GENERAL SERVICES ADMINISTRATION (GSA)

GSA Facilities Maintenance and Management Schedule –

Contract number- GS-21F-0050W

Federal Supply Service
Authorized Federal Supply Schedule Price List
On-line access to contract ordering information, terms and conditions, up-to-date pricing are available on IBM's website – www.ibm.com/easyaccess/gsa or call us directly at 1-800-333-6705

IBM also has its terms and conditions published on GSA's GSA Advantage! Website - GSAAdvantage.gov.

Facilities Maintenance and Management Schedule
FSC Group 03FAC

IBM's GSA Schedule Contract number –GS-21F-0050W
For more information on ordering from Federal Supply Schedules click on the FSS Schedules button at fss.gsa.gov.

Base Contract period – December 22, 2009 – December 21, 2014
w/ 3 additional 5-year Optional Periods

Business size - Large.

IBM Corporation

6710 Rockledge Dr.

Bethesda, MD 20817

General Customer Information

1. The following SINS apply to this Contract

SIN 811-002	Complete Facilities Maintenance
SIN 811-003	Complete Facilities Management
SIN 811-006	Facilities Maintenance and Management Consulting
SIN 871-202	Energy Management Planning and Strategies
SIN 871-203	Training on Energy Management
SIN 871-204	Metering Services
SIN 871-205	Energy Program Support Services
SIN 871-206	Building Commissioning Services
SIN 871-207	Energy Audit Services
SIN 871-208	Resource Efficiency Management
SIN 871-209	Innovations in Energy
SIN 871 210	Water Conservation
SIN 871-299	Introduction of New Services

NOTE: IBM's labor rates and descriptions apply to all of the SINs listed above.

2. Maximum order

$1,000,000 for all SINS. Notwithstanding this limit, agencies may place and IBM may honor orders exceeding this limit.

3. Minimum Order

$100.00

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4. Geographic Coverage

For all Special Items, the geographic scope of this Contract is within the United States, Puerto Rico and the District of Columbia. On a case-by-case basis, IBM will perform Services in support of US Government operations overseas.

5. Credit Card Orders

IBM will accept credit card orders of $3,000 (or the current micro-purchase threshold). To place a credit card order with IBM, a Government purchaser must provide IBM with the cardholder's name and telephone number, the card type, account number and expiration date. The Government credit card program provides that invoices are not necessary; therefore, IBM will present such invoices to the Government only upon specific request for an individual order.

6. Ordering Information -Orders shall be directed to the following locations:

IBM Government Systems Attn: Carolyn Marsh 6710 Rockledge Dr. Bethesda, MD 20817	Phone Number – 1-800-333-6705 FAX Number – 1-888-520-0533
Alternate Location: IBM Government Attn: Carolyn Marsh 800 N. Frederick Avenue Gaithersburg, MD 20879	

6a. Ordering procedures

The GSA ordering procedures, including information on Blanket Purchase Agreements (BPAs) are found in Federal Acquisition Regulation (FAR) 8.405-3.

7. Payment address(es)

ACH Payments: IBM Corporation C/O PNC Bank Lockbox IBM# 643584 500 First Avenue Pittsburgh, PA 15219 Attn: Lockbox IBM# 643584 (877-762-0830) ABA#: 043000096 Acct# 1017305745	Mail: IBM Corporation Lockbox 643584 PO Box 643584 Pittsburgh, PA 15264-3584

8. IBM's Company Information

- Duns # - 83-513-0485
- Cage Code – 3BXY7
- Type of Contractor – Large Business
- Taxpayer ID – 13-087-1985
- IBM's information is available in the CCR database

9. Acceptance/Inspection

For Services subject to a Statement of Work, acceptance occurs when IBM meets the agreed upon Completion Criteria outlined in the Statement of Work.

For hourly services, acceptance occurs upon completion of the service hours.

10. Intellectual Property Protection

For purposes of this clause, the term "Product" includes Materials, Machine Code and Licensed Internal Code.

If a third party claims that a Product IBM provides to the Government infringes that party's patent or copyright, IBM will indemnify the Government, its officers, agents, and employees against liability, at IBM's expense and pay all costs, damages, and attorneys fees that a court finally awards or that are included in a settlement approved by IBM, provided that the Government:

A. Promptly notifies IBM in writing of the claim; and

B. Gives IBM such opportunity as is offered by applicable laws, rules or regulations to participate in the defense thereof. The Government shall make every effort to permit IBM to fully participate in the defense and/or in any settlement of such claim. However, IBM understands that such participation will be under the control of the Department of Justice.

Remedies

If such a claim is made or appears likely to be made, the Government agrees to permit IBM to enable the Government to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, the Government agrees to return the Product to IBM on IBM's written request. IBM will then give the Government a credit equal to:

1. For a Machine, the Government's net book value provided the Government has followed generally-accepted accounting principles.
2. For a Program, the amount paid by the Government or 12 months' charges (whichever is less) and,
3. For Materials, the amount the Government paid IBM for the creation of the Materials.

This is subject to the Government's right to require continued use of the programs pursuant to the provisions of 28USC1498. In the event of such continued use, the Government shall notify IBM in writing of its election to continue use and agrees to undertake at the Government's expense the defense of any action against the Government and to indemnify IBM with respect to all costs, damages, and attorneys' fees attributed to such continued use after such notice is given to IBM; it being understood that IBM may participate at its expense in the defense of any such action if such claim is against IBM.

Claims for Which IBM is Not Responsible:

IBM has no obligation regarding any claim based on any of the following:

A. The Government's modification of a Product, or a Program's use in other than its Specified Operating Environment;

B. Anything the Government provides which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Government or by a third party on behalf of the Government;

C. The combination, operation, or use of a Product with other Products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data , apparatus, or business method that IBM did not provide, or the distribution, operation or use of a Product for the benefit of a third party; or

D. Infringement by a non-IBM Product.

The foregoing states the entire obligation of IBM with respect to infringement of patents or copyrights.

11. Warranty

Unless otherwise negotiated at the task order level: For each IBM Service, IBM warrants that it will be rendered with promptness and diligence and shall be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; provided, however, to the extent that a Statement of Work Service Level defines the required level of IBM's performance for a Service, this section shall not impose upon IBM an obligation to perform at a level higher than such Service Level. IBM further warrants that it will perform each IBM Service according to its current descriptions, specifications and standards (including completion criteria) set forth in a mutually agreeable Statement of Work.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IBM does not warrant uninterrupted or error-free operation of a Product or Service or warrant that all defects will be corrected.

Unless IBM specifies otherwise, it provides Materials and non-IBM Products WITHOUT WARRANTIES OF ANY KIND. However non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to you. Warranties, if any, for Other IBM Programs (IBM Programs licensed under a separate IBM license agreement, e.g., IBM International Program Licensing Agreement) and Non-IBM Programs (Programs licensed under a separate third party License agreement) may be found in their license agreement.

Where IBM provides Products to the Government as an IBM system, IBM warrants that they are compatible and will operate with one another. This warranty is in addition to IBM's other applicable warranties. Where IBM provides an integrated system to the Government that includes non-IBM products, IBM will address additional warranty terms based on the customer's requirements and scope of work as defined by each specific opportunity in a Statement of Work.

12. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, the Government is entitled to recover damages from IBM. Unless otherwise negotiated at the task order level: In each such instance, to the extent permitted by law or statute, and, regardless of the basis on which the Government is entitled to claim damages from IBM (including fundamental breach, negligence, or other contract or tort claim), IBM is liable only for:

A. Payments referred to in IBM's Patents and Copyrights terms described herein;

B. Damages for bodily injury (including death) and damage to real property and tangible personal property; and

C. The amount of any other actual direct damages or loss, up to the greater of: (i) $100,000; OR (ii) the contract price (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials, Machine Code and Licensed Internal Code. Nothing in this subsection C shall limit the Government's right to (i) excess reprocurement costs in the event of a Termination for Default; or (ii) the contractual remedies prescribed under the Price Reductions clause (GSAR 552.238-75) (May 2004)(Alternate I- May 2003) and GSAR 552.215-72, Price Adjustment – Failure to Provide Accurate Information (Aug 1997).

D. For classroom training or education material, IBM is liable for the charges associated with the corresponding item provided.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

Items for which IBM is not liable:

Under no circumstances is IBM, or its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

A. Loss of, or damage to data; or

B. Special, incidental, or indirect damages or for any economic consequential damages, or

C. Lost profits, business, revenue, goodwill or anticipated savings

D. Any third party claims against you except as described in the Patents and Copyrights section or as permitted by the Limitation of Liability section for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable

The parties acknowledge that nothing in this provision shall restrict the Government's statutory remedies in the event of fraud.

Additional Terms and Conditions

1.1 ORDERS

Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 51.232-19, Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.

All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence, except as may be otherwise agreed to by both IBM and the user agency.

For Services based on a mutually agreeable Statement of Work, in the event of conflict between the unique terms, conditions and prices of each negotiated engagement and the GSA Schedule terms, the Performance Based Service's task order shall govern.

Whenever the Government requires that service be provided at a domestic location by persons with security clearances, the Government shall state that requirement in each order issued. IBM may, at its option, reject any such orders by written notice to the ordering office within 60 days of receipt. If a DD Form 254, DOD Contract Security Classification Specification is required for security purposes, Section 6.a of the DD Form 254 should show the same IBM address as on the delivery order for maintenance coverage.

1.2 DEFINITIONS

Materials – literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to the Government as part of a Service. The term "Materials" does not include Programs, Machine Code, or other items available under their own license terms or agreements.

Service – performance of a task, assistance, support, or access to resources (such as information database) that IBM makes available to the Customer.

1.3. CUSTOMER RESOURCES

If the Government is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, the Government agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by the Government's failure to promptly obtain such licenses or approvals.

Unless otherwise agreed in a Statement of Work, the Government is responsible for i) any data and the content of any database the Government makes available to IBM in connection with a Service under this contract, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data.

1.4 PERSONNEL

a. Each party will assign personnel that are qualified to perform the tasks required of such party under this contract and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

b. IBM may perform its responsibilities under this Contract through its Affiliates or Subcontractors, in which case IBM remains responsible for the fulfillment of its obligations under this contract and for the performance of the Services. IBM will be using professional service personnel to perform services procured hereunder.

1.5 MATERIALS OWNERSHIP AND LICENSE

IBM will specify materials to be delivered to the Government in a mutually agreed to Statement of Work. They will be identified as being "Type I Materials," "Type II Materials," or otherwise as mutually agreed upon. If not specified, Materials will be considered Type II Materials.

The Government will own the copyright in Materials created as part of a Service that are identified as “Type I Materials” and each such Material will constitute a “work made for hire” to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to the Government. The Government grants IBM and an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants the Government an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within the Government Agency), copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM’s or its suppliers’ works that pre-exist or were developed outside of the contract between IBM and the Government and any modifications or enhancements to such works that may be made under the contract. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to the Government, if any, or otherwise as Type II Materials.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

1.6 STATEMENT OF WORK

A separate Statement of Work will be signed by both IBM and the Government for services provided other than hourly assist services. Upon acceptance by IBM, IBM agrees to provide the Services described in the Statement of Work.

The Statement of Work includes, for example:

A. IBM's responsibilities

B. The Government's responsibilities

C. The specific conditions (Completion Criteria), if any, that IBM is required to meet to fulfill its obligations

D. A performance period for Services and an estimated schedule for planning purposes, and

E. Applicable charges (not including taxes) and any other terms.

F. Resumes shall be provided by IBM upon request.

If a Statement of Work contains an estimated schedule, both IBM and the Government agree to make reasonable efforts to carry out our respective responsibilities according to that Schedule. If the Statement of Work contains Completion Criteria, IBM will inform the Government when each criteria is met. The Government then has 10 days to inform IBM if the Government believes that IBM has not met the criteria. The project is complete when IBM meets the Completion Criteria.

Changes to Statements of Work

When both IBM and the Government agree to change a Statement of Work, IBM will prepare a written description of the agreed change which must be signed by both IBM and the Government. Any change in the Statement of Work may affect the charges, estimated schedule, or other terms. Depending on the extent and complexity of the requested changes, additional charges may be required for analysis of the changes. Additional work will not commence until funded authorization is received from the Government.

1.7 TRAVEL REIMBURSEMENT AND OTHER CHARGES

Contractor travel will be in accordance with the Federal Travel Regulation or Joint Travel Regulations, as applicable. Established Federal Government per diem rates will apply.

The Government agrees to pay charges for these services including Billable Travel Time, if applicable, described hereafter in accordance with the rates set forth below. A one-hour minimum charge applies.

Costs for transportation and per diem (lodging, meals and incidental expense) are directly reimbursable by the ordering agency. Not-to-Exceed (NTE) amounts will be negotiated with the agency prior to the acceptance of each delivery order as appropriate. Travel time, as defined below, is billable at the same hourly rates as set forth in the Services price list.

Billable Travel Time is travel time in excess of one hour spent in traveling to and one hour spent in traveling from the Government's location. Travel time will be calculated as the lesser of the actual travel time incurred, or the normal travel time from/to the nearest IBM Location to/from the Government's location, or the normal travel time from/to the individual's assigned IBM location.

In the event the Government requires a specific technical skill which is not available from the normal servicing IBM Location, Billable Travel Time means the actual travel time in excess of one hour spent in traveling to and one hour spent in traveling from the Government's location. In such event, the Government will be notified in advance and its authorization obtained when such billable travel time is to be incurred.

In addition to the charges laid out herein, there may be charges applicable to this contract for special or unusual expenses incurred by IBM which are necessary to perform these services. If applicable, these charges will be set out separately in the Government's order.

1.8 Complete Agreement

IBM's 03FAC GSA Schedule Contract, including these published terms, and any RFP, Proposal and Statement of Work issued against the Contract constitute the complete Agreement of the parties and supersede all prior communications, agreement or understandings on this subject.
Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled.

1.9 Principles of Our Relationship

a. Neither party grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent.

b. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise.

c. The Government authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors, and IBM Business Partners) to store and use Customer's business contact information wherever they do business, in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer.

d. Customer is responsible for selecting Services that meet its needs and for the results obtained from the use of the Products and Services, including the Customer's decision to implement any recommendation concerning Customer's business practices and operations.

e. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.

f. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.

IBM's Labor Rates and Labor Description

IBM 03FAC Position Titles and Labor Categories

Position Title	Labor Category
Project Executive III	A'
Project Executive II	A
Project Executive I	B
Senior Project Manager II	B
Senior Project Manager I	C
Project Manager III	D
Project Manager II	E
Project Manager I	F
Senior Consultant III	F
Senior Consultant II	G
Senior Consultant I	H
Consultant I	H
Analyst I	I

SKILL LEVEL DESCRIPTIONS AND RATES

SKILL LEVEL DESCRIPTIONS

A Prime (A'). Up to and possibly 25 years of experience of progressive accomplishment managing and implementing large, complex information technology systems with expertise in a specific discipline such as Energy Services or Sustainability. This individual may work in conjunction with a Center of Competency or they may work independently directly with senior customer executives as consultants.

A. Up to and possibly exceeding 25 years of experience of progressive accomplishment managing and implementing large, complex systems. Experienced in advising senior

executives on effective utilization of energy systems and reengineering to meet business objectives.

B. Up to 20 years of experience with large, complex systems, providing key leadership in a multi-vendor environment. Extensive experience with large systems modernization and business practice reengineering.

C. Up to 15 years of progressive accomplishment as experts in large and complex energy or resource systems implementation. Expertise is applied across multiple platforms and the integration of diverse architectures.

D. Up to 12 years of significant accomplishment as an expert in large integrated systems. Experience with several architectures and platforms in an integrated environment.

E. A deep understanding of architecture, techniques and management processes across a broad spectrum of systems, applications and requirements. This level of personnel generally has up to ten years of professional experience in specialized areas of large customer applications.

F. Generally regarded as an expert in their particular discipline or technology. This level of personnel generally has up to eight years of professional experience in their field of expertise.

G. Broad knowledge of the labor category field and a demonstrated ability to independently work on complex assignments. This level of personnel generally has up to five years of professional experience in the field of expertise.

H. Significant knowledge of the labor category field and the ability to work independently on typical assignments. This level of personnel generally has up to four years of professional experience in the field of expertise.

I. General knowledge of the labor category field and the ability to work with minimal supervision. Assistant personnel generally have up to three years of professional experience in the field of expertise.

General Note:

Consultants at these skill levels provide managerial and technical leadership for development, implementation and operations of complex energy, resource and facility management systems implementation. They are recognized for their experience in providing expert guidance to senior executives.

LABOR RATES

The following table outlines the hourly rates for each of these skill level descriptions:

Figure 1: Technical and Consulting Labor Rates (includes .75% IFF)

	GFY10	GFY11	GFY12	GFY13	GFY14
A'	$390	$402	$413	$404	$404
A	$318	$328	$336	$344	$351
B	$291	$300	$307	$314	$321
C	$265	$273	$280	$287	$293
D	$232	$239	$246	$252	$257
E	$204	$210	$216	$221	$226
F	$195	$200	$206	$211	$215
G	$180	$185	$190	$194	$199
H	$159	$164	$168	$172	$176
I	$129	$133	$136	$139	$142

Subject to agreement by both the Government and IBM, IBM will provide support outside IBM's normal working hours. Under such circumstances, the rates identified above will be increased by 15%.

NOTE: The GSA Schedule rates for each labor category applies to labor performed by –

1. the offeror;
2. Subcontractors; and/or
3. Divisions, subsidiaries, or affiliates of the offeror under a common control