

**AUTHORIZED FEDERAL SUPPLY SERVICE
INFORMATION TECHNOLOGY SCHEDULE PRICELIST
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY
EQUIPMENT, SOFTWARE AND SERVICES**

SIN 132-8 Purchase Of Equipment

FSC CLASS 7010 - System Configuration - Other Systems Configuration Equipment, Not Elsewhere Classified

NOTE: Installation must be incidental to, in conjunction with and in direct support of the products sold under SIN 132-8 of this contract and cannot be purchased separately. If the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act apply. In applying the Davis-Bacon Act, ordering activities are required to incorporate wage rate determinations into orders, as applicable.

SIN 132-12 - Repair Service, and Repair Parts/Spare Parts

FPDS Code J070 - Repair Service

SIN 132-33 - Perpetual Software Licenses

Microcomputers – Application Software

SIN 132-34 – Maintenance of Software

Avocent Huntsville Corp.
4991 Corporate Drive
Huntsville, AL 35805-6201
256/430-4000

Contract Number: GS-35F-0264K

Period Covered by Contract: February 29, 2000 through February 28, 2010

Includes all Modifications through #PO0078 dated August 1, 2008

General Services Administration
Federal Supply Service

Products and ordering information in this Authorized FSS Information Technology Schedule Pricelist are also available on the GSA Advantage! System. Agencies can browse GSA Advantage! by accessing the Federal Supply Service's Home Page via the Internet at <http://www.fss.gsa.gov/>

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INFORMATION FOR ORDERING OFFICES

SPECIAL NOTICE TO AGENCIES:

Small Business Participation

SBA strongly supports the participation of small business concerns in the Federal Supply Schedules Program. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.fss.gsa.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Supply Service Home Page (www.fss.gsa.gov) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1. GEOGRAPHIC SCOPE OF CONTRACT:

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities. Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

Offerors are requested to check one of the following boxes:

The Geographic Scope of Contract will be domestic and overseas delivery.

The Geographic Scope of Contract will be overseas delivery only.

The Geographic Scope of Contract will be domestic delivery only.

2. CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION:

Avocent Huntsville Corp.
4991 Corporate Drive
Huntsville, AL 35805-6201

When authorized dealers are allowed by the Contractor to bill Government agencies and accept payment, the order and/or payment must be in the name of the Contractor, in care of the Authorized Dealer.

Contractors are required to accept the Government purchase card for payments equal to or less than the micropurchase threshold for oral or written delivery orders. Government purchase

cards will be acceptable for payment above the micropurchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering agencies to obtain technical and/or ordering assistance: 256/430-4000

3. LIABILITY FOR INJURY OR DAMAGE

The Contractor shall not be liable for any injury to Government personnel or damage to Government property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

4. STATISTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279:

Block 9: G. Order/Modification Under Federal Schedule
Block 16: Data Universal Numbering System (DUNS) Number: 105540270
Block 30: Type of Contractor - Large Business
Block 31: Woman-Owned Small Business - No
Block 36: Contractor's Taxpayer Identification Number (TIN): 63-0801728

- 4a. CAGE Code: 8Y651
- 4b. Contractor has registered with the Central Contractor Registration Database.

5. FOB DESTINATION

Prices cover equipment delivery to destination, for all locations within the 48 contiguous states and the District of Columbia.

6. DELIVERY SCHEDULE

a. TIME OF DELIVERY: The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

SPECIAL ITEM NUMBER	DELIVERY TIME (Days ARO)
132-8	7 Days
132-33	7 Days

Expedited delivery of products is available under this contract for a separate charge. Government customers choosing expedited delivery can receive products 48 hours after receipt of order (ARO).

b. URGENT REQUIREMENTS: When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering agency, agencies are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering agency, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

7. DISCOUNTS: Prices shown are NET Prices; Basic Discounts have been deducted.

- a. Prompt Payment: None
- b. Quantity
- c. Dollar Volume

- d. Government Educational Institutions – Government Educational Institutions receive the same discount as all other Government buyers under this contract.
- e. Other

8. TRADE AGREEMENTS ACT OF 1979, AS AMENDED:

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

9. STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING:

Export packing is available to all overseas locations under the scope of this contract.

10. SMALL REQUIREMENTS: The minimum dollar value of orders to be issued is \$50.

11. MAXIMUM ORDER: (All dollar amounts are exclusive of any discount for prompt payment.)

- a. Special Item Number 132-8 - Purchase of Equipment

The maximum dollar value per order for all purchased equipment will be \$500,000.

- b. Special Item Number 132-12 - Repair Parts/Spare Parts

The maximum dollar value per order for all repair parts/spare parts will be \$10,000.

- c. Special Item Number 132-33 – Purchase of Software

The maximum dollar value per order for all purchased software will be \$500,000.

- d. Special Item Number 132-34 – Maintenance of Software

The maximum dollar value per order for all purchased maintenance will be \$500,000.

Note: Maximum Orders do not apply to Special Item Numbers 132-12 Maintenance and Repair Service (except for Repair Parts/Spare Parts).

12. ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS:

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

13. FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS

REQUIREMENTS: Federal departments and agencies acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering offices, shall be responded to promptly by the Contractor.

13.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS

PUBS): Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been

granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

13.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS): Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Supply Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

14. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2001)

- (a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.
- (b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. The Industrial Funding Fee does NOT apply to travel and per diem charges. NOTE: Refer to FAR Part 31.205-46 Travel Costs, for allowable costs that pertain to official company business travel in regards to this contract.
- (c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.
- (d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.
- (e) Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.
- (f) Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.

- (g) Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.
- (h) Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.
- (i) Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- (j) Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

15. CONTRACT ADMINISTRATION FOR ORDERING OFFICES: Any ordering office, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the Government's convenience, and (m) Termination for Cause (See C.1.)

16. GSA Advantage!

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. *GSA Advantage!* will allow the user to perform various searches across all contracts including, but not limited to:

- (1) Manufacturer;
- (2) Manufacturer's Part Number; and
- (3) Product categories.

Agencies can browse *GSA Advantage!* by accessing the Internet World Wide Web utilizing a browser (ex.: Netscape). The Internet address is <http://www.fss.gsa.gov/>.

17. PURCHASE OF OPEN MARKET ITEMS

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated at open market purchases. Ordering Activities procuring open market items must follow FAR 8.401(d).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if-**

- (1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));
- (2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

- (3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
- (4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

- (1) Time of delivery/installation quotations for individual orders;
- (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.
- (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

19. OVERSEAS ACTIVITIES

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below:

Upon request of the Contractor, the Government may provide the Contractor with logistics support, as available, in accordance with all applicable Government regulations. Such Government support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

20. BLANKET PURCHASE AGREEMENTS (BPAs)

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

21. CONTRACTOR TEAM ARRANGEMENTS

Contractors participating in contractor team arrangements must abide by all terms and conditions

of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

22. INSTALLATION, DEINSTALLATION, REINSTALLATION

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act apply.

The requisitioning activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

23. SECTION 508 COMPLIANCE.

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following: www.avocent.com. The EIT standard can be found at: www.Section508.gov/.

24. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

- (a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and
- (b) The following statement:
This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

25. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- (b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

- (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
 - (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

26. SOFTWARE INTEROPERABILITY.

Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.

27. ADVANCE PAYMENTS

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 334)

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT
(SPECIAL ITEM NUMBER 132-8)**

1. MATERIAL AND WORKMANSHIP

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

3. TRANSPORTATION OF EQUIPMENT

FOB DESTINATION. Prices cover equipment delivery to destination, for all locations within the 48 contiguous states and the District of Columbia.

4. INSTALLATION AND TECHNICAL SERVICES

a. INSTALLATION. Products listed in this Contract are considered to be self-installable.

b. INSTALLATION, DEINSTALLATION, REINSTALLATION. The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.

The requisitioning activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

c. OPERATING AND MAINTENANCE MANUALS. The Contractor shall furnish the Government with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased.

5. 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 equipment that has been tendered for acceptance. The Government may require repair or replacement of nonconforming equipment at no increase in contract price. The Government must exercise its postacceptance 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.

6. WARRANTY

a. Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the contract's commercial pricelist will apply to this contract. All products are fully warranted for two years from the date of purchase.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

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

d. If inspection and repair of defective equipment under this warranty will be performed at the Contractor's plant, the address is as follows:

Avocent Huntsville Corp.
4991 Corporate Drive
Huntsville, AL 35805-6201

7. PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the Government will be charged will be the Government purchase price in effect at the time of order placement, or the Government purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less.

8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

9. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an agency determines that Information Technology equipment will be replaced, the agency shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).

**TERMS AND CONDITIONS APPLICABLE TO REPAIR SERVICE FOR GOVERNMENT-
OWNED GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT
(AFTER EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN
REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY PROVISIONS)
(SPECIAL ITEM NUMBER 132-12)**

1. SERVICE AREAS

All repair services will be performed at the Contractor's plant(s) listed below:

Avocent Huntsville Corp.
4991 Corporate Drive
Huntsville, AL 35805-6201

2. REPAIR SERVICE ORDERS

a. Agencies may use written orders, EDI orders, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service under this contract. Orders for repair service shall not extend beyond the end of the contract period.

b. When repair service is ordered, only one chargeable repairman shall be dispatched to perform repair service, unless the ordering office agrees, in advance, that additional repair personnel are required to effect repairs.

3. LOSS OR DAMAGE

When the Contractor removes equipment to his establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the equipment is removed from the Government installation, until the equipment is returned to such installation.

4. SCOPE

a. Repair service shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.

5. RESPONSIBILITIES OF THE GOVERNMENT

a. Government personnel shall not attempt repairs to equipment while such equipment is under the purview of a warranty, unless agreed to by the Contractor.

b. Subject to security regulations, the Government shall permit access to the equipment which is to be repaired.

6. RESPONSIBILITIES OF THE CONTRACTOR

For equipment not covered by a warranty, the Contractor's repair service personnel shall complete repairs as soon as possible after receipt of equipment at Contractor's repair location.

7. REPAIR SERVICE RATE PROVISIONS

All repair service is based upon a fixed price for a specific piece of equipment. All parts, furnished as spares or as repair parts in connection with the repair of equipment, unless otherwise indicated in the Avocent pricelist, shall be new, standard parts manufactured by the equipment manufacturer. All parts shall be furnished at the list prices indicated in the Contractor's pricelist titled Avocent Repair and Testing Fee and Policy dated January 2000.

8. GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS

a. REPAIR SERVICE

All repair work will be guaranteed/warranted for a period of 30 days.

9. INVOICES AND PAYMENTS

a. Repair Service

Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Payment under blanket purchase agreements will be made quarterly or monthly, except where cash payment procedures are used. Invoices shall be submitted separately to each Government office ordering services under the contract. The cost of repair parts shall be shown as a separate item on the invoice, and shall be priced in accordance with paragraph #10, above. PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

**TERMS AND CONDITIONS APPLICABLE TO
PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND
MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE
COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance 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 software, unless the change is due to the defect in the software.

2. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

Avocent DS-Series Software

Contractor warrants that the software product will, for a period of ninety (90) days from the date of delivery, perform substantially in accordance with contractor's written materials accompanying the software product. The foregoing limited warranty shall not apply to any defect in the software product that is caused by (i) the use or operation of the software product with an application or in an environment other than that intended or recommended by contractor, (ii) modifications to the software product not made by contractor, (iii) third party hardware or software or (iv) the government's failure to implement all error corrections which are issued under this agreement. In the event of any breach of the foregoing warranty or other duty owed by contractor, contractor's and its suppliers' entire liability and the government's exclusive remedy shall be, at contractor's option, either (a) return of the price paid (license fees) by the government for the software product (not to exceed the net GSA Schedule price) if any, or (b) repair or replacement of the defective software product. Any replacement software product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

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

3. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number 888/793-8763 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available 7 a.m. and 5:30 p.m. Monday through Friday CST excluding holidays.

4. SOFTWARE MAINTENANCE

- a. Software maintenance service shall include the following:

Avocent DS-Series Software

Contractor shall provide the authorized licensee of the Software with all New Releases. Contractor shall provide telephone support between 07.00 am and 5.30 pm Monday to Friday, Central time, excluding Contractor holidays. Contractor holidays can be found at www.avocent.com/calendar. Contractor shall also provide such other Maintenance Services, as it deems reasonably necessary to cause the Software to perform materially in accordance with the then current Documentation provided that the Government installs all updates, modifications, and corrections provided by Contractor and that the Government's use of the Software is in accordance with this Agreement and the Documentation. Contractor shall use its reasonable efforts to rectify any errors in the Software that the Government brings to the attention of Contractor if Contractor is able to confirm that such error or defect exists through independent testing. When notifying Contractor of an error in the Software, the Government must provide Contractor with an example of the error, the context in which the error was encountered, a description of the system configuration, and the steps necessary to generate or reproduce the error. If requested by Contractor, the Government shall permit Contractor or its representative's full access to the Software and the system on which it is installed during working hours (and any extra agreed cover) so that Contractor can carry out its obligations under this Agreement.

- b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

5. PERIODS OF AND MAINTENANCE (132-34)

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for maintenance, the period of the maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the maintenance orders citing the new appropriation shall be required, if the maintenance is to be continued during any remainder of the contract period.
- d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the maintenance is to be terminated at that time. Orders for the continuation of maintenance will be required if the maintenance is to be continued during the subsequent period.

6. UTILIZATION LIMITATIONS - (132-33, AND 132-34)

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:
 - (1) Title to and ownership of the software and documentation shall remain with the Contractor.
 - (2) Avocent DS-Series Software – The software product is a commercial product, developed at private expense, and provided with restricted rights. If the Government has acquired a single copy license, the Government may install and use one copy of the software product on a single computer. If the Government has acquired the software product in an Avocent “Client License Pack” for multiple copies of the software product, the Government may install and use concurrently not more than the number of copies of the computer software portion of the software product identified in the Client License Pack or on the “Systems” tab of the software product. Neither the software product nor the hardware product shall be used in connection with any system where malfunction can reasonably be expected to result in personal injury, death, or damage to tangible property or the environment. Without limiting the foregoing, neither the software product nor the hardware shall be used in connection with any life support or patient care system, nuclear facility, aircraft operation, air traffic control, or other application representing a similar degree of hazard.
 - (3) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.
 - (4) Except as is provided in paragraph 8.b(3) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

- (5) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
- (6) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

7. SOFTWARE CONVERSIONS - (132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version.

8. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

9. RIGHT-TO-COPY PRICING

No right-to-copy licenses are available under this contract.

**USA COMMITMENT TO PROMOTE
SMALL BUSINESS PARTICIPATION
PROCUREMENT PROGRAMS**

PREAMBLE

Avocent Huntsville Corp. provides commercial products to the Federal Government. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

COMMITMENT

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in Federal Government contracts. To accelerate potential opportunities please contact David Crafton at 800/932-9239.

**BEST VALUE
BLANKET PURCHASE AGREEMENT
FEDERAL SUPPLY SCHEDULE
(Insert Customer Name)**

In the spirit of the Federal Acquisition Streamlining Act [Agency] and Avocent Huntsville Corp. enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract GS-35F-0264K.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

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.

Signatures

_____ DATE

AGENCY

_____ DATE

CONTRACTOR

BPA NUMBER _____

(CUSTOMER NAME) BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s) _____, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) exclusively with (Ordering Agency):

(1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

MODEL NUMBER/PART NUMBER	*SPECIAL BPA DISCOUNT/PRICE
_____	_____
_____	_____

(2) Delivery:	
DESTINATION	DELIVERY SCHEDULE/DATES
_____	_____
_____	_____

(3) The Government estimates, but does not guarantee, that the volume of purchases through this agreement will be _____.

(4) This BPA does not obligate any funds.

(5) This BPA expires on _____ or at the end of the contract period, whichever is earlier.

(6) The following office(s) is hereby authorized to place orders under this BPA:

OFFICE	POINT OF CONTACT
_____	_____
_____	_____

(7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- (a) Name of Contractor;
- (b) Contract Number;
- (c) BPA Number;
- (d) Model Number or National Stock Number (NSN);
- (e) Purchase Order Number;
- (f) Date of Purchase;
- (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- (h) Date of Shipment.

(9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10) 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 this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

BASIC GUIDELINES FOR USING “CONTRACTOR TEAM ARRANGEMENTS”

Federal Supply Schedule Contractors may use “Contractor Team Arrangements” (see FAR 9.6) to provide solutions when responding to a customer agency requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions or the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customers needs, or -
- Federal Supply Schedule Contractors may individually submit a Schedules “Team Solution” to meet the customer’s requirement.
- Customers make a best value selection.