

Blanket Purchase Agreement DoD Enterprise Software Agreement (ESA)

In the spirit of the Federal Acquisition Streamlining Act, the Department of Defense (DoD) and Quest Software, Inc. enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Service Administration (GSA) Federal Supply Schedule Contract #GS-35F-0593K.

Federal Supply Schedule Contract Blanket Purchase Agreements (BPA) reduce contracting and open market costs such as: search for sources, the development of technical documents, solicitations, and the evaluation of bids and offers.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the Government that works better and costs less.

The Enterprise Software Initiative (ESI) is a joint DoD project to develop and implement a DoD enterprise process. This BPA is issued in the spirit of the policy and guidelines provided in the Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

Attachments to this agreement are:

- a. Attachment A – Product and Price List
- b. Attachment B – License Agreement
- c. Attachment C – Report of Sales Format
- d. Attachment D – Fees and Payments

A. TERMS AND CONDITIONS

1. Pursuant to General Services Administration (GSA) Federal Supply Services (FSS) Contract Number GS-35F-0593K, Quest Software, Inc. agrees to the following terms of a Blanket Purchase Agreement (BPA) with the ACA Information Technology, E-Commerce and Commercial Contracting Center (ITEC4). All orders placed against this BPA are subject to the terms and conditions of the FSS Contract. The items on this BPA are set forth in Attachment A. License terms and conditions applicable to products acquired under this BPA are defined in the Quest Software, Inc. License Agreement included as Attachment B. The Order of Precedence for resolving any inconsistency between the Commercial License and the GSA contract terms shall be as specified in the GSA contract's Commercial Item clause, FAR 52.212-4, and the provisions of FAR 52.212-4 specified in FAR 12.302, as required by Federal law, shall prevail over any terms of the commercial license.

2. **Extent of Obligation.** The Government is obligated only to the extent of authorized purchases actually made under this BPA.

3. **Funds Obligation.** The BPA does not obligate any funds. Funds will be obligated on each delivery order.

4. **BPA Term.** The BPA expires five (5) years after award. This expiration is contingent upon the Contractor maintaining or renewing a GSA FSS Schedule. The BPA will be reviewed annually to ensure that it still represents a "best value".

5. Pricing Terms. Attachment A provides unit prices as explained below. Prices may increase or decrease consistent with changes in the underlying GSA schedule. Spot discounting is encouraged. The prices will be reviewed annually, or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee shall be included in the prices. The contractor shall be responsible for the payment of all fees that are included in the product pricing (i.e. GSA, ACT), as calculated on the customer orders, in accordance with Attachment D.

6. Discount Terms and Conditions.

All line items on this BPA are discounted by at least three percent (3%) from Quest Software's GSA Contract #GS-35F-0593K. Additional volume discounts will be applied on a transaction basis (per order) using the discount schedule in Attachment A.

7. Out-Year Prices.

Volume discounts are calculated on a transactional basis and are not governed by agreement year. Discounts are not cumulative across orders against the BPA. The unit price for the discount level on Attachment A is not subject to upward adjustment during the term of the BPA.

8. Price Reduction.

8.1 Most Favored Customer Prices. The prices under this BPA shall be at least as low as the prices that Quest Software, Inc. has under any other contract instrument under like terms and conditions. If at any time the prices under any other contract instrument become lower than the prices in this BPA, this BPA will be modified to include the lower prices.

8.2 SmartBUY Transition. OMB has recently announced the SmartBUY initiative to maximize cost savings and achieve best quality when acquiring software. The General Services Administration (GSA) is the designated Executive Agent for SmartBUY. The initiative will establish software enterprise licensing on a government-wide basis. If during the term of this ESA, Quest Software, Inc. and its resellers enter into a government-wide agreement with the GSA under the SmartBUY Initiative, which includes pricing for the specific products or services under similar terms and conditions as those licensed by the DoD, neither Quest Software, Inc. or its resellers will preclude the DoD from licensing products or purchasing services under a SmartBUY agreement.

9. License Agreement.

Attachment B is the Software License Agreement for software licenses purchased from Quest Software, Inc. Notwithstanding any provision to the contrary, except for licenses for Software used to move (including, without limitation, migrate or convert) data from one platform or system to another, licenses are transferable by Licensee with written notice to Quest to any entity into which Licensee is merged or consolidated. This statement of transferability takes precedence over the statement of non-transferability in Section 2 of Attachment B – Software License Agreement. Software licenses purchased under this BPA are non-exclusive, perpetual use licenses subject to the licensing provisions and the terms of the GSA Contract. Any delivery order issued hereunder will serve as proof of purchase.

9.1 Functionality Replacement and Extended Support. If the form, fit, or functionality contained in any licensed products acquired hereunder and for which DoD continuously purchases Maintenance Services is substantially reduced or if the product is replaced, and/or (the contractor), provides this same or substantially similar functionality as a separate or

renamed product, provided such separate or renamed product does not include substantially more or additional functionality than the product being replaced, then the DoD is entitled to license such software at no additional licenses or maintenance fees. However, throughout the term of this agreement, the contractor will provide support services for a period of one year from the date each licensed product is first licensed.

9.2 Rights of Survivorship of the Agreement. This Agreement shall survive unto Quest Software, Inc., its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement notwithstanding the acquisition or merger of Quest Software, Inc. by or with another entity. (Note: covered in 9.1).

9.3 Audits. In lieu of any audit provisions in the license agreement, Licensee may perform an internal audit and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses in use. Licensee may permit Quest Software, Inc. to have access to Licensee records and computer systems and the right to audit such systems to insure software use is in accordance with its license terms. All vendor personnel must have appropriate security clearances to gain access to Licensee site or data.

10. Media.

Most Quest Software products may be either downloaded after purchase and all are available to be delivered on electronic media. Upon Credit Card or Purchase Order Approval, the end-users will be sent an email confirmation and their *Quest Software* Customer ID (CID) will be validated for download capability. The end user can then go to <http://questsupportlink.quest.com/default.asp> and enter their valid CID for download of the Software products.)

11. Support and Maintenance.

11.1. Support. Further details for Support Services are identified in Attachment B.

11.2. Maintenance. Software purchases include Maintenance Services for a period of one (1) year. Further details for Maintenance services are identified in Attachment B.

12. Professional Services. Professional services offerings vary by product and are described in Attachment A. All professional services sales must include a Statement of work (SOW) signed by the customer.

13. On-Site Training. Training offerings vary by product and are described in Attachment A.

14. Technology Improvement. The Government may solicit and the BPA holder is encouraged to propose independently, technology improvements to the BPA. Proposals shall be submitted by the BPA holder and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule. Discounts shall be at the same or greater discount level as the original BPA product prices.

15. Substitution and Technology Refreshment. If at any time during the life of this BPA, the original manufacturer of the equipment (includes software, hardware and firmware) schedules the products for discontinuation, improvement and/or replacement, the BPA holder shall provide a proposal to include the new or revised products on the BPA under the appropriate line items. Proposed prices for new or revised products shall be constructed in accordance with paragraph

8 of this BPA for most favored prices. Discounts shall be at the same or greater discount level as the original BPA product prices. Quest shall make commercially reasonable efforts to submit Proposals to the Contracting Officer within seven (7) days of the BPA holder's written notification to Quest of its awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.

B. AUTHORIZED USERS AND POINTS OF CONTACT

Authorized Users. The BPA is open for ordering by all Department of Defense (DoD) Components. For the purposes of this agreement, a DoD component is defined as: the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, the U. S. Coast Guard, and the Intelligence Community. This BPA is also open to DoD Contractors authorized to order in accordance with the FAR Part 51.

Authorized Users. This has been designated as a DoD ESI Contract and is open for ordering by all , Department of Defense (DoD) Components, and authorized contractors. This BPA is also open to DoD contractors authorized to order in accordance with FAR Part 51.

2. BPA Points of Contact:

a. Contracting Office:

Procuring Contracting Officer (PCO):

Ronald L. Hyde

Information Technology, E-Commerce and
Commercial Contracting Center (ITEC4)

Attn: SFCA-IT-A

2461 Eisenhower Avenue

Alexandria, VA 223331-1700

PCO: Ronald L. Hyde

Phone: 703 325-4625

FAX 703 428-9842

Email: Ron.Hyde@us.army.mil

b. Software Product Manager (SPM):

Software Product Manager (SPM):

PEO EIS

Assistant Project Manager, ASCP

Squier Hall, Building 283

Fort Monmouth, NJ 07703

POC:

SPM: David Bahary

Phone: (732) 532-7123

Fax: (732) 532-5185

Email: David.Bahary@us.army.mil

c. Customer Point of Contact: (To be specified on each order.)

C. ORDERING

1. DFARS Section 208.74 directs DoD software buyers and requiring officials to check the DoD ESI website for DoD inventory or an ESA before using another method of acquisition. These steps for the buyer are summarized from the DFARS:

- a. Check the Enterprise Agreement Summary Table to determine if software rights or maintenance have already been purchased and are available from DoD inventory. If they are available, purchase the designated software from DoD inventory and reimburse the SPM.
- b. If the required software rights or maintenance are not available from inventory or from an ESA, you may use an alternate method of acquisition, subject to laws and policy.
- c. If the required software rights or maintenance are not available from inventory but are available from an ESA, you must follow the procedure in the DFARS Section 208.74.
- d. If you must obtain the software or software maintenance outside the DoD ESA, you may seek a waiver from a management official designated by your DoD Component.

This BPA will be posted to the DoD ESI website as part of the ESI program. The web site can be viewed at <http://www.esi.mil>. The Government will also post this contract to the Army Small Computer Program website at: <https://ascp.monmouth.army.mil/scp/index.jsp>.

2. **Delivery Orders.** The scope of this effort is worldwide. Delivery requirements and administration will be stipulated on Delivery Orders. (*See examples below*)

Notice to Ordering Offices: When ordering services, ordering offices are responsible for compliance with GSA's Ordering Procedures for Services and DFARS 208.404-70.

Example 1: Ordering via this BPA is decentralized. Orders are prepared by a Government Ordering

Officer (a duly warranted Contracting Officer whose warrant authorizes purchases from the GSA Schedule), in accordance with the terms and conditions of this BPA and the GSA Schedule. Orders may be placed by EDI, credit card, facsimile, on an authorized form such as a Standard Form (SF) 1449 or Department of Defense (DD) Form 1155, or by logging on to the Quest Software purchasing page at the Army Small Computer Program website <https://ascp.monmouth.army.mil/scp/index.jsp>.

Example 2: Ordering instructions may be found at the Army Small Computer Program website <https://ascp.monmouth.army.mil/scp/index.jsp>.

Attachment A-1-Active Directory Products have been established in accordance with FAR 8.405-1. Orders placed against Attachment A-1 may be placed as the need for the Products arise.

Orders placed against Attachment 2- All Other Items are required to be ordered using the procedures set forth in FAR 8.405-1 or 8.405-2 as applicable.

3. **Users' Ordering Guide.** The Contractor shall develop a Users' Ordering Guide in coordination with the Government that will be posted to the Contractor web site and various Government sites. The Ordering Guide shall be submitted to the SPM and PCO within thirty (30) days of BPA issuance and made available on the Contractor's home page upon written

approval. This guide shall be continuously updated as required. The guide shall contain all information necessary for geographically dispersed activities to place orders, including, as a minimum:

- a. URL where a complete list of products available, with appropriate contract line item numbers (CLINs) and associated prices can be found
- b. Government and Contractor Points of Contact
- c. Description of the ordering process
- d. Program Terms and Conditions
- e. License Terms and Conditions
- f. Information necessary to complete a DD350 (such as CAGE, DUNS, TIN, Business Size, etc.)
- g. Range of discounts
- h. Links to DoD ESI and the Government web sites

4. E-Commerce Site. It is the intention of the Government to use existing and future capability of the DoD Standard Procurement System, Electronic Data Interchange (EDI) capability, Government procurement card, and vendor electronic ordering capability to create a paper-less ordering, invoicing and payment process. During the term of the BPA, the Contractor shall participate to achieve this objective.

On-line ordering can also be accomplished at <https://ascp.monmouth.army.mil/scp/index.jsp>. This BPA may also be loaded into the electronic catalog systems of other DoD agencies.

5. Delivery Schedule.

The Contractor shall deliver media (the current media is compact disks, or CDs) to the requested destination or make the software available for electronic delivery with seven to ten calendar days after receipt of order.

6. Delivery Notice. Unless otherwise agreed to, all deliveries ordered under this BPA must be accompanied by a delivery notice, ticket or sales slips that must contain at a minimum the following information:

- a. Name of Contractor
- b. GSA Contract Number
- c. BPA Number
- d. Product Description/Model numbers
- e. Delivery order number
- f. Date of purchase
- g. Quantity, unit price and extension of each item (unit prices need not be shown when incompatible with the use of automated systems; provided that the invoice is itemized to show the information)
- h. Date of shipment

7. Suspension. There may be occasions where the Government may suspend ordering (by CLIN up to and including the entire BPA.) If a suspension is announced, the Contractor shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

D. INVOICING AND PAYMENT

1. Invoicing. The requirements of a proper invoice are as specified below as required by FAR 52.212-4 in the Federal Supply Schedule contract. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>. The contractor shall submit an original invoice and three

copies (*or electronic invoice, if authorized*), to the address specified on the delivery orders issued against the BPA. An invoice must include:

- a. Name and address of the Contractor
- b. Invoice date
- c. Contract number, contract line item number and, if applicable, the order number
- d. Description, quantity, unit of measure, unit price and extended price of the items delivered
- e. Terms of any prompt payment discount offered
- f. Name and address of official to whom payment is to be sent
- g. Name, title, and phone number of the person to be notified in event of defective invoice

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125. Prompt Payment Contractors are encouraged to assign an identification number to each invoice.

2. Fast Payment Procedure The provisions of FAR 52.213-1 FAST PAYMENT PROCEDURE (*FEB 1998*) are incorporated in this BPA by reference and pertain to Credit Card purchases or other applicable order deliveries. Fast Payment procedures may be used when the conditions of FAR 13.402 are met and the delivery order authorizes Fast Payment. Full text of this clause can be found on the web at URL: <http://farsite.hill.af.mil/>.

3. Precedence. The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of the BPA and the Contractor's invoice, the provisions of the BPA will take precedence.

E. BPA MANAGEMENT AND OVERSIGHT

1. The Contractor must provide centralized administration, in the form of a Program Manager, in support of all work performed under this BPA. The Program Manager, at a minimum, is required to participate in periodic program management reviews (which may require travel to a Government named site). Additional functions would include customer service, periodic program management reviews, invoicing, payment and submission of monthly and quarterly reports.

2. Report of Sales. Consistent with Clause C.22 of the GSA Schedule, a Report of Sales as described herein shall accompany the remittance of the ACT Fees to enable verification of the fee amounts rendered. Submission of the Report of Sales shall be submitted to the SPM and the PCO in electronic format within fifteen (15) days following the completion of the monthly reporting period, or as otherwise requested by the SPM. The report shall be submitted in the standard format shown in Attachment C. Negative reports are required. The SPM or PCO shall provide written approval of each report. At the end of each calendar quarter, the written approval provided to the contractor will be accompanied by a request to remit ACT fees. The SPM or PCO will provide copies of the Report of Sales on a quarterly basis to the DoD Components participating in fee sharing. If the BPA contains services, current ACT fee paid by Delivery Order and total ACT fees paid will be included in the report.

3. Universal Standard Products and Services Code. The Universal Standard Products and Services Code (UNSPSC) is a required field of the Report of Sales found in Attachment C. The UNSPSC code permits software asset management through a standard coding structure. The UNSPSC is a coding system used to classify both products and services for use throughout the

global marketplace. The management and development of the UNSPSC Code is coordinated by ECCMA, the Electronic Commerce Code Management Association. The current version consists of more than 16,000 terms and is available free as a download at <http://www.unspsc.org>.

4. **Records.** The Contractor shall maintain archival copies of all orders for the life of the BPA. Copies shall be made available to the Government upon request.

5. **Army Information Technology Conference.** Quest Software will exhibit at the Army Information Technology Conference (AITC) during the existence of this BPA.

6. **Sales Leakage.** The goals of the ESI Program can only be realized through cooperation between the Government and the Contractor to direct appropriate sales through the ESI vehicles. The Contractor shall ensure that all sales personnel are aware of the ESI Program and enforce the policy that this BPA is the preferred procurement vehicle for the products within. The Contractor shall also establish a process to regularly audit sales to Government buyers, determine where sales outside the ESI vehicle are occurring, and take appropriate action to direct further sales through the ESI vehicle. Results of these audits will be presented as an agenda item during PMRs.

7. **Marketing.** The Contractor shall dedicate reasonable resources to this effort and work to market and advertise this agreement. Desired actions include: advertising resultant vehicles on the contractor's Internet site and advertising the agreement at relevant trade shows, participation in DoD Component sponsored events and news media geared to Government/DoD IT people.

8. **Virtual IT Marketplace.** ESI and GSA have partnered to create the Virtual IT Marketplace (VITM). The VITM interfaces with GSA Advantage and provides ESI agreement product information to the DoD customer. The Contractor shall follow GSA procedures for electronic loading of ESI contract information to the VITM and will be responsible to ensure that the VITM data is maintained in a current status. The VITM may be accessed at www.VITM.gov.

9. **Enterprise Integration Toolkit.** The Enterprise Integration Toolkit is a program developed by the Assistant Deputy Under Secretary of Defense (L&MR) Logistics Systems Management (LSM) to assist DoD Program Managers, Contracting Officers and members of the Integrated Project Team (IPT) in the acquisition and implementation of Commercial Off The Shelf (COTS) Business Systems software.

The Toolkit provides guidance, processes and tools to define program needs and determine how to best meet these needs through an external acquisition via a three-tiered Roadmap to guide the entire life-cycle from problem definition to solution roll-out. It provides a collection of best practice tools adopted from the commercial industry, and includes more than 100 best practice templates, guides, checklists, and samples.

Because the Toolkit is not vendor specific and may be applied across a variety of COTS software package implementations, including this BPA, the Contractor, shall be familiar with the Toolkit and include as part of the Marketing effort required above, a description of the Toolkit for their customers, and a link to the Enterprise Toolkit web site at: <http://www.eitoolkit.com>

F. Standards.

1. **YEAR 2000 Compliance.** All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.

2. JTA Compliance. All products offered shall comply with the appropriate Publicly Available Standards (PAS) (e.g., TIA, EIA, ANSI, IEEE, ISO) and the applicable DoD information technology standards contained in the Joint Technical Architecture (JTA). More information on this standard can be found at <http://jta.disa.mil>.

3. Section 508 of the Rehabilitation Act Compliance. Quest has completed Voluntary Product Accessibility Templates for many of our applicable products. We are continuing towards full compliance with Section 508 by making this part of our development processes for product upgrades as well as new product development.

4. Applicable Standards

52.204-2 -- Security Requirements (Aug. 1996)

52.237-2 -- Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)

252.201-7000 -- Contracting Officers Representative (Dec 1991)

252.204-7000 -- Disclosure of Information (Dec 1991)

252.204-7004 -- Required Central Contractor Registration (Mar 2000)

252.209-7004 -- Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (Mar 1998)

252.227-7015 -- Technical Data -- Commercial Items (Nov 1995)

252.227-7037 -- Validation of Restrictive Markings on Technical Data (Sep 1999)

252.246-7000 -- Material Inspection and Receiving Report (Dec 1991)