



User's Ordering Guide  
ESI/SmartBuy Blanket Purchase Agreement  
FA8771-07-A-0308



## 4.0 Description of the Ordering Process

### 4.1 Department of Defense (DoD) Customers

The SmartBuy/ESI BPA has been loaded into the Department of the Navy's ITEC Direct system as part of the DON Information Technology Electronic Commerce (ITEC) Direct Project. ITEC Direct requires customer registration to place an online order or to submit a Request for Quote (RFQ). For additional information, to register in ITEC Direct or to place an order online please visit: <http://itec-direct.navy.mil>

Alternatively, DoD customers may order through the ESI/SmartBuy website located at <http://www.esi.mil/designatedSoftware.asp?ProductServiceID=1#49> . While the ESI/SmartBuy website is specific to this BPA, GSA has also loaded the BPA into GSA e-Buy. GSA e-Buy is a component of *GSA Advantage!*® and is an electronic RFQ system designed to allow buyers to prepare RFQ's directly online for products offered on our GSA Schedule.

Autonomic Resources welcomes the opportunity to load the BPA into the electronic catalog systems of other DoD Agencies. This document will be continually updated to include additional ordering systems as they become available.

### 4.2 Other Federal, State, Local, NATO, and FMS Customers

Federal customers outside of the Department of Defense, including State, Local, NATO, and FMS customers may order through the ESI/SmartBuy website located at [http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=8399&channelId=-18846&oid=22458&contentId=23207&pageTypeId=8199&contentType=GSA\\_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=SBUY](http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=8399&channelId=-18846&oid=22458&contentId=23207&pageTypeId=8199&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=SBUY) While the ESI/SmartBuy website is specific to this BPA, GSA has also loaded the BPA into GSA e-Buy. GSA e-Buy is a component of *GSA Advantage!*® and is an electronic Request for Quote (RFQ) system designed to allow buyers to prepare RFQ's directly online for products offered on our GSA Schedule.

### 4.3 Delivery Process and Schedule

Once Autonomic Resources receives the order from GSA or ITEC Direct, we will log the order into the Report of Sales and forward the order to SPYRUS for fulfillment. SPYRUS will ship the product direct to the customer according to the delivery schedule set forth in the BPA:

Description	Quantity	Ship Date
Talisman/DS Data Security Suite Software	Any	7 days after receipt of order (ARO)
Talisman/DS Data Security Suite Hardware	<100	5 days ARO
Talisman/DS Data Security Suite Hardware	100-1000	10 days ARO
Talisman/DS Data Security Suite Hardware	>1000	Custom delivery quote based on quantity, schedule, and locations

## 5.0 Terms and Conditions

**5.1 Precedence.** Pursuant to General Services Administration (GSA) Federal Supply Services (FSS) Contract Number GS-35F-0587R, Autonomic Resources agrees to the following terms of a Blanket Purchase Agreement (BPA) with the Air Force's 754<sup>th</sup> Electronic System Group. 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 at <http://www.autonomicresources.com/smartbuy>. License terms and conditions applicable to products acquired under this BPA are defined in the SPYRUS and WinMagic License Agreements. The Order of Precedence for resolving any inconsistency shall be first, the terms of this BPA, and second, the GSA Schedule contract including the order of precedence provision of the clause at FAR 52.212-4. 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.

**5.2 Extent of Obligation.** The Government estimates, but does not guarantee, that the volume of purchases through agreement(s) under this solicitation could reach \$24 million. The Government is obligated only to the extent of authorized purchases actually made under this BPA.

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

**5.4 BPA Term.** The BPA expires five years after award, if extended by option exercise. 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".

**BPA Option.** The Government may extend the term of this BPA to five years from the date of this BPA's execution by written notice to the Contractor prior to the end of the current GSA FSS Schedule period, provided that the Contractor's GSA FSS Schedule has been extended. If the Government exercises this option, the extended BPA shall be considered to include this option provision.

**5.5 Pricing Terms.** Unit prices for information technology (IT) Special Item Numbers (SINs) applicable for SPYRUS products including training and services can be found at <http://www.autonomicresources.com/smartbuy.html> . Prices shall not escalate and are not subject to upward adjustment during the term of the BPA. 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., ACT Fee and GSA's Industrial Funding Fee (IFF)), as calculated on the customer orders. The ACT Fee does not include GSA's IFF.

Spot discounting is encouraged in negotiating orders. Factors for consideration for Enterprise licensing discounts include program scope, support needs, user count, license term, and /or finance requirements, among others.

**5.6 Discount Terms and Conditions.** See <http://www.autonomicresources.com/smartbuy.html>

**5.7 Out-Year Prices.** Discount levels are achieved by dollar value only and are not governed by agreement year. Any purchased quantity that is creditable towards a volume discount level is cumulative for the total term of the BPA. Any creditable purchases made are credited immediately to determine the applicable discount level. The unit price for the discount level on is not subject to upward adjustment during the term of the BPA.

## **5.8 Price Reduction.**

**5.8.1 Most Favored Customer Prices.** The prices under this BPA shall be at least as low as the prices that Autonomic Resources 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. The most favored customer pricing shall be maintained in accordance with the GSA Schedule contract's clause GSAR 552.238-75, Price Reductions. The Contractor shall notify the Contracting Officer of any price reduction subject to the clause as soon as possible, but not later than 15 calendar days after its effective date. Modifications to the Schedule contract to reflect any price reduction which becomes applicable in accordance with the clause will be extended also to the BPA.

**5.8.2 Mandatory SmartBUY Channel.** GSA and Office of Management and Budget (OMB) have indicated their intent to issue regulations that make this BPA a mandatory source for agencies of the Federal government. Autonomic Resources acknowledge(s) that this BPA is a preferred contract vehicle for the Government and will convey this to all employees, agents and teaming partners authorized to offer SPYRUS and WinMagic products.

**5.9 License Agreement.** Software licenses purchased under this BPA are subject to the licensing provisions and the terms of the GSA Contract, except those notwithstanding any provision to the contrary, licenses are transferable within an acquiring agency, subject only to necessary administrative procedures; and with prior approval of the licensor also transferable among other authorized users, which approval shall not be unreasonably withheld. Any delivery order issued hereunder will serve as proof of purchase. Upon validation and receipt of software, customers will be provided an electronic version of the license agreement. The Order of Precedence for resolving any inconsistency between the Commercial License, the BPA and the GSA contract terms shall be first, the terms of this BPA, and second, the GSA Schedule contract including the order of precedence provision of the Commercial Item clause at FAR 52.212-4. 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. The following provisions will be included in a license addendum if the BPA is awarded to other than the software publisher:

**5.9.1 Functionality Replacement and Extended Support.** If the form, fit or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced and/or (the contractor) provides the same or substantially similar functionality as a separate or renamed product, 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.

**5.9.2 Rights of Survivorship of the Agreement.** This Agreement shall survive unto SPYRUS and WinMagic, 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 SPYRUS and WinMagic by or with another entity. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.

**5.9.3 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 Autonomic

Resources to have access to Licensee records and computer systems and the right to audit such systems to ensure 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.

**5.9.4 Escrow.** Vendors may be required to successfully negotiate and execute a commercial source code escrow agreement with the Government when cumulative orders under the BPA exceed \$100,000. It is the Government's intent that the negotiated Source Code Escrow Agreement shall provide for deposit of source code for products on BPA with mutually agreeable commercial escrow agent and include technical verification that source code is complete and usable with obligation to deposit source code for updates and upgrades on semiannual basis. Release conditions shall include original equipment manufacturer (OEM) failure to provide support for product, OEM ceasing business operations, OEM bankruptcy filing, OEM inadequate support to address deficiencies following notice with right of beneficiary to invoke release, subject to resolution of any objections by arbitration within a total of 90 days. OEM shall bear cost of escrow.

**5.10 Media.** Autonomic Resources offers the Talisman/DS Data Security Suite software products to authorized users on CD-ROM media from SPYRUS or its partners. Each order for a Talisman/DS software product component will come with one CD-ROM media. The Talisman/DS software component may be distributed to approved points of contact via download from a secure web site. One CD-ROM media will be provided for every 50 licenses ordered, unless otherwise agreed in writing. Orders for SPYRUS Talisman/DS Data Security Suite software products less than quantity 50 receive one CD-ROM media, regardless of size of order. The SPYRUS website at <http://www.spyrus.com/support/overview.asp> will identify the specific URL used to download any Talisman/DS Data Security software product or update. Copies of the applicable license agreements and user guides are contained in the installation software.

**5.11 Support and Maintenance.** Autonomic Resources is offering a Platinum Support Plan that includes maintenance and support as described below. The terms herein supplement the SPYRUS product technical specifications. The fees for the Platinum Support Plan and other services are detailed at <http://www.autonomicresources.com/smartbuy.html>

**5.11.1 Support.** The Platinum Support Plan includes support services to the Government designated point of contact for each of the Talisman/DS Data Security products being used by the Government on computing platforms commercially supported under the Platinum Support Plan. These services will be provided only on the then-current release of the product and on the then-previous sequential release for up to twelve (12) months after the commercial release of the then-current release of the product.

Contractor will provide the Government with remote installation assistance, remote diagnostics and telephone support at 408-545-0120, and email support during regular business hours, defined as 8:00am Eastern to 5:00 PM Pacific Time from Monday to Friday, with the exception of company holidays. We will use reasonable efforts to provide email or telephone acknowledgement of the problem to the Government within four (4) business hours. A dedicated technical support resource will be provided as an interface. Knowledgeable support representatives who have access to developer resources to troubleshoot complex support issues for the Talisman/DS Data Security software components staff this call center. The call center is supplemented by a web service that offers support information, troubleshooting

information, and Frequently Asked Questions (FAQ). Customers may visit this site by accessing <http://www.spyrus.com/overview.asp>.

Talisman/DS Data Security software is user-installable through the online user guide support documentation included and distributed with each media copy and installs through a very user-friendly installation wizard. The website will permit Government requests of online copies of the applicable user's guide and will contain a FAQ listing of frequently asked questions concerning software installation and operation.

### **Problem Classification**

When the Government reports a problem or incident, Contractor will, in consultation with the Government, first classify the problem or incident according to its severity and nature. It will then be logged in the Contractor's problem tracking system. In the event that the Contractor and the Government do not agree on the severity of a reported problem, Contractor reserves the right to classify the problem as it deems appropriate. The following classification scheme will be used to categorize problems:

**Severity 1:** Critical error in the software which completely disables the software for which no workaround exists.

**Severity 2:** Either a critical error in the software for which a workaround exists or else a non-critical error that significantly affects the functionality of the software.

**Severity 3:** Isolated error which does not significantly affect the functionality of the software.

**Severity 4:** A benign error.

### **Problem Resolution**

The following procedures will be used depending on the classification of the problem:

**Severity 1 and Severity 2:** Contractor will use reasonable efforts to resolve the problem immediately including implementing workarounds whenever possible. When code changes are required to resolve the problem, Contractor will use reasonable efforts to provide a fix within five (5) business days.

Contractor may, at its discretion, escalate its work to resolve the problem which may include, but may not be limited to, onsite diagnosis and other appropriate steps. Such onsite diagnosis shall be at Contractor's expense, provided however in the event that a problem reported by the Government is subsequently determined to be due to causes other than the Talisman/DS Data Security product, then the Government shall pay Contractor's charges and expenses as per SIN 132-51 for the on-site diagnosis.

**Severity 3:** Company may include the error correction in the next major update of the product.

**Severity 4:** Company may include the error correction in the next major update of the product.

### **Excluded Services**

Contractor shall have no responsibility for: (a) correcting errors in the software modified by a party other than Contractor; (b) correcting errors in the software due to (1) failure of computer hardware, equipment or software not provided by Contractor or (2) accident, neglect, misuse, failure of electric power, adverse environmental conditions, catastrophe, negligence of the Government or improper use, or (3) casualty, act of God, strikes, riot, war, the unauthorized acts of third parties; (c) onsite technical support; (d) correcting errors which are not reproducible; or (e) correcting errors for any version of the software that Contractor no longer supports. If Contractor establishes in its reasonable discretion that (i) no error existed, (ii) the error resulted from a modification made by Government or any other third party without authorization by Contractor, and/or (iii) the error resulted from an error and/or defect in the Government's other software and/or hardware, then Contractor shall invoice the Government for its reasonable services at Contractor's rates as per SIN 132-51.

**5.11.2 Maintenance.** SPYRUS commercial terms for maintenance include the offering of Updates during the applicable Maintenance period, which include, but are not limited to, patches and fixes to licensees who are enrolled in the Platinum Support Plan. An "Update" refers to a subsequent release of an existing Talisman/DS Data Security product that is generally deemed to be a bug-fix release and/or that provides some minor added/extended features, but will generally not contain new functionality. Update releases are typically designated by a change in the digit of the release number to the right of the decimal, e.g., X.1 to X.2. There is no charge for Updates while the Maintenance agreement is in force and associated fees are paid in full.

When SPYRUS commercially releases a Talisman/DS Data Security Suite software component Update, a notification will be emailed no later than 10 days after the Update release to all registered customers covered by the applicable Platinum Support Plan terms. In addition, Updates will be hosted on the SPYRUS website accessible over a secure connection for downloading by the end user.

Standard Platinum Support Plan and maintenance begins on the date that the Talisman/DS Data Security Suite product license is received by the Government and shall continue for an initial term of one year. For this BPA, however, Contractor will offer Government customers the option of commencing the Platinum Support Plan support and maintenance at the time of product installation rather than at time of product delivery.

### **Out-year maintenance**

Upon the expiration of the first year of maintenance, the Government may purchase out-year maintenance for the Talisman/DS Data Security products on an annual basis for the length of the contract, provided there are no gaps in coverage. Out-year maintenance pricing can be found at <http://www.autonomicresources.com/smartbuy.html> . Orders for out-year maintenance must be placed no later than the expiration of the then-current maintenance period.

### **Discontinuance**

If the Government discontinues and then resumes purchase of maintenance and technical support under the Platinum Support Plan, the Government will be required to pay the entire Platinum Support Plan fees for the period of discontinuance, plus the Platinum Support Plan fees for the term then commencing.

### **Software Upgrades**

Upgrades to Talisman/DS Data Security software components shall be available to the Government under Contractor's standard terms, conditions and fees for such Upgrades. An "Upgrade" refers to a subsequent release of an existing Talisman/DS Data Security product which will contain new functionality and enhancements in addition to bug fixes. Upgrade releases are typically designated by a change in the digit of the release number to the left of the decimal, e.g., 1.X to 2.Y.

### **Enhanced Support Services**

Contractor will provide Enhanced Support Services on an ad hoc basis as requested by the Government. This may include but not be limited to, onsite installation assistance, training, or problem diagnosis and resolution. These services will be charged at Contractor's rates as per SIN 132-51.

**5.12 Professional Services.** During the term of the contract, Contractor will use reasonable commercial efforts, upon the Government's written request, to provide professional services in accordance with Contractor's rates as per SIN 132-51. The Government shall reimburse Contractor for all reasonable travel and living expenses incurred by SPYRUS personnel in connection with travel reasonably required for such consulting. The fees for Professional Services can be found at <http://www.autonomicresources.com/smartbuy.html> .

**5.13 Training.** The Government may purchase professional training from Contractor at Contractor's rates as per SIN 132-51. The Government shall reimburse Contractor for all reasonable travel and living expenses incurred by Contractor's training personnel in connection with travel reasonably required for such training.

**5.14 Technology Improvement.** The Government may solicit and the ESI/SmartBUY ESA 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.

**5.15 Substitution and Technology Refreshment.** If at any time during the life of this BPA the original manufacturer of the equipment (including 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. Proposals shall be submitted to the Contracting Officer within seven (7) days of the BPA holder's awareness of the OEM's intent. Improvement of product includes new releases, updates, upgrades including additional features and functionality, and successor or upgrade products.