

# CYBERLUX CORP

## **FORM 8-K** (Current report filing)

Filed 09/08/08 for the Period Ending 09/08/08

Address	4625 CREEKSTONE DRIVE SUITE 100 DURHAM, NC 27703
Telephone	919-474-9700
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Industry	Electronic Instr. & Controls
Sector	Technology
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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the Securities and Exchange Act of 1934

Date of Report (Date of earliest reported): September 8, 2008

CYBERLUX CORPORATION

(Exact name of registrant as specified in charter)

Nevada

(State or other jurisdiction  
of incorporation)

000-33415

(Commission  
File Number)

91-2048978

(IRS Employer  
Identification No.)

4625 Creekstone Drive, Suite 130, Research Triangle Park, Durham, NC

(Address of principal executive offices)

27703

(Zip Code)

Registrant's telephone number, including area code: (919) 474-9700

Copies to:

John W. Ringo  
Secretary and Corporate Counsel  
4625 Creekstone Drive, Suite 130  
Research Triangle Park  
Durham, NC 27703  
Phone: (919) 474-9700  
Fax: (919) 474-9712

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 8.01 Other Events**

Cyberlux Corporation today announced the renewal of its supplier agreement with The Boeing Company for lighting equipment in support of the Secure Border Initiative net (SBInet) project. Cyberlux was awarded the supplier agreement based on the Company's response to the SBInet VICD 605002 request for quote (RFQ) for mobile lighting systems. Cyberlux quoted the BrightEye Portable Visible and Covert 10 Meter Tower Lighting System for intended use along the Mexican and Canadian borders as an added level of security for Customs and Border Patrol personnel and as an added level of deterrence for potential border violators.. As part of The Boeing Company Basic Ordering Agreement, Cyberlux provided quotes of \$29,004 to \$31,185 per unit in 10 unit increments from 1-40 with a quote of \$28,277 for 41 units and greater. Under this Agreement, the unit demand for Cyberlux products is solely determined by The Boeing Company.

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**ITEM 9.01 Financial Statements and Exhibits.**

(c) Exhibits.

99.1 Secure Border Initiative net (SBInet) Basic Ordering Agreement

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**CYBERLUX CORPORATION**

Dated: September 8, 2008

BY: /s/ Mark D. Schmidt  
**Mark D. Schmidt**  
Chief Executive Officer

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**BASIC ORDERING AGREEMENT**

**AGREEMENT #55021 Revision A  
Between**

**THE BOEING COMPANY  
*Secure Border Initiative net (SBI net)***

**And**

**Cyberlux Corporation  
4625 Creekstone Dr. Ste. 130  
Durham, NC. 27703**

**BEST Supplier code  
#BE10362796**

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**EXHIBITS:**

- Exhibit A Vendor Item Control Drawing
- Exhibit B Price Schedule
- Exhibit C Terms and Conditions
- Exhibit D Revisions

This Agreement is entered into by and between **The Boeing Company** (hereinafter referred to as "BUYER"), and **Cyberlux Corporation**, (hereinafter referred to as "SELLER"), with offices at 4625 Creekstone Dr. Ste. 130 Durham, NC. 27703.

## WITNESSETH

In consideration of the promises set forth herein, the parties hereto mutually agree as follows:

This is a Basic Ordering Agreement (hereinafter referred to as "BOA" or "Agreement") sets forth terms and conditions for the procurement of supplies and services in support of SBInet Prime contract requirements. SELLER agrees to furnish such supplies and/or services as may be ordered by BUYER, from time-to-time at the prices and terms and conditions set forth herein.

This Agreement consists of this Title Page; the Schedule, the Signature page and the following Exhibits incorporated herein by reference:

Exhibit:

- Exhibit A Vendor Item Control Drawing (VICD)
- Exhibit B Price Schedule
- Exhibit C Terms and Conditions
- Exhibit D Revisions

## SCHEDULE

### 1 INCORPORATION

This is a Basic Ordering Agreement (hereinafter BOA) under **The Boeing Company** (hereby referred to as the Buyer), in support of the Secure Border Initiative net (SBInet) requirements called out in Exhibit A. This Basic Ordering Agreement consists of this Agreement and the specific Exhibits.

The Quality Clauses shown on Exhibit C are incorporated by reference into this Purchase Agreement. The full text of each is available at the following website:

[http://www.boeing.com/companyoffices/doingbiz/idscommon/clauses/clause\\_index.htm](http://www.boeing.com/companyoffices/doingbiz/idscommon/clauses/clause_index.htm)

Any additional/special Quality requirements will be provided at time of individual Purchase Order release.

### 2 DEFINITIONS

- 2.1. Order: a Delivery Order, Purchase Order, Purchase Contract, Work Order, Blanket Purchase Order, Release, Purchasing Card purchase or any other BUYER-authorized procurement document issued by BUYER to SELLER.
- 2.2. Items: Goods and/or services as specifically defined by this Agreement.
- 2.3. Lead-Time: the time span from when BUYER releases an Order to SELLER to when the goods and/or services are received by BUYER.

**3 STATEMENT OF WORK**

SELLER shall provide all labor, material and/or facilities necessary to provide the items identified in Exhibit "A" and in accordance with the delivery schedules and firm fixed-prices set forth in this agreement.

**4 PERIOD OF PERFORMANCE**

- 4.1 Basic Period: The effective term of this Agreement shall be for a period beginning on the date of BUYER's August 31, 2009 and ending September 30, 2008.  
Revision A extends date out and additional 12 months to September 30, 2009
- 4.2 SELLER shall accept and process all orders issued by BUYER during the period of performance notwithstanding that the delivery dates of any orders may extend beyond the period of performance.

**5 OPTIONS**

5.1 Introduction

Seller hereby grants Buyer irrevocable option(s) to purchase additional quantities of the products, services per data as described herein below.

If the Buyer exercises its option, they shall be delivered in accordance with the delivery schedule set forth on individual Purchase Orders.

It is mutually understood and agreed that Buyer is under no obligation whatsoever to exercise any option either in whole or in part, that the Buyer has made no representations or commitments whereby Buyer has agreed to the exercise of the option and that Buyer may procure any such requirements elsewhere.

5.2 Description of Option and Exercise Date

<u>Option</u>	<u>Term of Option</u>	<u>Exercise Date</u>
1	October 1, 2008 through September 30, 2009	Within the 60 days prior to the end of the period of performance.

The option shall be exercised by providing written notice to Seller.

5.3 Price

Pricing for each item is identified on Exhibit B and shall remain firm fixed for the duration of the option term.

**6 ESTIMATED DEMAND**

- 6.1 Any estimates regarding forecasts, planning, and/or quantities provided to SELLER by BUYER in any document relating to this Agreement are considered informational only and represent no commitment by BUYER to purchase any particular quantity of supplies or service.

6.2 Notwithstanding any other provision of this Agreement, BUYER will not be obligated to pay SELLER more than the price of each order, together with its amendments, for performance under this Agreement, including termination costs, if any.

6.3 There is no guarantee of minimum usage under this Agreement.

## 7 PRICING

7.1 The prices covered by this Agreement are set forth in Exhibit "B,"

7.2 The prices are firm-fixed for the term of this Agreement.

## 8 ORDERING

Individual Orders will constitute the sole authority for procurement of all items under this Agreement. BUYER may issue, and SELLER shall accept, Orders for the items described herein. However, BUYER and SELLER agree that this Agreement does not constitute an Order for any items, nor shall it be construed as authorizing work hereunder.

## 9 DELIVERY

9.1 Items shall be delivered in accordance with the delivery requirements as set forth in individual Orders. BUYER may issue orders requiring delivery to multiple destinations.

9.2 F.O.B. point shall be ORIGIN. Ship in accordance with instructions found in Supplier Management and Procurement Information – Routing Instructions, located on web site (upon arrival, click "general information"; then, look for the Routing Instructions link appropriate to your firm):  
<http://boeing.com/companyoffices/doingbiz>

9.3 Packaging Requirements

SELLER shall strictly adhere to Packaging Requirements specified in the Order or as noted in Exhibit A.

## 10 INVOICING AND PAYMENT

10.1 SELLER shall submit invoices to the Accounts Payable Department as specified in the applicable Order. (Not applicable to Orders utilizing pay from receipt process).

10.2 SELLER invoices shall comply with the instructions of the applicable Order. Each invoice shall contain, but not be limited to, the following: (1) Order Number (2) Agreement Number, (3) Item Description, (4) Unit Price, (5) Total Amount Billed.

10.3 Payment Terms under this Agreement are: Net **30** days.

10.4 Purchases under this Agreement are for resale.

The BUYER's Tax Permit Numbers applicable to this Agreement are located at the following website:

<http://finance.whq.boeing.com/Tax/taxgroup/taxregbystate.htm>  
or, contact the Tax Department at 562-797-3151 for assistance.

## **11 PARTICIPATION**

- 11.1 SELLER agrees that any Boeing division or Boeing subsidiary ("Boeing Entity") not specifically included in this Agreement may place orders under this Agreement during the term hereof or any written extension thereof, under the terms, conditions and pricing specified by this Agreement. SELLER agrees that the prices set forth herein may be disclosed by Boeing on a confidential basis to Boeing entities wishing to invoke this Section. SELLER shall notify the Boeing Procurement Representative named in Section 11.0 of this Agreement of Boeing Entities not specifically referenced herein who frequently use this Agreement.
- 11.2 BUYER Subcontractors/Suppliers - SELLER agrees that any subcontractor or supplier performing work for BUYER, including but not limited to inventory management, (hereinafter referred to as "BUYER Subcontractor") may issue an order or contract with SELLER independent of the Agreement. SELLER agrees to sell items to such BUYER Subcontractor for its use in its contracts with BUYER at the prices set forth herein. BUYER assumes no obligation, including payment obligation, with respect to such independent contract. SELLER may request written verification from the BUYER Subcontractor that the items ordered pursuant to the authority of the Agreement support BUYER requirements. SELLER shall periodically inform BUYER of each such request invoking this participation right.
- 11.3 Notification of Contract. In the event a purchaser known by SELLER to be a Boeing Entity or Boeing Subcontractor places an order for supplies or services covered by this Agreement but fails to reference this Agreement or otherwise seek the prices established by this Agreement, SELLER shall notify such purchaser of the existence of this Agreement and the prices established hereunder and shall offer such prices to such purchaser.
- 11.4 Notification of Price Reductions. If SELLER is awarded an additional order or contract by another Boeing Entity that results in any price less than that established under this Agreement, SELLER agrees to notify the Boeing Procurement Representative immediately of said price reductions and shall extend all such price reductions to this Agreement.

## **12 NOTICES AND CORRESPONDENCE**

All notices and formal correspondence between the parties, in all matters dealing with this Agreement, will be sent to the following addresses:

To BUYER:                   THE BOEING COMPANY  
P.O. Box 240002  
Huntsville, AL 35813  
Attention: Susan Harrington MC JI-100  
Telephone: 256-461-4603  
Fax: 256-461-1851  
Email: susan.a.harrington@boeing.com

To SELLER:                   Cyberlux Corporation  
4625 Creekstone Drive, STE 130  
Durham, NC, 27703.  
Attention: Mark Schmidt  
Telephone: 919 474-9700  
Fax: 919 474-9712  
Email: mschmidt@cyberlux.com

or any other address, provided prior written notice is given to the other party.

### **13 PRIORITY RATING**

The following certification will be applicable to all orders issued under this Agreement that references a DPAS-rating and is released referencing a government prime contract number:

"This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR 700). Pursuant to the DPAS regulation, you are required to acknowledge this order in writing within fifteen working days after receipt of a 'DO' rated order and within ten working days after receipt of a 'DX' rated order."

### **14 PERFORMANCE CRITERIA**

- 14.1 During performance of this Agreement, SELLER must maintain a minimum composite rating for quality and delivery of Bronze as defined by BUYER's enterprise performance measurement systems. If SELLER falls below Bronze in either category for three consecutive months, a corrective action plan (CAP) must be submitted to BUYER within two weeks of published performance data for BUYER's review and acceptance. The CAP shall include, but not be limited to, identification of the issue causing the infractions, SELLER's corrective actions and a date when performance shall be at Bronze or better. This recovered Bronze level shall be maintained for a period of three (3) months. Failure to comply with this article may result in termination of this Agreement.
- 14.2 If SELLER is unable to meet the delivery or quality requirements for an individual Order, BUYER may issue an Order with an alternate source or direct SELLER to obtain the goods from a BUYER-approved alternate source to satisfy BUYER's requirement. Examples where BUYER may impose this requirement include, but are not limited to: 1) SELLER unable to meet normal lead time for an Order, 2) SELLER unable to meet delivery schedule for an open Order, 3) SELLER unable to support BUYER's expedited lead time.

### **15 OBSOLESCENCE & DESIGN CHANGES**

Obsolescence - SELLER shall, at a minimum, annually review all Goods listed in Exhibit A and notify BUYER in writing of any Goods that may or will become obsolete within the next twelve (12) months and if there are any substitute/replacement Goods.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which is effective as of the date executed by the Boeing Company below.

<b>THE BOEING COMPANY</b>			
<i>Susan Harrington</i> Authorized Agent		<i>Mark D. Schmidt</i> SELLER's Representative	
<b>Susan Harrington</b>	<b>8/28/2008</b>	<b>Mark D. Schmidt</b>	<b>9/04/2008</b>
Printed or Typed Name	Date	Printed or Typed Name	Date
<b>Procurement Agent</b>		<b>President &amp; CEO</b>	
Title (print)		Title (print)	
<b>256-461-4603</b>	<b>256-461-1851</b>	<b>(919) 474 - 9700</b>	<b>(919) 474 - 9712</b>
Telephone	Fax Phone	Telephone	Fax Phone

## EXHIBIT C TERMS AND CONDITIONS

The terms and conditions below are incorporated by reference into this Agreement. Unless indicated elsewhere in the Agreement, the version of each incorporated clause will be the latest dated version as of the effective date of this Agreement. The full text of each is available at the following website:

[http://www.boeing.com/companyoffices/doingbiz/idscommon/clauses/clause\\_index.htm](http://www.boeing.com/companyoffices/doingbiz/idscommon/clauses/clause_index.htm)

GPI	Fixed Price Contract (07/09/2004)
D401	Hazardous Material – Material Safety Data Sheet (MSDS)
D405	Polychlorinated Biphenyls (PCBs)
D500	Source of Supplies
F200	Price Warranty
F500	Resale – MDC Entities
G102	Warranty Period
H001	Cost Accounting Standards
H100	Foreign Ownership Interests
H106	RFP/RFQ/RFI – Legend – U.S. Suppliers
H107	Export Taxes and Custom Duties
H113	Compliance with Export Laws and Regulations
H201	Additional Prime Contract Requirements
H202	Customer Contract Requirements (HSBP1006D01353)
H203	Subcontract for Commercial Items and Commercial Components
H208	Government Regulations Inapplicable to Foreign Work
H900V	Additional General Provisions
H903	Seller Compliance with Occupational Safety and Health Act
H905	Embedded or Hidden Data
M427	Electronic Trading Account
Q040	Boeing Right of Entry
Q041	Government Right of Entry
Q094	Certification of Compliance
Q300	Corrective Action (If hardware fails)
Q300P	Seller Use of Electronic Supplier Corrective Action Notice (E-SCAN)

**EXHIBIT D**

**REVISIONS**

<b>REVISION</b>	<b>DATE</b>	<b>DESCRIPTION OF CHANGE</b>
A	8/15/2008	1. Extend Basic Ordering Agreement (BOA) to an ending date of September 30, 2009 2. Incorporate additional quality clauses: Q300P - Seller Use of Electronic Supplier Corrective Action Notice (E-SCAN)  These Clauses can be located at: <a href="http://boeing.com/companyoffices/doingbiz">http://boeing.com/companyoffices/doingbiz</a>

SCD# 333-  
605002

**Price Schedule - Exhibit B**

Revision  
A

Period of  
Performance: 10/1/2008 THRU 09/30/2009

					Range 1	Range 2	Range 3	Range 4	Range 5
Item	Boeing Part Number	Supplier Part Number	Supplier Name and Cage Code	Item Description	Unit Price 1-10	Unit Price 11-20	Unit Price 21-30	Unit Price 31-40	Unit Price 41 +
001	333-605002-1	2CP0182	38HR0	Portable Mobile Lighting	\$31,185.00	\$30,458.00	\$29,731.00	\$29,004.00	\$28,277.00
Lead time					42 days				

Notes:

