

SOLICITATION, OFFER AND AWARD			1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING DO-C2	PAGE OF PAGES 1 40
2. CONTRACT NO.	3. SOLICITATION NO. N33191-15-R-0842	4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	5. DATE ISSUED 27 Aug 2015	6. REQUISITION/PURCHASE NO.		
7. ISSUED BY NAVFAC EUROPE AFRICA SOUTHWEST ASIA PSC 817 BOX 51 FPO AE 09622-0051		CODE N33191	8. ADDRESS OFFER TO (If other than Item 7) FEAD NAPLES AEROPORTO DI CAPODICHINO BASE AMERICANA (ROICC) 80144 NAPOLI 81044		CODE N33191	TEL: 39 081 568 7750 FAX: 39 081 568 7750

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and 1 copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in NAVFAC EURAFSWA Naples until 11:00 AM local time 14 Sep 2015
(Hour) (Date)

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME CHERIE M MITCHELL	B. TELEPHONE (Include area code) (NO COLLECT CALLS) +39 081 568 6395	C. E-MAIL ADDRESS cherie.mitchell@eu.navy.mil
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)				
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
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15B. TELEPHONE NO (Include area code)	<input type="checkbox"/> 15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.	17. SIGNATURE	18. OFFER DATE
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AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)() <input type="checkbox"/> 41 U.S.C. 253(c)()		23. SUBMIT INVOICES TO ADDRESS SHOWN IN	ITEM
24. ADMINISTERED BY (If other than Item 7) CODE		25. PAYMENT WILL BE MADE BY CODE	
26. NAME OF CONTRACTING OFFICER (Type or print) TEL: EMAIL:		27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	28. AWARD DATE

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

Section B - Supplies or Services and Prices

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	Provide Electrical Power FFP Provide Electrical power in accordance with the solicitation for the period of November 1, 2015 – April 30, 2017. Award amount will be based on total proposal amount provided in the J200000-04 Firm Fixed Price Form. FOB: Destination	1	Job		

NET AMT

Section C - Descriptions and Specifications

STATEMENT OF WORK

NAVFAC EURAFSWA is the Government agent delegated to procure electricity for the U.S. Navy in Spain.

The Government is soliciting offers for supply and transmission of electricity and ancillary services for the **Naval Support Activity (NSA) Rota**, an installation, whose location in the electrical grid is identified by the **NIF/CIF G3360073E** and **CUPS ES0031102555053001GD0F** belonging to Endesa Distribución Eléctrica S.L.U. as competent Distributor. Such installation shares the Spanish Navy Base, Agrupación Base Naval de Rota, and is located in Rota, Cadiz. The **estimated** amount of energy to be provided is **98.7 GWh**.

Technical specifications and account data of the point of service, including estimated electric consumption, historical data and load profile, are provided in section J.

The present solicitation intends to select one supplier to provide electricity to NSA Rota over the 18- month period November 1, 2015 – April 30, 2017.

To this purpose the Client states:

- That the Client's supply contract is not subject to any restriction that would prevent the Contractor from starting the supply at the set date;
- That the Client does not have any obligations pending with previous supply, transportation and dispatching contractors;
- That the point of delivery is connected to the Distributor's grid, and that these connections are adequately configured to meet energy requirements.

The Offeror shall specify in the technical offer:

- That it qualifies as electric energy vendor registered in 2nd Section of "Registro Administrativo de Distribuidores, Comercializadores, y Consumidores Cualificados" located at Ministry of "Economía y Hacienda";
- That in 2013 or 2014 it supplied electricity to end users in the Free Market for a total quantity of at least 1000 GWh/year. The number of end users and the volume of electricity totally supplied shall be provided in section J, form D.
- That in 2013 or 2014 the offeror supplied at least 100 GWh (Giga-watt hours) to at least one end user in the free market. Provide a point of contact and method of communication (e-mail address and telephone number) for the point of contact. This end user may be contacted directly by the United States Government. This information will be submitted per Section J Form D

Joint Venture (JV) Offerors shall furnish with their proposal a notarized legal document that establishes the JV and all the documentation listed in section L.5.

Upon award, the Offeror is required to submit a bank guarantee in the amount of €250,000.00. The bank guarantee, whose language is located at J-200000-05, shall be submitted not later than ten business days after award and shall be valid through the end of the performance period and until all invoices have been submitted and reconciled.

Upon the execution of this contract, the Client authorizes and the Contractor agrees to subscribe to the access tariff contract with the Distributor, on the Client's behalf.

The Contractor shall designate at least **two** points of contact (a prime and a deputy) to be responsible for all customer service matters with the Client. **The point of contact shall not be a Call Center.**

Not later than 10 working days prior to the commencement of the performance period, the Contractor shall notify the Client, via email, the name, email address and telephone numbers of the Client's points of contact shown in block 10 of the SF33 (first page) or at Art.12.1. Should a point of contact be replaced, the Contractor shall provide the new reference data to the Client within 5 working days. Failure to meet these terms will be governed by the procedure in Art.

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Article 1. Communication and Contract Modifications

Communication between the Parties concerning contract administration and modifications will be conducted in writing. Such communication will be sent by mail or email with all correspondence attached in .pdf format.

If corresponding via mail, the Contractor is required to address correspondence

to: NAVFAC EURAFSWA
ATTN: CHERIE MITCHELL
Viale Porto, Box 51 – Aeroporto Capodichino
80144 Napoli, Italia

E-mail: cherie.mitchell@eu.navy.mil

Phone: +39-081-568-6395

The Contractor shall ensure that all contract correspondence that is addressed to the Government is submitted in English, or English and Spanish.

Each modification to the contract shall be performed through the bilateral completion of the Standard Form 30 (SF30), by Client and Contractor.

The Client shall issue a SF30 to the Contractor who will countersign and return to the Client within 2 weeks by email in .pdf format.

Article 2. Conditions of the Supply and Transmission of Electricity and Ancillary Services

The electricity supply shall be continuous and non-interruptible. Transmission, distribution and ancillary services will be provided by the Contractor who will subscribe to the Access Tariff Contract with the Distributor, on the Client's behalf as agreed in Article 1.

The quantity of electricity under the contract is subject to ordinary variations due to different causes. However, such variations neither shall justify reason for failure to deliver electricity nor justify any Contractor's claims against the Client.

The quantities of supplies or services specified in section J are estimates only and are not purchased through this contract. The Contractor shall not request any revision to prices if, at the completion of the billing month, consumption resulted in lower or higher usage than the Client's estimate. Likewise, should consumption be higher than estimated, the Client shall not request any

discount at the completion of the billing month.

For each delivery point through the duration of this contract, the Contractor shall make the following available to the Client by the 10th of every month, through a **secure Website** using a personal password:

- hourly and/or 15-minute consumption data in table format
- hourly and/or 15-minute consumption data in graph format
- monthly summary demand and consumption data for all the calendar months preceding the current month, if available

Failure to meet these terms will be governed by the procedure in Art. 17.

The Client agrees to purchase and pay for the total quantity supplied by the Contractor as recorded by the Distributor's official meters at the agreed contract prices.

Payments will be made, unless differently agreed upon by the Parties, via bank transfer through NSA Rota Payment Office as detailed in Art. 12.

Article 3. Period of Performance

The contract performance shall begin on November 1, 2014 at 00:00 through April 30, 2017 at 24:00.

The contract performance period ends on April 30, 2017 at 24:00.

Article 4. Unit Price of Supply

The Offeror shall submit a pricing offer, as follows:

- A firm fixed **Offer Price on the J-200000-04 firm fixed price form** which will include the per MWh consumed through the entire performance period. This Offer Price, in €/MWh, can be diversified according to Time Bands described in the Legend.

Offer Price shall NOT include:

- Tarifa de Acceso (Término de Energia):
 - Pagos por capacidad €/kWh
 - Pérdidas (% sobre los Pagos por Capacidad)
- Costes permanentes (% sobre la Tarifa de Acceso):
 - Tasa de CNE
 - Compensaciones insulares y extrapeninsulares
 - Operador del Sistema
- Costes de Interrumpibilidad (VPI)
- Costs relevant to the metering system rental, installation, maintenance, validation and sending of energy usage data to the OMEL, as set by art.2.2 of ITC 3860/2007.

Offer Price shall include:

- costs associated with the application of the 2003/87/CE Directive "Emissions Trading" on GHG emissions;
- imbalance costs and any other dispatch costs related to scheduling of deliveries; and,
- costs relevant to holding the necessary authorizations, in accordance with current legislation, to subscribe on behalf of the Client, to purchase transportation rights, production capacity at national level and import of energy from foreign markets.

The following charges, as well as all other taxes (see Art. 11), shall not be applied:

- Impuesto Municipal (% sobre Pagos por Capacidad + Pérdidas)

Article 5. Offer Conditions and Award Criteria

Receipt of Offeror's Technical and Pricing Offers are due as described in section

L The basis for award is found in Section M.

Article 6. Letters of references and Bank Guarantees

In order to participate in the present Solicitation, the Offeror shall submit two letters of proper bank references issued by two different credit institutions or authorized brokers. Such bank references shall state the Offeror's financial capability to acquire the required bank guarantees in case of award. It is mandatory that in the subject the letters make specific reference to this Solicitation number N33191-15-R-0842.

The awarded Offeror will be required to sign and submit a bank guarantee (the text and amount are provided in J-2000000-05) ten business days after contract award.

The bank guarantee will be valid through April 30, 2017 and will be payable on a written first -demand basis. Additionally, the Client will retain physical possession of the bank guarantee documents until all invoices have been submitted and reconciled following conclusion of the performance period.

This demand will occur if the contract is terminated due to Contractor's failure as per Article 16.

Article 7. Total Price and Conditions of Connection Tariffs and Additional Costs

When the Contract is awarded, the Client authorizes the Contractor to subscribe the access tariff contract with the Distributor, on the Client's behalf.

In addition to the Offer Price, the Contractor shall invoice the Client the amounts relevant to current costs of Tarifa de Acceso, Costes permanentes Costes de Interrumpibilidad (VPI), Costs relevant to the metering system rental, installation, maintenance, validation and sending of energy usage data to the OMEL, as determined by the Spanish law and/or regulatory body.

No charges additional to the ones listed will be invoiced, and Contractor will provide details about metered consumption.

Article 8. Reference Provisions

The regulation of electricity in Spain, to include supply, transportation and distribution, is governed by the Spanish Civil Code. The Contractor will adhere to the rules and regulations implemented by ITC, CNE and other governing bodies, for the purposes of electricity regulation.

For the issues not explicitly provided for in this contract, both Parties agree to accept the provisions contained in the regulatory body resolutions and in the Spanish Civil Code.

Article 9. Change in terms and conditions for regulated services

In the event that rules and regulations issued and enforced by regulatory bodies should affect the

supply contract terms the Contractor and the Client will negotiate modifications in order to comply with the requirements within 60 days from one Party's request to the other Party.

In case the modifications introduced within the context of the new regulations should affect the mutual interest of the Parties to such an extent as to cause an increase or decrease in the cost of performance to the Parties, within 60 days from one Party's request to the other Party the Contractor and the Client will make an equitable adjustment in the contract price to protect the interests of both.

Article 10. Taxes and duties

The Contractor represents that the contract price, including the prices in any subcontracts awarded under this contract, do not include taxes as the Government is exempt under the Agreement of Defense Cooperation Between the United States and the Kingdom of Spain from all Spanish taxes, duties and charges directly applicable to such acquisition if the total cost of the acquisition equals or exceeds 600 euros.

The Contractor represents that the contract prices, including subcontract prices, do not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes, or any other taxes from which the United States Government is exempt:

- (1) Derechos de Aduana (Customs Duties)
- (2) Impuesto de Compensacion a la Importacion (Compensation Tax on Imports)
- (3) Transmisiones Patrimoniales (Property Transfer Tax)
- (4) Impuesto Sobre el Lujo (Luxury Tax)
- (5) Actos Juridicos Documentados (Legal Official Transactions)
- (6) Impuesto sobre el Trafico de Empresas (Business Trade Tax)
- (7) Impuesto Especiales de Fabricacion (Special Products Tax)
- (8) Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its By-Products)
- (9) Impuesto Sobre el Uso de Telefona (Telephone Tax)
- (10) Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax)
- (11) Impuesto Industrial (Industrial Tax)
- (12) Impuesto de Rentas Sobre el Capital (Capital Gains Tax)
- (13) Plus Vailia (Increase on Real Property)
- (14) Contribucion Territorial Urbana (Metropolitan Real Estate Tax)
- (15) Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax)
- (16) Impuestos de la Diputacion (Country Service Charges)
- (17) Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges)
- (18) IVA (VAT)
- (19) Impuesto sobre electricidad

Article 11. Invoice and Payment

The Contractor may only invoice for charges allowed under the terms and conditions of this contract.

All expenses relevant to invoicing, including stamps and mailing costs, shall be the Contractor's responsibility and shall be included in the offered price. If such costs are broken out and included on any

invoice, the costs will not be reimbursable. All invoicing shall be based on metered quantities at the service point.

In the event the Distributor has not performed a meter reading on the account, the Contractor shall invoice on the basis of the estimated monthly consumption as per section J, column "Electrical Energy Consumption Monthly Forecast." Any and all estimated bills shall be "trued up" on the first billing cycle after the Distributor bill is made available.

If feasible, agreements may be reached with the Contractor to have the invoicing based on the self-readings monthly provided by the Client when the Distributor's information is missing.

In case any undue charge is invoiced by the Contractor and paid by the Client, the money paid in excess shall be reimbursed through crediting the amount on the relevant account in order to be balanced with the following bill(s). Should this be unfeasible due to contract expiration, the credit claimed by the Client shall be reimbursed through a check addressed to the U.S. Treasury.

The Contactor shall NOT issue credit notes as the U.S. Government cannot accept credit notes under any type of circumstances. Therefore, any credit due to the Client will be indicated in the next invoice(s) for consumption and deducted from the total amount due. Should there be credit(s) at the time the contract expires or if unexpectedly terminated, the credit(s) will be reimbursed to the U.S. Government via banker's draft made payable to the U.S. Treasury and forwarded to the NAVFAC EURAFSWA FM POC Mr. Leandro Fernandez.

Invoices shall be issued to the Client by the 20th day of the month following the month when the consumption occurred.

The payment of invoices will be made within 30 calendar days after e-mail receipt of a proper invoice by the office designated in Article 12.

Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available, as described at Article 10.

In case the Client detects errors or inaccuracies in the invoices and gives written notice to the Contractor, such invoices will be put on hold until the issue is settled and no charge for late payment will be assessed.

Section E - Inspection and Acceptance

INVOICING INSTRUCTIONS

ARTICLE 12. Submission and Payment of Invoices

The Contractor will submit their paper invoices to the following addresses:

U.S. Naval Support Activity
Central T. Ed 64
Apartado 33/BOX 9
11.530 Base Naval de Rota

In addition to the paper invoices sent through the regular mail service, **the Contractor shall email a pdf version of the invoice** to each individual below:

Jose Perez Rodriguez	Jose.PerezRodrigu.SP@eu.navy.mil
Manuel Marquez Acuña	Manuel.MarquezAcu.SP@eu.navy.mil
Juan Antonio Ayllon Gonzalez	JuanAntonio.Ayllo.SP@eu.navy.mil
Alfredo Menendez Gonzalez	Alfredo.menendezg.sp@eu.navy.mil

The official receipt date will be the date the invoice is e-mailed to the points of contact.

The payment of the invoices will be made by the following Government Office within 30 calendar days upon receipt of a proper invoice.

Commercial Bill Paying Office
Naval Support Activity, Rota, Spain

The Contractor is required to provide the Client with the information necessary to make payment via bank transfer. Within 15 working days after award, the Contractor shall e-mail this information directly to the points of contact shown in block 10 of the SF33 (first page) with copy to the Contracting Officer.

The Contractor is required to promptly notify the Contracting Officer of any change affecting the way the payment of invoices must be performed.

Except as required in Article 7, the Client will not be required to submit any deposit, bank or insurance guarantee.

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	Destination	Government	Destination	Government

Section F - Deliveries or Performance

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	30-APR-2017	1	NAVFAC EURAFSWA ROTA SPAIN BASE NAVAL DE ROTA ROTA (CADIZ) FOB: Destination	N33191

Section G - Contract Administration Data

Section I - Contract Clauses

CONTRACT CLAUSES

Article 13. Joint Ventures Agreement

For the purposes of this solicitation , a Joint Venture (JV) refers to a U.S.-Styled formal legal entity in the nature of a partnership comprised of two or more persons or companies. Each JV must provide one (1) CAGE/NCAGE code, one (1) DUNS number for the JV and one (1) DUNS number for each member comprising the JV. Each JV must be registered in SAMs using the name of the JV.

Joint Venture Offerors (JV) offerors, shall provide with their proposal a notarized legal document that establishes the JV. The JV Agreement shall take effect upon the submission of the proposal and remain irrevocable until one (1) year after the work has been finally inspected and accepted by the Government. Submission of the notarized legal document that establishes the JV shall be furnished with the proposal in its original language version along with a certified English translation of the notarized JV document. **The Joint Venture must be formed and valid at the time of submission of the proposal.** The validated notarized legal document must include language that each member of the JV will be jointly and severably liable for the performance of the whole contract and will be incorporated into the contract award if award is made to the JV.

Only offers from Prime Contractors and Joint Ventures (JV) will be accepted. Offers from Temporary Joint Ventures (Unión Temporal de Empresas (UTE)) will not be accepted for this procurement and will be considered non-responsive to the solicitation.

1. The Joint Venture Agreement shall include, at a minimum, the following:

- (a) Name of firms that form the JV and the name of the JV.
- (b) Name and title of the corporate officials signing on behalf of each party.
- (c) Solicitation number.
- (d) Description of the responsibilities in terms of work category for each member (for example: Firm A performing 100% of C-2-d.)
- (e) The statement "The composition and structure of the JV will remain unchanged from award to one (1) year after the work has been finally inspected and accepted by the Government."
- (f) Date of issuance of the agreement and notarized signature of the corporate officials signing in behalf of each party.
- (g) Statement under oath stating that the Joint Venture(JV) is in compliance at the time of proposal submission with all applicable laws, rules, and regulations. This statement must be signed under oath by all members comprising the Joint Venture.

The U.S. Government reserves the right to review the actual JV Agreement to determine its basis and compliance with the applicable laws. Any internal agreements affecting the internal composition of the existing JV and its potential liabilities in relation to the contract (performance guarantee, insurance, etc) will be sent to the Contracting Officer to provide notice of the same. Any change in the composition of the JV will require the JV to formally request a Novation Agreement in accordance with FAR 42.12, which will be approved/disapproved at the discretion of the Contracting Officer.

Article 14. Protest After Award

“Protest” means a written objection by an interested party to any of the following:

- A solicitation or other request by an agency for offers for a contract for the procurement of property or services.
- The cancellation of the solicitation or other request.
- An award or proposed award of the contract.
- A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

Interested party for the purpose of filing a protest” means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

Upon receipt of a notice of protest or a determination that a protest is likely, the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

Upon receipt of the final decision in the protest, the Contracting Officer shall either—

- Cancel the stop-work order; or
- Terminate the work covered by the order as provided in the contract.

If a stop-work order issued under this article is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if:

- The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

The Government's rights to terminate this contract at any time are not affected by action taken under this article.

If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

Article 15. Termination for Convenience

The Client has the right to unilaterally terminate the contract with a 3-month advance notice.

The Contractor has the right to unilaterally terminate the contract by giving the Client a 6-month written advance notice.

The party that terminates the contract shall pay a fair compensation of provable irretrievable costs afforded or to be afforded by the other party until the set contract expiration.

Article 16. Termination for Default

The Contracting Officer on behalf of the Client can terminate the contract by giving the Contractor a written notice by registered mail in case one of the following conditions should occur:

- beginning of liquidation procedures;
- interruption or temporary suspension of the activity;
- failure to provide a bank guarantee in accordance with Article 6.

Article 17. Failure to Meet Minor Contract Terms

Minor term is a term that, if not observed, is judged insufficient to result in the termination for default.

In case the Contractor fails to meet some minor terms of the present contract and the Client notifies such failure in writing, the Contractor is given 15 working days to solve the issue or to show evidence of a justified reason for the failure. If the problem persists without justification, the Client will record the failure in the past performance file for evaluation in future competitions.

Article 18. Force Majeure

No Party shall be liable for any failure to perform its obligations where such failure is a result of acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), invasion, sovereign act of foreign nations, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labour dispute, strike, interruption or failure of electricity due to any third party (REE, Distributor, etc.) or legislative provisions which make it impossible for any of the parties to fulfil their obligations.

Upon the occurrence of a force majeure, the party affected by the force majeure shall notify the other party in writing of the commencement of the force majeure.

Where a force majeure continues for a period of 90 days, the Party affected by the force majeure may, by written notice to the other Party, terminate this agreement.

Article 19. Contract Administration

NAVFAC EURAFSWA has the right to delegate the partial or total contract administration authority to other Government entities.

In no event, however, will any understanding or agreement, modification, change order, or other matter deviating from the terms of the contract between the Contractor and any person other than the Contracting Officer be effective or binding upon the Government, unless formalized by proper contractual documents executed by the Contracting Officer prior to completion of this contract.

The authorized representative as indicated hereinafter:

1. The Contracting Officer's Representative (COR) is designated by the Contracting Officer as the authorized representative of the Contracting Officer. The COR is responsible for monitoring performance and the technical management of the effort required hereunder, and should be contacted regarding questions or problems of a technical nature.

2. The Contract Specialist designated is the Administrative Contracting Officer's representative on all other contract administrative matters. The Contract Specialist should be contacted regarding all matters pertaining to the contract.

Written notice of the above designations will be provided by the Contracting Officer to the Contractor.

Article 20. Non-Disclosure Agreement and Privacy Clause

Throughout the duration of the contract, the Parties agree not to divulge information regarding the Contract, except for data and information needed by third parties in order to perform or complete the obligations under contract terms and conditions.

In compliance with Ley Orgánica 15/1999, regarding Private Data Protection (“Protección de Datos de Carácter Personal”), data handling is authorized for contract purposes only.

Article 21. Gratuities

The right of the Contractor to proceed may be terminated by written notice if, after notice, the agency head or a designee determines that the Contractor, its agent, or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government and intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

- (a) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (b) If this contract is terminated under paragraph (a) of this clause, the Government is entitled—
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee.
- (c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Article 22. Warranty Against Contingent Fees

The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to cancel this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

"Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

Article 23. Domicile of the Parties

The legal domicile for service of process is the Contractor's legal place of incorporation. The legal domicile for the Government is defined in the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965.

Article 24. Inconsistency between English and Spanish language

In case of inconsistency or ambiguity between the contract terms expressed in English and Spanish languages, English shall control.

Article 25. Disputes

Except as provided by the Spanish Law, all disputes arising under or relating to this contract shall be resolved under this article.

Claim, as used in this article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim. The submission may be converted to a Claim, by complying with the submission and certification requirements of this article, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

A Claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

When submitting any Claim, the contractors shall provide the certification specified below:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit. If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

Article 26. Assignment of Claims

- (a) No claims for monies due, or to become due, shall be assigned by the Contractor unless:
 - a. Approved in writing by the Contracting Officer;
 - b. Permitted by the laws and regulations of the Contractor's country; and,
 - c. Made in accordance with the laws and regulations of the United States of America..
- (b) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—
 - a. Identify the assignee by name and complete address; and
 - b. Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

Article 27. Contract Terms And Conditions-- Commercial Items (MAY 2015)

- (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. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. 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.** See Article 27
- (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 or 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. See Article 13

(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.-- See Article 13

(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. See Article 12

(l) Termination for the Government's convenience. See Article 17

(m) Termination for cause. See Article 18

(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. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 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, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations 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; and (9) the specification.
- (t) System for Award Management (SAM).
- (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 SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM 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 SAM database to ensure it is current, accurate and complete. Updating information in the SAM 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 SAM 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 SAM 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 SAM 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 SAM database. Information provided to the Contractor's SAM 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 SAM accessed through <https://www.acquisition.gov>.

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

End Clauses

Section J - List of Documents, Exhibits and Other Attachments

DOCUMENTS, EXHIBITS, AND OTHER

<u>ATTACHMENT NUMBER</u>	<u>ATTACHMENT TITLE</u>
J-200000-01	Definitions and Acronyms
J-200000-02	Historic Electric Energy Consumption
J-200000-03	Form D
J-200000-04	Firm Fixed Price Form / Formulario precio fijo
J-200000-05	Bank Guarantee
J-200000-06	Projected Demands and Load Profiles.
J-200000-07	Spanish translation of the original solicitation

J200000-01

Definitions and Acronyms

Government stands for the Government of the United States of America (U.S.);

NAVFAC EURAFSWA stands for Naval Facilities Engineering Command Europe Africa South West Asia;

Client stands for the U.S. Navy;

Contracting Officer is the Government representative in charge for executing the supply contract on behalf of the Client;

Contracting specialist is the Government representative responsible for the contract preparation, contracting transactions, and pre-award and post-award functions;

Offeror stands for a supplier that submits an offer;

Contractor stands for the Offeror that is awarded the contract;

RFP stands for Request for Proposal;

SF stands for Government's standard form; "SF" is followed by a number identifying what contract action the form is intended for;

TET stands for the Government Technical Evaluation Team in charge to receive, accept and evaluate the offers;

ADR stands for the Alternative Dispute Resolution;

ITC stands for the Ministry of Industry, Tourism and Commerce which is in charge of the energy policies and regulated electricity rates;

CNE stands for the National Energy Commission (Comisión Nacional de Energía) which is the regulatory body for Spain's energy systems, as per Hydrocarbons Act 34/1998 and R.D. 1339/1999;

Distributor is the Entity running the electrical distribution activity in its area of responsibility;

Delivery Point is defined as the interconnection with the competent Distributor's network identified through the 22-alphanumeric-digit CUPS (Codigo Universal de Punto de Suministro), and by the CIF/NIF (Código de Indentificación Fiscal and Número de Indentificación Fiscal) both indicated at the art.1 of this solicitation/contract.

High Voltage (HV) stands for delivery voltage at delivery points exceeding 1 kV;

Connection Tariffs (Tarifas de Acceso) is the rate for electric energy transportation, dispatching, distribution and additional system costs applicable to each delivery point as per of R.D. 1164/2001 depending on the supply voltage (art. 8);

Ancillary Services are all services as provided as a consequence of the Contractor subscribing the Access Tariff Contract, and that are other than transmission, dispatching, and distribution services;

REE stands for Spanish Electrical Grid (Red Electrica de España), which is the company dedicated to the power transmission and the operation of electrical systems as per Electricity Sector Act 54/1997 and following modifications;

OMEL stands for Iberic Energy Market Operator (Operador del Mercado Iberico de Energia) whose role and functions are established by Electricity Sector Law 54/1997, and R.D. 2019/1997;

Parties stands for the Client and Contractor; and,

Time Bands are defined as follows:

Six-Band Structure: based on 6 bands (Periodo Tarifario) named P1, P2, P3, P4, P5 and P6, as defined in the Table 1 shown at art.8.3.3 of R.D. 1164/2001 and subsequent modifications.

J200000-02
Historic Electric Energy Consumption

Address: **Base Naval de Rota – Base Naval Rota (Cádiz)**
 CUPS: **ES0031102555053001GD0F**
 Voltage: **66 kV**
 Tarifa de Acceso: **6.2**

Active Energy consumption - 12 consecutive months
Energia Activa - 12 meses consecutivos

month	P1 [MWh]	P2 [MWh]	P3 [MWh]	P4 [MWh]	P5 [MWh]	P6 [MWh]	TOTAL [MWh]
Jul-14	1,538	2,135	-	-	-	4,266	7,939
Aug-14	-	-	-	-	-	8,955	8,955
Sep-14	-	-	1,534	2,560	-	4,150	8,245
Oct-14	-	-	-	-	4,070	3,756	7,827
Nov-14	-	-	1,162	1,920	-	3,871	6,952
Dec-14	1,262	2,060	-	-	-	3,875	7,198
Jan-15	1,303	2,160	-	-	-	3,980	7,443
Feb-15	1,159	1,929	-	-	-	3,312	6,400
Mar-15	-	-	1,339	2,270	-	3,953	7,563
Apr-15	-	-	-	-	3,340	3,268	6,608
May-15	-	-	-	-	3,918	4,958	8,877
Jun-15	1,095	1,010	867	1,405	-	4,281	8,658
Total	6,358	9,295	4,902	8,155	11,329	52,625	92,664
%	6.9%	10.0%	5.3%	8.8%	12.2%	56.8%	100.0%

Month of June 2015

	P1	P2	P3	P4	P5	P6	
Act Energy	1094.977	1009.971	866.596	1405.184	-	4280.971	8657.699
Primary busbars consumption	1142.053	1058.85	897.373	1470.953		4497.206	9066.435
Energy price (€/kWh)	0.106705	0.0902	0.07588	0.064433	0.062836	0.052282	
VPI rate (€/kWh)	0.00213	0.00213	0.00213	0.00213	0.00213	0.00213	0.00213
Total VPI cost (€)	€ 2,432.57	€ 2,255.35	€ 1,911.40	€ 3,133.13	€ -	€ 9,579.05	€ 19,311.51
Total Termino de energia (€)	€ 119,272.09	€ 93,354.73	€ 67,668.71	€ 93,673.35		€ 233,396.77	€ 607,365.66

Act En / Busbars cons RATIO	0.95878	0.95384	0.96570	0.95529		0.95192	0.95492
Act En / Busbars cons Rev. RATIO	1.042993	1.048396	1.035515	1.046805		1.050511	1.047211
Act En / Busbars cons Rev.%	104.3%	104.8%	103.6%	104.7%		105.1%	104.7%

**J200000-03
Form D**

J-200000-03 Form D

(a) Total electricity supplied and number of end users:

CALENDAR YEAR 2013 OR 2014

Offeror	Year	Total electricity supplied to end users in the Free Market [GWh/year]	Nr. of end users

(b) Electricity supplied to a single large end user:

Offeror	Year	Electricity supplied to a single end user in the Free Market [GWh/year]	End user Contact Information

Signature and Corporation stamp / Sello de la empresa y Firma

Date/Fecha

J200000-04
Firm Fixed Price Form

See external document (Attachment)

J200000-05
Bank Guarantee

AUTONOMOUS BANK GUARANTEE PAYABLE ON FIRST WRITTEN DEMAND

....., 2015

Attn: Commanding Officer, NAVFAC EURAFSWA
Viale Porto Box 51 – Aeroporto Capodichino
80144 Napoli, ITALIA

Subject: AUTONOMOUS BANK GUARANTEE PAYABLE ON FIRST WRITTEN DEMAND

The underwritten Bank (hereafter the BANK), with legal seat in _____, fiscal code _____, VAT _____, Chamber of Commerce registration no. _____, Branch of _____, here represented by its Bank Manager Mr _____, born in _____ on _____, holding the necessary powers to issue an executable bank guarantee payable on first written demand (hereafter the GUARANTEE) in favour of NAVFAC and to meet the related obligations as mutually agreed assuming that:

- a) NAVFAC EURAFSWA with legal seat in Viale Porto Box 51 – Aeroporto Capodichino 80144 Napoli Italia, VAT/FC N, 80156020630 (hereafter the CLIENT), and _____ with legal seat in _____, NIF/CIF codes _____ and _____, Chamber of Commerce registration no. _____, (hereafter the SUPPLIER), have agreed to sign a contract which provides for the SUPPLIER to deliver electric energy to the CLIENT starting from November 1, 2015 through October 31, 2016;
- b) as suspension clause for contract efficacy the SUPPLIER must give the CLIENT a bank guarantee payable on first written demand issued by a primary Spanish bank, valid through 24.00 hours of the last day of the contract, the text of which guarantee is that provided by the CLIENT;
- c) in case of unilateral termination of the contract it is agreed that the GUARANTEE should be valid through 24.00 hours of the last contract day, independently of the termination day; considering all the above assumptions a fundamental part of GUARANTEE obligations, the BANK as here represented agrees to meet the following obligations towards the CLIENT:

ART.1 OBLIGATIONS

On behalf of the SUPPLIER the BANK irrevocably and unconditionally guarantees the CLIENT up to a maximum amount of 250,000.00 Euros (twohundredfiftythousand and 00/100 €), including capital, VAT, duties and taxes, accessories, and other CLIENT's requests, assuming autonomous obligation of guarantee towards the CLIENT in the agreed terms.

The present bank guarantee covers the electric energy supply which the Supplier is to deliver the Client from November 1, 2015.

Therefore the BANK shall pay the amount requested up to the agreed maximum on the CLIENT's first written demand. The payment will be made to the CLIENT's bank account and following the CLIENT's crediting directions within five working days from receiving the demand. The demand shall

be mailed as Registered R.R. or telegram.

The BANK will renounce all exceptions, oppositions, actions, claims for whatever reason by the SUPPLIER or third parties, including actions concerning contract validity and efficacy or should a liquidation procedure be applied for the SUPPLIER. In any case there shall be no charges, expenses or formalities for the CLIENT.

The CLIENT agrees that excussion will occur only in case of contract termination due to the SUPPLIER's failure as per article 16 of the Contract.

Should the term of five working days be delayed, the CLIENT will be granted an interest rate calculated according to Spanish Law until the payment is effective without any further actions.

ART. 2 PARTIAL EXCUSSION; CESSION OF GUARANTEE RIGHTS

In case of partial excussion of the amount fixed in art.1, the BANK's obligation shall not change for the remaining amount.

In no case shall the BANK reduce the GUARANTEE amount (art.1) which is fixed until the deadline as fixed in art.3.

Should the CLIENT transfer his contract, the BANK's obligation will not change provided that the BANK is notified of such cession by both parties not later than on the date of excussion on the first written demand.

ART. 3 DURATION AND VALIDITY OF THE GUARANTEE; TERMINATION

The GUARANTEE is valid and effective through the last contract day, October 31, 2016.

In case of unilateral termination of the contract (see letter c), the GUARANTEE will terminate the last day of validity of the original contract independently of the date on which the termination becomes effective. The same provision applies to any other form of contract resolution before the original terms.

The BANK agrees that the GUARANTEE shall not be revoked for any reason whatsoever nor shall the B A N K unilaterally terminate the GUARANTEE before the agreed deadline.

ART. 4 COMMUNICATIONS

All communications on the subject of the GUARANTEE should be mailed to: BANK:,
....., Fax, Attention of NAVFAC: NAVFAC
EURAFSWA, Viale Porto Box 51 – Aeroporto Capodichino 80144 Napoli Italia, Fax
+390815685517, Attention of Paul Heavey (Contracting Officer)

ART. 5 EXCLUSIVE LEGAL JURISDICTION

Any disputes which should arise concerning the GUARANTEE will fall under the exclusive legal

jurisdiction of the Court of Madrid. Any other Court is expressly excluded.

Signature the BANK _____

The BANK approves the terms and conditions of the present GUARANTEE with reference to the above articles no.1-3-5.

Signature the BANK _____

J200000-06
Projected Demands and Load Profiles

See external document (Attachment)

J200000-07
Spanish version of the original solicitation

See external document (Attachment)

Section L - Instructions, Conditions and Notices to Bidders

INSTRUCTIONS TO OFFERORS

L.1 SITE VISIT

There is no pre-proposal conference and site visit scheduled for this requirement.

L.2 FORMAT TO SUBMIT PRE-PROPOSAL INQUIRIES (PPI)

All prospective offerors submitting Pre-Proposal Inquiries (PPIs) must use the attached PPI form. All PPIs shall be submitted to Ms. Cherie Mitchell at e-mail address cherie.mitchell@eu.navy.mil with a copy to Ms. Teresa Traettino at e-mail address teresa.traettino.it@eu.navy.mil

PPIs shall be submitted Microsoft Word and only have one question per sheet.

In order to allow time for the Government to respond to the PPI, the cutoff date for PPIs is Friday, September 4th 2015.

PRE-PROPOSAL INQUIRY	
RFP: N33191-15-R-0842	PPI No.
SOLICITATION: Competitive Power Spain	
<p>NOTE: <u>ALL</u> PRE-PROPOSAL INQUIRIES SHALL BE SUBMITTED BY E-MAIL, ON THIS FORM TO THE FOLLOWING E-MAIL ADDRESSES. SUBMIT ONLY ONE INQUIRY ON EACH FORM.</p> <p>cherie.mitchell@eu.navy.mil and Teresa.Traettino.it@eu.navy.mil</p>	
DATE OF PROPOSAL INQUIRY:	
FROM FIRM:	POC:
ADDRESS:	
PHONE NO.:	E-MAIL ADDRESS:
PROPOSAL INQUIRY: (Please type or print clearly)	
(Include RFP Section, page number, and paragraph if applicable)	
GOVERNMENT RESPONSE:	
Responder's signature/date:	
Amendment required? Yes	No

L.3 PERIOD OF ACCEPTANCE OFFERORS:

Only offers received via e-mail within the stated time will be accepted. The official time stamp will be the one of the Contract Specialist's computer.

L.4 REQUEST FOR PROPOSAL (RFP) FILES:

As mandated by our agency, solicitation files are posted to the Federal Business Opportunities (FEDBIZOPS) website: <https://www.fbo.gov>

It is the sole responsibility of the offeror to obtain the RFP files, along with any amendments, from this website.

L.5 JOINT VENTURE (JV) AGREEMENTS

For the purposes of this solicitation, a Joint Venture (JV) refers to a U.S.-Styld formal legal entity in the nature of a partnership comprised of two or more persons or companies. Each JV must provide one (1) CAGE/NCAGE code, one (1) DUNS number for the JV and one (1) DUNS number for each member comprising the JV. Each JV must be registered in the System for Award Management (SAM) using the name of the JV. The **System for Award Management (SAM)** is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS. There is NO fee to register for this site. The website is: www.sam.gov

Joint Venture Offerors (JV) offerors, shall provide with their proposal a notarized legal document that establishes the JV. The JV Agreement shall take effect upon the submission of the proposal and remain irrevocable until one (1) year after the work has been finally inspected and accepted by the Government. Submission of the notarized legal document that establishes the JV shall be furnished with the proposal in its original language version along with a certified English translation of the notarized JV document. **The Joint Venture must be formed and valid at the time of submission of the proposal.** The validated notarized legal document must include language that each member of the JV will be jointly and severably liable for the performance of the whole contract and will be incorporated into the contract award if award is made to the JV.

Only offers from Prime Contractors and Joint Ventures (JV) will be accepted. Offers from Temporary Joint Ventures (Unión Temporal de Empresas (UTE)) will not be accepted for this procurement and will be considered non-responsive to the solicitation.

1. The Joint Venture Agreement shall include, at a minimum, the

- following:
- (a) Name of firms that form the JV and the name of the JV.
 - (b) Name and title of the corporate officials signing on behalf of each party.
 - (c) Solicitation number.

- (d) Description of the responsibilities in terms of work category for each member (for example: Firm A performing 100% of C-2-d.)
- (e) The statement "The composition and structure of the JV will remain unchanged from award to one (1) year after the work has been finally inspected and accepted by the Government."
- (f) Date of issuance of the agreement and notarized signature of the corporate officials signing in behalf of each party.
- (g) Statement under oath stating that the Joint Venture(JV) is in compliance at the time of proposal submission with all applicable laws, rules, and regulations. This statement must be signed under oath by all members comprising the Joint Venture.

The U.S. Government reserves the right to review the actual JV Agreement to determine its basis and compliance with the applicable laws. Any internal agreements affecting the internal composition of the existing JV and its potential liabilities in relation to the contract (performance guarantee, insurance, etc) will be sent to the Contracting Officer to provide notice of the same. Any change in the composition of the JV will require the JV to formally request a Novation Agreement in accordance with FAR 42.12, which will be approved/disapproved at the discretion of the Contracting Officer.

L.6 5252.215-9300 CONTENT OF PROPOSALS (JAN 2003)

PROPOSAL REQUIREMENTS. The technical proposal and price/cost proposal shall be submitted in separate volumes. The technical proposal shall not contain any cost/pricing information. The technical proposal presented by the offeror to whom the award is made will be incorporated into the contract at time of award.

Proposals shall be submitted via e-mail with the subject line as one of the following, as appropriate:

“SOLICITATION N33191-15-R-0842; Competitive Power Spain”

Multiple e-mails may need to be sent for any of the submissions, if your e-mail exceeds 5MB.

The U.S. Navy computer server will only accept e-mails with attachments up to 5MB. If you need to submit more than one e-mail for any of the above submission, then number them at the end of the e-mail subject title as 1 of ?, 2 of ?, etc.

Proposals not received at the above address on or before the hour and date set for the receipt of proposals shall be subject to the provisions of FAR Clause 52.215-1 Instructions to Offerors -- Competitive Acquisition (JAN 2004).

Offers are solicited on an “all or none” basis and FAR 52.215-1, INSTRUCTIONS TO OFFERORS COMPETITIVE ACQUISITION in Section L, is hereby modified. Failure to submit offers for all line items listed shall be cause for rejection of the offer.

b) The offeror shall submit the following information:

- (1) Technical Proposal Submission: Submit the following:
 - a. Submit all Technical factor requirements.
 - b. Page format shall have margins of 1 inch on all four sides. Text shall be black, using Times New Roman or Courier, and no smaller than 11 point and single line spacing.

(2) Pricing Submission:

All offerors shall be notified of their technical rating within seven (7) calendar days after the technical proposal due date. Offerors found to be technically acceptable shall be instructed of the due dates for the pricing submission.

The Pricing Submission shall consist of the following:

- a. A completed J-200000-04. The submitted J-200000-04 must have proposed prices for each Time Band.
- b. A statement that the offeror agrees to hold prices for 5 days from the date specified for the receipt of prices.

(3) Offeror must complete Page 1 of the Solicitation (Blocks 12 through Block 18) and submit it with their proposal on the proposal due date. This includes acknowledgement of all Amendments. **Any Offeror who does not complete this will be considered Non-Responsive and will not be considered for award.**

L.7 SUBMIT PROPOSALS TO:

Technical Proposals shall be submitted via e-mail to Ms. Cherie Mitchell at e-mail address cherie.mitchell@eu.navy.mil with a copy to Ms Teresa Traettino at e-mail address teresa.traettino.it@eu.navy.mil by **11:00 am Central European Time (CET) on Monday, September 14th 2015.**

Price Proposals shall be submitted via email to Ms. Cherie Mitchell at e-mail address cherie.mitchell@eu.navy.mil with a copy to Mr. Joseph Martinez at e-mail address Joseph.A.Martinez@eu.navy.mil by **11:00 am Central European Time (CET) on Monday, September 14th 2015.**

Section M - Evaluation Factors for Award

EVALUATION FACTORS FOR AWARD**A. BASIS FOR AWARD**

1. The Government reserves the right to award the contract to the responsible offeror with the lowest price technically acceptable proposal based on the evaluation factors in the solicitation as outlined in this Section M.
2. The LPTA process is selected as appropriate for this acquisition because the best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.
3. Pricing offers will be calculated based on the annual total value resulting from the expected consumption data provided in the solicitation, on the basis of the applicable unit prices per time band.
4. The successful offeror will be the one offering the price with the lowest total cost calculated by multiplying time band unit prices by the energy consumption expected in the relevant time band, then adding the results of the different time bands.
5. An overall non-price factors rating must be at least "ACCEPTABLE" in order to be eligible for award. An "UNACCEPTABLE" rating in any factor results in the overall non-price factors proposal being rated "UNACCEPTABLE" unless corrected through discussions. An overall non-price factors rating of "UNACCEPTABLE" makes a proposal ineligible for award.

B. BASIS OF EVALUATION AND SUBMITTAL REQUIREMENTS FOR EACH FACTOR:**Price Factor:****(i) Solicitation Submittal Requirements:**

- a. A completed J-200000-04. The submitted J-200000-04 must have proposed prices for each Time Band.
- b. A statement that the offeror agrees to hold prices for 5 business days from the date specified for the receipt of prices.

(ii) Basis of Evaluation:

The Government's evaluation of price will be based on the total price. The successful offeror will be the one offering the price that is determined to be the lowest cost calculated by multiplying time band unit prices by energy consumption expected in the relevant time band, then totaling the results of all the different time bands. Analysis will be performed by one or more of the following techniques to ensure a fair and reasonable price:

- (i) Comparison of proposed prices received in response to the RFP.

- (ii) Comparison of proposed prices with the Independent Government Estimate.
- (iii) Comparison of proposed prices with available historical information.
- (iv) Comparison of market survey results.

Technical Factors:**(1) Factor 1; Cover Letter**(i) Solicitation Submittal Requirements:

(a) A cover letter completed with all the information identified in FAR 52.215-1(c)(2), including: Solicitation Number; name, address, telephone and e-mail address of the Offeror; in case the Offeror is a JOINT VENTURE (JV), the name of the JV MUST BE CLEARLY IDENTIFIED; Name, title, and signature of the person authorized to sign the proposal; DUNS Number and CAGE or NCAGE Code of the Offeror; in case the Offeror is a JOINT VENTURE (JV), provide a DUNS Number for each member of the JV.

(b) Registration in the System for Award Management (SAM) at <https://www.sam.gov> at time of proposal submission is required. Registration will include the completion of the Representations and Certifications portion of the website.

(c) Completed (Blocks 13 through 18), signed and dated Standard Form (SF) 33, Solicitation, Offer, and Award.

(ii) Basis of Evaluation: The basis of evaluation will be the offeror's accurate and complete submission of the information above for the solicitation submittal requirements.

To receive an acceptable rating in this factor the offeror's submission shall contain all the required information.

(2) Factor 2; Completed Form D

(i) Solicitation Submittal Requirements: Completion of the attachment Form D (see attachment J-200000-03) or similar document with the appropriate corporate signature and stamp demonstrating: that:

(a) the offeror supplied electricity to end users in the Free Market for a total quantity of at least 1,000 GWh/year

(b) the offeror supplied at least 100 GWh (Giga-watt hours) last year to at least one end user in the free market. Provide a point of contact and method of communication (e-mail address and telephone number) for the point of contact. This end user may be contacted directly by the United States Government

(ii) Basis of Evaluation: To receive an acceptable rating in this factor, the offeror must demonstrate that it supplied power more than 1000 GWH from 2013-2014 total in the free market and that supplied at least 100 GWh/year to a single user in the free market.

To receive an acceptable rating in this factor the offeror's submission shall contain all the required information.

(3) Factor 3; Letters of Reference

(i) Solicitation Submittal Requirements: Two letters issued by two different credit institutions or authorized brokers. Such letters shall reference the offeror's financial capability to acquire the required bank guarantees in the amount of €250,000 in case of award. It is mandatory that in the subject the letters make specific reference to this solicitation number N33191-15-R-0842.

(ii) Basis of Evaluation: The basis of evaluation will be the offeror's ability to submit two letters issued by two different credit institutions or authorized brokers. Such letters shall reference the offeror's financial capability to acquire the required bank guarantees in the amount of €250,000 in case of award. It is mandatory that the subject line of the letters specifically reference solicitation number N33191-15-R-0842. A sample of bank guarantee is provided in J-200000-05.

To receive an acceptable rating in this factor, the Offeror must submit proof of its financial capability to acquire performance guarantee(s) in the amount of €250,000

(4) Factor 4; Sample High Voltage Invoice

(i) Solicitation Submittal Requirements: Submit a sample invoice to be used under this solicitation that contains sufficient detail to demonstrate the consumption of electricity per time of use category, per day, for each billing period.

(ii) Basis of Evaluation: The basis of evaluation will be the offeror's submission of a sample invoice to be used under this solicitation that contains sufficient detail to demonstrate the costs associated with the consumption of electricity per time of use category, per day, for each billing period.

To receive an acceptable rating in this factor the offeror's invoice shall clearly demonstrate the costs associated with the consumption of electricity per time of use category for each billing period.

(5) Factor 5; Energy Vendor Qualification

(i) Solicitation Submittal Requirements: Submit qualifications as electric energy vendor registered in 2nd Section of "Registro Administrativo de Distribuidores, Comercializadores, y Consumidores Cualificados" located at Ministry of "Economía y Hacienda" or that it possesses any other qualifications authorizing it to meet supplier obligations.

(ii) Basis of Evaluation: The basis of evaluation will be the offeror's submission of current registration in 2nd Section of "Registro Administrativo de Distribuidores, Comercializadores, y Consumidores Cualificados" located at Ministry of "Economía y Hacienda" or that it possesses any other qualifications authorizing it to meet supplier obligations.

To receive and acceptable rating in this factor the offeror must establish proof of its qualifications to operate as an energy vendor appropriately registered and licensed with the

Spanish Government.