to the Government. The following factors will be used to evaluate offers:

1. Technical Reliability (20 points)

System redundancy

Incidence of downtime (in excess of five minutes) over the last twelve-month period

Incidence of lost data over the same twelve-month period

System's freedom from hacker incursion and tampering by public or vendor's staff

System's authentication of filer's identity

2. Ease of Use (20 points)

Procedure for becoming a registered user of the system

Ease in uploading files to system

Ease in downloading and printing filed documents

Method for payment of user charges

Search capabilities available in the system

Frequency of updating of indexes which support full-text search

Nature and extent of training available to prospective users

Board's downloading of all filings in Board cases and related identifying information (e.g. filer's name, case number, judge's name) for purposes of on-site and/or off-site storage

Downloading of individual files in editable format for internal use

Nature and degree of technical support available to Board and registered users

3. Past Performance References (10 points)

Comments from References

4. Degree of Experience in Providing E-filing Services to Judicial or Quasi-judicial Tribunals (20 points)

Identity of specific tribunals

Extent of services provided

Length of time services have been provided

5. Fairness and Reasonableness of Proposed Fee Structure (20 points)

6. Features Offered in Addition to Solicitation Requirements (10 points)

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(D-3) **FAR 52.212-3 Offeror Representations and Certifications-Commercial Items.***

Offeror Representations and Certification-Commercial Items (Apr. 2002)

(a) *Representations required to implement provisions of Executive Order 11246–*

(1) Previous contracts and compliance. The offeror represents that–

- (i) It ___ has, ___ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and
- (ii) It ___ has, ___ has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* The offeror represents that –

- (i) It ___ has developed and has on file, ___ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2) or
- (ii) It ___ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

* (D-4) *Addendum.* The Federal Acquisition Regulation (FAR) establishes uniform policies and procedures for acquisition by all executive agencies. FAR 1.101. FAR defines "acquisition" as: "the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease" FAR 2.101. Since the GSA Board of Contract Appeals does not intend to expend any appropriated funds for its contract for electronic filing services, the contract is not subject to the FAR. Nevertheless, the Board is conducting this procurement following, wherever practicable, the FAR procedures for commercial acquisition of supplies and services (FAR Part 12). The FAR clauses called for in Part 12 and set out in this solicitation, therefore, are modified, where appropriate, to reflect the fact that non-appropriated funds will not serve as consideration for the electronic filing services being sought here. Rather, the agreement to provide electronic filing services is supported by the Government's agreement to provide the contractor with a revocable, nonexclusive license to use the GSBICA's docket database.