

<b>SOLICITATION, OFFER AND AWARD</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE OF PAGES 1 268			
2. CONTRACT NUMBER		3. SOLICITATION NUMBER 89243318RAU000002		4. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)		5. DATE ISSUED 04/19/2019		6. REQUISITION/PURCHASE NUMBER	
7. ISSUED BY National Energy Technology Lab U.S. Department of Energy Morgantown Campus 3610 Collins Ferry Road P.O. Box 880 Morgantown WV 26507-0880		CODE 892433		8. ADDRESS OFFER TO (If other than Item 7)					
<b>NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".</b>									

<b>SOLICITATION</b>									
9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in _____ until <u>1600 ET</u> local time <u>05/24/2019</u> (Hour) (Date)									
CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.									
10. FOR INFORMATION CALL:		A. NAME George M. LeMasters		B. TELEPHONE (NO COLLECT CALLS) AREA CODE NUMBER EXT. 304 285-5271			C. E-MAIL ADDRESS george.lemasters@netl.doe.gov		

11. TABLE OF CONTENTS									
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)		
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES					
<input checked="" type="checkbox"/>	A	SOLICITATION/CONTRACT FORM	1	<input checked="" type="checkbox"/>	I	CONTRACT CLAUSES	41		
<input checked="" type="checkbox"/>	B	SUPPLIES OR SERVICES AND PRICES/COSTS	6	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.					
<input checked="" type="checkbox"/>	C	DESCRIPTION/SPECS./WORK STATEMENT	11	<input checked="" type="checkbox"/>	J	LIST OF ATTACHMENTS	159		
<input checked="" type="checkbox"/>	D	PACKAGING AND MARKING	12	PART IV - REPRESENTATIONS AND INSTRUCTIONS					
<input checked="" type="checkbox"/>	E	INSPECTION AND ACCEPTANCE	13	<input checked="" type="checkbox"/>	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	213		
<input checked="" type="checkbox"/>	F	DELIVERIES OR PERFORMANCE	15	<input checked="" type="checkbox"/>	L	INSTRS., CONDS., AND NOTICES TO OFFERORS	221		
<input checked="" type="checkbox"/>	G	CONTRACT ADMINISTRATION DATA	17	<input checked="" type="checkbox"/>	M	EVALUATION FACTORS FOR AWARD	263		
<input checked="" type="checkbox"/>	H	SPECIAL CONTRACT REQUIREMENTS	22						

<b>OFFER (Must be fully completed by offeror)</b>									
<b>NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.</b>									
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.									
13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232.8)		10 CALENDAR DAYS (%)		20 CALENDAR DAYS (%)		30 CALENDAR DAYS (%)		CALENDAR DAYS (%)	
14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):		AMENDMENT NO.		DATE		AMENDMENT NO.		DATE	
15A. NAME AND ADDRESS OF OFFEROR		CODE		FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)			
15B. TELEPHONE NUMBER AREA CODE NUMBER EXT.		15C. CHECK IF REMITTANCE ADDRESS <input type="checkbox"/> IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE.				17. SIGNATURE		18. OFFER DATE	

<b>AWARD (To be completed by government)</b>									
19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT		21. ACCOUNTING AND APPROPRIATION					
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) ( ) <input type="checkbox"/> 41 U.S.C. 253 (c) ( )				23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)				ITEM	
24. ADMINISTERED BY (If other than Item 7) CODE				25. PAYMENT WILL BE MADE BY CODE					
26. NAME OF CONTRACTING OFFICER (Type or print) Donald E. Hafer Jr				27. UNITED STATES OF AMERICA Signature on File (Signature of Contracting Officer)				28. AWARD DATE	

Section B - Supplies or Services/Prices .....	7
B.1 SERVICES BEING ACQUIRED – TECHNICAL SECURITY, COMMUNICATIONS SECURITY, CYBER, ANALYSIS and SECURITY ADMINISTRATION .....	7
B.2 ESTIMATED TOTAL VALUE OF THE CONTRACT .....	9
B.3 FAR 52.217-8 OPTION TO EXTEND SERVICES .....	9
B.4 DISTRIBUTION OF PERFORMANCE AWARD FEE (Cost Reimbursement).....	10
B.5 LIMITATION OF FUNDS .....	10
B.6 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000).....	10
Section C - Description/Specifications .....	11
C.1 PERFORMANCE WORK STATEMENT .....	11
Section D - Packaging and Marking .....	12
D.1 DOE-D-2001 PACKAGING AND MARKING (OCT 2014) .....	12
Section E - Inspection and Acceptance.....	13
E.1 DOE-E-2001 INSPECTION AND ACCEPTANCE (OCT 2014) .....	13
E.2 FAR 52.246-4 INSPECTION OF SERVICES – FIXED-PRICE. (AUG 1996) (FIXED PRICE) .....	13
E.3 FAR 52.246-5 INSPECTION OF SERVICES – COST-REIMBURSEMENT. (APR 1984) (COST REIMBURSEMENT) .....	13
Section F - Deliveries or Performance.....	15
F.1 PERIOD OF PERFORMANCE (BASE CONTRACT AND OPTION YEARS) .....	15
F.2 PRINCIPAL PLACE OF PERFORMANCE .....	15
F.3 FAR 52.242-15 STOP-WORK ORDER. (AUG 1989) (FIXED PRICE).....	15
F.4 FAR 52.242-15 STOP-WORK ORDER. (AUG 1989) - ALTERNATE I (APR 1984) (COST REIMBURSEMENT) .....	16
Section G - Contract Administration Data.....	17
G.1 DOE-G-2001 CONTRACTING OFFICER AUTHORITY (OCT 2014).....	17
G.2 DOE-G-2002 CONTRACTING OFFICER’S REPRESENTATIVE (OCT 2014) .....	17
G.3 CORRESPONDENCE PROCEDURES .....	17
G.4 SUBMISSION OF VOUCHERS/INVOICES .....	17
G.5 PAYMENT OF PERFORMANCE AWARD FEE (COST REIMBURSEMENT).....	19
G.6 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR .....	20
G.7 ACCOUNTABILITY OF COSTS/SEGREGATION OF CLINs (COST REIMBURSEMENT).....	20
G.8 OBSERVANCE OF LEGAL HOLIDAYS .....	20
G.9 DOE-G-2007 CONTRACTOR PERFORMANCE ASSESSMENT REPORTING (JUL 2018).....	20
G.10 DOE-G-2008 NON-SUPERVISION OF CONTRACTOR EMPLOYEES (OCT 2014).....	21
Section H - Special Contract Requirements.....	22
H.1 DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014) .....	22
H.2 TECHNICAL DIRECTION (DEC 2000) .....	22
H.3 USE OF GOVERNMENT-OWNED EQUIPMENT/FACILITIES .....	23
H.4 WORK BREAKDOWN STRUCTURE.....	23
H.5 KEY PERSONNEL/PROGRAM MANAGER & SENIOR TECHNICAL SECURITY SPECIALIST .....	24
H.6 TRAVEL AND PER DIEM COSTS .....	25
H.7 PRIOR APPROVAL REQUIREMENTS FOR PLACEMENT OF SUBCONTRACTS AND/OR CONSULTANTS.....	25
H.8 SUBCONTRACTOR FACILITIES CAPITAL COST OF MONEY .....	25
H.9 INDIRECT COSTS (COST REIMBURSEMENT) .....	26
H.10 LIMITATION OF INDIRECT COST (COST REIMBURSEMENT) .....	26
H.11 ANNUAL INDIRECT RATE SUBMISSIONS (COST REIMBURSEMENT) .....	27
H.12 PERFORMANCE EVALUATION AND MANAGEMENT PLAN (PEMP) (COST REIMBURSEMENT) .....	29
H.13 PERFORMANCE BASED AWARD FEE (COST REIMBURSEMENT).....	29
H.14 CONFIDENTIALITY OF INFORMATION .....	30
H.15 CONTRACTOR COMMUNICATION RELEASES .....	31
H.16 ANNUAL REPRESENTATIONS AND CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR .....	31
H.17 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014) .....	31
H.18 INSURANCE -- MINIMUM REQUIREMENTS .....	31
H.19 DOE-H-2029 POSITION QUALIFICATIONS (OCT 2014).....	32
H.20 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014).....	32
H.21 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM (OCT 2014) .....	33

H.22	DOE-H-2075 PROHIBITION ON FUNDING CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014) (cost reimbursement) .....	33
H.23	DOE-H-2076 LOBBYING RESTRICTIONS (OCT 2014) .....	34
H.24	ACCESS TO DOE-OWNED OR LEASED FACILITIES .....	34
H.25	NOTIFICATION OF OWNERSHIP CHANGES & OTHER SUSPENSION/DEBARMENT PROCEEDINGS .....	35
H.26	REIMBURSEMENT OF TRAINING COSTS (COST-REIMBURSABLE CLIN ONLY) .....	35
H.27	FOREIGN NATIONAL ACCESS APPROVAL .....	35
H.28	DOE-H-2041 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS (OCT 2014) .....	36
H.29	DOE-H-2046 DIVERSITY PROGRAM (OCT 2014) .....	37
H.30	DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014) .....	37
H.31	DOE-H-2063 CONFIDENTIALITY OF INFORMATION (OCT 2014) .....	37
H.32	DOE-H-2065 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (OCT 2014) .....	38
H.33	DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014) ....	39
H.34	DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS .....	39
H.35	DOE-H-2079 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018) .....	39
H.36	DOE-H-2080 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018) .....	40
Section I -	Contract Clauses .....	41
I.1	FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) .....	41
I.2	FAR 52.202-1 DEFINITIONS. (NOV 2013) .....	41
I.3	DEAR 952.202-1 DEFINITIONS .....	41
I.4	FAR 52.203-3 GRATUITIES. (APR 1984) .....	41
I.5	FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES. (MAY 2014) .....	42
I.6	FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (SEP 2006) 42	
I.7	FAR 52.203-7 ANTI-KICKBACK PROCEDURES. (MAY 2014) .....	42
I.8	FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (MAY 2014) .....	43
I.9	FAR 52.203-10 PRICE OR FEE ADJUSTEMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (MAY 2014) 44	
I.10	FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (OCT 2010) .....	45
I.11	FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT. (OCT 2015) .....	48
I.12	FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S). (OCT 2015) .....	51
I.13	FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS. (APR 2014) .....	51
I.14	DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (DEC 2000) 51	
I.15	FAR 52.204-2 SECURITY REQUIREMENTS. (AUG 1996) .....	52
I.16	DEAR 952.204-2 SECURITY REQUIREMENTS (AUG 2016) .....	52
I.17	FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER. (MAY 2011) .....	55
I.18	FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL. (JAN 2011) 55	
I.19	FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS. (OCT 2018) .....	55
I.20	FAR 52.204-12 DATA UNIVERSAL NUMBERING SYSTEM NUMBER MAINTENANCE (OCT 2016) 58	
I.21	FAR 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE. (OCT 2018) .....	58
I.22	FAR 52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS. (OCT 2016) .....	60
I.23	FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018) .....	61
I.24	DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION. (SEP 1997) .....	62
I.25	DEAR 952.204-75 PUBLIC AFFAIRS. (DEC 2000) .....	63
I.26	DEAR 952.204-76 CONDITIONAL PAYMENT OF FEE OR PROFIT-SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION (JAN 2004) (COST REIMBURSEMENT) .....	63
I.27	DEAR 952.204-77 COMPUTER SECURITY. (AUG 2006) .....	65

I.28	FAR 52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES. (MAY 2014)	66
I.29	DEAR 952.208-70 PRINTING. (APR 1984)	66
I.30	FAR 52.209-6 PROTECTING THE GOVERNMENT’S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (OCT 2015)	67
I.31	FAR 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS. (OCT 2018)	68
I.32	FAR 52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS. (NOV 2015)	69
I.33	DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)	69
I.34	FAR 52.210-1 MARKET RESEARCH. (APR 2011)	71
I.35	FAR 52.215-2 AUDIT AND RECORDS - NEGOTIATION. (OCT 2010)	71
I.36	FAR 52.215-8 ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT. (OCT 1997)	72
I.37	RESERVED	72
I.38	FAR 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA - MODIFICATIONS. (OCT 2010)	72
I.39	FAR 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES. (OCT 2009)	74
I.40	DEAR 952.215-70 KEY PERSONNEL (DEC 2000)	75
I.41	FAR 52.216-7 ALLOWABLE COST AND PAYMENT. (AUG 2018) (DEVIATION)	75
I.42	FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (OCT 2018)	80
I.43	FAR 52.219-14 LIMITATIONS ON SUBCONTRACTING (JAN 2017)	82
I.45	FAR 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION. (JUL 2013)	83
I.46	FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)	84
I.47	FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS. (JUL 1990)	84
I.48	FAR 52.222-3 CONVICT LABOR. (JUN 2003)	85
I.49	FAR 52.222-17 NONDISPLACEMENT OF QUALIFIED WORKERS. (MAY 2014)	86
I.50	FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (APR 2015)	89
I.51	FAR 52.222-26 EQUAL OPPORTUNITY. (SEP 2016)	89
I.52	FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS. (OCT 2015)	91
I.53	FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES. (JUL 2014)	91
I.54	FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS. (FEB 2016)	92
I.55	FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT. (DEC 2010)	92
I.56	FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS. (JAN 2019)	94
I.57	FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION. (OCT 2015)	101
I.58	FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. (MAY 2011)	103
I.59	FAR 52.223-6 DRUG-FREE WORKPLACE. (MAY 2001)	104
I.60	DEAR 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES. (DEC 2000)	105
I.61	DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES. (DEC 2000)	105
I.62	FAR 52.223-10 WASTE REDUCTION PROGRAM. (MAY 2011)	106
I.63	FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING. (AUG 2011)	106
I.64	FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)	107
I.65	FAR 52.224-2 PRIVACY ACT (APR 1984)	107
I.66	FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (JUN 2008)	108
I.67	FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)	108
I.68	DEAR 970.5227-1 RIGHTS IN DATA—FACILITIES (DEC 2000)	108
I.69	FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL). (JUN 1987)	112
I.70	FAR 52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (JAN 1997) (FIXED PRICE CLIN’S ONLY)	112
I.71	FAR 52.228-7 INSURANCE – LIABILITY TO THIRD PERSONS. (MAR 1996) (COST-REIMBURSABLE CLIN’S ONLY)	113
I.72	FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013) (fixed price)	114
I.73	FAR 52.232-1 PAYMENTS. (APR 1984) (fixed price)	115
I.74	FAR 52.232-8 DISCOUNT FOR PROMPT PAYMENT. (FEB 2002) (FIXED PRICE)	115
I.75	FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)	115
I.76	FAR 52.232-17 INTEREST. (MAY 2014)	116
I.77	FAR 52.232-18 AVAILABILITY OF FUNDS. (APR 1984)	117

I.78	FAR 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR. (APR 1984) .....	117
I.79	FAR 52.232-22 LIMITATION OF FUNDS. (APR 1984) .....	117
I.80	FAR 52.232-23 ASSIGNMENT OF CLAIMS. (MAY 2014).....	118
I.81	FAR 52.232-25 PROMPT PAYMENT. (JAN 2017) .....	118
I.82	FAR 52.232-25 PROMPT PAYMENT. (JAN 2017) - ALTERNATE I (FEB 2002) (COST REIMBURSEMENT).....	122
I.83	FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT. (OCT 2018) .....	126
I.84	FAR 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS. (JUN 2013) .....	127
I.85	FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS. (DEC 2013).....	128
I.86	FAR 52.233-1 DISPUTES. (MAY 2014).....	128
I.87	FAR 52.233-3 PROTEST AFTER AWARD. (AUG 1996) .....	129
I.88	FAR 52.233-3 PROTEST AFTER AWARD. (AUG 1996) - ALTERNATE I (JUN 1985) (COST REIMBURSEMENT) .....	129
I.89	FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM. (OCT 2004) .....	130
I.90	FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984).....	130
I.91	FAR 52.237-3 CONTINUITY OF SERVICES. (JAN 1991).....	130
I.92	FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996) .....	131
I.93	FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS. (APR 1984) (COST REIMBURSEMENT) 131	131
I.94	FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS. (MAY 2014) .....	131
I.95	FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS. (JAN 1997) (COST REIMBURSEMENT).....	132
I.96	FAR 52.242-13 BANKRUPTCY. (JUL 1995).....	133
I.97	FAR 52.243-1 CHANGES – FIXED-PRICE. (AUG 1987) - ALTERNATE II (APR 1984) (FIXED PRICE) 133	133
I.98	FAR 52.243-2 CHANGES – COST-REIMBURSEMENT. (AUG 1987) - ALTERNATE II (APR 1984) (COST REIMBURSEMENT) .....	134
I.99	FAR 52.244-2 SUBCONTRACTS. (OCT 2010) – ALTERNATE I (JUN 2007).....	134
I.100	FAR 52.244-5 COMPETITION IN SUBCONTRACTING. (DEC 1996) .....	136
I.101	FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (JAN 2019) .....	136
I.102	FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017) .....	138
I.103	FAR 52.246-25 LIMITATION OF LIABILITY - SERVICES. (FEB 1997) .....	149
I.104	DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010).....	149
I.105	FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE). (APR 2012) (FIXED PRICE) .....	149
I.106	FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT). (MAY 2004) (COST-REIMBURSEMENT) 152	152
I.107	FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICES). (APR 1984) (FIXED PRICE) ...	155
I.108	FAR 52.249-14 EXCUSABLE DELAYS. (APR 1984).....	156
I.109	FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012) .....	156
I.110	DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (AUG 2009).....	156
I.111	FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES. (APR 1984) .....	157
I.112	FAR 52.253-1 COMPUTER GENERATED FORMS. (JAN 1991) .....	157
Section J	- List of Documents, Exhibits and Other Attachments.....	159
J.1	DOE-J-1001 LIST OF ATTACHMENTS.....	159
J.A	ATTACHMENT A PERFORMANCE WORK STATEMENT (PWS) .....	160
J.B	ATTACHMENT B PERFORMANCE EVALUATION MANAGEMENT PLAN (PEMP) .....	173
J.C	ATTACHMENT C TECHNICAL SECURITY Program (TSP) QUALIFICATIONS .....	178
J.D	ATTACHMENT D GLOSSARY .....	194
Section K	- Representations, Certifications, and Other Statements of Bidders .....	213
K.1	FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (SEP 2007).....	213
K.2	FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS. (OCT 2018) .....	213
K.3	FAR 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS. (DEC 2014).....	216
K.4	FAR 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS. (OCT 2018) .....	216

K.5	FAR 52.209-11 REPRESENTATION BY CORPORATIONS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW. (FEB 2016)	217
K.6	DEAR 952.204-73 FACILITY CLEARANCE (AUG 2016)	218
Section L	- Instructions, Conditions, and Notices to Bidders	221
L.1	CONSECUTIVE NUMBERING	221
L.2	SMALL BUSINESS SIZE STANDARDS AND SET-ASIDE INFORMATION	221
L.3	CONTENT OF RESULTING CONTRACT	221
L.4	RESPONSIBLE PROSPECTIVE CONTRACTORS	221
L.5	UNNECESSARILY ELABORATE PROPOSALS AND FILE SIZE LIMITATIONS	221
L.6	INFORMATION OF AWARD	221
L.7	DISPOSITION OF SOLICITATION MATERIALS AND PROPOSALS	221
L.8	CLASSIFIED MATERIAL	222
L.9	COMMITMENT OF PUBLIC FUNDS	222
L.10	FAR 52.204-7 SYSTEM FOR AWARD MANAGEMENT. (OCT 2018)	222
L.11	FAR 52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE. (APR 1991)	223
L.12	FAR 52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY. (APR 1991)	223
L.13	FAR 52.215-1 INSTRUCTIONS TO OFFERORS – COMPETITIVE ACQUISITION. (JAN 2017)	223
L.14	FAR 52.215-16 FACILITIES CAPITAL COST OF MONEY. (JUN 2003)	226
L.15	FAR 52.215-22 LIMITATIONS ON PASS-THROUGH CHARGES – IDENTIFICATION OF SUBCONTRACT EFFORT. (OCT 2009)	226
L.16	FAR 52.216-1 TYPE OF CONTRACT. (APR 1984)	227
L.17	FAR 52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION. (FEB 1999)	227
L.18	FAR 52.222-46 EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES. (FEB 1993)	227
L.19	DEAR 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY. (AUG 2009)	228
L.20	DEAR 952.233-5 AGENCY PROTEST REVIEW. (SEP 1996)	228
L.21	FAR 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE. (FEB 1998)	228
L.22	FAR 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS. (APR 1984)	228
L.23	DEAR 952.219-70 DOE MENTOR-PROTÉGÉ PROGRAM. (DOE DEVIATION) (FEB 2019)	228
L.24	DOE-L-2021 GUIDANCE FOR PROSPECTIVE OFFERORS – IMPACT OF TEAMING ARRANGEMENTS ON SMALL BUSINESS STATUS (OCT 2015)	228
L.25	DOE-L-2015 OFFER ACCEPTANCE PERIOD (OCT 2015)	229
L.26	DOE-L-2026 SERVICE OF PROTEST (OCT 2015)	229
L.27	NUMBER OF AWARDS	229
L.28	DOE-L-2017 EXPENSES RELATED TO OFFEROR SUBMISSIONS (OCT 2015)	229
L.29	DOE-L-2022 ALTERNATE BID/PROPOSAL INFORMATION – NONE (OCT 2015)	229
L.30	DOE-L-2001 PROPOSAL PREPARATION INSTRUCTIONS – GENERAL (OCT 2015)	229
L.31	PROPOSAL PREPARATION INSTRUCTIONS - OFFER AND OTHER DOCUMENTS - VOLUME I.	232
L.32	PROPOSAL PREPARATION INSTRUCTIONS - TECHNICAL AND MANAGEMENT PROPOSAL VOLUME II.	235
L.33	PROPOSAL PREPARATION INSTRUCTIONS - VOLUME III COST PROPOSAL	243
L.34	DOE-L-2019 SITE VISIT (OCT 2015)	252
L.35	FAR 52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME (MAR 2015)	252
L.36	LIST OF EXHIBITS	253
L.36A	EXHIBIT A – PERFORMANCE GUARANTEE	254
L.36B	EXHIBIT B – COST EXHIBITS	256
L.36C	EXHIBIT C – PAST PERFORMANCE INFORMATION QUESTIONNAIRE COVER LETTER	257
L.36D	EXHIBIT D – PAST PERFORMANCE QUESTIONNAIRE	258
L.36E	EXHIBIT E – PAST PERFORMANCE REFERENCE INFORMATION FORM	261
Section M	- Evaluation Factors for Award	263
M.1	PROPOSAL EVALUATION - GENERAL	263
M.2	COMPLIANCE WITH THE REQUEST FOR PROPOSAL	263
M.3	BASIS FOR CONTRACT AWARD	263
M.4	OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA	263
M.5	EVALUATION CRITERIA – TECHNICAL AND MANAGEMENT PROPOSAL	264
M.6	EVALUATION CRITERIA – COST	266
M.7	FAR 52.217-5 EVALUATION OF OPTIONS. (JUL 1990)	266
M.8	RATING DEFINITION TABLES	266

## **Section B - Supplies or Services/Prices**

### **B.1 SERVICES BEING ACQUIRED – TECHNICAL SECURITY, COMMUNICATIONS SECURITY, CYBER, ANALYSIS AND SECURITY ADMINISTRATION**

A. The Contractor shall furnish all personnel, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of the items of work as specified in the Performance Work Statement (PWS) set forth in Part III, Section J, Attachment A for the **(TERM)** specified in Part I, Section F. This contract is a hybrid blend of cost-plus-award-fee (CPAF) and firm-fixed price (FFP) contract line item numbers (CLINs). The contract provides Classification Support Services as described in the PWS.

B. For the Cost-Plus-Award-Fee (CPAF) CLINs, the level of effort specified for the base period is the present level of effort **estimated** for the performance of work set forth in Part III, Section J, Attachment A, PWS. However, changes in programmatic requirements may cause a substantial increase or decrease in the number of Direct Productive Labor Hours (DPLH) identified for the Contract Line Item Numbers (CLIN) listed in Part I, Section B. This contract is to be available for the Government to obtain services for the contract period **(TERM)**, even if the level of effort and/or the estimated cost as originally specified is insufficient. The estimated level of effort, as may be approved by the Contracting Officer in accordance with this contract, is inclusive of all effort for the prime contractor, subcontractor(s), consultant(s), or other such entities that provide labor under this contract. The estimated DPLH is identified below for each CLIN. The Total Estimated Cost identified below is inclusive of all items (e.g. labor, supplies, materials, subcontracts, etc.)

C. For the Firm-Fixed Price CLINs, the fixed price shall encompass completion of all work specified in Part III, Section J, Attachment A, PWS.

D. All work under this contract shall be performed under the general guidance and direction of the DOE Contracting Officer's Representative (COR) whose responsibilities are set forth in the clause Technical Direction in Part I, Section H. Such guidance and direction shall not; however, effect any change in the Contract Schedule, PWS, or other provisions of this contract. Such changes shall only be made by the expressed written direction of the Contracting Officer.

E. The PWS set forth in Part III, Section J, Attachment A, defines the scope of work specific for each CLIN listed below.

#### **CLIN 1 – Technical Security Program (TSP) Support Services (Cost Reimbursement)**

This CLIN provides support services and qualified personnel for all programs within the Technical Security Program (TSP). Technical security personnel provide support for the implementation and administration of the DOE TSP in accordance with DOE Order 470.6, relevant National Security Agency implementations, Committee on National Security Policies, Director of National Intelligence Policies and Directorate Central Intelligence Agency Directives (DCIDs) and various Executive order and legislations. Each of these support services are further described in the Performance Work Statement (PWS).

Base Period (Effective date through 12 months)			
Item Number	Description (Cost-Plus-Award-Fee)	Estimate	Total Est Cost/Fee
CLIN 1	Technical Support Services		
	Total Estimated Cost	TBD	
	Estimated DPLH	TBD	
	Maximum Award Fee Pool	TBD	
	Total Estimated Cost Plus Maximum Award Fee		TBD

Option Period I (month 13 through month 24)			
Item Number	Description (Cost-Plus-Award-Fee)	Estimate	Total Est Cost/Fee
CLIN 1	Technical Support Services		
	Total Estimated Cost	TBD	
	Estimated DPLH	TBD	
	Maximum Award Fee Pool	TBD	
	Total Estimated Cost Plus Maximum Award Fee		TBD

Option Period II (month 25 through month 36)			
Item Number	Description (Cost-Plus-Award-Fee)	Estimate	Total Est Cost/Fee
CLIN 1	Technical Support Services		
	Total Estimated Cost	TBD	
	Estimated DPLH	TBD	
	Maximum Award Fee Pool	TBD	
	Total Estimated Cost Plus Maximum Award Fee		TBD

Option Period III (month 37 through month 48)			
Item Number	Description (Cost-Plus-Award-Fee)	Estimate	Total Est Cost/Fee
CLIN 1	Technical Support Services		
	Total Estimated Cost	TBD	
	Estimated DPLH	TBD	
	Maximum Award Fee Pool	TBD	
	Total Estimated Cost Plus Maximum Award Fee		TBD

Option Period IV (month 49 through month 60)			
Item Number	Description (Cost-Plus-Award-Fee)	Estimate	Total Est Cost/Fee
CLIN 1	Technical Support Services		
	Total Estimated Cost	TBD	
	Estimated DPLH	TBD	
	Maximum Award Fee Pool	TBD	
	Total Estimated Cost Plus Maximum Award Fee		TBD

**CLIN 2 – Contract Administration and General Administrative Support Services (Firm-Fixed Price).**

This CLIN supports the contract administration and general administrative support services necessary to perform the support services of this contract.

Base Period (Effective date through 12 months)		
Item Number	Description (Firm-Fixed-Price)	Total Price



CLIN 2	Contract Administration, General Administrative Support	TBD
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Option Period I (month 13 through month 24)		
Item Number	Description (Firm-Fixed-Price)	Total Price
CLIN 2	Contract Administration, General Administrative Support	TBD

Option Period II (month 25 through month 36)		
Item Number	Description (Firm-Fixed-Price)	Total Price
CLIN 2	Contract Administration, General Administrative Support	TBD

Option Period III (month 37 through month 48)		
Item Number	Description (Firm-Fixed-Price)	Total Price
CLIN 2	Contract Administration, General Administrative Support	TBD

Option Period IV (month 49 through month 60)		
Item Number	Description (Firm-Fixed-Price)	Total Price
CLIN 2	Contract Administration, General Administrative Support	TBD

### CLIN 3 – TRANSITION (Firm-Fixed Price)

The Contractor shall perform all transition activities to begin performance of this contract, consistent with this contract. Transition activities are defined as any effort that is necessary to transition the work from the incumbent Contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources, responsibilities, and accountability from the incumbent Contractor; and (3) allows the Contractor to perform the work in an efficient, effective, and safe manner. Specific transition activities will be identified; however, anticipated transition activities include, but are not limited to, assuming operational control of staffing, orienting, and training Key Personnel and other than Key Personnel, etc. Transition shall commence upon contract award and continue through the effective date of the contract which will coincide with the date the Contractor assumed full responsibility for contract operational performance.

Item Number	Description (Firm-Fixed-Price)	Total Price
CLIN 3	Transition	TBD

## B.2 ESTIMATED TOTAL VALUE OF THE CONTRACT

The estimated total value of this contract, inclusive of all CLINs (including profit and fee) is TBD. This is an estimated total cost only and is not considered a ceiling value of the contract as this contract is to be available for the Government to obtain services for the contract period (**TERM**), even if the level of effort and/or the estimated cost as originally specified is insufficient. This is not a requirements type contract.

## B.3 FAR 52.217-8 OPTION TO EXTEND SERVICES

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall

not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days of the end of the contract period.

#### **B.4 DISTRIBUTION OF PERFORMANCE AWARD FEE (COST REIMBURSEMENT)**

FEE PERIOD	FEE PERIOD BEGINNING DATE	FEE PERIOD ENDING DATE	AVAILABLE AWARD FEE POOL	FEE EARNED
1	TBD	TBD	*	**
2	TBD	TBD	*	**
3	TBD	TBD	*	**
4	TBD	TBD	*	**
5	TBD	TBD	*	**
6	TBD	TBD	*	**
7	TBD	TBD	*	**
8	TBD	TBD	*	**
9	TBD	TBD	*	**
10	TBD	TBD	*	**

\* Reference paragraph C contained in Section H, clause entitled H.13 PERFORMANCE BASED AWARD FEE. The Available Award Fee Pool is the sum of all award fee negotiated at the CLIN level, rolled up to a total contract amount for the fee period identified rolled together into one total contract amount (as identified in the above Available Award Fee Pool column) for the months of performance that are within the dates specified for each fee period). The Available Award Fee Pool shall be filled in (through contract modification) for each fee period.

NOTE: Unearned fee in any given period shall not be carried forward or “rolled-over” in subsequent periods.

For example, if the Contractor earns \$1,400,000 in award fee from the available award fee pool identified for fee period 1 (\$1,800,000), the unearned fee (\$400,000) is foregone and will not be rolled over into the second fee period (i.e., the available award fee pool for fee period 2 remains unchanged).

\*\* The Fee Earned column shall be filled in (through contract modification) based on the total amount of fee earned for each fee period identified.

In the event the Government exercises an option period, the additional Fee Periods will be added to the table above. In the event of contract termination, award fee will be handled in accordance with FAR 52.249-6.

#### **B.5 LIMITATION OF FUNDS**

Pursuant to Section I, Clause 52.232-22, “Limitation of Funds,” total funds in the amount of \$TBD are obligated herewith and made available for payment of allowable costs and award fee to be incurred from the effective date of this contract through the period estimated to end TBD.

#### **B.6 FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may unilaterally extend the term of this contract by written notice to the Contractor within the term of the contract; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed sixty (60) months.

**Section C - Description/Specifications**

**C.1      PERFORMANCE WORK STATEMENT**

The Performance Work Statement (PWS) is located in Part III -- Section J, Attachment A to this contract.

## **Section D - Packaging and Marking**

### **D.1 DOE-D-2001 PACKAGING AND MARKING (OCT 2014)**

(a) Preservation, packaging and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s), including electronic means.

(b) Each package, report or other deliverable shall be accompanied by a letter or other document which –

- (1) Identifies the contract by number pursuant to which the item is being delivered;
- (2) Identifies the deliverable item number or report requirement which requires the delivered item; and
- (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

(c) For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document required by paragraph (b) shall be simultaneously delivered to the office administering this contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

## **Section E - Inspection and Acceptance**

### **E.1 DOE-E-2001 INSPECTION AND ACCEPTANCE (OCT 2014)**

Inspection and acceptance of all items under this contract shall be accomplished by the Contracting Officer in accordance with the clause entitled E.2 FAR 52.246-4 Inspection of Services – Fixed-Price (AUG 1996) and E.3 FAR 52.246-5 Inspection of Services – Cost Reimbursement (APR 1984). If the Contracting Officer assigns this responsibility to the Contracting Officer's Representative or another representative of the Government, the Contracting Officer shall notify the Contractor in writing.

### **E.2 FAR 52.246-4 INSPECTION OF SERVICES – FIXED-PRICE. (AUG 1996) (FIXED PRICE)**

- (a) *Definitions. Services*, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and (2) reduce the contract price to reflect the reduced value of the services performed.
- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or (2) terminate the contract for default.

### **E.3 FAR 52.246-5 INSPECTION OF SERVICES – COST-REIMBURSEMENT. (APR 1984) (COST REIMBURSEMENT)**

- (a) *Definition.*

*Services* as used in this clause, includes services performed workmanship and material furnished or used in performing services.

- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

## **Section F - Deliveries or Performance**

### **F.1 PERIOD OF PERFORMANCE (BASE CONTRACT AND OPTION YEARS)**

#### **BASE CONTRACT**

The work to be performed under the Base Contract (Reference Part I, Section B) shall commence on the effective date of the contract (upon completion of transition) and shall continue for twelve (12) months.

#### **OPTION PERIOD 1**

Option Period 1, if exercised, shall commence on the 13<sup>th</sup> month and shall continue through the 24<sup>th</sup> month.

#### **OPTION PERIOD 2**

Option Period 2, if exercised, shall commence on the 25<sup>th</sup> month and shall continue through the 36<sup>th</sup> month.

#### **OPTION PERIOD 3**

Option Period 3, if exercised, shall commence on the 37<sup>th</sup> month and shall continue through the 48<sup>th</sup> month.

#### **OPTION PERIOD 4**

Option Period 4, if exercised, shall commence on the 49<sup>th</sup> month and shall continue through the 60<sup>th</sup> month.

### **F.2 PRINCIPAL PLACE OF PERFORMANCE**

The principal places of performance under this contract shall be at the DOE Germantown facility in Germantown, Maryland, with occasional work at the Forrestal Building in Washington, DC. One FTE may be located at the Albuquerque, NM site. Occasional travel among DOE sites (domestic and international) may be required..

### **F.3 FAR 52.242-15 STOP-WORK ORDER. (AUG 1989) (FIXED PRICE)**

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

**F.4 FAR 52.242-15 STOP-WORK ORDER. (AUG 1989) - ALTERNATE I (APR 1984) (COST REIMBURSEMENT)**

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.



## **Section G - Contract Administration Data**

### **G.1 DOE-G-2001 CONTRACTING OFFICER AUTHORITY (OCT 2014)**

The Contracting Officer is responsible for administration of the contract. The Contracting Officer may appoint a Contracting Officer's Representative (COR), in accordance with the clause entitled Contracting Officer's Representative, to perform specifically delegated functions. The Contracting Officer is the only individual who has the authority on behalf of the Government, among other things, to take the following actions under the contract:

- (a) Assign additional work within the general scope of the contract.
- (b) Issue a change in accordance with the clause entitled Changes.
- (c) Change the cost or price of the contract.
- (d) Change any of the terms, conditions, specifications, or services required by the contract.
- (e) Accept non-conforming work.
- (f) Waive any requirement of the contract.

### **G.2 DOE-G-2002 CONTRACTING OFFICER'S REPRESENTATIVE (OCT 2014)**

Pursuant to the clause at H.2, Technical Direction (DEC 2000), the Contracting Officer shall designate in writing a Contracting Officer's Representative (COR) for this contract and provide a copy of such designation to the contractor, including the delegated responsibilities and functions. The COR does not have authority to perform those functions reserved exclusively for the Contracting Officer.

### **G.3 CORRESPONDENCE PROCEDURES**

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

#### **A. Technical Correspondence**

Technical correspondence (as used herein, this term excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions, of this contract) shall be addressed to the DOE Contracting Officer's Representative, with an information copy of the correspondence to the DOE Contract Specialist.

#### **B. Indirect Rate Correspondence**

All correspondence relating to the establishment, revision, and negotiation of billing and final indirect cost rates shall be addressed to the Contracting Officer for Indirect Cost Rate Management, with information copies of the correspondence to the DOE Contract Specialist.

#### **C. Other Correspondence**

All other correspondence shall be addressed to the DOE Contract Specialist with information copies of the correspondence to the DOE Contracting Officer's Representative.

#### **D. Subject Line(s)**

All correspondence shall contain a subject line commencing with the contract number, i.e., TBD and identifying the specific contract action requested.

### **G.4 SUBMISSION OF VOUCHERS/INVOICES**

#### **A. Voucher Form (SF 1034)**

In requesting reimbursement, Contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal), and F4220.50 (Statement of Cost). Electronic versions of the SF1034 and the F4220.50 can be found at <https://netl.doe.gov/node/5722>. The Statement of Cost shall be supported by the information contained in Paragraph (c) of this clause. Acceptable substitutes for the forms (which provide the same necessary information) may be used.

In accordance with FAR 52.232-25, "Prompt Payment," all invoices shall include the following information:

1. Name and address of Contractor
2. Invoice date and invoice number (The Contractor should date invoices as close as possible to the date of the mailing or transmission)
3. Contract number or other authorization for supplies delivered or services performed (including order number and contract line number)
4. Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed
5. Shipping and payment terms (e.g. shipment number and date of shipment, discount for prompt payment terms, bill of lading number and weight of shipment will be shown for shipments on Government bills of lading)
6. Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)
7. Name (where practicable), title, phone number and mailing address of the person to notify in the event of a defective invoice.
8. Taxpayer Identification Number (TIN)
9. Electronic funds transfer (EFT) banking information
  - a. If EFT banking information is not included on the invoice, the Contractor shall have submitted the correct EFT banking information in accordance with applicable solicitation provision (e.g. FAR 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g. FAR 52.232-33 Payment by Electronic Funds Transfer – System for Award Management, or FAR 52.232-34, Payment by Electronic Funds Transfer – Other than System for Award Management), or applicable agency procedures.
10. Other substantiating documentation or information as required by the contract.

#### B. Statement of Cost

The SF 1034 shall be completed so as to make due allowances for the Contractor's cost accounting system. The costs claimed shall be only those recorded costs (including cost sharing) which are authorized for billing by the payment provisions of this contract. Indirect rates claimed shall be billed in accordance with the "Allowable Cost and Payment Clause." The Certification (block 11) must be signed by a responsible official of the Contractor.

#### C. Supporting Documentation

Direct costs (e.g., labor, equipment, travel, supplies, etc.) claimed for reimbursement on the Statement of Cost must be adequately supported. The level of detail provided must clearly indicate where the funds were expended. For example, support for labor costs must include the labor category (e.g., senior engineer, technician, etc.) the hourly rate, and the labor cost per category; equipment costs must be supported by a list of the equipment purchased, along with the item's cost; supporting data for travel must include the destination of the trip, number and labor category of travelers, transportation costs, per diem costs, and purpose of the trip; and supplies should be categorized by the nature of the items (e.g., office, lab, computer, etc.) and the dollar amount per category.

Indirect rates used for billings must be clearly indicated, as well as their basis of application. When the cognizant Contracting Officer (CO) or auditor approves a change in the billing rates, include a copy of the approval.

The contractor shall include a cumulative roll up of the cost-incurred-to-date which shall include separate lines for costs incurred, Firm-Fixed-Price CLINs, costs incurred (Cost Reimbursement CLINs), award fee, and DPLH as indicated below:

<b>Element</b>	<b>Current Period</b>	<b>Cumulative Total</b>
Firm-Fixed-Price (FFP CLIN)	XXXX	XXXX
Cost Incurred (cost reimbursement CLIN)	XXXX	XXXX
Award Fee (cost reimbursement CLIN)	XXXX	XXXX
DPLH (cost reimbursement CLIN)	XXXX	XXXX

The invoice, cost management report, invoice detail report, and staffing report summary are to be prepared and submitted at the same time so that all include the same information and are supportive of each other.

#### D. Submission of Voucher

Contractors shall submit vouchers electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS). VIPERS allows vendors to submit vouchers, attach supporting documentation and check the payment status of any voucher submitted to the DOE. Instructions concerning contractor enrollment and use of VIPERS can be found at <https://vipers.doe.gov>.

#### E. Billing Period

Vouchers shall be submitted no more frequently than monthly (unless prior written consent of the Contracting Officer for more frequent billing is obtained). The period of performance covered by vouchers should be the same as covered by any required monthly technical progress reports and/or monthly cost reports.

#### F. Payment Method

In accordance with the clause entitled "Payment by Electronic Funds Transfer - System for Award Management," payment under this contract will be made utilizing the Automated Clearing House (ACH) network.

#### G. Defective Invoices

Invoices that are determined to be defective, and therefore not suitable for payment, shall be returned to the Contractor as soon as practicable, specifying the reason(s) why the invoice is not proper.

#### H. Status of Payments

The Oak Ridge Financial Service Center (ORFSC) has a system via Internet, in which Contractors can request information about payments by invoice, by contract number, and/or by paid date. The system is called Vendor Inquiry Payment Electronic Reporting System (VIPERS) and is available to Contractors at the following website: <https://vipers.doe.gov>. Contractors must have a Federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system.

#### I. Invoice Approval

The Contract Specialist and Invoice Approving Official is TBD. The Contracting Officer's Representative (COR) for the purposes of monitoring and coordinating the technical requirements of this contract is TBD.

### G.5 PAYMENT OF PERFORMANCE AWARD FEE (COST REIMBURSEMENT)

The Government will promptly make payment of any award fee earned upon submission by the Contractor to the Contracting Officer, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made based upon an authorization letter from the Fee Determination Official (FDO) and without the need for a contract modification. The Contractor shall submit a separate invoice (i.e., apart from regular monthly invoice) based on the FDO's fee notice to the Government for payment.

## **G.6 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR**

A support service Contractor performs the function of processing of all invoices submitted to the Department of Energy, against its awards. Therefore, this Contractor has access to cost/rate information. A special provision in this Contractor's award requires the confidential treatment by all Contractor employees of any and all business confidential information of other Contractors and financial assistance recipients to which they have access.

## **G.7 ACCOUNTABILITY OF COSTS/SEGREGATION OF CLINS (COST REIMBURSEMENT)**

All costs incurred by the Contractor under this contract shall be segregated by each CLIN (and further segregated or identified by work assignment and funding stream, if applicable). The Contractor shall, therefore, establish separate "Job Order Accounts and Numbers" for each CLIN and shall record all incurred costs in the appropriate job order account in accordance with the Work Breakdown Structure clause set forth in Part I Section H.

## **G.8 OBSERVANCE OF LEGAL HOLIDAYS**

A. The on-site Government personnel observe the following holidays:

1. New Year's Day
2. Martin Luther King, Jr.'s Birthday
3. President's Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Veterans Day
9. Thanksgiving Day
10. Christmas Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

- B. When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.
- C. The Contractor shall not exceed the total number of holidays identified in paragraph (A) above. Contractor personnel shall comply with its own company's personnel policy and procedures regarding the administration of holidays. The costs associated with the observance of such holidays shall be consistent with company's established cost accounting standards and practices; other terms and conditions of the contract, and Federal Acquisition Regulation Part 31, Contract Cost Principles and Procedures.
- D. Any administrative time-off granted as a result of early holiday release; release or delay due to inclement weather; or any other administrative release is at the discretion of the Contractor. However, when granting any administrative time-off, the Contractor shall continue to provide sufficient personnel to perform critical or essential tasks under this contract.
- E. Non-productive time, such as sick leave, vacation leave, and emergency leave, shall be charged in accordance with the Contractor's established accounting practices and procedures.
- F. When the U.S. Government is closed, as advised by OPM, Contractor employees at the DOE Germantown, Maryland, Forrestal Building in Washington, DC, and the National Archives and Records Administration (NARA) locations will be dismissed. These individuals working under the cost-reimbursement CLINs are authorized to bill time to the area to which they normally would have been performing provided that it meets with the corporate policy of the contractor (dismissed with pay, for the same duration, as the DOE Federal employees).

## **G.9 DOE-G-2007 CONTRACTOR PERFORMANCE ASSESSMENT REPORTING (JUL 2018)**

(a) The Contracting Officer will document the Contractor's performance under this contract (including any task orders placed against it, if applicable) by using the Contractor Performance Assessment Reporting System (CPARS). CPARS

information is handled as “Source Selection Information,” available to authorized Government personnel seeking past performance information when evaluating proposals for award.

(b) Contractor performance will be evaluated at least annually at the contract or task-order level, as determined by the Contracting Officer. Evaluation categories may include any or all of the following at the Government’s discretion: (1) technical/quality, (2) cost control, (3) schedule, (4) management or business relations, and (5) small business subcontracting. Past performance information is available at <http://www.cpars.gov>. It is recommended that the Contractor take the overview training found on the CPARS website. The Contractor shall acknowledge receipt of the Government’s request for comments on CPARS assessments at the time it is received and shall respond to such requests within fourteen (14) calendar days of the request.

(c) Joint Ventures. Performance assessments shall be prepared on contracts with joint ventures. When the joint venture has a unique Commercial and Government Entity (CAGE) code and Data Universal Numbering System (DUNS) number, a single assessment will be prepared for the joint venture using its CAGE code and DUNS number. If the joint venture does not have a unique CAGE code and DUNS number, separate assessments, containing identical narrative, will be prepared for each participating contractor and will state that the evaluation is based on performance under a joint venture and will identify the contractors that were part of the joint venture.

(d) In addition to the performance assessments addressed above, the Government will perform other performance assessments necessary for administration of the contract in accordance with other applicable clauses in this contract.

#### **G.10 DOE-G-2008 NON-SUPERVISION OF CONTRACTOR EMPLOYEES (OCT 2014)**

The Government shall not exercise any supervision or control over Contractor employees performing services under this contract. The Contractor's employees shall be held accountable solely to the Contractor's management, who in turn is responsible for contract performance to the Government.

## **Section H - Special Contract Requirements**

### **H.1 DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014)**

Due to automated procedures employed in formulating this document, clauses and provisions contained within may not always be consecutively numbered.

### **H.2 TECHNICAL DIRECTION (DEC 2000)**

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Providing direction to the Contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.

(2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the Government.

(b) The Contractor will receive a copy of the written COR designation from the Contracting Officer. It will specify the extent of the COR's authority to act on behalf of the Contracting Officer.

(c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that-

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the Contractor's right to perform the terms and conditions of the contract.

(d) All technical direction shall be issued in writing by the COR.

(e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer must-

(1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

(2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or

(3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

(f) A failure of the Contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

### **H.3 USE OF GOVERNMENT-OWNED EQUIPMENT/FACILITIES**

The Contractor is authorized to use on a no-charge, non-interference, basis in the performance of this contract, the Government-owned facilities indicated below.

The Government shall furnish, as appropriate, the facilities, furniture, office supplies, information and communications technology systems and equipment and maintenance thereof, required data, and other materials as required for performance of the work under the contract. EHSS currently has office space for 11 Full Time Equivalents (FTEs) at the Germantown, Maryland site; office space for 13 at DOE HQ Forrestal Building in Washington, DC; & office space for 1 at Albuquerque, New Mexico (if necessary) that is available for use by on-site Contractor personnel. All equipment, systems, databases, information, and materials acquired, developed, or used by the Contractor under this contract shall remain the property of the DOE.

### **H.4 WORK BREAKDOWN STRUCTURE**

The Contractor's Work Breakdown Structure (WBS) shall require the written approval of the Contracting Officer's Representative (COR) prior to submission of the first invoice. The WBS submitted by the Contractor shall be in sufficient detail to track all incurred cost and labor hours to their lowest elements. For example, as a minimum, the WBS Structure and dictionary must be capable of breaking down labor cost, travel, materials, supplies, equipment, subcontracts, consultants, and other costs.

- A. WBS Structure Use – The Contractor shall use the WBS structure approved by the COR as the basis for all contractual reporting, invoicing, and accounting;
- B. Changes in WBS – On an annual basis the Contractor shall review their WBS structure to ensure continued compliance with the work required. If a change is determined to be necessary, the Contractor shall submit a revised WBS for review and approval;
- C. Subcontract WBS – The Contractor shall include the requirements of this clause in all cost-reimbursement subcontracts it issues when:
  - 1. The value of the subcontract is greater than \$250,000; unless specifically waived by the Contracting Officer; or
  - 2. The Contracting Officer determines that the subcontractor effort is, or involves, a critical area related to the contract.
- D. Example:
  - 1. WBS Level 1: Contract Level Reporting
  - 2. WBS Level 2: CLIN Level Reporting
  - 3. WBS Level 3: SubCLIN Level Reporting (if needed)
  - 4. WBS Level 4: Activity Level Reporting (if needed)

Further levels as appropriate.

## **H.5 KEY PERSONNEL/PROGRAM MANAGER & SENIOR TECHNICAL SECURITY SPECIALIST**

### **A. Introduction**

The key personnel, which include the Program Manager and Senior Technical Security Specialist (STSS), specified below, are considered to be critical to the success of all work being performed under this award. This Clause provides specific requirements, in addition to the requirements of the clause in Section I entitled, “952.215-70 Key Personnel.” Any changes to these personnel require prior DOE Contracting Officer’s written approval.

### **B. Key Personnel Team Requirements**

The Contracting Officer and designated Contracting Officer’s Representative(s) shall have direct access to the Key Personnel. In addition to the definition contained in the Section I Clause entitled, “DEAR 952.215-70, Key Personnel,” Key Person(s) are considered managerial personnel.

In addition, the Program Manager is the most senior resident manager. This individual is responsible for the planning, implementation, management, performance, and supervision of the contract. The Program Manager shall receive and execute, on behalf of the Contractor, such technical directions as the DOE Contracting Officer’s Representative may issue within the terms and conditions of the contract.

### **C. Definitions**

For the purposes of this clause, Changes to Key Personnel is defined as: (i) any changes to the position assignment of a current Key Person under the contract, except for a person who acts for short periods of time, in the place of a Key Person during his or her absence, the total time of which shall not exceed 30 working days during any given year; (ii) utilizing the services of a new substitute Key Person for assignment to the contract; or (iii) assigning a current Key Person for work outside the Contract.

### **D. Contract Award Fee Reductions for Changes to Key Personnel**

1. Notwithstanding approval by the Contracting Officer, anytime the Program Manager (the initial Program Manager or any accepted substitution approved by the Contracting Officer) is changed for any reason after being placed in the position, the total Available Award Fee Pool (sum of all individual CLIN award fee pools), may be reduced, for the fee period in which the change occurs, by \$75,000 for each and every occurrence of a change to the Program Manager.
2. Notwithstanding approval by the Contracting Officer, anytime a Key Person other than the Program Manager (any initial Key Person or any accepted substitution approved by the Contracting Officer) is changed for any reason after being placed in the position, the total Available Award Fee Pool (sum of all individual CLIN award fee pools), may be reduced, for the fee period in which the change occurs, by \$25,000 for each and every occurrence of a change to the Key Person.
3. The Contractor may request, in writing, that the Contracting Officer consider waiving all or part of a reduction in the available award fee pool. Such written request shall include the factual basis for the request. The Contracting Officer shall have unilateral discretion to make the determination to waive or not waive all or part of a reduction in the available award fee pool.

### **E. Key Personnel for this Contract**

The Key Personnel that have been approved for this contract are identified below. Any changes to these personnel require prior DOE Contracting Officer’s written approval.

<u>Name</u>	<u>Position/Title</u>
[TBD]	Program Manager (PM)
[TBD]	Senior Technical Security Specialist (STSS)

The Contractor shall notify the Contracting Officer not less than thirty (30) calendar days prior to the diversion or substitution of key personnel and shall submit a written justification (including qualifications of proposed substitutions) to permit evaluation. The proposed changes will be approved in writing at the sole discretion of the Contracting Officer.



## **F. Contract Award Fee Reductions for Key Personnel Commitments**

Unless a written waiver is approved in advance, by the CO, should any key personnel be removed, replaced, or diverted by the Contractor prior to fulfillment of the commitment letter received for that specific key personnel, the total Available Award Fee Pool (sum of all individual CLIN award fee pools), may be reduced, for the fee period in which the change occurs, by \$30,000 for each and every failure to fulfill commitment. The reduction referred in this paragraph is in addition to the specific position reduction stated in paragraph D, above.

## **H.6 TRAVEL AND PER DIEM COSTS**

Costs incurred by Contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable subject to the limitations contained in FAR 31.205-46 and the terms and conditions of this contract. Foreign travel is not expected to be incurred under this contract; however, in the event that foreign travel is required, it shall be subject to DEAR 952.247-70. Travel and training must be pre-approved by the Contracting Officer's Representative (COR) or designee. The Contractor shall submit travel and/or training requests at least thirty (30) days in advance of the anticipated start date of the travel and/or training.

## **H.7 PRIOR APPROVAL REQUIREMENTS FOR PLACEMENT OF SUBCONTRACTS AND/OR CONSULTANTS**

The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract, including consultants, for which advance notification is required under FAR 52.244-2, "Subcontracts."

Any request for subcontract/consultant approval shall include the elements prescribed by FAR 52.244-2, including subcontractor/consultant Representations and Certifications. For consultants, the Contractor will obtain and furnish information supporting the need for and selection of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultants to others for performing consulting services of a similar nature.

Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts and/or consultants shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

The Contractor is hereby given consent to the placement of the following subcontracts, which were evaluated during negotiations:

[TBD]

Notwithstanding this consent, the Contractor shall ensure compliance with FAR 52.244-2. All subcontracts and/or consultants must contain all applicable flow-down clauses contained in Part II, Section I.

## **H.8 SUBCONTRACTOR FACILITIES CAPITAL COST OF MONEY**

- A. To the extent a subcontractor proposes to recover as an element of proposed cost any Facilities Capital Cost of Money (FCCOM) from a higher tier subcontractor or from the prime Contractor, the FCCOM cost principle (FAR 31.205-10) shall apply to subcontracts and new scope modifications issued thereto which are fee bearing cost reimbursement type or negotiated fixed price type.
- B. To the extent a subcontractor is eligible to recover yet does not propose as an element or proposed cost any Facilities Capital Cost of Money (FCCOM) from a higher tier subcontractor or from the prime Contractor, the higher tier subcontractor or the prime Contractor shall insert the following provision in any such subcontract or new scope modification issued thereto:
  - Waiver of Facilities Capital Cost of Money (FAR 52.215-17, OCT 1997)
- C. The Contractor agrees to insert the substance of this clause, including this paragraph (C) altered as necessary for proper identification of the parties, in any subcontract placed hereunder which is a fee bearing cost reimbursement or negotiated fixed price type.

## H.9 INDIRECT COSTS (COST REIMBURSEMENT)

Pending establishment of final indirect cost rates (e.g., G&A, DOE specific on-site overhead, off-site overhead, etc.) for any period, billing and reimbursement of indirect costs shall be made on the basis of provisional rates recommended by the cognizant Government auditor. When a rate change occurs, and after it has been audited and approved by the cognizant Government auditor, the Contractor shall inform the Contracting Officer by letter of the indirect rate change. This notification shall include a copy of the cognizant auditor's approval and the cost impact of the rate change on the program. The change shall not be implemented until the Contracting Officer has reviewed and approved the documentation provided.

DOE requires the use of a DOE on-site overhead rate which shall include the Contractor's cost elements to perform work on-site at DOE taking into consideration the facilities, property, and services provided by DOE for on-site support. Since this rate is specific to this requirement it is not expected that there will be any conflict with the Contractor's audited rate structure.

## H.10 LIMITATION OF INDIRECT COST (COST REIMBURSEMENT)

Notwithstanding any other clause(s) of this contract, the Government shall not reimburse the Contractor for any site specific on-site, off-site, and G&A indirect costs in excess of the indirect expense dollars derived for each of the Contractor's fiscal years by the application of the following individual indirect cost ceiling rates to the appropriate base outlined below. The indirect cost ceiling rates are based on a [TBD - *percentage of overall rate or percentage of growth for individual or groups of cost elements*] basis. All indirect costs in excess of said limit(s) shall be borne by the Contractor.

### A) Percentage of Overall Rate

Entity[TBD]		Indirect Cost Ceiling Rate(s) per Contractor's Fiscal Year (1) (Years 1-5)					
Indirect Cost	Base of Application	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]
DOE Site Specific On-Site Overhead	\$(TBD)	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%
Off-Site Overhead (Contractor's site)	\$(TBD)	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%
G&A	\$(TBD)	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%	[TBD]%

(1) For Contractor's FY beginning [TBD] and ending [TBD].

Or

### B) Percentage of Growth for Individual or Group of Cost Elements

Entity[TBD]		Indirect Cost Ceiling Rate(s) per Contractor's Fiscal Year (1) (Years 1-5)					
Indirect Cost	Cost Element	FY[TBD ]	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]	FY[TBD]
DOE Site Specific On-Site Overhead	[TBD]	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed
Off-Site Overhead (Contractor's site)	[TBD]	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed

G&A	[TBD]	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed	[TBD]% of growth allowed
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*(1) For Contractor's FY beginning [TBD] and ending [TBD].*

The indirect cost limitations set forth above include provisions for all known increases that will take place during the term of this contract resulting from statute, court decisions and/or written ruling or regulation by the Internal Revenue Service (IRS) or any other taxing authority. However, in the event that during the term of this contract, any other statute, court decision and/or written ruling or regulation affects the Contractor's indirect costs, the indirect cost limitations will be adjusted to the extent the Contracting Officer determines the increase or decrease, if any, said statute, court decision and/or ruling or regulation impacts the Contractor's indirect costs.

This clause shall be flowed down to all subcontracts issued under a cost reimbursement basis. The indirect rate ceilings contained in this clause shall be negotiated prior to the placement of any cost-reimbursement subcontracts not previously authorized in Part I, Section, H, "Prior Approval Requirements for Placement of Subcontracts and/or Consultants." The prime Contractor is responsible for negotiating the indirect rate ceilings and ensuring a copy is contained in the subcontract approval package submitted to the Government. However, if the subcontractor is concerned with the prime Contractor having access to company proprietary information, with permission from the prime Contractor, the required information can be submitted directly to the Government for negotiation. In this instance, the prime Contractor will forward an e-mail to the Contract Specialist stating their intention/agreement for the Government to negotiate the indirect rate ceilings. Upon completion, the Government will maintain the agreed upon rate ceilings and provide the prime Contractor with a written notification that negotiations with the subcontractor have been completed.

## **H.11 ANNUAL INDIRECT RATE SUBMISSIONS (COST REIMBURSEMENT)**

### **Introduction**

1. Indirect billing, revised billing (as necessary), and final rate agreements must be established between a Contractor and the Department of Energy (DOE) for each of the Contractor's fiscal years for the life of the contract. These indirect rate agreements allow a Contractor to recover indirect expenses incurred during a fiscal year for which final indirect rates have not been established.
2. Indirect billing and revised indirect billing rate proposals must represent the Contractor's best estimate of the anticipated indirect expenses to be incurred and the estimated allocation base for the current fiscal year in accordance with their approved accounting system. Revised billing rates allow a Contractor or DOE to adjust the approved billing rates, based upon updated information, in order to prevent significant over or under billings. Revised billing rates, once established, are retroactive to the beginning of the fiscal year involved and require an adjustment voucher to be submitted by the Contractor reconciling all previous indirect billings which used the previously approved billing rates.
3. A final indirect rate proposal represents the indirect rate expenses actually incurred during a fiscal year and the actual business base experienced. Once established they are retroactive to the beginning of the fiscal year involved and require an adjustment voucher to be submitted by the Contractor reconciling all previous indirect billings if the established final rates differ from the previously approved billing rates.
4. FAR 42.703(a) stipulates that "A single agency [see FAR 42.705-1(a)] shall be responsible for establishing indirect cost rates for each business unit. These rates shall be binding upon all agencies and their contracting offices, unless otherwise specifically prohibited by statute." This single Government agency is referred to as the Cognizant Federal Agency (CFA). The CFA is normally the Federal agency which has the largest unliquidated contract dollar amount by fiscal year with a Contractor.
5. Sections (B) and (C) or (D) of this clause define the requirements to be followed by the Contractor in establishing indirect rates for contracts when DOE is the CFA and when DOE is not the CFA. Specific instructions for submittal of indirect rate proposals to agencies other than DOE must be obtained from the agency involved.

A. Requirements whether or not DOE is the CFA

1. Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable sections of FAR Part 30, "Cost Accounting Standards," FAR Part 31 and DEAR 931, "Contract Cost Principles and Procedures," in effect as of the date of this contract.
2. Pending settlement of the final indirect expense rates for any period, the Contractor shall be reimbursed at billing rates approved by the CFA subject to acknowledgment by the DOE Indirect Rate Contracting Officer (IRCO). These billing rates are subject to appropriate adjustments when revised by mutual agreement or when the final indirect rates are settled, either by mutual agreement or unilateral determination by the CFA subject to acknowledgment by the DOE IRCO.
3. The Contractor shall continue to use the latest DOE or CFA approved billing rate(s) which have been acknowledged by the DOE IRCO until those rates are superseded by establishment of final rates or more current billing rates. In those cases where current billing rates have not been established, the latest approved final rates shall be used for invoicing, unless it is determined by the DOE IRCO that use of said rates would not provide for an equitable recovery of indirect costs. In those instances, the DOE IRCO will take whatever steps are necessary to establish rates that DOE considers to be reasonable for billing purposes.
4. All Indirect Rate agreements and correspondence shall be submitted to:

U.S. Department of Energy  
Forrestal Building  
1000 Independence Ave., S.W.  
Washington, DC 20585  
Contracting Officer for Indirect Cost Rate Management

B. Requirements when DOE is the CFA

1. No later than six months after the close of its fiscal year, the Contractor shall identify to the DOE IRCO all of its contracts with Federal agencies, either as a prime or as a subcontractor (any level), and provide the following information for those contracts:

Name of Federal Agency  
Contract Number  
Contract Value (total and by fiscal year)  
Period of performance  
Type of contract (CPFF, FFP, etc.)

2. In accordance with the "Allowable Cost and Payment" clause (DEAR 952.216-7) the Contractor, as soon as possible but not later than six months after the close of its fiscal year, shall submit to the DOE IRCO, identified in paragraph (b)(4) of this clause, a proposal for final indirect rates based on the Contractor's actual costs for the period, together with all supporting data. The Contractor's failure to provide the required rate proposals in a timely manner may impact payment of vouchers and could ultimately result in suspension of payments for the indirect expense portion of the vouchers.
3. The settlement of the final indirect rates and indirect costs shall be accomplished prior to the Contracting Officer's approval of the final payment.
4. Pending settlement of the final indirect cost rates for any period, the Contractor shall be reimbursed at billing rates approved by the DOE IRCO. These billing rates are subject to appropriate adjustments when revised by mutual agreement or when the final indirect rates are settled, either by mutual agreement or unilateral determination by the cognizant DOE IRCO (see FAR 42.704).
5. The Contractor shall provide to the DOE IRCO annually, no later than 30 calendar days after the close of its fiscal year, a billing rate proposal for the ensuing fiscal year, with supporting data. Failure to provide the required rate proposals in a timely fashion may impact payment of vouchers and could ultimately result in suspension of the indirect expense portion of vouchers.

6. If the projected indirect expenses or bases change substantially during any fiscal year, the Contractor shall notify the DOE IRCO in writing and request an adjustment to the indirect billing rates. Upon review of the revised billing rate proposal the DOE IRCO may adjust the previously approved billing rates. Such adjustments will apply retroactively to all billings containing the previously approved rates for the fiscal year in question and the Contractor shall make all appropriate adjustments on its next voucher.

**C. Requirements when DOE is not the CFA**

1. When another Federal agency or a different DOE Office has the CFA responsibility for the establishment of indirect rates with the Contractor, the Contractor shall provide a copy of the rate proposals to DOE IRCO, including all supporting documentation, submitted to the CFA. These submittals to DOE shall be within the time periods established within paragraphs (C)(2) and (C)(5) of this clause unless a written request for an extension is submitted by the Contractor and granted by DOE. Failure to provide the required rate proposals in a timely manner may impact payment of vouchers and could ultimately result in suspension of payments for the indirect expense portion of vouchers.
2. The Contractor shall provide copies of all rates established by that CFA and any correspondence related to indirect rates to the DOE IRCO. It is imperative that the DOE IRCO be provided signed copies of all rate agreements established by the CFA since these agreements must be in the possession of, reviewed, and acknowledged by the DOE IRCO before any rates contained therein can be used by the Contractor for cost reimbursement under this contract.

**H.12 PERFORMANCE EVALUATION AND MANAGEMENT PLAN (PEMP) (COST REIMBURSEMENT)**

The Contractor's performance will be evaluated at the CLIN level and on the management of the contract as a whole in accordance with the Performance Evaluation and Measurement Plan included in Part III, Section J, Attachment B. The Plan includes the criteria to be considered under each area evaluated and the percentage of award fee available for each area. The Plan may be revised unilaterally by the Government with notification of the change(s) provided to the Contractor at least fifteen (15) calendar days prior to the start of the evaluation period to which the change will apply. The Plan may be revised bilaterally anytime throughout performance of the contract.

Provision related to the Contractor's performance evaluation and award fee schedule are further detailed in the contract PEMP (Section J) and clause H.13 Performance Based Award Fee.

**H.13 PERFORMANCE BASED AWARD FEE (COST REIMBURSEMENT)**

**A. AWARD FEE DETERMINATION**

The Government shall, at the conclusion of each semi-annual evaluation period, evaluate the Contractor's performance for a determination of performance-based award fee earned. The Government will validate, by appropriate means, the information in the Contractor's self-evaluation.

The Contractor agrees that the determination of performance-based award fee earned will be made solely by the Government Fee Determination Official (FDO) and such determination is binding on both parties.

The evaluation of the Contractor's performance shall be in accordance with the Government's Performance Evaluation and Management Plan (PEMP) as indicated in Clause entitled "Performance Evaluation and Management Plan" set forth in Part III, Section J.

The Contractor shall be promptly advised in writing of the FDO's determination and the reasons why the performance award fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government in accordance with the PEMP, the FDO may also consider any information available to him or her which relates to the Contractor's performance of contract and CLIN requirements, regardless of whether or not those requirements are specifically identified in the PEMP. To the extent the Contractor does not perform those requirements, the FDO may reduce the fee. In the event that the Contractor's performance is considered unacceptable in any area of performance which is specified in the Performance Evaluation and Management Plan, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her sole discretion determine the

Contractor's overall performance to be unacceptable, and accordingly, may prohibit the Contractor from earning fee.

Unearned fee in any given period shall not be carried forward or "rolled-over" in subsequent periods.

#### **B. CONTRACTOR SELF-ASSESSMENT**

Following each semi-annual evaluation period, the Contractor may submit a self-assessment no later than 30 days after each evaluation period end date. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the Contractor's self-assessment, if submitted, as part of the evaluation of the Contractor's management during the period. An unrealistic self-assessment will result in lower performance fee determinations. The Contractor will not be penalized for a realistic self-assessment, although deficiencies noted by the Contractor may be reflected in the Government's evaluation. The self-assessment itself will not be the basis for the performance fee determination.

#### **C. CALCULATION OF AVAILABLE AWARD FEE AND PROVISIONAL FEE**

All award fee is "at risk", where the Contractor may earn no fee or an amount up to, but not exceeding, the maximum award fee pool identified in Part I, Section B for any given fee period. The pool is expressed as a discreet dollar amount, not as a percentage of the plan.

#### **D. REVIEW AND ADJUSTMENT OF AVAILABLE AWARD FEE POOL**

If an adjustment to the available award fee pool will occur, a meeting with the DOE COR and Contractor may be held in the fifth month of the fee period. The meeting will discuss any impacts to the award fee pool based on variance of planned versus actual Direct Productive Labor Hours (DPLH). The COR and the Contractor will reach an agreement on changes for the award fee pool and provide that information to the CO for modification to the contract.

Fee shall not be adjusted based solely on a variance of costs incurred. The variances will be based on planned versus actual DPLH and a range for the adjustment to the fee pool. Fee pool adjustments will be made in whole dollar amounts. Variances are assumed to fall into one of the following categories:

1. Actual DPLH may underrun/overrun plan attributable to the Contractor's management or performance of the contract (i.e., implementation of best practices; applied cost efficiencies; poor work processes; misalignment of work resources; slipped schedules due to poor performance; etc.). In these instances, an adjustment to the fee pool (increase or decrease) would not be made.
2. The work schedule, as agreed upon for activities within a CLIN's Plan, had to be revised based on Government direction, causing the work and its associated DPLH to move to a future performance period. In this case, the fee dollars may migrate with the work and a straight-line adjustment to the available fee may be appropriate.
3. Actual DPLH may underrun/overrun plan due to changes in programmatic nature of the scope (based on Government direction). Some adjustment to the pool should be made, but a straight-line adjustment may not be appropriate.

The Contracting Officer may make a determination on acceptable adjustments (based upon the individual CLINs) to the available award fee pool and those adjustments shall be documented in a contract modification prior to the closing of the evaluation period.

#### **H.14 CONFIDENTIALITY OF INFORMATION**

To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- A. Information which, at the time of receipt by the Contractor, is in the public domain;

- B. Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- C. Information which the Contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- D. Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he/she will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

The Contractor agrees that upon request by DOE it will execute a DOE-approved nondisclosure/nonuse agreement with any party whose facilities or proprietary data the Contractor is given access to or is furnished. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

This clause shall flow down to all subcontracts.

#### **H.15 CONTRACTOR COMMUNICATION RELEASES**

The DOE policy and procedure on news releases requires that all Contractor communication releases (i.e., press releases, public statements) be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) working days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned news releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

This clause shall flow down to all subcontracts.

#### **H.16 ANNUAL REPRESENTATIONS AND CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR**

(a) Pursuant to the clause at FAR 52.204-8, Annual Representations and Certifications, the System for Award Management (SAM) dated TBD is hereby incorporated into the contract by reference.

(b) The Contractor, by signing this contract, certifies that it has verified that its SAM submission incorporated by reference into this contract pursuant to paragraph (a) above is current, accurate, complete, and applicable to this contract.

#### **H.17 DOE-H-2034 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (OCT 2014)**

The Government may award contracts to other contractors for work to be performed at a DOE-owned or -controlled site or facility. The Contractor shall cooperate fully with all other on-site DOE contractors and Government employees. The Contractor shall coordinate its own work with such other work as may be directed by the Contracting Officer or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by a Government employee.

#### **H.18 INSURANCE -- MINIMUM REQUIREMENTS**

In accordance with FAR 52.228-5 and 52.228-7 (Section I), the Contractor shall provide insurance in the minimum amounts as set forth below. The required amount of insurance to be carried by the Contractor under this section may be changed upon the Government's written notice to the Contractor.

- (a) Worker's Compensation and Employer's Liability.

Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. The Contractor shall obtain employer's liability coverage of at least \$100,000.

(b) General Liability.

The Contractor shall obtain bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence and property damage liability insurance coverage of at least \$500,000 per occurrence.

(c) Automobile Liability.

The Contractor shall obtain automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles, including Government furnished vehicles, used in connection with performing the contract. The Contractor shall obtain coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$50,000 per occurrence for property damage, including any property damage to Government furnished vehicles.

#### **H.19 DOE-H-2029 POSITION QUALIFICATIONS (OCT 2014)**

The Contractor shall provide personnel for the performance of this contract, whether employees of the Contractor or employees of a subcontractor, which satisfy as a minimum the applicable labor category qualifications, both education and experience, set forth in the "Position Qualifications" in Section J, Attachment C, except as the Contracting Officer may otherwise authorize.

#### **H.20 DOE-H-2033 ALTERNATIVE DISPUTE RESOLUTION (OCT 2014)**

(a) The DOE and the Contractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, DOE and the Contractor shall use their best efforts to informally resolve any contractual issue in controversy by mutual agreement. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.

(b) If a mutual agreement cannot be reached through negotiations within a reasonable period of time, the parties may use a process of alternate dispute resolution (ADR) in accordance with the clause at FAR 52.233-1, Disputes. The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision, but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible in evidence in any subsequent litigation proceedings.

(c) Either party may request that the ADR process be used. The Contractor shall make a written request to the Contracting Officer, and the Contracting Officer shall make a written request to the appropriate official of the Contractor. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process, and officials of both parties who have the authority to resolve the issue must participate in the agreed upon process.

(d) ADR procedures may be used at any time that the Contracting Officer has the authority to resolve the issue in controversy. If a claim has been submitted by the Contractor, ADR procedures may be applied to all or a portion of the claim. If ADR procedures are used subsequent to issuance of a Contracting Officer's final decision under the clause at FAR 52.233-1, Disputes, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the Contracting Officer's final decision and does not constitute reconsideration of the final decision.

(e) If the Contracting Officer rejects the Contractor's request for ADR proceedings, the Contracting Officer shall provide the Contractor with a written explanation of the specific reasons the ADR process is not appropriate for the resolution of the dispute. If the Contractor rejects the Contracting Officer's request to use ADR procedures, the Contractor shall provide the Contracting Officer with the reasons for rejecting the request.



## **H.21 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM (OCT 2014)**

(a) Pursuant to the clause at DEAR 952.204-2, Security, the Contractor agrees to comply with all security regulations and contract requirements as incorporated into the contract.

(b) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified below in implementing the requirements of this clause. The Contracting Officer, may, at any time, unilaterally amend this clause in order to add, modify or delete specific requirements.

Directive No. Date Directive Title / Contract Requirements Document

- Executive Order 13526, “Classified National Security Information,” as amended, and implanting regulations (<https://www.archives.gov/isoo/policy-documents>)
- 32 C.F.R. Part 2001 (<https://www.archives.gov/isoo/policy-documents>);
- 10 C.F.R. Part 824 – Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations;
- 10 C.F.R. Part 1004, “Freedom of Information: (<https://www.gpo.gov/fdsys/>)
- 10 C.F.R. Part 1017, “Identification and Protection of Unclassified Controlled Nuclear Information” (<https://www.gpo.gov/fdsys/>)
- 10 C.F.R. Part 1045, “Nuclear Classification and Declassification” (<https://www.gpo.gov/fdsys/>)
- 35 U.S.C. Section 181, “Secrecy of Certain Inventions and Withholding of Patent – Patent Laws” (<https://www.uspto.gov/>)
- 37 C.F.R. Section 1.14, “Patent Applications Preserved in Confidence” (<https://www.uspto.gov/>)
- Public Law 105-261, Section 3161, “Protection Against Inadvertent Release of Restricted Data and Formerly Restricted Data” (<https://www.gpo.gov/fdsys/pkg/PLAW-105publ261/pdf/PLAW-105publ261.pdf>)
- Public Law 106-65, Section 3149, “Supplement to Plan for Declassification of Restricted Data and Formerly Restricted Data” (<http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title50-section2673&num=0&edition=prelim>)
- Special Historical Records Review Plan (Supplement) (<https://www.osti.gov/opennet/reports/historical.pdf>)
- DOE Order 200.1A (12/23/08) Chg 1, “Information Technology Management”;
- DOE Order 471.1B (03/1/10), “Identification and Protection of Unclassified Controlled Nuclear Information”;
- DOE Order 475.2B (10/3/2014) “Identifying Classified Information”;
- DOE Order 471.6 Chg 2 (06/29/2011), “Information Security”;
- Atomic Energy Act of 1954, as amended, and implementing regulations;
- Freedom of Information Act, as amended, and implementing regulations;
- Privacy Act of 1974, as amended, and implanting regulations;
- DOE Order 471.3 (04/09/03) Admin Change 1 (01/18/11) Identifying and Protecting Official Use Only Information; DOE Manual 471.3-1 Admin Change 1 (01/11/11) Manual for Identifying and Protecting Official Use Only Information or successor order;
- DOE Order 414.1D (04/25/11) Quality Assurance;
- DOE Order 472.2 Chg 1 (PgChg) (07/21/2011) “Personnel Security” with respect to the processing of access authorization requests.

## **H.22 DOE-H-2075 PROHIBITION ON FUNDING CERTAIN NONDISCLOSURE AGREEMENTS (OCT 2014) (COST REIMBURSEMENT)**

The Contractor agrees that:

a) No cost associated with implementation or enforcement of nondisclosure policies, forms or agreements shall be allowable under this contract if such policies, forms or agreements do not contain the following provisions: “These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”

b) The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

c) Notwithstanding the provisions of paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

## **H.23 DOE-H-2076 LOBBYING RESTRICTIONS (OCT 2014)**

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## **H.24 ACCESS TO DOE-OWNED OR LEASED FACILITIES**

A. The performance of this contract requires that employees of the Contractor have physical access to DOE-owned or leased facilities; however, this clause does not control requirements for an employee's obtaining a security clearance. The Contractor understands and agrees that DOE has a prescribed process with which the Contractor and its employees must comply in order to receive a security badge that allows such physical access. The Contractor further understands that it must propose employees whose background offers the best prospect of obtaining a security badge approval for access, considering the following criteria, which are not all inclusive and may vary depending on access requirements:

1. Is, or is suspected of being, a terrorist;
2. Is the subject of an outstanding warrant;
3. Has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
4. Has presented false or forged identity source documents;
5. Has been barred from Federal employment;
6. Is currently awaiting a hearing or trial or has been convicted of a crime punishable by imprisonment of six (6) months or longer; or
7. Is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer.

B. The Contractor shall assure:

1. In initiating the process for gaining physical access, (i) compliance with procedures established by DOE in providing its employee(s) with any forms directed by DOE, (ii) that the employee properly completes any forms, and (iii) that the employee(s) submits the forms to the person designated by the Contracting Officer.
2. In completing the process for gaining physical access, that its employee (i) cooperates with DOE officials responsible for granting access to DOE -owned or leased facilities and (ii) provides additional information, requested by those DOE officials.

C. The Contractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE that an employee's application for a security badge is or will be denied, the Contractor shall promptly identify and submit the forms referred to in subparagraph (B)(1) of this clause for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Contract or any contractor claim against DOE.

D. The Contractor shall return to the Contracting Officer or designee the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE -owned or leased facilities by the Contractor's

employee(s), upon (1) the termination of this Contract; (2) the expiration of this Contract; (3) the termination of employment on this Contract by an individual employee; or (4) demand by DOE for return of the badge.

- E. The Contractor shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Contract, in which an employee(s) of the subcontractor will require physical access to DOE – owned or leased facilities.

All questions and compliance issues should be directed to the EHSS Security.

## **H.25 NOTIFICATION OF OWNERSHIP CHANGES & OTHER SUSPENSION/DEBARMENT PROCEEDINGS**

The Contractor shall notify the Contracting Officer and Contracting Officer's Representative, within 30 days, when they become aware that a change in ownership has occurred or is certain to occur. The Contractor shall also notify the Contracting Officer and Contracting Officer's Representative as soon as they become aware of a suspension/debarment proceeding by any federal agency against the corporation, its board of directors, or key personnel.

The Contractor shall include the substance of this clause in all subcontracts under this contract.

## **H.26 REIMBURSEMENT OF TRAINING COSTS (COST-REIMBURSABLE CLIN ONLY)**

Training costs incurred by the Contractor for their staff that are direct-charged to this contract shall only be considered allowable if the individual continues to perform work under this contract for a period of twelve months after completion of the training course. In the event the employee does not work directly in support of this contract for the full twelve month period required after completion of the training course or if the employee fails to adequately complete the training course, then the Contractor shall be required to reimburse the Government for the entire cost of the training for that employee (note: during the last year of performance on this award the process identified above may be waived (entirely or in part) by the COR).

## **H.27 FOREIGN NATIONAL ACCESS APPROVAL**

### **1. Introduction**

It is in the interest of both the Government and the Contractor to be aware of approval requirements for Foreign Nationals assigned work under this contract and how they relate to export controls, access to DOE sites, and access to DOE information, technologies, and equipment regardless of whether the work is performed at a DOE site or off-site location/facility.

This clause is required to be flowed down to all subcontracts at all tiers.

### **2. Definitions.**

Foreign national, as used in this clause, is defined in DOE Order 142.3, Unclassified Foreign Visits and Assignments Program.

Fundamental research, as used in this clause, is defined in National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information.

On-site, as used in this clause, is defined as a DOE site.

Off-site, as used in this clause, is defined as a location or facility not located on a DOE site, including the Contractor's facilities/site.

### **3. Requirements:**

DOE Order 142.3 requires processing for all foreign nationals seeking access to DOE sites, and access to DOE information, technologies, and equipment regardless of whether the work is performed on-site or off-site. Requests for access must be approved by DOE on an individual basis.

The Contractor is required to complete the Request for Unclassified Foreign National Visit, Assignment form, or Access for any Foreign National identified to perform unclassified work under this contract (refer to DOE Order 142.3 for requirements related to classified work). The NETL form is required for all individuals who will have access to DOE information, technologies, and equipment regardless of whether the work is performed on-site or off-site and all individuals who require access to DOE sites.

In accordance with 15 CFR 734.11, if fundamental research is funded by the U.S. Government, compliance with DOE Order 142.3 will result in preservation of any application of the exception to Export Administration Regulations (EAR) found at 15 CFR. Violation of the control requirements set forth in this award, and subsequently required in flow-down requirements, may result in non-application of the available EAR exception.

The Iran Threat Reduction and Syria Human Rights Act of 2012, H.R. 1905, excludes citizens of Iran from entering the United States and seeking education relating to the nuclear and energy sectors of Iran.

#### 4. References:

DOE Order 142.3, Unclassified Foreign Visits and Assignments Program

15 CFR 730 780, Export Administration Regulations (EAR)

National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information

H.R. 1905, Iran Threat Reduction and Syria Human Rights Act of 2012

### **H.28 DOE-H-2041 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS (OCT 2014)**

(a) Pursuant to Executive Orders 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well-being of its Federal employees and contractor service providers. The Contractor shall use its best efforts to support DOE in meeting those commitments, including sustainable acquisition or environmentally preferable contracting which may involve several interacting initiatives, such as -

- (1) Alternative Fueled Vehicles and Alternative Fuels;
- (2) Biobased Content Products (USDA Designated Products);
- (3) Energy Efficient Products;
- (4) Non-Ozone Depleting Alternative Products;
- (5) Recycled Content Products (EPA Designated Products); and
- (6) Water Efficient Products (EPA WaterSense Labeled Products).

(b) The Contractor should become familiar with these information resources:

- (1) Recycled Products are described at <http://epa.gov/cpg>.
- (2) Biobased Products are described at <http://www.biopreferred.gov/>.
- (3) Energy efficient products are described at <http://energystar.gov/products> for Energy Star products.
- (4) FEMP designated products are described at <http://www.eere.energy.gov/femp/procurement>
- (5) Environmentally Preferable Computers are described at <http://www.epeat.net>.
- (6) Non-Ozone Depleting Alternative Products are described at <http://www.epa.gov/ozone/strathome.html>.
- (7) Water efficient plumbing fixtures are described at <http://epa.gov/watersense>.

(c) If, in the course of providing services at the DOE site, the Contractor's services necessitate the acquisition of any of the above types of products, it is expected that the Contractor will acquire the sustainable, environmentally preferable models unless the product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. While there is no formal reporting, DOE prepares a sustainable acquisition annual report and the Contractor may be asked by the Contracting Officer to provide information in support of DOE's report.

#### **H.29 DOE-H-2046 DIVERSITY PROGRAM (OCT 2014)**

(a) The Contractor shall develop and implement a diversity program consistent with and in support of the DOE's diversity program. A diversity plan covering the full period of performance (base and option periods) shall be submitted to the Contracting Officer for approval within [30] calendar days after the effective date of the contract. Once the diversity plan is approved by the Contracting Officer, the Contractor shall implement the diversity plan within [30] calendar days of its approval by the Contracting Officer.

(b) The diversity plan shall address, at a minimum, the Contractor's approach to ensure an effective diversity program (including addressing applicable affirmative action and equal employment opportunity regulations) to include: (1) a statement of the Contractor's policies and practices; and (2) planned initiatives and activities which demonstrate a commitment to a diversity program, including recruitment strategies for hiring a diverse work force. The diversity plan shall also address, as a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force; (2) educational outreach, including a mentor-protégé program; (3) stakeholder involvement and outreach; (4) subcontracting; and (5) economic development.

(c) An annual diversity report shall be submitted pursuant to Attachment J.A Performance Work Statement. This report shall provide a list of accomplishments achieved, both internally and externally during the current reporting period, and projected initiatives during the next reporting period. The report shall also list any proposed changes to the diversity plan which shall be subject to the Contracting Officer's approval.

#### **H.30 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014)**

(a) Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered.

(b) The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes. Any removal of vegetation shall be in accordance with the terms of applicable habitat mitigation plans and permits. Furthermore, all wildlife must be protected consistent with programs approved by the Contracting Officer.

(c) Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

#### **H.31 DOE-H-2063 CONFIDENTIALITY OF INFORMATION (OCT 2014)**

(a) Performance of work under this contract may result in the Contractor having access to confidential information via written or electronic documents, or by virtue of having access to DOE's electronic or other systems. Such confidential information includes personally identifiable information (such as social security account numbers) or proprietary business, technical, or financial information belonging to the Government or other companies or organizations. The Contractor shall treat this information as confidential and agrees not to use this information for its own purposes, or to disclose the information to third parties, unless specifically authorized to do so in writing by the Contracting Officer.

(b) The restrictions set out in paragraph (a) above, however, do not apply to –

(1) Information which, at the time of receipt by the Contractor, is in the public domain;

(2) Information which, subsequent to receipt by the Contractor, becomes part of the public domain through no fault or action of the Contractor;

- (3) Information which the Contractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this contract;
  - (4) Information which the Contractor can demonstrate was received from a third party who did not require the Contractor to hold it in confidence; or
  - (5) Information which is subject to release under applicable law.
- (c) The Contractor shall obtain a written agreement from each of its employees who are granted access to, or furnished with, confidential information, whereby the employee agrees that he or she will not discuss, divulge, or disclose any such information to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to the Contracting Officer.
- (d) Upon request of the Contracting Officer, the Contractor agrees to execute an agreement with any party which provides confidential information to the Contractor pursuant to this contract, or whose facilities the Contractor is given access to that restrict use and disclosure of confidential information obtained by the Contractor. A copy of the agreement, which shall include all material aspects of this clause, shall be provided to the Contracting Officer for approval.
- (e) Upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing the confidential or proprietary information it receives under this contract and identify the source (company, companies or other organizations) of the information.
- (f) The Contractor agrees to flow down this clause to all subcontracts issued under this contract.

#### **H.32 DOE-H-2065 REPORTING OF FRAUD, WASTE, ABUSE, CORRUPTION, OR MISMANAGEMENT (OCT 2014)**

The Contractor shall comply with the following:

- (a) Notify employees annually of their duty to report allegations of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems to an appropriate authority (e.g., OIG, other law enforcement, supervisor, employee concerns office, security officials). Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; DOE environment, safety, and health violations; theft; computer crimes; contractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Contractors must also ensure that their employees are aware that they may always report incidents or information directly to the Office of Inspector General (OIG).
- (b) Display the OIG hotline telephone number in buildings and common areas such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies.
- (c) Publish the OIG hotline telephone number in telephone books and newsletters under the Contractor's cognizance.
- (d) Ensure that its employees report to the OIG within a reasonable period of time, but not later than 24 hours after discovery, all alleged violations of law, regulations, or policy, including incidents of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, that have been referred to Federal, State, or local law enforcement entities.
- (e) Ensure that its employees report to the OIG any allegations of reprisals taken against employees who have reported to the OIG fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (f) Ensure that its managers do not retaliate against DOE contractor employees who report fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (g) Ensure that all their employees understand that they must –
  - (1) Comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements;
  - (2) Not impede or hinder another employee's cooperation with the OIG; and

(3) Not take reprisals against DOE contractor employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.

(h) Seek more specific guidance concerning reporting of fraud, waste, abuse, corruption, or mismanagement, and cooperation with the Inspector General, in DOE directives.

### **H.33 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014)**

(a) The Government may provide Government-owned and/or –leased motor vehicles for the Contractor’s use in performance of this contract in accordance with the clause FAR 52.245-1, Government Property.

(b) The Contractor shall ensure that its employees use and operate Government-owned and/or –leased motor vehicles in a responsible and safe manner to include the following requirements:

- (1) Use vehicles only for official purposes and solely in the performance of the contract.
- (2) Do not use vehicles for transportation between an employee’s residence and place of employment unless authorized by the Contracting Officer.
- (3) Comply with Federal, State and local laws and regulations for the operation of motor vehicles.
- (4) Possess a valid State, District of Columbia, or commonwealth’s operator license or permit for the type of vehicle to be operated.
- (5) Operate vehicles in accordance with the operator’s packet furnished with each vehicle.
- (6) Use seat belts while operating or riding in a Government vehicle.
- (7) Do not use tobacco products while operating or riding in a Government vehicle.
- (8) Do not provide transportation to strangers or hitchhikers.
- (9) Do not engage in “text messaging” while operating a Government vehicle, which includes those activities defined in the clause at FAR 52.233-18, Encouraging Contractor Policies to Ban Text Messaging While Driving.
- (10) In the event of an accident, provide information as may be required by State, county or municipal authorities and as directed by the Contracting Officer.

(c) The Contractor shall –

- (1) Establish and enforce suitable penalties against employees who use, or authorize the use of Government vehicles for unofficial purposes or for other than in the performance of the contract; and
- (2) Pay any expenses or cost, without Government reimbursement, for using Government vehicles other than in the performance of the contract.

(d) The Contractor shall insert this clause in all subcontracts in which Government-owned and/or –leased vehicles are to be provided for use by subcontractor employees.

### **H.34 DOE-H-2078 MULTIFACTOR AUTHENTICATION FOR INFORMATION SYSTEMS**

The Contractor shall take all necessary actions to achieve multifactor authentication (MFA) for standard and privileged user accounts of all classified and unclassified networks. In so doing, the Contractor shall comply with the requirements and procedures established in the document "U.S. Department of Energy Multifactor Authentication Implementation Approach" and its appendices as determined by the Contracting Officer.

### **H.35 DOE-H-2079 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018)**

(a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) By submission of its offer, the officer agrees to provide to the Contracting Officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707. DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5(g).

(c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

### **H.36 DOE-H-2080 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018)**

(a) Program implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts. (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.

(2) The DOE Prime Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE Prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.



## **Section I - Contract Clauses**

### **I.1 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulations (Clauses starting with 52): <https://www.acquisition.gov/far/>

Department of Energy Regulations (Clauses starting with 952): <http://farsite.hill.af.mil/vmdoea.htm>

### **I.2 FAR 52.202-1 DEFINITIONS. (NOV 2013)**

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

### **I.3 DEAR 952.202-1 DEFINITIONS**

(a) As prescribed in 902.201, insert the clause at 48 CFR 52.202-1, Definitions, in all contracts. The following shall be added to the clause as paragraph (c):

(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

### **I.4 FAR 52.203-3 GRATUITIES. (APR 1984)**

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative-

- (1) Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled-

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**I.5 FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES. (MAY 2014)**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) *Bona fide agency*, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

*Bona fide employee*, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

*Contingent fee*, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

*Improper influence*, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

**I.6 FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (SEP 2006)**

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

**I.7 FAR 52.203-7 ANTI-KICKBACK PROCEDURES. (MAY 2014)**

(a) *Definitions.*

*Kickback*, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

*Person*, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

*Prime contract*, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

*Prime Contractor*, as used in this clause, means a person who has entered into a prime contract with the United States.

*Prime Contractor employee*, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

*Subcontract*, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

*Subcontractor*, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

*Subcontractor employee*, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from-

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under under this contract which exceed \$150,000.

## **I.8 FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (MAY 2014)**

(a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may-

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which-

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either-

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

**I.9 FAR 52.203-10 PRICE OR FEE ADJUSTEMENT FOR ILLEGAL OR IMPROPER ACTIVITY.  
(MAY 2014)**

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be -

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts -

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may -

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not

to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

**I.10 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (OCT 2010)**

(a) *Definitions.* As used in this clause-

*Agency* means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.

*Covered Federal action* means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

*Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

*Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

*Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

*Officer or employee of an agency* includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

*Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

*Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

*Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

*Recipient* includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

*Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

*State* means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.* (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities;  
or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

(2) *Professional and technical services.* (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure.* (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties.* (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts.* (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$150,000.

**I.11 FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT. (OCT 2015)**

(a) *Definitions.* As used in this clause-

*Agent* means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

*Full cooperation*-(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require-

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from-

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

*Principal* means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

*Subcontract* means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) *Code of business ethics and conduct.* (1) Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall-

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor shall-

(i) Exercise due diligence to prevent and detect criminal conduct; and



(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3)(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed-

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101. The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program shall be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system shall-

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including-

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontractor thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of \$5.5 million and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

**I.12 FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S). (OCT 2015)**

(a) *Definition.*

*United States*, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).* Except as provided in paragraph (c)-

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites-

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

*Poster(s) Obtain from*

[Contracting Officer shall insert-(i) Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster); and (ii) The website(s) or other contact information for obtaining the poster(s).]

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5.5 million, except when the subcontract-

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

**I.13 FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS. (APR 2014)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

**I.14 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (DEC 2000)**

(a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.

(b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

#### **I.15 FAR 52.204-2 SECURITY REQUIREMENTS. (AUG 1996)**

(a) This clause applies to the extent that this contract involves access to information classified *Confidential*, *Secret*, or *Top Secret*.

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the *National Industrial Security Program Operating Manual* (DOD 5220.22-M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

#### **I.16 DEAR 952.204-2 SECURITY REQUIREMENTS (AUG 2016)**

(a) *Responsibility.* It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) *Regulations.* The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.

(c) *Definition of classified information.* The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended, or prior executive orders, which is identified as *National Security Information*.

(d) *Definition of restricted data.* The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

(e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information—(1) Relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

(f) *Definition of national security information.* The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, *Classified National Security Information*, as amended, or any

predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

(g) *Definition of special nuclear material.* The term “special nuclear material” means—(1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Access authorizations of personnel.* (1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.

(2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.

(i) A review must—Verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.

(ii) Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reappraised without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(iii) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those—(A) Governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (B) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

(iv) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR 707.4. All positions requiring access authorizations are deemed *testing designated positions* in accordance with 10 CFR part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(v) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

(vi) The Contractor must maintain a record of information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization. Upon request only, the following information will be furnished to the head of the cognizant local DOE Security Office:

(A) The date(s) each Review was conducted;

(B) Each entity that provided information concerning the individual;

(C) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

(D) A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and

(E) The results of the test for illegal drugs.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794).

(j) *Foreign ownership, control, or influence.* (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this contract. The Contractor will submit the Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.

(2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

(3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.

(4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

(k) *Employment announcements.* When placing announcements seeking applicants for positions requiring access authorizations, the Contractor shall include in the written vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR part 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

(l) *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require such subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in 48 CFR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be

submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term “Contracting Officer” means the DOE Contracting Officer. When this clause is included in a subcontract, the term “Contractor” shall mean subcontractor and the term “contract” shall mean subcontract.

**I.17 FAR 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER. (MAY 2011)**

(a) *Definitions.* As used in this clause -

*Postconsumer fiber* means-(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

**I.18 FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL. (JAN 2011)**

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

(1) When no longer needed for contract performance.

(2) Upon completion of the Contractor employee's employment.

(3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

**I.19 FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS. (OCT 2018)**

(a) *Definitions.* As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that would benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect cost.

“Month of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- (1) Salary and bonus.
- (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.
- (3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (5) Above-market earnings on deferred compensation which is not tax-qualified.
- (6) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause required the disclosure of classified information.

(d)

(1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) (FAR provision 52.204-7), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor’s preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)



(2) First-tier subcontract information. Unless otherwise directed by the contracting officer, or as provided in paragraph (g) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of \$30,000 or more, the Contractor shall report the following information at <http://www.fsrs.gov> for that first tier subcontract. (The Contractor shall follow the instruction at <http://www.fsrs.gov> to report the data.)

- (i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
- (ii) Name of the subcontractor.
- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.
- (v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (vi) Subcontract number (the subcontract number assigned by the Contractor).
- (vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
- (ix) The prime contract number, and order number if applicable.
- (x) Awarding agency name and code.
- (xi) Funding agency name and code.
- (xii) Government contracting office code.
- (xiii) Treasury account symbol (TAS) as reported in FPDS.
- (xiv) The applicable North American Industry Classification System code (NAICS).

(3) Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$30,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <https://www.fsrs.gov> , if—

- (i) In the subcontractor's preceding fiscal year, the subcontractor received—
  - (A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and
  - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than \$30,000 to avoid the reporting requirements in paragraph (d) of this clause.

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g)

(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor

(h) The FSRS database at <http://www.fsrs.gov> will be prepopulated with some information from SAM and the FPDS database. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM information is incorrect, the contractor is responsible for correcting this information.

#### **I.20 FAR 52.204-12 DATA UNIVERSAL NUMBERING SYSTEM NUMBER MAINTENANCE (OCT 2016)**

(a) Definition. “Unique entity identifier”, as used in this clause, means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at the System for Award Management (SAM) for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

#### **I.21 FAR 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE. (OCT 2018)**

(a) *Definition.* As used in this clause--

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

“Registered in the System for Award Management (SAM)” means that—

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

"Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d)

(1)

(i) If a Contractor has legally changed its business name or "doing business as" name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to--

(A) Change the name in the SAM;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect

information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in SAM. Information provided to the Contractor’s SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.sam.gov>.

## **I.22 FAR 52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS. (OCT 2016)**

(a) Definition.

*First-tier subcontract* means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1-September 30).

(c) The Contractor shall report the following information:

(1) Contract number and, as applicable, order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f)(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and unique entity identifier); and

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

**I.23 FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (JUL 2018)**

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.

As prescribed in 4.2004, insert the following clause:

Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018)

(a) Definitions. As used in this clause--

Covered article means any hardware, software, or service that--

(1) Is developed or provided by a covered entity;

(2) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(3) Contains components using any hardware or software developed

in whole or in part by a covered entity.

Covered entity means--

(1) Kaspersky Lab;

(2) Any successor entity to Kaspersky Lab;

(3) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or

(4) Any entity of which Kaspersky Lab has a majority ownership.

(b) Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Contractor is prohibited from--

(1) Providing any covered article that the Government will use

on or after October 1, 2018; and

(2) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

(c) Reporting requirement. (1) In the event the Contractor identifies a covered article provided to the Government during contract performance, or the Contractor is notified of such by a subcontractor at any tier or any other source, the Contractor shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil/>. For indefinite delivery contracts, the Contractor shall report to the Contracting

Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil/>.

(2) The Contractor shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

#### **I.24 DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION. (SEP 1997)**

In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Classifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

**I.25 DEAR 952.204-75 PUBLIC AFFAIRS. (DEC 2000)**

(a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.

(b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.

(c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.

(d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.

(e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.

(f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

(g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

**I.26 DEAR 952.204-76 CONDITIONAL PAYMENT OF FEE OR PROFIT-SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION (JAN 2004) (COST REIMBURSEMENT)**

**(a) General.**

(1) The payment of fee or profit (i.e., award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the Contractor's compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (i.e., Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term "Contractor" as used in this clause to address failure to comply shall mean "Contractor or Contractor employee."

(2) In addition to other remedies available to the Government, if the Contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the Contracting Officer may unilaterally reduce the amount of fee or profit that is otherwise payable to the Contractor in accordance with the terms and conditions of this clause.

(3) Any reduction in the amount of fee or profit earned by the Contractor will be determined by the severity of the Contractor's failure to comply with contract terms and conditions relating to the safeguarding of restricted data or other classified information pursuant to the degrees specified in paragraph (c) of this clause.

**(b) Reduction Amount.**

(1) If in any period (see 48 CFR 952.204-76 (b)(2)) it is found that the Contractor has failed to comply with contract terms and conditions relating to the safeguarding of Restricted Data or other classified information, the Contractor's fee or profit of the period may be reduced. Such reduction shall not be less than 26% nor

greater than 100% of the total fee or profit earned for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure. The Contracting Officer must consider mitigating factors that may warrant a reduction below the specified range (see 48 CFR 904.402(c)). The mitigating factors include, but are not limited to, the following:

- (i) Degree of control the Contractor had over the event or incident.
  - (ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.
  - (iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.
  - (iv) General status (trend and absolute performance) of safeguarding Restricted Data and other classified information and compliance in related security areas.
- (2) (i) For purposes of this clause, (2)(i) Except in the case of performance-based firm-fixed-price contracts (see paragraph (b)(3) of this clause), the Contracting Officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [*insert 6 or 12*] months to run sequentially for the entire term of the contract (i.e., from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.
- (ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the Contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.
- (3) For performance-based firm-fixed-price contracts, the Contracting Officer will at the time of contract award include negative monetary incentives in the contract for Contractor violations relating to the safeguarding of Restricted Data and other classified information.

(c) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failures relating to the Contractor's obligations under this contract for safeguarding of Restricted Data and other classified information are as follows:

- (1) First Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:
- (i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.
  - (ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.
  - (iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.



(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other information regardless of classification (except for information covered by paragraph (c)(1)(iii) of this clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iii) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

## **I.27 DEAR 952.204-77 COMPUTER SECURITY. (AUG 2006)**

(a) *Definitions.* (1) *Computer* means desktop computers, portable computers, computer networks (including the DOE Network and local area networks at or controlled by DOE organizations), network devices, automated information systems, and or other related computer equipment owned by, leased, or operated on behalf of the DOE.

(2) *Individual* means a DOE Contractor or subcontractor employee, or any other person who has been granted access to a DOE computer or to information on a DOE computer, and does not include a member of the public who sends an e-mail message to a DOE computer or who obtains information available to the public on DOE Web sites.

(b) *Access to DOE computers.* A Contractor shall not allow an individual to have access to information on a DOE computer unless—

(1) The individual has acknowledged in writing that the individual has no expectation of privacy in the use of a DOE computer; and

(2) The individual has consented in writing to permit access by an authorized investigative agency to any DOE computer used during the period of that individual's access to information on a DOE computer, and for a period of three years thereafter.

(c) *No expectation of privacy.* Notwithstanding any other provision of law (including any provision of law enacted by the Electronic Communications Privacy Act of 1986), no individual using a DOE computer shall have any expectation of privacy in the use of that computer.

(d) *Written records.* The Contractor is responsible for maintaining written records for itself and subcontractors demonstrating compliance with the provisions of paragraph (b) of this section. The Contractor agrees to provide access to these records to the DOE, or its authorized agents, upon request.

(e) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (e), in subcontracts under this contract that may provide access to computers owned, leased or operated on behalf of the DOE.

**I.28 FAR 52.208-9 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES. (MAY 2014)**

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under 41 U.S.C. 8504. Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an AbilityOne central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

(1) National Industries for the Blind  
1310 Braddock Place  
Alexandria, VA 22314-1691  
(703) 310-0500; and

(2) NISH  
8401 Old Courthouse Road  
Vienna, VA 22182  
(571) 226-4660.

**I.29 DEAR 952.208-70 PRINTING. (APR 1984)**

The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of

multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8 1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the Contractor shall notify the Contracting Officer in writing and obtain the Contracting Officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

**I.30 FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (OCT 2015)**

(a) *Definition. Commercially available off-the-shelf (COTS) item*, as used in this clause-

(1) Means any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of \$35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$35,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that-

(1) Exceeds \$35,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

**I.31 FAR 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS. (OCT 2018)**

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management database via <https://www.acquisition.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIS consist of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIS is automatically transferred after a waiting period of 14 calendar days, except for--

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

**I.32 FAR 52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS. (NOV 2015)**

(a) Definitions. As used in this clause-

*Inverted domestic corporation* means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

*Subsidiary* means an entity in which more than 50 percent of the entity is owned-

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

**I.33 DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)**

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of two (2) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not-

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

**I.34 FAR 52.210-1 MARKET RESEARCH. (APR 2011)**

(a) *Definition.* As used in this clause-

*Commercial item* and *non-developmental item* have the meaning contained in Federal Acquisition Regulation 2.101.

(b) Before awarding subcontracts over the simplified acquisition threshold for items other than commercial items, the Contractor shall conduct market research to-

(1) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, non-developmental items are available that-

(i) Meet the agency's requirements;

(ii) Could be modified to meet the agency's requirements; or

(iii) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and

(2) Determine the extent to which commercial items or non-developmental items could be incorporated at the component level.

**I.35 FAR 52.215-2 AUDIT AND RECORDS - NEGOTIATION. (OCT 2010)**

(a) As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to-

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.* (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the

supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold and -

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which certified cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

#### **I.36 FAR 52.215-8 ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT. (OCT 1997)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

#### **I.37 RESERVED**

#### **I.38 FAR 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA - MODIFICATIONS. (OCT 2010)**

(a) *Exceptions from certified cost or pricing data*. (1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable -

(i) *Identification of the law or regulation establishing the price offered*. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.



(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If -

(1) The original contract or subcontract was granted an exception from certified cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include -

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

### **I.39 FAR 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES. (OCT 2009)**

(a) *Definitions.* As used in this clause--

*Added value* means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

*Excessive pass-through charge*, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

*No or negligible value* means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

*Subcontract* means any contract, as defined in FAR 2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor*, as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Reporting.* Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if--

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges.* If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

(2) For applicable DoD fixed-price contracts, as identified in 15.408(n)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) *Access to records.* (1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Flowdown*. The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

**I.40 DEAR 952.215-70 KEY PERSONNEL (DEC 2000)**

(a) The personnel listed below or elsewhere in this contract, Section H.6 Key Personnel/Program Manager are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

- (1) Notify the Contracting Officer reasonably in advance;
- (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and
- (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

**I.41 FAR 52.216-7 ALLOWABLE COST AND PAYMENT. (AUG 2018) (DEVIATION)**

(a) *Invoicing*.

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.2 as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the 30<sup>th</sup> day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) *Reimbursing costs*.

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only --

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for --

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check or other form of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks

(d) *Final indirect cost rates.*

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)

(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be

requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(iii) An adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant Federal agency official:

(A) Summary of all claimed indirect expense rates, including pool, base, and calculated indirect rate.

(B) *General and Administrative expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts).

(C) *Overhead expenses (final indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) for each final indirect cost pool.

(D) *Occupancy expenses (intermediate indirect cost pool)*. Schedule of claimed expenses by element of cost as identified in accounting records (Chart of Accounts) and expense reallocation to final indirect cost pools.

(E) Claimed allocation bases, by element of cost, used to distribute indirect costs.

(F) Facilities capital cost of money factors computation.

(G) Reconciliation of books of account (*i.e.*, General Ledger) and claimed direct costs by major cost element.

(H) Schedule of direct costs by contract and subcontract and indirect expense applied at claimed rates, as well as a subsidiary schedule of Government participation percentages in each of the allocation base amounts.

(I) Schedule of cumulative direct and indirect costs claimed and billed by contract and subcontract.

(J) *Subcontract information*. Listing of subcontracts awarded to companies for which the contractor is the prime or upper-tier contractor (include prime and subcontract numbers; subcontract value and award type; amount claimed during the fiscal year; and the subcontractor name, address, and point of contact information).

(K) Summary of each time-and-materials and labor-hour contract information, including labor categories, labor rates, hours, and amounts; direct materials; other direct costs; and, indirect expense applied at claimed rates.

(L) Reconciliation of total payroll per IRS form 941 to total labor costs distribution.

(M) Listing of decisions/agreements/approvals and description of accounting/organizational changes.

(N) Certificate of final indirect costs (see 52.242-4, Certification of Final Indirect Costs).

(O) Contract closing information for contracts physically completed in this fiscal year (include contract number, period of performance, contract ceiling amounts, contract fee computations, level of effort, and indicate if the contract is ready to close).

(iv) The following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process:

(A) Comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data.

(B) General organizational information and limitation on allowability of compensation for certain contractor personnel. See 31.205-6(p). Additional salary reference information is available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedBeforeJune24.pdf> and <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>.

(C) Identification of prime contracts under which the contractor performs as a subcontractor.

(D) Description of accounting system (excludes contractors required to submit a CAS Disclosure Statement or contractors where the description of the accounting system has not changed from the previous year's submission).

(E) Procedures for identifying and excluding unallowable costs from the costs claimed and billed (excludes contractors where the procedures have not changes from the previous year's submission).

(F) Certified financial statements and other financial data (*e.g.*, trial balance, compilation, review, etc).

(G) Management letter from outside CPAs concerning any internal control weaknesses.

(H) Actions that have been and/or will be implemented to correct the weaknesses described in the management letter from subparagraph (G) of this section.

(I) List of all internal audit reports issued since the last disclosure of internal audit reports to the Government.

(J) Annual internal audit plan of scheduled audits to be performed in the fiscal year when the final indirect cost rate submission is made.

(K) Federal and State income tax returns.

(L) Securities and Exchange Commission 10-K annual report.

(M) Minutes from board of directors meetings.

(N) Listing of delay claims and termination claims submitted which contain costs relating to the subject fiscal year.

(O) Contract briefings, which generally include a synopsis of all pertinent contract provisions, such as: Contract type, contract amount, product or service(s) to be provided, contract performance period, rate ceilings, advance approval requirements, pre-contract cost allowability limitations, and billing limitations.

(v) The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this sections, within 60 days after settlement of final indirect cost rates.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify

- (i) the agreed-upon final annual indirect cost rates,
- (ii) the bases to which the rates apply,
- (iii) the periods for which the rates apply,
- (iv) any specific indirect cost items treated as direct costs in the settlement, and
- (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates.

The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates. The completion invoice or voucher shall include settled subcontract amounts and rates. The prime contractor is responsible for settling subcontractor amounts and rates included in the completion invoice or voucher and providing status of subcontractor audits to the contracting officer upon request.

(6)

(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may--

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates --

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be --

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.*

(1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver --

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except --

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

#### **I.42 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (OCT 2018)**

(a) *Definitions.* As used in this contract--

"HUBZone small business concern" means a small business concern, certified by the Small Business Administration, that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern"—

(1) Means a small business concern—



(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern, consistent with 13 CFR 124.1002," means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

"Veteran-owned small business concern" means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be

conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d)

(1) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if--

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm) ; or <http://www.sba.gov/hubzone> ;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3<sup>rd</sup> Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov) .

#### **L.43 FAR 52.219-14 LIMITATIONS ON SUBCONTRACTING (JAN 2017)**

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Applicability.* This clause applies only to--

(1) Contracts that have been set aside or reserved for small business concerns or 8(a) participants;

(2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) participants; and

(3) Orders set aside for small business or 8(a) participants under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

(c) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for --

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

**I.44 52.219-17 SECTION 8(A) AWARD. (JAN 2017)**

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Except for novation agreements, delegates to the [insert name of contracting activity] the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided*, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the Department of Energy.

**I.45 FAR 52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION. (JUL 2013)**

(a) *Definitions*. As used in this clause-

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily

engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall rerepresent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.

(3) For long-term contracts-

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/content/table-small-business-size-standards>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code [insert NAICS Code] assigned to contract number [insert contract number]. (*Contractor to sign and date and insert authorized signer's name and title*).

#### **I.46 FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)**

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

#### **I.47 FAR 52.222-2 PAYMENT FOR OVERTIME PREMIUMS. (JUL 1990)**

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed TBD or the overtime premium is paid for work-

- (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- (2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
- (4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall-

- (1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;
- (2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;
- (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and
- (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

**I.48 FAR 52.222-3 CONVICT LABOR. (JUN 2003)**

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons--

- (1) On parole or probation to work at paid employment during the term of their sentence;
- (2) Who have been pardoned or who have served their terms; or
- (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--
  - (i) The worker is paid or is in an approved work training program on a voluntary basis;
  - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
  - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
  - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

**I.49 FAR 52.222-17 NONDISPLACEMENT OF QUALIFIED WORKERS. (MAY 2014)**

(a) *Service employee*, as used in this clause, means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(b) The Contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the service employees were hired, a right of first refusal of employment under this contract in positions for which the service employees are qualified.

(1) The Contractor and its subcontractors shall determine the number of service employees necessary for efficient performance of this contract and may elect to employ fewer employees than the predecessor Contractor employed in connection with performance of the work.

(2) Except as provided in paragraph (c) of this clause, there shall be no employment opening under this contract, and the Contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation.

(i) The successor Contractor and its subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Contractor and its subcontractors shall decide any question concerning a service employee's qualifications based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and the Contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bonafide offer of employment).

(c)(1) Notwithstanding the obligation under paragraph (b) of this clause, the successor Contractor and any subcontractors (i) may employ under this contract any service employee who has worked for the contractor or subcontractor for at least three months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (ii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Labor Standards statute, 41 U.S.C. 6701(3), and (iii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor whom the Contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12(c)(4) for additional information). The successor Contractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(2) In addition, any Contractor or subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (*e.g.*, it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The HUBZone small business Contractor or subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(3) Nothing in this clause shall be construed to permit a Contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart 19.13), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

(d)(1) The Contractor shall, not less than 30 days before completion of the Contractor's performance of services on the contract, furnish the Contracting Officer with a certified list of the names of all service employees working under this contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Contractor shall, in accordance with paragraph (e) of this clause, not less than 10 days before completion of the services on this contract, furnish the Contracting Officer with an updated certified list of the names of all service employees employed within the last month of contract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor Contractors or their subcontractors.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(3) The Contracting Officer will direct the predecessor Contractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor contractor. Where a significant portion of the predecessor Contractor's workforce is not fluent in English, the notice shall be provided in English and the language(s) with which service employees are more familiar. The written notice shall be-

(i) Posted in a conspicuous place at the worksite; or

(ii) Delivered to the service employees individually. If such delivery is via email, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(e)(1) If required in accordance with 52.222-41(n), the predecessor Contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor Contractors or their subcontractors. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor Contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of 52.222-41(n) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(f) The Contractor and subcontractor shall maintain the following records (regardless of format, *e.g.*, paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written

notice that may have been distributed, and the names of the service employees from the predecessor contract to whom an offer was made.

(2) A copy of any record that forms the basis for any exemption claimed under this part.

(3) A copy of the service employee list provided to or received from the contracting agency.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Contractor shall also deliver a copy of the receipt to the service employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

(g) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause (52.233-1) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the service employees under the contract or its predecessor contract. The Contracting Officer will refer any service employee who wishes to file a complaint, or ask questions concerning this contract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Contact email: [displaced@dol.gov](mailto:displaced@dol.gov).

(h) The Contractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor or its subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

(j) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance. However, if the Contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the Contractor may request that the United States, through the Secretary, enter into such litigation to protect the interests of the United States.

(k) The Contracting Officer will withhold, or cause to be withheld, from the prime Contractor under this or any other Government contract with the same prime Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the Contractor has failed to provide a list of the names of service employees working under the contract, the Contracting Officer may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the Contracting Officer.

(l) *Subcontracts.* In every subcontract over the simplified acquisition threshold entered into in order to perform services under this contract, the Contractor shall include a provision that ensures-

(1) That each subcontractor will honor the requirements of paragraphs (b) through (c) of this clause with respect to the service employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor Contractor and its subcontractors;

(2) That the subcontractor will provide the Contractor with the information about the service employees of the subcontractor needed by the Contractor to comply with paragraphs (d) and (e) of this clause; and



(3) The recordkeeping requirements of paragraph (f) of this clause.

**I.50 FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (APR 2015)**

(a) *Definitions.* As used in this clause-

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Segregated facilities* means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**I.51 FAR 52.222-26 EQUAL OPPORTUNITY. (SEP 2016)**

(a) *Definitions.* As used in this clause-

*Compensation* means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

*Compensation information* means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

*Essential job functions* means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if-

(1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or

(2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\\_FAQs.html](http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(5)(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by-

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.

#### **I.52 FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS. (OCT 2015)**

(a) Definitions. As used in this clause-

"Active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," "qualified disabled veteran," and "recently separated veteran" have the meanings given at FAR 22.1301.

(b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

#### **I.53 FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES. (JUL 2014)**

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**I.54 FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS. (FEB 2016)**

(a) *Definitions.* As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e.*, active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at <http://www.dol.gov/vets/vets4212.htm>).

(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date-

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**I.55 FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT. (DEC 2010)**

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2(d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any Web site that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be -

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart 9.4. Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) Subcontracts. (1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States,

through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

**I.56 FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS. (JAN 2019)**

(a) *Definitions.* As used in this clause—

“Agent” means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Commercially available off-the-shelf (COTS) item” means--

- (1) Any item of supply (including construction material) that is—
  - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
  - (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced labor” means knowingly providing or obtaining the labor or services of a person—

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Recruitment fees” means- Fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for--

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising;

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents,

such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other

notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs--

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is--

- (i) Paid in property or money;
- (ii) Deducted from wages;
- (iii) Paid back in wage or benefit concessions;
- (iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or
- (v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to--
  - (A) Agents;
  - (B) Labor brokers;
  - (C) Recruiters;
  - (D) Staffing firms (including private employment and placement firms);
  - (E) Subsidiaries/affiliates of the employer;
  - (F) Any agent or employee of such entities; and
  - (G) Subcontractors at all tiers.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy.* The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract;
- (3) Use forced labor in the performance of the contract;



(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)

(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees or potential employees recruitment fees;

(7)

(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work

location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees and agents of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation.*

(1) The Contractor shall, at a minimum—

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not—

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from—

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan.*

(1) This paragraph (h) applies to any portion of the contract that—

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds \$500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate—

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto:help@befree.org).

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee or potential employees, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting.*

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either—

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds \$500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

**I.57 FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION. (OCT 2015)**

(a) *Definitions.* As used in this clause-

*Commercially available off-the-shelf (COTS) item-*

(1) Means any item of supply that is-

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee-

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

*United States*, as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.* (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall-

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of-

(i) *All new employees.* (A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of-

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that-

(1) *Is for-* (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,500; and

(3) Includes work performed in the United States.

#### **I.58 FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. (MAY 2011)**

(a) Definitions. As used in this clause-

*Toxic chemical* means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of section 302 of EPCRA.

(2) The emergency notice requirements of section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.

(5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

**I.59 FAR 52.223-6 DRUG-FREE WORKPLACE. (MAY 2001)**

(a) *Definitions.* As used in this clause-

*Controlled substance* means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

*Conviction* means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

*Drug-free workplace* means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

*Employee* means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

*Individual* means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration); or as soon as possible for contracts of less than 30 days performance duration -

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about -

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will -

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;



(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

**I.60 DEAR 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES. (DEC 2000)**

(a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) By submission of its offer, the offeror agrees to provide to the Contracting Officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.

(c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision renders the offeror unqualified and ineligible for award.

**I.61 DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES. (DEC 2000)**

(a) Program Implementation. The Contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to the Government, the Contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the Contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts.

(1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707.

(2) The DOE Prime Contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies

with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE Prime Contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.

(3) The Contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

**I.62 FAR 52.223-10 WASTE REDUCTION PROGRAM. (MAY 2011)**

(a) *Definitions.* As used in this clause-

*Recycling* means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

*Waste prevention* means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

*Waste reduction* means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).

**I.63 FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING. (AUG 2011)**

(a) *Definitions.* As used in this clause -

*Driving* - (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

*Text messaging* means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to -

(1) Adopt and enforce policies that ban text messaging while driving -

(i) Company-owned or rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as -

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

**I.64 FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C.552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

**I.65 FAR 52.224-2 PRIVACY ACT (APR 1984)**

(a) The Contractor agrees to --

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies --

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)

(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**I.66 FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (JUN 2008)**

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

**I.67 FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)**

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance, the entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

**I.68 DEAR 970.5227-1 RIGHTS IN DATA—FACILITIES (DEC 2000)**

(a) Definitions.

(1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

(7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this

Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

(1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting.

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

(2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

#### Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. - - - - with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services Contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other Contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

#### (f) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

#### Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. - - -. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
- (2) Used, copied for use, in a backup or replacement computer if any computer for which it was

acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by Contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

#### Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. - - - with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a R-mo/yr, may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

#### **I.69 FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL). (JUN 1987)**

Except for data contained on pages [ ], it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal dated [ ], upon which this contract is based.

#### **I.70 FAR 52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (JAN 1997) (FIXED PRICE CLIN'S ONLY)**

(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.

**I.71 FAR 52.228-7 INSURANCE – LIABILITY TO THIRD PERSONS. (MAR 1996) (COST-REIMBURSABLE CLIN'S ONLY)**

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed -

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for -

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities) -

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of -

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall -

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

#### **I.72 FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013) (FIXED PRICE)**

(a) As used in this clause-

*After-imposed Federal tax* means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

*After-relieved Federal tax* means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

*All applicable Federal, State, and local taxes and duties* means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

*Contract date* means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

*Local taxes* includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b)(1) The contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

**I.73 FAR 52.232-1 PAYMENTS. (APR 1984) (FIXED PRICE)**

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if -

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

**I.74 FAR 52.232-8 DISCOUNT FOR PROMPT PAYMENT. (FEB 2002) (FIXED PRICE)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

**I.75 FAR 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)**

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to -

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

**I.76 FAR 52.232-17 INTEREST. (MAY 2014)**

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if-

- (1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
- (2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
- (3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

- (1) The date on which the designated office receives payment from the Contractor;
- (2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

**I.77 FAR 52.232-18 AVAILABILITY OF FUNDS. (APR 1984)**

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

**I.78 FAR 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR. (APR 1984)**

Funds are not presently available for performance under this contract beyond the end of the current fiscal year. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond the end of the current fiscal year, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

**I.79 FAR 52.232-22 LIMITATION OF FUNDS. (APR 1984)**

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause (1) the Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract and (2) the Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the contract by the Government or (ii) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's

corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of (1) The amount previously allotted by the Government or (2) if this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this contract.

#### **I.80 FAR 52.232-23 ASSIGNMENT OF CLAIMS. (MAY 2014)**

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as *the Act*), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

#### **I.81 FAR 52.232-25 PROMPT PAYMENT. (JAN 2017)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

- (ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)
- (iii) Contract number or other authorization for supplies delivered or services performed (including order number and line item number).
- (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
- (v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.
- (vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).
- (vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.
- (viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

- (x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

- (i) The designated billing office received a proper invoice.
- (ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.



(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payment. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

**I.82 FAR 52.232-25 PROMPT PAYMENT. (JAN 2017) - ALTERNATE I (FEB 2002) (COST REIMBURSEMENT)**

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat

food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if-

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall-

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible-

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payment. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected line item or subline item, if applicable; and

(iv) Contractor point of contact.

- (2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.
- (e) Invoices for interim payments. For interim payments under this cost-reimbursement contract for services-
  - (1) Paragraphs (a)(2), (a)(3), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i) do not apply;
  - (2) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30th day after the designated billing office receives a proper invoice; and
  - (3) The contractor shall submit invoices for interim payments in accordance with paragraph (a) of FAR 52.216-7, Allowable Cost and Payment. If the invoice does not comply with contract requirements, it will be returned within 7 days after the date the designated billing office received the invoice.

**I.83 FAR 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER – SYSTEM FOR AWARD MANAGEMENT. (OCT 2018)**

*(a) Method of payment.*

- (1) All payments by the Government under this contract, shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.
- (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--
  - (i) Accept payment by check or some other mutually agreeable method of payment; or
  - (ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

*(b) Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the SAM.

*(c) Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

*(d) Suspension of payment.* If the Contractor's EFT information in the SAM is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the SAM; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

*(e) Liability for uncompleted or erroneous transfers.*

- (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--
  - (i) Making a correct payment;
  - (ii) Paying any prompt payment penalty due; and
  - (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in the SAM and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to Subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the SAM.

#### **I.84 FAR 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS. (JUN 2013)**

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

**I.85 FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS. (DEC 2013)**

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

**I.86 FAR 52.233-1 DISPUTES. (MAY 2014)**

(a) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(d)(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.



(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

**I.87 FAR 52.233-3 PROTEST AFTER AWARD. (AUG 1996)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

**I.88 FAR 52.233-3 PROTEST AFTER AWARD. (AUG 1996) - ALTERNATE I (JUN 1985) (COST REIMBURSEMENT)**

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

#### **I.89 FAR 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM. (OCT 2004)**

United States law will apply to resolve any claim of breach of this contract.

#### **I.90 FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

#### **I.91 FAR 52.237-3 CONTINUITY OF SERVICES. (JAN 1991)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or

another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**I.92 FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)**

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

**I.93 FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS. (APR 1984) (COST REIMBURSEMENT)**

(a) Notwithstanding any other clause of this contract-

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor responds within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

**I.94 FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS. (MAY 2014)**

(a) *Definition. Proposal*, as used in this clause, means either-

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which-

- (i) Relates to any payment made on the basis of billing rates; or
  - (ii) Will be used in negotiating the final contract price; or
- (2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.
- (b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 2324 or 41 U.S.C. chapter 43, as applicable, which is implemented in section 42.709 of the Federal Acquisition Regulation (FAR).
- (c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the FAR, or an executive agency supplement to the FAR.
- (d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to -
  - (1) The amount of the disallowed cost allocated to this contract; plus
  - (2) Simple interest, to be computed-
    - (i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and
    - (ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.
- (f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of 41 U.S.C. chapter 71, Contract Disputes.
- (g) Pursuant to the criteria in FAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.
- (h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

**I.95 FAR 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS. (JAN 1997) (COST REIMBURSEMENT)**

- (a) The Contractor shall -
  - (1) Certify any proposal to establish or modify final indirect cost rates;
  - (2) Use the format in paragraph (c) of this clause to certify; and
  - (3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.
- (b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.
- (c) The certificate of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and
2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**I.96 FAR 52.242-13 BANKRUPTCY. (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

**I.97 FAR 52.243-1 CHANGES – FIXED-PRICE. (AUG 1987) - ALTERNATE II (APR 1984) (FIXED PRICE)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**I.98 FAR 52.243-2 CHANGES – COST-REIMBURSEMENT. (AUG 1987) - ALTENRATE II (APR 1984) (COST REIMBURSEMENT)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

**I.99 FAR 52.244-2 SUBCONTRACTS. (OCT 2010) – ALTERNATE I (JUN 2007)**

(a) *Definitions.* As used in this clause -

*Approved purchasing system* means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

*Consent to subcontract* means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

*Subcontract* means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that -

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds -

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts: [TBD]

(e) (1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting -

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c) or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination -

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [TBD]

#### **I.100 FAR 52.244-5 COMPETITION IN SUBCONTRACTING. (DEC 1996)**

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protege Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its proteges.

#### **I.101 FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (JAN 2019)**

(a) *Definitions.* As used in this clause—

“Commercial item and commercially available off-the-shelf item” have the meanings contained Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509), if the subcontract exceeds \$5.5 million and has a performance period of more than 120 days. In altering



this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (JUN 2016) other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c ) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(vi) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vii) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(viii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).

(ix) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212(a));

(x) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

(xi) 52.222-37, Employments Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

(xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiii)

(A) 52.222-50, Combating Trafficking in Persons (Jan 2019) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xiv) 52.222-55, Minimum Wages under Executive Order 13658 (Dec 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xv) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flow down is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvi)

(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable.

(xvii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xviii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Dec 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

#### **L102 FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017)**

(a) *Definitions.* As used in this clause—

“Cannibalize” means to remove parts from Government property for use or for installation on other Government property.

“Contractor-acquired property” means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

“Contractor inventory” means—

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

“Contractor's managerial personnel” means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

“Demilitarization” means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

“Discrepancies incident to shipment” means any differences (*e.g.*, count or condition) between the items documented to have been shipped and items actually received.

“Equipment” means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

“Government-furnished property” means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

“Government property” means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

“Loss of Government Property” means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government’s expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to—

- (1) Items that cannot be found after a reasonable search:
- (2) Theft:
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition;  
or
- (4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

“Material” means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

“Nonseverable” means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

“Precious metals” means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Production scrap” means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, *e.g.*, textile and metal clippings, borings, and faulty castings and forgings.

“Property” means all tangible property, both real and personal.

“Property Administrator” means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

“Property records” means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

“Provide” means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

“Real property” See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

“Sensitive property” means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

“Unit acquisition cost” means—

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the Contractor’s records that reflect consistently applied generally accepted accounting principles.

*(b) Property management.*

(1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

*(c) Use of Government property.*

(1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are—

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

(d) *Government-furnished property.*

(1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)(i) The Contracting Officer may by written notice, at any time—

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Government property.*

(1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts.*

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) *Contractor plans and systems.*

(1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) *Acquisition of Property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) *Receipt of Government Property.* The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (*e.g.*, stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) *Government-furnished property.* The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition) and other data elements as necessary and required in accordance with the terms and conditions of the contract.

(2) Quantity received (or fabricated), issued, and balance-on-hand.

(3) Unit acquisition cost.

(4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(5) Unit of measure.

(6) Accountable contract number or equivalent code designation.

(7) Location.

(8) Disposition.

(9) Posting reference and date of transaction.

(10) Date placed in service (if required in accordance with the terms and conditions of the contract).

(B) *Use of a Receipt and Issue System for Government Material.* When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory.* The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (*e.g.*, overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) *Subcontractor control.*

(A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (*e.g.*, extent of liability for loss of Government property).

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property related reports as directed by the Contracting Officer.

(vii) *Relief of stewardship responsibility and liability.* The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

- (1) Date of incident (if known).
- (2) The data elements required under paragraph (f)(1)(iii)(A) of this clause.
- (3) Quantity.
- (4) Accountable contract number.
- (5) A statement indicating current or future need.
- (6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.
- (7) All known interests in commingled material of which includes Government material.
- (8) Cause and corrective action taken or to be taken to prevent recurrence.
- (9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.
- (10) Copies of all supporting documentation.
- (11) Last known location.
- (12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when—

- (1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;
- (2) Property Administrator grants relief of responsibility and liability for loss of Government property;
- (3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;  
or
- (4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) *Utilizing Government property.*

(A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.



(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

(ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

(g) *Systems analysis.*

(1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) *Contractor Liability for Government Property.*

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss of Government property furnished or acquired under this contract, except when any one of the following applies—

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and

convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

(5) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible. Standard Form 1428.

(j) *Contractor inventory disposal.* Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer or authorizing official.

(1) *Predisposal requirements.*

(i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules.*

(i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report—

(A) Government-furnished property that is no longer required for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer

(iv) The Contractor shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:

(A) Any additional; information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

*(3) Submission requirements.*

(i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other

types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

(4) *Corrections.* The Plant Clearance Officer may—

- (i) Reject a schedule for cause (*e.g.*, contains errors, determined to be inaccurate); and
- (ii) Require the Contractor to correct an inventory disposal schedule.

(5) *Postsubmission adjustments.* The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(6) *Storage.*

- (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.
- (ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(7) *Disposition instructions.*

- (i) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.
- (ii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(8) *Disposal proceeds.* As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(9) *Subcontractor inventory disposal schedules.* The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(3) of this clause.

(k) *Abandonment of Government property.*

- (1) The Government shall not abandon sensitive property or termination inventory without the Contractor's written consent.
- (2) The Government, upon notice to the Contractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication.* All communications under this clause shall be in writing.

(m) *Contracts outside the United States.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

#### **I.103 FAR 52.246-25 LIMITATION OF LIABILITY - SERVICES. (FEB 1997)**

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Government acceptance of services performed under this contract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term *Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of -

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

#### **I.104 DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010)**

Contractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, Official Foreign Travel, or its successor in effect at the time of award.

#### **I.105 FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE). (APR 2012) (FIXED PRICE)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of -

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including -

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

(i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted -

- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
- (2) Any claim which the Government has against the Contractor under this contract; and
- (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**I.106 FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT). (MAY 2004) (COST-REIMBURSEMENT)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if -

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. *Default* includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:



- (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
  - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including -

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor -

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted -

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

**I.107 FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICES). (APR 1984) (FIXED PRICE)**

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to -

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted

supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as *manufacturing materials* in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **L.108 FAR 52.249-14 EXCUSABLE DELAYS. (APR 1984)**

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. *Default* includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

#### **L.109 FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 2012)**

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. The provisions of the clause at FAR 52.245-1, Government Property, apply to all property acquired under such authorization.

#### **L.110 DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (AUG 2009)**

(a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting Officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal Contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal Contractor employees.

(e) Car rentals. Surface Deployment and Distribution Command (SDDC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal Contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government Contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The Contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government Contractor to furnish a letter signed by the Contracting Officer. The following illustrates a standard letter of identification.

#### OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

#### **I.111 FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES. (APR 1984)**

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of (*DEVIATION*) after the date of the clause.

(b) The use in this solicitation or contract of any Department of Energy Regulation (DEAR) (48 CFR 9) clause with an authorized deviation is indicated by the addition of (*DEVIATION*) after the name of the regulation.

#### **I.112 FAR 52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)**

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the

form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

**Section J - List of Documents, Exhibits and Other Attachments**

**J.1      DOE-J-1001 LIST OF ATTACHMENTS**

The following attachments constitute part of this contract:

<b>Attachment</b>	<b>Description</b>
A	Performance Work Statement
B	Performance Evaluation Management Plan
C	Position Qualifications
D	Glossary

**TECHNICAL, ANALYTICAL, COMMUNICATIONS SECURITY, ADMINISTRATIVE, & CYBER  
SUPPORT FOR THE DEPARTMENT OF ENERGY, TECHNICAL SECURITY PROGRAM**

**Comprising of:**

**TECHNICAL SECURITY, COMMUNICATIONS SECURITY, CYBER, ANALYSIS and SECURITY  
ADMINISTRATION**

**March 15, 2019**

**I. BACKGROUND**

The Office of the Associate Under Secretary for Environment, Health, Safety and Security (EHSS) is responsible for the development, promulgation, and evaluation of security programs, and the oversight of safeguards and security; cyber security; emergency management; and environment, safety, and health programs throughout the Department. In addition, EHSS serves as the principal advisor to the Secretary of Energy on matters relating to protection of the environment, workers, and the public from hazards posed by the Department of Energy's (DOE) facilities and operations. This is achieved by ensuring conformance of the Department's activities with applicable laws and requirements governing security of the workers at DOE facilities. Within EHSS is the Office of the Associate Under Secretary, which provides protection of the Department's facilities in the National Capital Area, the health and safety of assigned personnel, and the classified, sensitive, and unclassified property and information in those facilities, and ensures the Continuity of Government (COG) in all circumstances mandated by Presidential Decision Directives.

The Office of Technical Security within EHSS is responsible for the facilities security against foreign and domestic electronic espionage and terrorism through the Technical Security Program (TSP) consisting of Technical Surveillance Countermeasures Program (TSCM), TEMPEST, Communications Security (COMSEC) and complementary disciplines. Therefore, DOE Office of Technical Security acts as the focal point for all technical security related activities operationally (inspections, surveys, investigations, etc.) and administratively (policy developments, training, certifications, coordination, research, purchasing, etc.). This office provides Federally TSCM and TEMPEST trained personnel to perform all technical tasks related to supporting the DOE TSP Program and to provide TSP services for DOE facilities. In addition, to enhance on-site physical security and safeguard classified activities, the program is responsible for TSP requirements related to DOE security related construction, upgrades and enhancement projects for on or off-site DOE facilities or other areas of security responsibility.

Communications Security (COMSEC), ensures the protection of DOE's sensitive unclassified and classified channels through various security components and serves as the Central Office of Record for the DOE COMSEC activities. These components provide protection during transmission while affording communications interoperability between locations. It is responsible for the acquisition, storage, assignment, distribution, inventory control and accountability of COMSEC material and is also applicable to Cryptographic, Secure Telephone Equipment and other forms of communications protection (i.e., encryption/decryption of voice, data, facsimile and television).

The Administrative, Cyber and Analytical activities support TSP activities in the form of assistance to technical security and COMSEC operations such as, but not limited to; research, coordination, administrative support, physical security and cyber assistance and augmentation to technical security and COMSEC operations.

**II. PURPOSE**

The purpose of this contract is to provide personnel, facilities, equipment, materials and services necessary to fulfill the requirements of the DOE TSP. The DOE TSP requires Technical Security in the areas of TSCM, TEMPEST, COMSEC, and associated Supporting Services (Administration, Cyber, Analytics, etc.) for EHSS which is responsible for security policies, security-related technical support, security training, operation of certain facilities,



and emergency management. The Contractor shall fully integrate the requirements contained in this Performance Work Statement (PWS) in a manner that assures a seamless structure is maintained. This includes full integration of functions, roles, and responsibilities if more than one Contractor is involved in fulfilling the requirements of this contract.

### **III. CONTRACT STRUCTURE**

The anticipated award type will be a hybrid of both firm-fixed price and cost-reimbursement activities. The Contractor shall perform work on a contract line item number (CLIN) basis. The contract will contain three (3) CLINs, which are summarized below:

**CLIN 1** – Technical Support Services (Cost Reimbursement – Award Fee)

**CLIN 2** – Contract Administration, General Administrative (Fixed Price)

**CLIN 3** – Transition Activities (Fixed Price)

### **IV. SCOPE OF WORK/PERFORMANCE REQUIREMENTS**

#### **General Requirements**

Individuals must be able to provide support of DOE TSP activities at any DOE location as necessary.

The Contractor will procure Contractor-Acquired-Government-Owned Technical Security and countermeasures equipment and COMSEC equipment, as required, to ensure strict compliance with Technical Security requirements.

The Contractor shall provide weekend or after hours work as may be required from Technical Security Specialists and COMSEC personnel during the course of this contract on a scheduled or emergency basis.

The Contractor will be provided office/equipment storage space on-site. Site transportation between the Forrestal and Germantown facilities or other HQ DOE facilities is available using the DOE HQ shuttle bus or other pre-arranged DOE transportation.

The Contractor may be required to transport equipment (Rental/Leased Vehicles, Government Vehicle, etc.) between sites and required locations.

#### **A. Performance Activities**

Performance activities consist of three different work areas. These include:

1. Technical Support Services (Cost Reimbursement – Award Fee)
2. Contract Administration and General Administrative Support Services (Firm-Fixed Price)
3. Transition Activities (Firm-Fixed Price)

**CLIN 1 – Technical Support Services (Cost Reimbursement – Award Fee)**

#### **CLIN Type**

This CLIN is planned to be cost reimbursement.

#### **Place of Performance**

The main location of work for Technical Security personnel under this contract will be Germantown, Maryland and the Forrestal Building in Washington DC. One FTE may be located at the Albuquerque, NM site. The Contractor

shall be required to travel among DOE sites. Local, domestic, and/or international travel by contractor personnel may be required in the performance of this contract.

## **Objectives**

The Contractor shall provide support and qualified personnel for all programs within the TSP. The implementation and administration of the DOE TSP will be in accordance with DOE Technical Security Program Order 470.6 (**Attachments are Official Use Only and Classified and cannot be released – some information can be found at <https://www.directives.doe.gov/directives-documents/400-series/0470.6-BOrder-chg1-minchg>** ), and successor documents, relevant to National Intelligence Policies and Directorate Central Intelligence Agency Directives (DCIDs) and various Executive Order and legislations to include those identified below. Performance objectives identified below pertain to all TSP subordinate programs.

## **Scope/Requirements**

### **1. Technical Security**

The Contractor shall provide Inter-Agency Training Center countermeasures graduates as DOE certified/certifiable Technical Security (TEMPEST and TSCM) personnel to support the implementation and administration of the DOE Technical Security Program in accordance with DOE Order 470.6, relevant National Security Agency implementations, Committee on National Security Policies, Director of National Intelligence Policies and Directorate Central Intelligence Agency Directives (DCIDs) and various Executive order and legislations to include the following:

- a. Coordination and performance of technical evaluations and countermeasures for all DOE Headquarters facilities and those facilities which fall under the agreements and Order Requirements for Technical Security support for other DOE facilities/sites and agencies outside of DOE.
- b. Coordination and performance of Technical Security surveys for penetrations, hazards and security vulnerabilities concerning technical security for all DOE Headquarters facilities and those facilities which fall under the agreements and Order Requirements for Technical Security support for other DOE facilities/site and agencies outside of DOE.
- c. Coordination, formulation and evaluation of Technical Security recommendations for corrective actions related to penetrations, hazards, countermeasures, assessments and security vulnerabilities concerning technical security for all DOE Headquarters facilities and those facilities which fall under the agreements and Order Requirements for Technical Security support for other DOE facilities and agencies outside of DOE.

**Performance Objective # 1.** The Contractor shall provide support services and procure/maintain all equipment necessary to perform all DOE TSP services and duties for the DOE TSP operations based on National and DOE Technical Security Policies.

- (1) The Contractor shall create, review and update, as required by DOE Orders, existing and future, TS Operational Plans, policy and guidance for DOE TSP.
- (2) The Contractor shall respond, as needed, to survey findings and programmatic issues with expediency and expertise.
- (3) The Contractor shall provide all necessary support to the technical security teams to ensure that operations security, need-to-know, and operational security requirements are met.
- (4) The Contractor shall validate that all new and existing facilities meet all applicable DOE requirements

for the activities being conducted.

- (5) The Contractor shall provide services to detect and deter technical security issues and provide recommendations to isolate and nullify the technical surveillance operations and vulnerability exploitations targeted against DOE facilities.
- (6) The Contractor shall use specialized search methodologies to detect the emplacement of technical surveillance systems and technical security (TEMPEST) hazards.
- (7) The Contractor shall possess detailed knowledge of emplacement techniques and use this knowledge to provide recommendations for modification of facilities to increase the difficulty of unauthorized insertion of a technical surveillance system, increase the probability of discovering insertion attempts or nullify technical security hazards for potential exploitation.
- (8) The Contractor shall notify the TSP, Certified TEMPEST Technical Authority (CTTA) and/or TS Operations Managers on all operational activities regarding Technical Security services and operations.
- (9) Support special requests such as data analysis and outside audits, as needed.
- (10) The Contractor shall ensure all technical security technicians maintain proficiency in accordance with the minimum standards set forth in the DOE TSP Order 470.6. In concert with the Technical Security Operations Manager or CTTA, identify training needs to ensure the maintenance of knowledge, skills and abilities required for each Technical Security Technician.
- (11) The Contractor shall ensure all technical security services are conducted in accordance with the DOE Orders, Manuals and Policies, laws and other National Operational Policies and Doctrine (CNSS).
- (12) The Contractor shall validate that technical security findings are properly addressed.

**Performance Objective # 2.** The Contractor shall provide and maintain technical security equipment to the following minimum standards:

- (1) The Contractor shall maintain and manage all DOE owned and contractor acquired equipment in support of the TSP.
- (2) The Contractor shall assist the DOE in the identification, upgrade and maintenance of any new and/or existing equipment or consumable items in support of the DOE TSP.
- (3) The Contractor shall establish and document a comprehensive maintenance program for all assigned equipment and associated documentation for all new and existing technical security equipment. The contractor shall ensure that each item is maintained in accordance with the original equipment manufacturer's recommendations.

## **2. Communications Security**

The Contractor shall provide support services to the DOE Central Office of Record, secure telecommunications and COMSEC activities as outlined in DOE orders and National policies, including stated program, project activities, and training. The Contractor will provide training, conduct COMSEC audits, support services requests, install/maintain secure communications equipment and distribute classified key materials.

**Performance Objective # 1.** The Contractor, in accordance with Federal program management requirements, shall provide support services and personnel to install/maintain all equipment necessary to perform DOE Central Office of Record requirements, KEY distribution, and HQ secure telecommunications activities and duties based

on National and DOE Technical Security and COMSEC Policies, Laws and Operational Doctrine.

1. The Contractor shall maintain all inventories, maintenance schedules and associated documentation for all new and existing equipment and materials supporting the DOE Communications Security (COMSEC) Program and Central Office of Record.
2. The Contractor shall provide COMSEC support by conducting COMSEC Audits, Inspections, Inquiries and training for tracking over 28,000 COMSEC items for DOE.
3. The Contractor shall track all tracers for DOE COMSEC accounts and reports to the National Security Agency.
4. The Contractor shall draft responses for all COMSEC related documents from DOE Laboratory and Field sites.
5. The Contractor shall provide certified personnel (as noted in the Position Qualifications attachment 2) for the DOE Key Management Infrastructure (KMI) system, to operate and maintain the system.
6. The Contractor shall develop and maintain COMSEC forms (i.e., SF-153) to be made available online. The contractor shall maintain databases and systems as required by National Policies and the Key Management Infrastructure (KMI).
7. The contractor will provide COMSEC Education, Training, policy and Awareness Support in adapting national policy as it pertains to DOE Central Office of Record activities and requirements.
8. The contractor will provide support to DOE HQ for secure phone installation, maintenance and keying; in addition to providing support services for DOE HQ secure wireless phones and bulk encryption equipment.

### **3. Support Services for TSCM Supplies, Materials, and Equipment**

**Performance Objective:** The object of the TSCM Support services Supplies, Materials, and Equipment CLIN is to purchase necessary supplies, materials, and classified and unclassified equipment in support of this contract.

1. The Contractor shall provide procurement support to include all supplies, materials, and equipment necessary to perform the support services required by this PWS unless specifically identified to be provided by the Government. Title to all equipment purchased under this contract shall be vested with the Government. It is anticipated that the total cost of the procurement support will not exceed \$1,000,000 in supplies, materials, and equipment purchases for a twelve (12) month period of performance.

#### **Deliverables for CLIN 1:**

The following outlines the deliverables associated with this CLIN. All deliverables shall be submitted to the COR and Contract Specialist.

##### **1. TSP Service (Ad-Hoc) Reports**

This report(s) shall include a detailed summary of services completed and any issues/comments arising from analysis. The report will be submitted as requested by the Federal Program Manager.

##### **2. Supply and Material Tracking Reports**

This report shall include a detailed breakdown of all supplies and materials purchased in support of this CLIN. The supplies and materials shall be tracked by contractor. This report shall be submitted quarterly, within 15 days after the end of each contract quarter, to the COR.

## Performance Expectations/Inspection and Acceptance

The performance expectations for CLIN 1 –TSP Support Services are summarized into performance objectives listed below followed by the performance expectation and the surveillance method. The performance expectation is the standard for which services will be accepted.

Performance Objective	Performance Expectation	Surveillance Method
Schedule Performance	DOE will assess the timeliness of deliverables, completion of milestones, responsiveness to DOE request, and range of schedule variance.	Direction Observation Inspection Customer Complaints Customer Validations
Management Performance	DOE will assess the effective use of personnel resources; clear, accurate, and inclusive reporting; dependability, responsiveness, coordination, and cooperation with DOE; and overall business relation.	Direction Observation Inspection Customer Complaints Customer Validations
Technical Performance	DOE will assess the performance of the specific technical functions within the PWS; thoroughness of approach; integration of technical effort; and compliance with PWS requirements including laws, regulations, directives, manuals, notices, publication, and guidance.	Direction Observation Inspection Customer Complaints Customer Validations
Product Quality	DOE will assess the degree to which work is accurate, completion, and relevant; appearance and format; compliance with DOE and regulatory requirements; the sufficiency of the deliverable	Direction Observation Inspection Customer Complaints Customer Validations
Cost Control	DOE will assess adherence to budgets and accuracy of cost estimates, or range of cost variance, traceability of costs relative to work progress,	Direction Observation

	and cost reduction/avoidance initiatives.	
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### Resource Load Information

Historically, the work performed under this CLIN was performed at the following volume(s) for a period of one year (FTE based on 1860/year):

**Senior Technical Security Specialist – 20460 hours**  
**Mid-level Technical Security Specialist – 1860 hours**  
**Junior Technical Security Specialist – 1860 hours**  
**Technical Security Trainee – 1860 hours beginning in Option Year 2**  
**Logistician/Equipment Manager – 1860 hours**  
**Senior COMSEC Auditor – 5580 hours**  
**COMSEC Auditor – 1860 hours**  
**Senior Telecommunications Specialist – 5580 hours**  
**Telecommunications Specialist – 1860 hours**  
**Technical Security Analyst/Researcher – 1860 hours**  
**Cyber/Network Security Specialist Level 1 – 1860 hours**  
**Cyber/Network Security Specialist level 2 – 1860 hours**  
**Digital Forensic Specialist – 1860 hours**

### CLIN 2 – Contract Administration and General Administrative Support Services (Firm-Fixed Price)

#### CLIN Type

This CLIN is planned to be firm-fixed price.

#### Place of Performance

The main location of performance of work under this contract will be the DOE Germantown facility, with occasional work at the Forrestal Building in Washington, DC. Local, domestic, and/or travel by contractor personnel may be required in the performance of this contract.

#### Objectives

The object of the contract administration and general administration support services CLIN is to provide complete administration necessary to perform the support services of this contract. This CLIN will also support the centralized administrative, clerical, and technical functions associated with the overall project management.

#### Program Management

- Provide program management, project monitoring, and contract administration necessary to manage the contract process to ensure that cost, resources, schedule and quality requirements are tracked and communicated to the COR.
- Provide consistent communications with the COR to ensure current status is provided on the various work activities.
- Attend status meetings, as necessary, at the request of DOE to discuss, but not be limited to, reviews of both in-progress and forthcoming work, schedule, and deliverables.
- Consult with the COR to resolve conflicting priorities and convey to project personnel.

- Manage allocated resources and establish/maintain an approach to ensure corporate knowledge of ongoing work being performed is available to satisfy contract requirements and not impact schedule.
- The Contractor shall submit all formal reports of technical security services to the appropriate TSP Federal Program Managers.
- The Contractor shall maintain all TSP service reports, equipment maintenance records, operational plans, training records, purchase receipts and other correspondence and documentation related to TSP activities.

## **Project Cost Management**

- Regarding CLIN 1, provide cost management (i.e., invoice) broken down by labor and cost with a cumulative running totals of both labor and cost for assigned projects.
- Regarding CLIN 1, manage costs by staying within the budget of CLIN 1 or request approval from the COR for additional expenditures.

## **Quality Assurance**

- The Contractor shall develop, maintain, deliver, and manage to the Government-approved Quality Assurance Program Plan that defines the Contractor's Quality Assurance program.
- The Contractor shall verify and validate the quality of deliverables throughout all areas of contract performance including papers, reports, and presentations.
- The Contractor shall monitor the effectiveness of their quality system and continually improve quality processes.

## **General Administrative Support**

The Contractor shall provide administrative and operational support services and duties for the TSP. The Contractor shall be required to, but is not limited to, the following:

- (1) Providing or editing a variety of draft written documents, numerical tables, charts, and reports with varied and advanced functions and one or more types of generic and specialized software;
- (2) Create/Maintain databases for Technical Security and COMSEC activities.
- (3) Provide analytical support and research for Technical Security evaluations, assessments, threat documents, risk assessments, presentations.
- (4) Provide cyber forensic analysis of stand-alone or networked systems to include Voice-Over-Internet Protocol (VoIP), Wireless and Cellular systems.
- (5) Maintain necessary requirements to conduct requested cyber activities on and off DOE networks as well as maintaining evidence related to such support of Counterintelligence or Law enforcement activities in support of TSP operational activities.
- (6) Ensure documents are in the proper format and that spelling, punctuation, capitalization, classification and grammar are correct;
- (7) Provide document management activities (i.e., archival document review folder management and file conversion of paper files to electronic files by scanning, quality control inspections, and testing of electronic document retrieval capabilities); Typing documents and assembling correspondence packages, including packages containing classified material;

- (8) Prepare travel authorizations and vouchers;
- (9) Maintain calendars;
- (10) Dispatch classified and unclassified documents to multiple addressees;
- (11) Utilize available department classified commuter networks.
- (12) Manage digital document review files to meet DOE records management requirements;
- (13) Perform quality assurance reviews; e.g., proofreading documents for clarity, effectiveness, classification reviews and compliance with DOE requirements;
- (14) Providing logistic support for unclassified and classified meetings;
- (15) Provide logistical support in procuring equipment and maintenance and will research availability of new and existing technical security equipment.

## **REPORTING/DELIVERABLES for CLIN 2**

### **1. Management Plan**

Thirty (30) calendar days after contract award, the Contractor shall provide a Management Plan that describes the approach to perform the requirements of the contract, and the technical, schedule, and cost/price, and financial management control systems used to manage performance of the contract. This plan shall be updated fifteen (15) calendar days after any significant contract changes.

### **2. Staffing Plan**

The Contractor shall provide a Staffing plan that describes the approach for providing personnel to carry out the requirements in the PWS. This plan shall be updated as required by changes to the Staffing Plan.

### **3. Quarterly Technical Management Report**

A Quarterly technical management report shall be due to the COR and the EHSS representatives within fifteen (15) business days of the end of the preceding month. This report shall address progress made on deliverables; highlight any significant events; and, will also include a brief narrative on work accomplished during the reporting period. It shall also describe any significant events that caused a disruption in service, or that had the potential to cause a disruption in service, along with a description of remedial and/or preventative actions taken. This report will be organized according to the EHSS defined Work Areas and associated Work Breakdown Structure.

### **4. Monthly Cost Management Report**

A monthly cost management report shall be due to the COR and the EHSS representatives within ten (10) business days of the end of the preceding month. This report shall detail costs by Work Area, hours, and labor category, the total costs expended during the month, the total costs expended for this effort from the inception of the work through the date of the report, and the anticipated amount of funding required to complete the effort.

### **5. Equipment Tracking Report**



This report shall include a detailed breakdown of all equipment purchased in support of CLIN 1 and shall be submitted with the Quarterly Technical Report.

## **6. Quality Assurance Management Plan (QAMP)**

Thirty (30) calendar days after contract award, the Contractor shall provide a QAMP that includes, but is not limited to, an approach to integrate the requirements listed into everyday work activities and how the execution of the plan will successfully and cost-effectively integrate DOE's own QA program for work to be conducted. This plan shall be updated, as required or as significant changes are identified.

## **7. Diversity Plan**

Thirty (30) calendar days after contract award, the Contractor shall provide a diversity plan addressing, at a minimum, the Contractor's approach to ensure an effective diversity program (including addressing applicable affirmative action and equal employment opportunity regulations) to include: (1) a statement of the Contractor's policies and practices; and (2) planned initiatives and activities which demonstrate a commitment to a diversity program, including recruitment strategies for hiring a diverse work force. The diversity plan shall also address, as a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force; (2) educational outreach, including a mentor-protégé program; (3) stakeholder involvement and outreach; (4) subcontracting; and (5) economic development.

An annual diversity report shall be submitted by December 31 of each year. This report shall provide a list of accomplishments achieved, both internally and externally during the current reporting period, and projected initiatives during the next reporting period. The report shall also list any proposed changes to the diversity plan which shall be subject to the Contracting Officer's approval.

## **Performance Expectations/Inspection and Acceptance**

The performance expectations under this contract are summarized into performance objectives listed below followed by the performance expectation and the surveillance method. The performance expectation is the standard for which services will be accepted.

<b>Performance Objective</b>	<b>Performance Expectation</b>	<b>Surveillance Method</b>
Quality of Work	Work products are accurate (i.e. free of typographical, grammatical, and formatting errors); and are mathematically correct when including numerical data); complete, relevant, and professional; and are continually accepted without significant revisions (only minor revisions).	Direction Observation Inspection Customer Complaints Customer Validations
Quality of Process	Management and Quality Control processes are efficient and effective to facilitate contract management, stay on schedule while delivering a high-quality product meeting or exceeding performance expectations.	Direction Observation Inspection Customer Complaints Customer Validations
Schedule	DOE shall assess the timeliness of overall contract and general administration support services; in addition to, required reports.	Direction Observation Inspection

		Customer Complaints
		Customer Validations

### **Resource Load Information**

Historically, the work performed under this CLIN was performed at the following volume(s) for a period of one year (FTE based on 1860/year):

**Program Manager – 1860 hours**  
**Administrative Assistant – 1860 hours**

### **CLIN 3 – Transition Activities (Firm-Fixed Price)**

#### **CLIN Type**

This CLIN is planned to be firm-fixed price.

#### **Place of Performance**

It is anticipated a portion of this work for this CLIN will be at the Contractor's place of business. Performance of work under this CLIN will also be the DOE Germantown and Forrestal facilities. Local, domestic, and/or international travel by contractor personnel may be required in the performance of this contract.

#### **Objectives**

The objective of the Transition Activities is to ensure the timely and efficient initiation of all contract services, including the transition of work being performed from the incumbent contractor to the successor contractor. Work under this CLIN covers activities required to transfer work from the incumbent Contractor to new Classification Support Services Contractor. The Contractor is expected to complete the orderly, efficient, and effective transition of work prior to the effective date of contract award. The transition must be completed within 90 days prior to the effective date of contract award.

#### **Scope/Requirements**

The Contractor shall perform all transition activities to begin performance, consistent with this contract. Transition activities are defined as any effort that is necessary to transition work from incumbent Contractor in a manner that (1) assures that all work for which the Contractor is responsible under the contract is continued without disruption; (2) provides for an orderly transfer of resources, responsibilities, and accountability from the incumbent Contractor; and (3) allows the Contractor to perform the work in an efficient, effective, and safe manner.

At the expiration of the contract term or any earlier termination thereof, the Contractor shall cooperate with successor Contractor or the Government by allowing its employees to interview for possible employment. Those employees who accept employment with the successor Contractor shall be released in a coordinated manner with the successor Contractor. The Contractor shall cooperate with the successor Contractor and Government with regard to the termination or transfer arrangements for such employees to assure maximum protection of employee service credits and fringe benefits.

The Contractor shall provide, 30 days prior to the effective date of the contract, a transition plan that describes transition management, execution, and schedule. This plan shall be updated based upon transition progress and/or COR input.

## **V. TECHNICAL DIRECTIVES**

The Contractor shall be required to perform in accordance with the performance requirements in this contract as supplemented by the technical directives issued by the COR. The performance requirements shall consist of performance objectives, performance measures and expectations contained in this document.

## **VI. PLACE OF PERFORMANCE**

The Contractor shall ensure that the Forrestal and Germantown facilities are staffed between the hours of 7:00 A.M. and 5:00 P.M., Monday through Friday, excluding Federal holidays. In addition, the Contractor shall ensure there is a plan in place for short notice travel due to an incident or investigation.

The Contractor personnel shall be provided office space in the Forrestal and Germantown facilities for use on this contract. Government-furnished computers, classified communications, telephones, and facsimile machines will also be provided by the Department of Energy, Headquarters, as needed. Copy machines are available on-site.

The Contractor shall provide all necessary and required support for all major DOE Headquarter facilities and operating locations in the Washington, DC Metropolitan Area. Those facilities are comprised of the following:

James Forrestal Building  
1000 Independence Avenue, SW  
Washington, DC 20585

L'Enfant Plaza North, SW Office Building  
955 L'Enfant Plaza, SW  
Washington, DC 20485

Portals III  
1201 Maryland Avenue, SW  
Washington, DC 20224

DOE Germantown Building  
19901 Germantown Road  
Germantown, MD 20874

Cloverleaf Building  
20400 Century Boulevard  
Germantown, MD 20874

In addition, the Contractor shall provide all necessary support to the DOE TSP Program at all DOE facilities located throughout the United States located at <https://www.energy.gov/maps/doe-national-laboratories>. Note: [This link requires the use of a modern browser \(i.e., Chrome\)](https://www.energy.gov/maps/doe-national-laboratories).

## **VII. OVERSIGHT AND MANAGEMENT**

The Contractor shall provide a Program Manager to serve as the Contractor's authorized supervisor for technical and administrative performance of all work. The Program Manager shall receive and execute, on behalf of the Contractor, such technical direction as the DOE Contracting Officer's Representative (COR) may issue within the terms and conditions of the contract for each supporting program activities and issues. The Government shall not exercise any supervision or control over Contractor employees performing services under this contract. The Contractor's employees are accountable solely to the Contractor's management, who in turn is responsible for performance to the Government.

The Contractor shall provide a stable, competent, qualified work force to meet the requirements of the contract. The Contractor shall ensure that its contract personnel, over the contract life, increasingly know and understand the TSP's mission and its policies. The contractor shall provide the necessary personnel; quality services; financial, project management, and administrative systems; and other resources required to accomplish the performance requirements under this contract, except for those resources specifically identified as being provided by the Government.

## **VIII. APPLICABLE DOCUMENTS**

In performance of work, the Contractor shall comply with all current and future applicable laws, regulations, and DOE directives, manuals, notices, orders, publications, and guidance which are, in part, identified below. This list is not to be considered all encompassing. DOE Orders may be found at the following address: (<http://www.directives.doe.gov>) and include the following:

- DOE Order 470.6 Chg 1, Technical Security Program (<https://www.directives.doe.gov/directives-documents/400-series/0470.6-BOrder-chg1-minchg>)
- DOE Order 471.6, Chg 2 (Admin Chg) (06/29/2011), “Information Security”
- DOE Order 472.2 (07/21/2011), “Personnel Security”
- Privacy Act of 1974, as amended, and implementing regulations;
- DOE Order 414.1D (04/25/11) Quality Assurance;

## **IX. SECURITY**

The duties performed under this PWS involve working with classified data and information that must be controlled pursuant to applicable statutes, regulations, and DOE security and classification policies and procedures in which the contractor must be fully knowledgeable.

As such, the contractor staff may be required to be trained in the DOE-sponsored Classified Matter Protection and Control (CMPC) course, as requested by the COR. All contractor personnel, assigned to this contract, are required to have an active DOE “Q” access authorization (security clearance) with SCI eligibility prior to commencement of any work under this contract. Contractor personnel who do not have an active DOE “Q” access authority shall acquire such within the 90-day transition period. New hires, during the contract performance, shall not perform any work (or charge to) this contract until such time that they complete the security clearance process and receive an active DOE “Q” access authority. In addition, each contractor personnel shall be familiar with DOE security regulations and directives prior to commencement of any work under this contract. The contractor shall submit the clearance paperwork for all individuals having a need to access classified information in compliance with DOE Order 472.2. The DOE has final authority in determining an individual’s security clearance eligibility.

## **X. TRAINING**

DOE specialized training is required for certification of authorities in the following labor categories: Technical Specialists and Cyber Network Specialists Level I and II, as described in the Position Qualifications document. Personnel must be able to obtain/maintain all necessary clearances and access authorizations, as described in the DOE TSP Order, for performing their duties. Individuals will be required to maintain any established certifications necessary for each position as outlined in the attached Position Qualifications.

The Contractor will provide candidates for entry into the DOE Technical Security training programs (TSCM and TEMPEST), if requested by the Government. This will include on-the-job training and successfully completing Federal entrance exams/requirements, training, and obtaining required certifications for the applicable program. These individuals must meet applicable security clearance requirements and/or be eligibility Top Secret/Sensitive Compartmented Information (TS/SCI) and applicable facility clearance requirements.

## **I. INTRODUCTION**

A. This PEMP covers the administration of the award fee provisions of this contract for the Department of Energy, Office of Environment, Health, Safety, and Security's (EHSS) Office of Technical Security and provides the standardization necessary to ensure effective development, administration, and coordination of the evaluation process. It is intended as a means to:

1. Document how performance during a specific award evaluation period will be evaluated and fee determined.
2. Assure that the contractor's performance is evaluated objectively in a consistent manner.
3. Afford the contractor an opportunity to earn fee commensurate with performance expended against performance expectations and standards.

B. The following matters, among others, are covered in the contract:

1. The contractor is required to provide services for types of services as identified in the Performance Work Statement (PWS) located in Section J, Attachment A, of the contract.
2. The term of the contract shall not exceed 60 months from its effective date including all option years.
3. The estimated cost of performing this contract, including all option years, is described in Section B of the contract.
4. The available award fee pool and fee evaluation periods will be in accordance with the Section B clause entitled Distribution of Performance Award Fee.
5. The available award fee pool is subject to equitable adjustments in accordance with the special contract requirements in Section H of the contract.
6. The award fee earned and payable will be determined unilaterally at the sole discretion of the U.S. Government (Government) by the Fee Determination Official (FDO) in accordance with the terms of this contract.
7. The Government may unilaterally make changes to this plan provided the contractor receives notice of the change at least 15 calendar days prior to the beginning of the evaluation period to which the changes apply.

## **Part II. ORGANIZATIONAL STRUCTURE FOR AWARD FEE ADMINISTRATION**

A. The following organizational structure is established for administering the award fee provisions of the contract. This structure is subject to change at the discretion of the Government.

1. Fee Determination Official (FDO)
  - a. The FDO is the Head of Contracting Activity (HCA). The HCA may delegate the FDO assignment/responsibilities to a senior DOE EHSS official. The Government may change assignment of the FDO without advance notice to the contractor.
  - b. The primary responsibilities of the FDO include the following:
    - (1) The FDO will determine the amount of award fee earned during each period. The amount determined will not result solely from mathematical summing, averaging, or the application of a formula. The FDO's determination of the amount of the award fee earned and the basis for this determination will be stated in the Award Determination letter to the contracting officer.
    - (2) The FDO authorizes changes to this plan.
2. Performance Evaluation Board (PEB)
  - a. PEB Chair and Membership: The FDO will designate the PEB Chair. The PEB membership will consist of the contracting officer's representative (COR) and other Federal representatives as selected by the PEB Chair. The Government may change the chair and membership without

notice to the contractor. PEB members are responsible for reviewing all data submitted by the Performance Raters (PRs) and providing a quality assurance review of the entire award package prior to submittal to the FDO.

- b. Performance Raters (PRs): The PRs will be the Technical Monitors (TMs). They will be responsible for evaluating and assessing the contractor's activities throughout the evaluation period and documenting the results at the end of the period. The PRs will be responsible for gathering information and objective evidence in order to evaluate Schedule, Management, Technical Performance; Product Quality; and Cost Control of the contractor, and recommending performance based ratings to the PEB. They will coordinate with the necessary personnel to develop the ratings and supporting documentation. The PRs will discuss and review progress with the contractor throughout the evaluation period. The Government may change the PRs without notice to the contractor.

### Part III. EVALUATION OF THE CONTRACTOR'S PERFORMANCE

#### A. Rating Plan

The contractor's performance shall be evaluated and rated according to this PEP. Supporting documents are attached:

- Exhibit E-1, Performance Areas, Evaluation Criteria, and Scoring
- Exhibit E-2, Award Fee Conversion Chart

#### Award Determination Process

Presented below are process steps that will be followed to evaluate and determine the award fee due the contractor, based on performance:

- No later than 30 calendar days after the end of the evaluation period, the Contractor shall submit a self-assessment to the Government.
- No later than 60 days after the end of the evaluation period, the PEB Chair provides the fee determination recommendation to the FDO.
- Upon receipt of notification of earned fee, the contractor prepares a separate (*i.e., apart from the regular monthly invoice*) voucher(s) based on the FDO's fee notice and submits this invoice to the Government for payment of its award fee.

#### EXHIBIT E-1. PERFORMANCE AREAS, EVALUATION CRITERIA, AND SCORING

Performance Area	General Evaluation Criteria	Performance Area Weight
1	Schedule Performance	20%
2	Management Performance	20%
3	Technical Performance	20%
4	Product Quality	20%
5	Cost Control	20%
	<b>TOTAL</b>	<b>100%</b>

#### PERFORMANCE AREA 1: SCHEDULE PERFORMANCE (Objective)

The objective of Performance Area 1, Schedule Performance, is to assess the timeliness of deliverables, completion of milestones, and responsiveness to DOE requests, and/or range of schedule variance. Each cost reimbursable activity will be assessed individually based on the following performance measures: (1) conformance with schedules, (2) early identification of schedule problems and inventiveness in overcoming them to maintain progress, (3) submission of deliverables on time, and (4) submission of deliverables ahead of schedule.

#### PERFORMANCE AREA 2: MANAGEMENT PERFORMANCE (Objective)

The objective of Performance Area 2, Management Performance, is to validate the contractor's performance of the specific management functions identified in the following measures. These functions are essential to effectively and efficiently manage the activities. Each cost reimbursable activity will be assessed individually based on the following performance measures: (1) effective use of personnel resources, proper and economical supervision, (2) clear, accurate, and inclusive reporting, (3) dependability, responsiveness, coordination, and cooperation with DOE, and (4) overall business relation to customer satisfaction.

### **PERFORMANCE AREA 3: TECHNICAL PERFORMANCE ( Objective )**

The objective of Performance Area 3, Technical Performance, is to assess the contractor's performance of the specific technical functions identified in the following measures. Each cost reimbursable activity will be assessed individually based on the following performance measures: (1) achievement of Performance Work Statement (PWS) performance expectations, (2) thoroughness of approach, (3) integration of technical effort, (4) compliance with requirements in the PWS including all applicable laws, regulations, DOE directives, manuals, notices, orders, publications, and guidance.

### **PERFORMANCE AREA 4: PRODUCT QUALITY ( Objective )**

The objective of Performance Area 4, Product Quality, is to assess the degree to which work is accurate, complete, and relevant with regard to DOE requests; professional in appearance and format; compliant with DOE and regulatory requirements; and accepted by DOE with minimal or no revision required to complete or correct the product. Each cost reimbursable activity will be assessed individually based on the following performance measures: (1) overall quality of deliverables, (2) extent and accuracy of any documentation, references and background material accompanying a deliverable, if applicable, (3) appropriateness of format and clarity, accuracy, and completeness of written products considering the intended audience for the deliverable, and (4) sufficiency of deliverable to support the decision-making process of senior DOE managers, the Secretary, Congress, and the President.

### **PERFORMANCE AREA 5: COST CONTROL ( Objective )**

The objective of Performance Area 5, Cost Control, is to assess the degree to which actual costs have minimal to no variance from approval operating plan. Cost control measures are documented and include a description of the action taken as well as actual dollar amount saved to date and projected savings. The evaluator may also take into consideration cost efficiencies that were documented and confirmed and adjust the rating accordingly. The specific activities will be assessed individually based on the following performance measures: (1) actual costs with cost projects, relating to estimated contract costs, (2) cost planning, (3) timely, accurate, and complete reporting, (4) clarity and traceability of costs relative to work schedules/technical progress, and (5) cost reduction/cost avoidance initiatives.

### **Generation of Performance Area Rating/Score**

Each cost reimbursable activity will be rated/scored. Each performance area, identified above, are considered of equal weighting and will not be individually rated or scored, but rather considered as-a-whole in developing the overall activity rating. In addition to the performance areas above the following will be considered in the overall adjectival rating assigned to each activity:

In broad terms, the evaluation board will evaluate the degree of efficiency and economy displayed in the Contractor's organization of all areas of effort including management and technical effort required to meet work requirements. Particularly to be considered will be: (1) establishment of internal controls to assure proper supervision of the work force and economical completion of assigned tasks; (2) the coordination and cooperation with cognizant DOE officials to resolve problems that arose in communication, planning, scheduling or other related areas; and (3) overall effective use of available resources, dependability and general coordination, including response to dynamic/urgent requirements.

## **Part IV. DETERMINING AWARD EARNED**

Each cost reimbursable activity will address each performance area during the evaluation period and an overall rating/score will be assigned for that activity, in accordance with the Award Fee Rating Chart. The COR will then average all activity rating/scores and assign an overall award fee rating/score.

For example, the below shows a *Summary of Recommended Ratings* for each active activity during the rating period and their associated adjectival rating and numerical score.

<b>Activity Number</b>	<b>Adjectival Rating</b>	<b>Numerical Rating</b>
Activity #2	Very Good	90
Activity #3	Excellent	95
Activity #4	Excellent	100
Activity #5	Very Good	90
Activity #6	Very Good	85
Activity #7	Excellent	98
Activity #8	Excellent	98
<b>OVERALL RATING</b>	<b>EXCELLENT</b>	



## EXHIBIT E-2. AWARD FEE RATING CHART

The following chart is for use performance-based fee ratings and reflect the percentages of available award fee earned for that adjectival rating. Scores will be rounded down to the nearest tenth before identifying the percent of available award fee earned.

<b>AWARD FEE ADJECTIVAL RATING</b>	<b>PERCENTAGE AWARD FEE</b>	<b>DESCRIPTION</b>
<b>Excellent</b>	91% - 100%	Contractor has exceeded almost all of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
<b>Very Good</b>	76% - 90%	Contractor has exceeded many of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
<b>Good</b>	51% - 75%	Contractor has exceeded some of the significant award-fee criteria and has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.
<b>Satisfactory</b>	No Greater Than 50%	Contractor has met overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award- fee plan for the award-fee evaluation period.
<b>Unsatisfactory</b>	0%	Contractor has failed to meet overall cost, schedule, and technical performance requirements of the contract in the aggregate as defined and measured against the criteria in the award-fee plan for the award-fee evaluation period.

## **J.C      ATTACHMENT C      TECHNICAL SECURITY PROGRAM (TSP) QUALIFICATIONS**

NOTE: If accepted, the labor category and minimum position qualifications proposed will be incorporated (and/or replace) the below listing.

### **TECHNICAL SECURITY PROGRAM (TSP) QUALIFICATIONS**

All personnel are required to possess an active Department of Energy (DOE) “Q” access authorization in order to perform under this contract. An active Top Secret clearance from Other Government Agencies, such as Department of Defense (DoD) based upon a single scope background investigation is typically acceptable for clearance reciprocity if the background investigation is less than five (5) years old. It is required that specified personnel have access to Sensitive Compartmented Information (SCI).

### **KEY PERSONNEL**

#### **PROJECT MANAGER (1 FTE – KEY)**

##### **Job Summary:**

The Project Manager serves as the principal point of contact to the Department of Energy (DOE) Federal Representative in support of specific or general requirements, daily project management, personnel, financial, training, and programmatic requirements associated with the DOE TSP. These programs include Technical Surveillance Countermeasures (TSCM), Communications Security (COMSEC), Secure Telecommunications, Protected Distribution Systems (PDS), Wireless Security (WiSec) and TEMPEST. Managing areas include (but not limited to) policy review, operations planning, reports, personnel, equipment and supporting the DOE Federal Technical Security employees. The candidate must possess advanced level proficiency with Excel skills required; and intermediate level proficiency with MS Word. Ability to effectively interact with personnel at all levels in a dynamic work environment is required. The candidate must be able to work independently and in a team environment and possess excellent written and oral communication skills. The Project Manager must maintain proper clearances and DOE/National training/certification requirements.

##### **Functional Responsibility:**

Responsible for formulating and enforcing work standards, assigning contractor schedules, reviewing work discrepancies, supervising contractor personnel, and communicating policies, purposes, and goals of the organization to subordinates. The Project Manager shall be responsible for the overall contract performance, milestones, reporting and budget.

##### **Minimum Position Requirements:**

Undergraduate degree in Business Administration, Management, Finance or other relevant discipline is desired, but not required. A minimum of 10 years related specialized management/supervisory experience with Technical Security and/or Counterintelligence (CI) programs combined. Relevant Technical Security certifications are required, (ex., include but are not limited to: Federal TSCM, TEMPEST and/ CI certifications). Must have a thorough understanding of the systems identified in the scope of work and specialized experience in related project work required. Two years of direct Government contracting experience at task/project management/supervisory level is required; experience in protecting national security information

in either the Government or private sector; basic knowledge/familiarity with contract administration desired.

## **SENIOR TECHNICAL SECURITY SPECIALIST (1 FTE KEY)**

### **Job Summary:**

Applicable knowledge, effective employment and utilizing state-of-the-art technical equipment, in support of the DOE TSP. The Senior Technical Security Specialist (STSS) will be responsible for conducting Technical Surveillance Countermeasures (TSCM), WiSec, PDS and TEMPEST services, inspections, in-conference security monitoring services, pre-construction support, to include other services as directed by the Department of Energy (DOE), in accordance with DOE and National Policies, Procedures and applicable laws. The STSS will be responsible for all other aspects related to participation and operation of a TSP as outlined. The STSS will also be responsible for maintaining proper clearances and DOE/National training/certification requirements. Must maintain appropriate security clearances and accesses.

The STSS that is designated as Key will be required to act as back-up to the Project Manager.

### **Functional Responsibility:**

Serve as the technical subject matter expert providing support and education to personnel on matters of technical security policy, procedures, and regulations. The candidate must possess a thorough knowledge of specialized equipment operations to include effective countermeasures employment. Provide technical security services to ensure the security of DOE information. Develop and present technical security related training to personnel in a formal classroom and in a field setting. Provide technical security support services as directed by DOE for a comprehensive TSP designed to protect facilities, employees and assets. Assist in developing and reviewing technical security designs for the agency's facilities. Provide input/review of proposed policies. Apply technical procedures in conducting needs surveys for preventing unauthorized access to, and possible disclosure of, classified and sensitive information. The candidate must have the ability to effectively relate technical requirements/issues to non-technical personnel. Must have the ability to communicate effectively to large or small groups on technical and non-technical issues related to the TSP. Effectively work in a team environment, as a team lead or team member. Provide clear and concise reports for each service conducted to identify cost effective strategies and effective security protection measures in accordance with DOE and National Policy and Protection Strategies. Provide support services on national and international developments in commercial, state-of-the-art, security technology through briefings and educational Materials. Physical and psychological capabilities are required which allow him/her to perform activities during sustained periods of intense concentration, working with electrical hazards, under adverse weather conditions, in confined and restricted areas. The ability to climb and work at heights; lift and carry heavy loads of at least 70 pounds; ability to distinguish colors and read codes on electronic components is required. Knowledge of, but not limited to, various types of communication and internet technology (IT) systems, physical security devices and methods, intelligence and counterintelligence methods, physical security, Operational Security, methods of radio frequency modulations coupled with a comprehensive appreciation of practices and techniques employed in espionage are essential position elements. Will be required to maintain/acquire certifications as mission necessities. Must be able to obtain and maintain

DOE/National certification within the time limitations depicted in DOE policy.

**Minimum Position Requirements:**

Undergraduate degree in an information technology, electronics, business, security or a related discipline is desired. Technical Security and Counterintelligence (CI) programs are required, to include, but not limited to, Federal TSCM, TEMPEST and/ CI certifications).

Graduation/Certification from a National Level Federal TSCM School is required. The candidate must have previous federal government training and current (within the last year) operational experience in/with a National Level TSCM/TS program. A combination of training and current operational experience of at least 15 years is required. Must possess/obtain all required security clearances to perform a technical security-related activity.

At least one year of management/supervisory responsibility required.

**SENIOR TECHNICAL SECURITY SPECIALIST (10 FTEs NON-KEY)**

**Job Summary:**

Applicable knowledge, effective employment and utilizing state-of-the-art technical equipment, in support of the DOE TSP. The Senior Technical Security Specialist (STSS) will be responsible for conducting Technical Surveillance Countermeasures (TSCM), WiSec, PDS and TEMPEST services, inspections, in-conference security monitoring services, pre-construction support, to include other services as directed by the Department of Energy (DOE), in accordance with DOE and National Policies, Procedures and applicable laws. The STSS will be responsible for all other aspects related to participation and operation of a TSP as outlined. The STSS will also be responsible for maintaining proper clearances and DOE/National training/certification requirements. Must maintain appropriate security clearances and accesses.

The STSS that is designated as Key will be required to act as back-up to the Project Manager.

**Functional Responsibility:**

Serve as the technical subject matter expert providing support and education to personnel on matters of technical security policy, procedures, and regulations. The candidate must possess a thorough knowledge of specialized equipment operations to include effective countermeasures employment. Provide technical security services to ensure the security of DOE information. Develop and present technical security related training to personnel in a formal classroom and in a field setting. Provide technical security support services as directed by DOE for a comprehensive TSP designed to protect facilities, employees and assets. Assist in developing and reviewing technical security designs for the agency's facilities. Provide input/review of proposed policies. Apply technical procedures in conducting needs surveys for preventing unauthorized access to, and possible disclosure of, classified and sensitive information. The candidate must have the ability to effectively relate technical requirements/issues to non-technical personnel. Must have the ability to communicate effectively to large or small groups on technical and non-technical issues related to the TSP. Effectively work in a team environment, as a team lead or team member. Provide clear and concise reports for each service conducted to identify cost effective strategies and effective security protection measures in accordance with DOE and National Policy and Protection Strategies. Provide support services on national and international developments in commercial, state- of-the-art, security technology through briefings and educational Materials. Physical and

psychological capabilities are required which allow him/her to perform activities during sustained periods of intense concentration, working with electrical hazards, under adverse weather conditions, in confined and restricted areas. The ability to climb and work at heights; lift and carry heavy loads of at least 70 pounds; ability to distinguish colors and read codes on electronic components is required. Knowledge of, but not limited to, various types of communication and internet technology (IT) systems, physical security devices and methods, intelligence and counterintelligence methods, physical security, Operational Security, methods of radio frequency modulations coupled with a comprehensive appreciation of practices and techniques employed in espionage are essential position elements. Will be required to maintain/acquire certifications as mission necessities. Must be able to obtain and maintain DOE/National certification within the time limitations depicted in DOE policy.

**Minimum Position Requirements:**

Undergraduate degree in an information technology, electronics, business, security or a related discipline is desired. Technical Security and Counterintelligence (CI) programs are required, to include, but not limited to, Federal TSCM, TEMPEST and/ CI certifications).

Graduation/Certification from a National Level Federal TSCM School is required. The candidate must have previous federal government training and current (within the last year) operational experience in/with a National Level TSCM/TS program. A combination of training and current operational experience of at least 15 years is required. Must possess/obtain all required security clearances to perform a technical security-related activity.

**MID-LEVEL TECHNICAL SECURITY SPECIALIST (1 FTE, non-key)**

**Job Summary:**

Applicable knowledge, effective employment and utilization of state-of-the-art technical equipment, in support of the DOE TSP. The Mid-Level Technical Security Specialist (MTSS) will be responsible for conducting Technical Surveillance Countermeasures (TSCM), WiSec, PDS and TEMPEST services, inspections, in-conference security monitoring services, pre-construction advice, to include other services and provide assistance as directed by the Department of Energy (DOE), in accordance with DOE and National Policies, Procedures and applicable laws. The MTSS will be responsible for all other aspects related to participation and operation of a TSP as outlined. The MTSS will also be responsible for maintaining proper clearances and DOE/National training/certification requirements. Must maintain appropriate security clearances and accesses.

**Functional Responsibility:**

Serve as the technical subject matter expert providing support and provide recommendations of technical security policy, procedures, and regulations. The candidate must possess a thorough knowledge of specialized equipment operations to include effective countermeasures employment; provide technical security services to ensure the security of DOE information; develop and present technical security related training to personnel in a formal classroom and in a field setting; and, provide technical security support services as directed by DOE for a comprehensive TSP designed to protect facilities, employees and assets. The candidate must assist in developing and reviewing technical security designs for the agency's facilities; provide input/review of proposed policies; and, apply technical procedures in conducting needs surveys for preventing unauthorized access to, and possible disclosure of, classified and sensitive information. The candidate must have the

ability to effectively relate technical requirements/issues to non-technical personnel; must have the ability to communicate effectively to large or small groups on technical and non-technical issues related to the TSP; and, effectively work in a team environment, as a team lead or team member. The candidate must provide clear and concise reports for each service conducted to identify cost effective strategies and security effect protection measures in accordance with DOE and National Policy and Protection Strategies. Must provide support services and recommendations on national and international developments in commercial, state- of-the-art, security technology through briefings and educational materials. Physical and psychological capabilities are required which allow him/her to perform activities during sustained periods of intense concentration, working with electrical hazards, under adverse weather conditions, in confined and restricted areas. The ability to climb and work at heights; lift and carry heavy loads of at least 70 pounds; ability to distinguish colors and read codes on electronic components is required. Knowledge of, but not limited to, various types of communication and internet technology (IT) systems, physical security devices and methods, intelligence and counterintelligence methods, physical security, Operational Security, methods of radio frequency modulations coupled with a comprehensive appreciation of practices and techniques employed in espionage are essential position elements. Will be required to maintain/acquire certifications as mission necessities. Must be able to obtain and maintain DOE/National certification within the time limitations depicted in DOE policy.

**Minimum Position Requirements:**

Undergraduate degree in an information technology, electronics, business, security or a related discipline is desirable. Extensive Technical Security and Counterintelligence (CI) programs are required, (Ex. Federal TSCM, TEMPEST and/ CI certifications). Graduation/Certification from a National Level Federal TSCM School is required. The candidate must have previous federal government training and current (within the last year) operational experience in/with a National Level TSCM/TS program. A combination of training and current operational experience of at least 10 years is required. Must possess/obtain all required security clearances to perform a TS related taskings.

**JUNIOR TECHNICAL SECURITY SPECIALIST (1 FTE, non-key)**

**Job Summary:**

Applicable knowledge, effective employment and utilizing state-of-the-art technical equipment, in support of the DOE TSP. The Junior Technical Security Specialist (JTSS) will be responsible for conducting Technical Surveillance Countermeasures (TSCM), WiSec, PDS and TEMPEST services, inspections, in-conference security monitoring services, pre-construction advice, to include other services and provide assistance as directed by the Department of Energy (DOE), in accordance with DOE and National Policies, Procedures and applicable laws. The JTSS will be responsible for all other aspects related to participation and operation of a TSP as outlined and directed by the DOE Office of Technical Security Director and/or relevant Federal Program/Operations Manager. The JTSS will also be responsible for maintaining proper clearances and DOE/National training/certification requirements. Must maintain appropriate security clearances and accesses. One FTE may be located at the Albuquerque, NM site.

**Functional Responsibility:**

Serve as the technical subject matter expert to provide support and recommendations of technical

security policy, procedures, and regulations. The candidate must possess a thorough knowledge of specialized equipment operations to include effective countermeasures employment; provide technical security services to ensure the security of DOE information; develop and present technical security related training to personnel in a formal classroom and in a field setting; and, provide technical security support services as directed by DOE for a comprehensive technical security program designed to protect facilities, employees and assets. The candidate must assist in developing and reviewing technical security designs for the agency's facilities; provide input/review of proposed policies; and, apply technical procedures in conducting needs surveys for preventing unauthorized access to, and possible disclosure of, classified and sensitive information. The candidate must have the ability to effectively relate technical requirements/issues to non-technical personnel; must have the ability to communicate effectively to large or small groups on technical and non-technical issues related to the TSP; effectively work in a team environment, as a team lead or team member. Provide clear and concise reports for each service conducted to identify cost effective strategies and security effect protection measures in accordance with DOE and National Policy and Protection Strategies. Provide support services and recommendations on national and international developments in commercial, state- of-the-art, security technology through briefings and educational materials. Physical and psychological capabilities are required which allow him/her to Perform activities during sustained periods of intense concentration, working with electrical hazards, under adverse weather conditions, in confined and restricted areas. The ability to climb and work at heights; lift and carry heavy loads of at least 70 pounds; ability to distinguish colors and read codes on electronic components is required. Knowledge of, but limited to, various types of communication and internet technology (IT) systems, physical security devices and methods, intelligence and counterintelligence methods, physical security, Operational Security, methods of radio frequency modulations coupled with a comprehensive appreciation of practices and techniques employed in espionage are essential position elements.

**Minimum Education:**

Undergraduate degree in an information technology, electronics, business, security or a related discipline is desirable. Extensive Technical Security and Counterintelligence (CI) programs are required, (Ex. Federal TSCM, TEMPEST and/ CI certifications). Graduation/Certification from a National Level Federal TSCM School will be required. The candidate must have previous federal government training and current (within the last year) operational experience in/with a National Level TSCM/TS program. A combination of training and current operational experience of at least 5 years is required. Must be able to obtain and maintain DOE/National certification within the time limitations depicted in DOE policy. Must possess/obtain all required security clearances to perform a TS related taskings.

**TECHNICAL SECURITY TRAINEE (1 FTE, non-key, beginning in Option Year 2)**

**Job Summary:**

Prepare for DOE and National TSCM and TEMPEST Certification through formal training, self-study and on the job training. The candidate must apply applicable knowledge, effective employment and utilization of state-of-the-art technical equipment, in support of the DOE TSP. The Trainee will be responsible for conducting TSCM services, inspections, in-conference security monitoring services, pre-construction advice, to include other services and provide assistance as directed by the Department of Energy (DOE), in accordance with DOE and National

Policies, Procedures and applicable laws. Must maintain proper clearances and achieve DOE/National training/certification requirements. The candidate must receive recommendation through an interview process of senior DOE TSCM technicians and approval from DOE Office of Technical Security for placement into this position. Trainee must meet all DOE and National Training pre-requisites, interviews and processes to be admitted into the TSP. Must pass all applicable National Training requirement as specified in DOE Orders for TSCM and Applicable technical security programs.

**Functional Responsibility.**

Gain knowledge of specialized equipment operations to include effective countermeasures employment to provide TS services to ensure the security of DOE information for National and DOE TSP certifications and performance requirements as a Technical Security Specialist Trainee (TSST). Through formal training and on-the-job (OTJ), the trainee will learn to provide technical security support services for a comprehensive TSP designed to protect facilities, employees and assets. Assist in developing and reviewing technical security designs for the agency's facilities. Provide input/review of proposed policies. Apply technical procedures in conducting needs surveys for preventing unauthorized access to, and possible disclosure of, classified and sensitive information. The candidate must possess the ability to effectively relate technical requirements/issues to non-technical personnel. Must have the ability to communicate effectively to large or small groups on technical and non-technical issues related to the TSP. Effectively work in a team environment, as a team lead or team member. Provide a clear and concise reports for each service conducted to identify cost effective strategies and security effect protection measures in accordance with DOE Policy and Protection Strategies. Provide research services and advising office personnel on national and international developments in commercial, state-of-the-art, security technology through briefings and educational materials.

The candidate must have the physical and psychological capabilities which allow him/her to perform activities during sustained periods of intense concentration, working with electrical hazards, under adverse weather conditions, in confined and restricted areas. The ability to climb and work at heights; lift and carry heavy loads of at least 70 pounds; ability to distinguish colors and read codes on electronic components is required. Will gain and become proficient in, but limited to, various types of communication systems, physical security devices and methods, intelligence and counterintelligence methods, physical security, Operational Security, methods of radio frequency modulations coupled with a comprehensive appreciation of practices and techniques employed in espionage are essential position elements.

**Minimum Education:**

Undergraduate degree in an information technology, electronics, electronics, telecommunications, computer technology, security or a related discipline is desirable. Five (5) years of demonstrated current experience in information technology, electronics, electronics, telecommunications, computer technology, security or a related discipline is required. Counterintelligence/Investigate experience is very desirable. Must possess and maintain necessary security clearances to perform a technical security related tasking and training.

**LOGISTICIAN/EQUIPMENT MANAGER (1 FTE, non-key)**



**Job Summary:**

Will maintain and control a system of records relative to purchasing and logistics for all equipment and contracting activities. Will present the service of vendors and assist in evaluation of the quality of items purchased. Will complete all necessary documentation and activities in the procurement, maintenance, certification and destruction of technical security equipment in accordance with DOE and manufacturer's requirements. Complete required documentation for equipment requests, maintenance, certification logs and updates. Maintain in-house equipment inventory. Coordinate all phases to maintain TSP equipment and transfers/loans of equipment within DOE and with other Government Agencies. Must maintain appropriate clearance levels. The candidate must be proficient with various software programs to include all Microsoft Office programs. The candidate must possess sufficient computer and word processor skills to accomplish basic inventory and records keeping entries.

**Functional Responsibility:**

Process purchase and maintenance requests and related documentation of materials and services in support of the TSP. Obtain competitive pricing on equipment and services. Maintain equipment and associated records and control the fixed asset inventory. Perform inventory control, property management and maintain approximately 1,000-line items of supplies and equipment.

**Minimum Education:**

Undergraduate degree is desirable. Three (3) years of related finance, budget, equipment logistics, office management or procurement experience required.

**SENIOR COMSEC AUDITOR (3 FTEs, non-key)**

**Job Summary:**

The Senior COMSEC Auditor will plan and conduct COMSEC audits and COMSEC training for the protection of COMSEC materials and items. The candidate must have expertise and working knowledge of COMSEC and COR operations and requirements. Must be able to maintain COMSEC databases and interactions with NSA. Will provide analytical, problem solving, and communication skills to deal with senior level field oversight.

**Functional Responsibility:**

Plan, coordinate and conduct COMSEC audits and inventories in accordance with DOE and National Policies for the protection for COMSEC materials, classified and CCI equipment for DOE. Prepare audit reports, review various COMSEC requests, conduct inquiries into COMSEC incidents, prepare and conduct COMSEC training and briefings. Will conduct day-to-day Central Office of Records activities. Coordination with the National Office of Record as required. Required to travel to field sites to conduct audits and training. Maintain electronic databases and records files. Required to assist in COMSEC Key transfers to field sites and training certifications as necessary. Maybe required to perform duties as COMSEC account manager.

**Minimum Education:**

Bachelor's degree is desired, but not necessary. Ten (10) years of combined experience conducting

COMSEC audits and/or Central Office of Record Operations (COR) for the protection of Type 1 encryption key, Controlled Cryptographic Items (CCI), supporting COMSEC accounts and other associated equipment in accordance with National Security Agency (NSA) policies and requirements and Committee on National Security Systems (CNSS) and is required.

#### **COMSEC AUDITOR (1 FTE, non-key)**

##### **Job Summary:**

The COMSEC Auditor will provide support in conducting COMSEC audits and COMSEC training for the protection of COMSEC materials and items. The candidate must have expertise and working knowledge of COMSEC and COR operations and requirements. Must be able to maintain COMSEC databases and interactions with NSA. Provide analytical, problem solving, and communication skills to deal with senior level field oversight.

##### **Functional Responsibility:**

Plan, coordinate and conduct COMSEC audits and inventories in accordance with DOE and National Policies for the protection for COMSEC materials, classified and CCI equipment for DOE. Prepare audit reports, review various COMSEC requests, conduct inquiries into COMSEC incidents, prepare and conduct COMSEC training and briefings. Will conduct day-to-day Central Office of Records activities. Coordination with the National Office of Record as required. Required to travel to field sites to conduct audits and training. Maintain electronic databases and records files. Required to assist in COMSEC Key transfers to field sites and training certifications as necessary.

##### **Minimum Education:**

Bachelor's degree is desired, but not necessary. Five (5) years of combined experience conducting COMSEC audits and/or Central Office of Record Operations for the protection of Type 1 encryption key, Controlled Cryptographic Items (CCI), supporting COMSEC accounts and other associated equipment in accordance with Committee on National Security Systems (CNSS) and National Security Agency (NSA) policies and requirements or as COMSEC custodian is required.

#### **SENIOR TELECOMMUNICATIONS SPECIALIST (3 FTEs, non-key)**

##### **Job Summary:**

The Senior Telecommunications Specialist will demonstrate analytical, problem solving, and communication skills in working with technical, functional, and management personnel. The candidate must have experience working with Communications Security (COMSEC) type 1 KEY and associated equipment. Will conduct secure telecommunication equipment (STE) installation, repair, upgrades, trouble shooting and destruction of Controlled Cryptographic Items (CCI). Will utilize National Security Agency approved Key Management Systems and associated equipment. As required by the contract, must possess appropriate level clearance (Q and TS clearance and SCI eligible).

##### **Functional Responsibility:**

Responsible for the day-to-day management, administration, maintenance, security, installation and support secure telecommunications equipment for DOE HQ responsibilities and COMSEC

Key Management System. Interface/integrate with the local classified and unclassified wide area network telecommunications operations on all matters involving secure telecommunications compatibility and connectivity. Detect, diagnose, report and analyze and resolve problems associated with hardware, applications software in support of classified telecommunications equipment and cryptographic items. Assist in COMSEC audits/inspections/inventories and training as required. Keep abreast of new equipment and Key Management requirements and operations. Protect operations and equipment in accordance with DOE and National Policy requirements. One FTE maybe be located at the Albuquerque, NM site.

**Minimum Education:**

Bachelor's degree in a relevant technical discipline is desired, but not a requirement. A combination of eight (8) years of relevant industry experience in Type I Key management and secure telecommunications/COMSEC equipment and/or Federal Government experience with relevant certifications is required.

**TELECOMMUNICATIONS SPECIALIST (1 FTE, non-key)**

**Job Summary:**

The Telecommunications Specialist will demonstrate analytical, problem solving, and communication skills in working with technical, functional, and management personnel. Must have experience working with Communications Security (COMSEC) type 1 KEY and associated equipment. Must have working knowledge in secure telecommunication equipment (STE) installation, repair, upgrades, trouble shooting and destruction of Controlled Cryptographic Items (CCI). Must have experience utilizing National Security Agency approved Key Management Systems and associated equipment.

**Functional Responsibility:**

Responsible for the day-to-day management, administration, maintenance, security, installation and support secure telecommunications equipment for DOE HQ responsibilities and COMSEC Key Management System. Interface/integrate with the local classified and unclassified wide area network telecommunications operations on all matters involving secure telecommunications compatibility and connectivity. Detect, diagnose, report and analyze and resolve problems associated with hardware, applications software in support of classified telecommunications equipment and cryptographic items. Assist in COMSEC audits/inspections/inventories and training as required. Protect operations and equipment in accordance with DOE and National Policy requirements.

**Minimum Education:**

Bachelor's degree in a relevant technical discipline is desired, but not a requirement. A combination of four (4) years of specialized experience in Type 1 Key management and secure telecommunications/COMSEC equipment and/or Federal Government experience with relevant certifications are required.

**TECHNICAL SECURITY ANALYST/RESEARCHER (1 FTE, non-key)**

**Job Summary:**

Provide research and analysis service in accordance with or directly related to the scope of work.

Provide briefings, on analysis results, to members of management, the professional staff, and to the customer. Exercise independent judgment and initiative in solving problems and performing complex technical efforts in specialty area by conducting research and analysis and provide professional national level assessments of technical security issues. Conduct research and analyze data to establish trends, identify threats, vulnerabilities, and potential areas of interest for technical security programs. Support TSP by utilizing specialized software provided for data mining and link analysis. Establish a fundamental understanding of DOE and TSP operations to include policies and procedures, and data sources available for analysis. Demonstrate fundamental understanding of investigative and intelligence processes to include the intelligence cycle. Proactively develop intelligence to provide support in accomplishing TSP objectives and mission.

Excellent verbal and written communication skills. Proficient in Microsoft Windows OS and Microsoft Suite. Demonstrated ability to work in a fast-paced environment and meet deadlines. Strong problem-solving skills with an interest and ability to conduct analysis and report on findings.

The candidate must demonstrate the ability to work independently in providing consulting, research and analytical products (Classified and Unclassified) on specialized projects that are professional in nature. The ability to plan and manage an activity with committed objectives, schedules, and costs.

**Functional Responsibility:**

Conduct research and analyze data to establish trends, identify threats, vulnerabilities, and potential areas of interest for TSP programs. Provide TSP support by utilizing specialized software provided for data mining and link analysis. Establish a fundamental understanding of DOE and TSP operations to include policies and procedures, and data sources available for analysis. Demonstrate fundamental understanding of investigative and intelligence processes to include the intelligence cycle. Proactively develop intelligence to assist in accomplishing TSP objectives and mission. Submit detailed reports to DOE regarding research and intelligence findings.

Other functions are to provide, within the specialty area, plan and initiate studies for original or advanced areas of customer problems and determines the techniques or methods involved that will accomplish the objectives. Develop and analyze analytical data, techniques and methodology for the solution of highly complex problems. Review reports and other products intended for release to the customers to ensure that technical merit and style of presentation reflect the highest quality. Analyze problem studies and problem history and prepare technical and managerial reports, including feasibility and desirability of extensions or modifications to the problem, program or system. Generally, provide knowledge and problem-solving abilities that are integral to the project in a specialty area of study.

**Minimum Education:**

A college degree is not required, but the applicant must have seven (7) years of experience in a specific field related to the scope of work. Requires thorough knowledge of the principles and concepts of National Level Analytical and Research Products. Must meet and maintain appropriate clearances and Special Access Program (SAP) and Sensitive Compartmental Information (SCI) eligibility.

## **CYBER/NETWORK SECURITY SPECIALIST LEVEL 1 (1 FTE, non-key)**

### **Job Summary:**

The primary function of Cyber/Network Security Specialist will be to support TSP operations and teams during the conduct of and Technical Security investigations, inquiries, inspections and reviews. Must be familiar with security policy/manuals and the appropriate DOE, Committee on National Security Systems (CNSS), Intelligence Community (IC) and other guiding policy documents. Must have the ability to work in a dynamic environment and effectively interact with numerous DOE, military/civilian personnel and industry partners. Working knowledge of Microsoft Office (Word, PowerPoint, and Excel). Possess a high degree of originality, creativity, initiative requiring minimal supervision.

Willingness to travel within the organizational geographic Area of Responsibility (AOR)  
Must be able to lift up to 50 lbs.

May be required to obtain additional skills and/or certifications related to cyber/digital/network analysis.

### **Functional Responsibility:**

Safeguards network against unauthorized infiltration, modification, destruction or disclosure.  
Conduct network traffic analysis for anomalies.

Research, evaluate, test, and recommend new security software or devices.

Provides recommendations on information assurance engineering standards, implementation dependencies, changing information assurance related technologies.

Prepares evaluation reports. Recommends remedial action.

Perform risk assessments and make recommendations to customers.

Advise government program managers on security testing methodologies and processes.

Periodically review system security to accommodate changes to policy or technology.

Coordinate Automated Information System (AIS) security inspections, tests, and reviews as part of TSP operations and surveys.

Develop policies and procedures for responding to security incidents, and for investigating and reporting security violations and incidents.

Ensure proper protection or corrective measures have been taken when an incident or vulnerability has been discovered within a system

Evaluate threats and vulnerabilities to ascertain whether additional safeguards are needed.  
Assess changes in the system, its environment, and operational needs that could affect create technical security vulnerabilities.

Provide support services for Conduct periodic testing of the security posture of the AIS.

Provide expert research and analysis in support of expanding programs and area of responsibility

**Minimum Education/General Experience:**

Documented experience analyzing and synthesizing information with other relevant data sources, providing guidance and mentor-ship to others in cyber threat analysis and operations, evaluating, interpreting, and integrating all sources of information, and fusing computer network attack analyses with counterintelligence and law enforcement investigations.

Bachelor's degree in the IT or Computer Security field with two (2) years of experience; or associate degree in the Information Technology or Computer Security field with three (3) years of experience; or five (5) years of experience with Local Area Networks, Wide Area Networks, and workstations. Must be certified Information Assurance Technician (IAT) Level 1 IAW DoD Directive 8570.01-M. Must meet and maintain Special Access Program (SAP) and Sensitive Compartmental Information (SCI) eligibility. Must have Global Industrial Cyber Security Certification (GICSP) and GIAC Security Essentials (GSE) Certification.

**CYBER/NETWORK SECURITY SPECIALIST LEVEL 2 (1 FTE, non-key)**

**Job Summary:**

The primary function of Cyber/Network Security Specialist will be to support and augment TSP operations and teams during the conduct of and Technical Security investigations, inquiries, inspections and reviews. Must be familiar with security policy/manuals and the appropriate DOE, CNSS, IC and other guiding policy documents. Must have the ability to work in a dynamic environment and effectively interact with numerous DOE, military/civilian personnel and industry partners. Working knowledge of Microsoft Office (Word, PowerPoint, and Excel). Possess a high degree of originality, creativity, initiative requiring minimal supervision.

Willingness to travel within the organizational geographic Area of Responsibility (AOR)  
Must be able to lift up to 50 lbs.

Maybe required to obtain additional skills and/or certifications related to cyber/digital/network analysis.

**Functional Responsibility:**

Safeguards network against unauthorized infiltration, modification, destruction or disclosure. Conduct network traffic analysis for anomalies. Research, evaluate, test, and recommend new security software or devices. Provides recommendations on information assurance engineering standards, implementation dependencies, changing information assurance related technologies.

Perform risk assessments and make recommendations to customers.

Provide recommendations to Government program managers on security testing methodologies and processes.

Periodically review system security to accommodate changes to policy or technology.

Coordinate AIS security inspections, tests, and reviews as part of TSP operations and surveys.

Develop policies and procedures for responding to security incidents, and for investigating and reporting security violations and incidents. Prepares evaluation reports. Recommends remedial action.

Ensure proper protection or corrective measures have been taken when an incident or vulnerability has been discovered within a system.

Evaluate threats and vulnerabilities to ascertain whether additional safeguards are needed.

Assess changes in the system, its environment, and operational needs that could affect create technical security vulnerabilities. Conduct periodic testing of the security posture of the AIS.

Provide expert research and analysis in support of expanding programs and area of responsibility.

**Minimum Education/General Experience:**

Documented experience analyzing and synthesizing information with other relevant data sources, providing guidance and mentor-ship to others in cyber threat analysis and operations, evaluating, interpreting, and integrating all sources of information, and fusing computer network attack analyses with counterintelligence and law enforcement investigations.

Bachelor's degree in the Information Technology or Computer Security field with two (2) years of experience; or associate degree in the Information Technology or Computer Security field with three (3) years of experience; or five (5) years of experience with Local Area Networks, Wide Area Networks, and workstations. Must meet and maintain Special Access Program (SAP) and Sensitive Compartmental Information (SCI) eligibility. Must have Global Industrial Cyber Security Certification (GICSP) and GIAC Security Essentials (GSE) Certification. Must be certified Information Assurance Technician (IAT) Level 2 IAW DoD Directive 8570.01-M.

**Digital Forensic Specialist (1 FTE, non-key)**

**Job Summary:**

The Digital Forensics Analyst performs a variety of highly technical analyses and procedures dealing with the collection, processing, preservation, analysis, and presentation of computer-related evidence, and is responsible for disseminating and reporting cyber-related activities, conducting vulnerability analyses and risk management of computer systems and recovering information from computers and data storage devices. Computer forensic analysts use forensic tools and investigative methods to find specific electronic data, including Internet use history, word processing documents, images and other files. This expert is not only proficient in the latest forensic, response, and reverse engineering skills, but is astute in the latest exploit methodologies.

**Functional Responsibility:**

Will be required to recover information from computers and data storage devices, often working alongside technical security Technicians, Security, Counterintelligence and law enforcement

officers helping to solve security issue or find electronic evidence.

May be required to recover data like documents, photos and e-mails from computer hard drives and other data storage devices, such as zip and flash drives that have been deleted, damaged or otherwise manipulated. Examine computers find evidence of illegal activity. Use expertise in a corporate setting to protect computers from infiltration, determine how a computer was broken into or recover lost files.

Utilize use forensic tools and investigative methods to find specific electronic data, including Internet use history, word processing documents, images and other files, hunt for files and information that may have been hidden, deleted or lost. Assist officials, analyze data, and evaluate its relevance to the service request. Transfer the evidence into a format that can be used for legal purposes.

Provide network security services for customer to protect against and identify outside threats. The Forensic Specialist will perform a full spectrum forensic analysis across multiple types of computer and network devices, Windows/Linux hosts, mobile devices, virtual machines, software and hardware. The candidate is expected to stay up-to-date with industry forensics best practices, industry accepted forensic methodologies, in addition to being responsible for the overall quality control of forensic investigations and related case reporting.

**Minimum Education/General Experience:**

A bachelor's degree in cyber/digital forensics, computer engineering, computer science, or other closely related IT discipline. Equivalent work of eight (8) years' of demonstrated experience may be considered on a case by case basis. Demonstrated experience using EnCase and Open Source methods and tools to perform Computer Forensic investigations. Minimum 5 years' of progressively responsible experience performing forensic investigations, malware reverse engineering, cyber security incident response, with a minimum of 3 years of experience specifically conducting cyber forensic investigations. Must meet and maintain Special Access Program (SAP) and Sensitive Compartmental Information (SCI) eligibility.

Must be certified Information Assurance Technician (IAT) Level 1 IAW DoD Directive 8570.01-M within 12 months of hiring.

**TECHNICAL SECURITY ADMINISTRATIVE SPECIALIST (1 FTE, non-key)**

**Job Summary:**

Provide executive level technical security and administrative support to the DOE Office of Technical Security. The candidate must possess knowledge of the DOE general administration, basic DOE physical and technical security requirements. The candidate must be familiar with utilization of classified databases and networks for research and creating Intelligence Information Reports (IIR). Provide coordination support for all technical security members. Efficient with computer applications, be able to track and complete multiple tasks, maintain various administrative reports and databases, proper handle classified information and review technical and executive reports for administrative correctness. Provide general administrative support and other-directed tasks to the DOE TSP staff. Detailed oriented and proficient with Microsoft Office products.



**Functional Responsibility:**

Provide administrative support for DOE Office of Technical Security. As requested, provides Executive Level status reports, briefing presentations and special projects support. Use work breakdown structures to track project activities. Assist in preparing charts, tables, graphs, and diagrams to assist in tracking and reporting program activities.

Coordinate and maintain office equipment, property/equipment inventories, and office vehicles as assigned by the DOE. Possess basic knowledge and/or experience in security disciplines, such as; Physical, Technical, Information, Computer Security, OPSEC, etc.

**Minimum Education:**

Undergraduate degree is desired. A combination of a minimum of 5 years of related work experience and training is required. Work experience includes technical and physical security related areas, office management, executive administrative support, suspense tracking, review of executive level correspondence, database administration, financial and project status tracking and reporting, monthly reports, maintaining operating procedures, electronic database operations management, administrative and correspondence processing procedures, and understanding of procedures required for processing actions for review/ approval and release.

**J.D      ATTACHMENT D      GLOSSARY**

<b><u>Acronyms</u></b>	<b><u>Definition</u></b>
ACREM	Accountable Classified Removable Media
AA	Administrative Assistant
CATS	Classified Action Tracking System
CIA	Central Intelligence Agency
CFR	Code of Federal Regulations
CLAN	Security Classified LAN
CLIN	Contract Line Item Number
CO	Contracting Officer
COR	Contracting Officer's Representative
CPR	Contractor Performance Report
CREM	Classified Removable Electronic Media
CUI	Controlled Unclassified Information
DoD	Department of Defense
DOE	Department of Energy
DC	Derivative Classifier
DD	Derivative Declassifier
DRL5	Document Reviewer Level 5
DRL4	Document Reviewer Level 4
DRL3	Document Reviewer Level 3
DRL2	Document Reviewer Level 2
DRL1	Document Reviewer Level 1
eCGS	electronic Classification Guidance System
ESN	Enterprise Secure Network
FOIA	Freedom of Information Act
FRD	Formerly Restricted Data
GDTS	Guidance Distribution Tracking System
GSI	Guidance Streamlining Initiative
GTN	Germantown
HSO	Headquarters Security Officer
LLD	Limited Derivative Declassifier
MR	Mandatory Review
MRA	Military Research Associate
NARA	National Archives and Records Administration
NDC	National Declassification Center
NSI	National Security Information
OC	Office of Classification
PACAS	Patent Application Classification Analysis System
PWS	Performance Work Statement
PBT	Performance Based Test
PA	Policy Analyst
PDF	Portable Document Format
PM	Program Manager
PS	Program Specialists
QA	Quality Assurance
REVCOM	DOE web-based Review and Comment System
RD	Restricted Data
RO	Reviewing Official
RIDS	Records Inventory and Disposition Schedule
SSA	Office of Security and Safety Performance Assurance
SRP	Statutory Reviews Program
STGA	Senior Technical Guidance Analyst
ST	Senior Trainer

SCI	Sensitive Compartmented Information
SSIMS	Safeguards and Security Information Management System
SubCLIN	Subordinate Contract Line Item
TM	Technical Monitor
TAM	Task Area Manager
TGA	Technical Guidance Analysts
TS	Top Secret
TA	Trainer A
TB	Trainer B
UCNI	Unclassified Controlled Nuclear Information
U.S.C.	United States Code
VTR	Vault Type Room
XML	Extensible Markup Language

## **Section K - Representations, Certifications, and Other Statements of Bidders**

### **K.1 FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (SEP 2007)**

(a) *Definitions.* As used in this provision- "Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

### **K.2 FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS. (OCT 2018)**

(a)

(1) The North American Industry classification System (NAICS) code for this acquisition is 561621.

(2) The small business size standard is \$20,500,000.00.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)

(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

☐ (i) Paragraph (d) applies.

☐ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)

(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation. This provision applies to all solicitations.

(iv) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at 52.204-7, System for Award Management.

(v) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations—Representation.

(vii) 52.209-5; Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(viii) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(ix) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(x) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xi) 52.219-1, Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

- (xii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.
- (xiii) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.
- (xiv) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.
- (xv) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.
- (xvi) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
- (xvii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.
- (xviii) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation. This provision applies to solicitations that include the clause at 52.204-7.
- (xix) 52.225-2, Buy American Certificate. This provision applies to solicitations containing the clause at 52.225-1.
- (xx) 52.225-4, Buy American--Free Trade Agreements--Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at 52.225- 3.
- (A) If the acquisition value is less than \$25,000, the basic provision applies.
- (B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.
- (C) If the acquisition value is \$50,000 or more but is less than \$80,317, the provision with its Alternate II applies.
- (D) If the acquisition value is \$80,317 or more but is less than \$100,000, the provision with its Alternate III applies.
- (xxi) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.
- (xxii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan--Certification. This provision applies to all solicitations.
- (xxiii) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certification. This provision applies to all solicitations.
- (xxiv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

X\_\_ (i) 52.204-17, Ownership or Control of Offeror.

\_\_ (ii) 52.204-20, Predecessor of Offeror.

\_\_ (iii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

\_\_ (iv) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Certification.

\_\_ (v) 52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification.

\_\_ (vi) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

\_\_ (vii) 52.227-6, Royalty Information.

\_\_ (A) Basic.

\_\_ (B) Alternate I.

\_\_ (viii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The Offeror has completed the annual representations and certifications electronically in SAM accessed through <https://www.sam.gov>. After reviewing the SAM information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

**K.3 FAR 52.204-19 INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS. (DEC 2014)**

The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

**K.4 FAR 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS. (OCT 2018)**

(a) *Definitions.* As used in this provision—

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceeding at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“Federal contracts and grants with total value greater than \$10,000,000” means—

- (1) The total value of all current, active contracts and grants, including all priced options; and
- (2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror ☐ has ☐ does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked “has” in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIS as required through maintaining an active registration in the System for Award Management which can be accessed via <https://www.sam.gov> (see 52.204-7).

**K.5 FAR 52.209-11 REPRESENTATION BY CORPORATIONS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW. (FEB 2016)**



(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that-

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that-

(1) It is \_\_\_ is not \_\_\_ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) It is \_\_\_ is not \_\_\_ a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

#### **K.6 DEAR 952.204-73 FACILITY CLEARANCE (AUG 2016)**

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

*(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328.*

(1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor's organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the Contractor must submit the Standard Form 328, Certificate Pertaining to Foreign Interests, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. The Contractor will submit the Foreign Ownership, Control or Influence (FOCI) information in the format directed by DOE. When completed the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be

reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) *Definitions.*

(1) *Foreign Interest* means any of the following—

- (i) A foreign government, foreign government agency, or representative of a foreign government;
- (ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
- (iii) Any person who is not a citizen or national of the United States.

(2) *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(c) *Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon—

- (1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;
- (2) A contract or proposed contract containing the appropriate security clauses;
- (3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
- (4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;
- (5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;
- (6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and
- (7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the contract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the contract. The Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

**Notice to Offerors—Contents Review (Please Review Before Submitting)**

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

- (1) The Standard Form 328 has been signed and dated by an authorized official of the company;
- (2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
- (5) A summary FOCI data sheet.

Note: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

## **Section L - Instructions, Conditions, and Notices to Bidders**

### **L.1 CONSECUTIVE NUMBERING**

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

### **L.2 SMALL BUSINESS SIZE STANDARDS AND SET-ASIDE INFORMATION**

This acquisition is set aside for 100% 8(a) small business set-aside competition with a small business size of **\$20,500,000** and a NAICS code of 561621.

### **L.3 CONTENT OF RESULTING CONTRACT**

Any contract awarded as a result of this RFP will contain PART I - The Schedule, PART II - Contract Clauses, and PART III, Section J - List of Attachments (excluding those attachments included in this RFP relating only to submission of proposals). Blank areas appearing in these sections, indicated by "[TBD]" will be completed prior to contract award. As indicated in Section H, the Contractor's proposal will be considered incorporated by reference to the resulting award. In the event of any conflict between the other terms and conditions of the contract and those presented in the Contractor's proposal, the contract shall prevail.

Offerors should carefully review the information contained therein, and, as appropriate, state any proposed exceptions/deviations per FAR 52.215-1.

### **L.4 RESPONSIBLE PROSPECTIVE CONTRACTORS**

This action is set-aside for small business entities, all responsible individuals, corporations, non-profit organizations, educational institutions, and state or local Governments that meet the small business size standard may submit proposals for consideration. The general and additional minimum standards for responsible prospective Contractors set forth at FAR 9.1 apply.

Only proposals offering the full range of services in the Performance Work Statement (PWS), all CLINs identified in Section B, for the base period and for all identified contract periods will be evaluated and considered for award.

DOE may conduct preaward surveys in accordance with FAR 9.106 and may solicit from available sources, relevant information concerning the Offeror's record of past performance, and use such information in making determinations of prospective Offeror responsibility.

### **L.5 UNNECESSARILY ELABORATE PROPOSALS AND FILE SIZE LIMITATIONS**

Unnecessarily elaborate proposals beyond those sufficient to present a complete and effective response to this solicitation are not desired. Elaborate art work, graphics and pictures may increase the document's file size. It is suggested that in preparing your proposal that you create files less than 5 MB. However, this file size may not be appropriate in all situations. As the nature of the proposal may create large files, offerors may wish to use "Zip" file compression software such as WinZip. Using this compression software will diminish the file size, thus reducing the time needed to upload and download a proposal.

### **L.6 INFORMATION OF AWARD**

Written notice to unsuccessful Offerors and contract award information will be promptly released in accordance with DOE regulations applicable to negotiated acquisitions.

### **L.7 DISPOSITION OF SOLICITATION MATERIALS AND PROPOSALS**

Drawings, specifications, and other documents supplied with the solicitation may be retained by the Offeror (unless there is a requirement for a document to be completed and returned as a part of the offer).

Offeror's Proposals will not be returned (except for timely withdrawals).

## **L.8 CLASSIFIED MATERIAL**

Performance under the proposed contract shall involve access to classified material.

## **L.9 COMMITMENT OF PUBLIC FUNDS**

The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed procurement. Any other commitment, either explicit or implied, is invalid.

## **L.10 FAR 52.204-7 SYSTEM FOR AWARD MANAGEMENT. (OCT 2018)**

(a) Definitions. As used in this provision—

*“Electronic Funds Transfer (EFT) indicator”* means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

*“Registered in the System for Award Management (SAM)”* means that—

- (1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM;
- (2) The offeror has completed the Core, Assertions, and Representations and Certification, and Points of contact sections of the registration in the SAM;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process.
- (4) The Government has marked the record “Active”.

*“Unique entity identifier”* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b)

- (1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
- (2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.
- (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.

- (3) Company physical street address, city, state and Zip Code.
- (4) Company mailing address, city, state and Zip Code (if separate from physical).
- (5) Company telephone number.
- (6) Date the company was started.
- (7) Number of employees at your location.
- (8) Chief executive officer/key manager.
- (9) Line of business (industry).
- (10) Company Headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See <https://www.sam.gov> for information on registration.

**L.11 FAR 52.214-34 SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE. (APR 1991)**

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

**L.12 FAR 52.214-35 SUBMISSION OF OFFERS IN U.S. CURRENCY. (APR 1991)**

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

**L.13 FAR 52.215-1 INSTRUCTIONS TO OFFERORS – COMPETITIVE ACQUISITION. (JAN 2017)**

(a) *Definitions.* As used in this provision-

*Discussions* are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

*In writing, writing, or written* means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

*Proposal modification* is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

*Proposal revision* is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

*Time*, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (*e.g.*, electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in

sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show-

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision, received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and -

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall -

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed - in whole or in part - for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of - or in connection with - the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets (*insert numbers or other identification of sheets*); and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.



(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

#### **L.14 FAR 52.215-16 FACILITIES CAPITAL COST OF MONEY. (JUN 2003)**

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205-10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

#### **L.15 FAR 52.215-22 LIMITATIONS ON PASS-THROUGH CHARGES – IDENTIFICATION OF SUBCONTRACT EFFORT. (OCT 2009)**

(a) *Definitions.* Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this solicitation entitled "Limitations on Pass-Through Charges" (FAR 52.215-23).

(b) *General.* The offeror's proposal shall exclude excessive pass-through charges.

(c) *Performance of work by the Contractor or a subcontractor.* (1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal-

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal--

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

**L.16 FAR 52.216-1 TYPE OF CONTRACT. (APR 1984)**

The Government contemplates award of a hybrid type contract combining firm-fixed price CLINs with cost-reimbursement CLINs resulting from this solicitation.

**L.17 FAR 52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION. (FEB 1999)**

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

**L.18 FAR 52.222-46 EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES. (FEB 1993)**

(a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As a part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

**L.19 DEAR 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY. (AUG 2009)**

(a) If a protest of this procurement is filed with the Government Accountability Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to 48 CFR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103-355. Such request must be in writing and addressed to the Contracting Officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of 48 CFR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

**L.20 DEAR 952.233-5 AGENCY PROTEST REVIEW. (SEP 1996)**

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 48 CFR 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the Contracting Officer prior to filing a protest.

**L.21 FAR 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE. (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es): <http://farsite.hill.af.mil/>.

**L.22 FAR 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS. (APR 1984)**

(a) The use in this solicitation of any Federal Acquisition Regulation (FAR) (48 CFR chapter 1) provision with an authorized deviation is indicated by the addition of (DEVIATION) after the date of the provision.

(b) The use in this solicitation of any Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9) provision with an authorized deviation is indicated by the addition of (DEVIATION) after the name of the regulation.

**L.23 DEAR 952.219-70 DOE MENTOR-PROTÉGÉ PROGRAM. (DOE DEVIATION) (FEB 2019)**

The Department of Energy has established a Mentor-Protege Program to encourage its prime contractors to assist small business concerns, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the Contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protege firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the agreement. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

**L.24 DOE-L-2021 GUIDANCE FOR PROSPECTIVE OFFERORS – IMPACT OF TEAMING ARRANGEMENTS ON SMALL BUSINESS STATUS (OCT 2015)**

(a) This procurement has been set aside for small business. In order to ensure that award is made to an eligible small business, prospective offerors, in consultation with legal counsel, are encouraged to review the Small Business Administration's (SBA's) size eligibility standards found at Title 13 of the Code of Federal Regulations, Section 121 (13 C.F.R. § 121). In particular, offerors proposing a joint venture, subcontracting, or another form of teaming arrangement shall review 13 C.F.R. § 121.103, "How does SBA determine affiliation?" prior to submitting a proposal.

(b) The SBA is the sole authority for making determinations of small business status for small business programs. Such determinations are binding on the offeror and the Contracting Officer. Accordingly, a finding by the SBA of affiliation between an offeror and its proposed team member(s) or subcontractor(s) may result in the offeror being found to be other than a small business and therefore ineligible for contract award.

**L.25 DOE-L-2015 OFFER ACCEPTANCE PERIOD (OCT 2015)**

The offeror's bid/proposal shall be valid for 180 calendar days after the required due date for bids/proposals.

**L.26 DOE-L-2026 SERVICE OF PROTEST (OCT 2015)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgement of receipt from the Contracting Officer:

U.S. Department of Energy  
National Energy Technology Laboratory  
3610 Collins Ferry Road, M/S I07  
P.O. Box 0880  
Morgantown, WV 26507-0880

(b) The copy of any protest must be received in the office designated above within one day of filing a protest with the GAO.

(c) Another copy of a protest filed with the GAO must be furnished to the following address within the time periods described in paragraph (b) of this clause:

U.S. Department of Energy  
Assistant General Counsel for Procurement and Financial Assistance (GC-61)  
1000 Independence Avenue, S.W.  
Washington, DC 20585  
Fax: (202) 586-4546

**L.27 NUMBER OF AWARDS**

It is anticipated that there will be one award resulting from this solicitation. However, the Government reserves the right to make any number of awards, or no award, if considered to be in the Government's best interest to do so.

**L.28 DOE-L-2017 EXPENSES RELATED TO OFFEROR SUBMISSIONS (OCT 2015)**

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or bid, or in making necessary studies or designs for the preparation thereof or for acquiring or contracting for any services relating thereto.

**L.29 DOE-L-2022 ALTERNATE BID/PROPOSAL INFORMATION – NONE (OCT 2015)**

Alternate bids/proposals are not solicited, are not desired, and will not be evaluated.

**L.30 DOE-L-2001 PROPOSAL PREPARATION INSTRUCTIONS – GENERAL (OCT 2015)**

(a) Offeror. The term “offeror,” as used in this Section L, refers to the single entity submitting the proposal. The offeror may be a single corporation or a “contractor team arrangement” as defined in FAR 9.601, for example, a limited liability company, limited liability partnership, joint venture, or similar entity or arrangement. The offeror may be an existing or newly-formed business entity for the purposes of competing for any contract resulting from this solicitation. If the offeror is a newly formed entity, it must be legally established on or before the date for submission of proposals. (See Volume I instructions regarding any requirement for a performance guarantee agreement.)

(b) Availability of the solicitation, amendments, and other documents – electronic media. In order to further the Government policy of maximizing electronic commerce and making the acquisition process optimally cost effective, electronic media will be used and will be the sole method for distributing the solicitation, amendments thereto, and other documents to the public. These documents will be posted via the FedConnect website at: <https://www.fedconnect.net>. This electronic medium will constitute the official distribution method for this solicitation. All amendments and any other official communications from DOE regarding this solicitation will be posted through this medium. Offerors and all other interested parties will need to maintain continual surveillance of this website to remain abreast of the latest available information (offerors and other interested parties are encouraged to utilize the website’s “Notifications” feature). No changes to this solicitation will be effective unless the changes are incorporated into the solicitation by an amendment. No other communication, whether oral or in writing, will modify or supersede the terms of the solicitation.

(c) Submission of proposals.

(1) The offeror must be registered in FedConnect at <https://www.fedconnect.net>. The offeror must also be registered in the System for Award Management (SAM) at <https://www.sam.gov>.

(2) Offerors must submit proposals electronically through FedConnect by the date and time specified in Standard Form 33, Solicitation, Offer and Award, in Section A of this solicitation and other provisions of Section L. Proposals shall only be accepted through FedConnect. It is imperative that the offeror read and understand how to submit its proposal using the FedConnect web portal. All proposal documents required by this solicitation must be uploaded and received in their entirety in the FedConnect Responses web portal no later than May 24, 2019. Proposals submitted via hardcopy, email, or the FedConnect Message Center shall not be accepted or considered. Failure to submit a response that is received through the FedConnect Responses web portal by the stated time and date may result in the proposal not being considered. By submitting a proposal, the offeror agrees to comply with all terms and conditions as set forth in this solicitation. DOE does not provide help desk assistance regarding FedConnect, and questions regarding FedConnect shall be addressed directly to FedConnect in accordance with instructions found on its web site.

(3) Electronic submission of a proposal via FedConnect shall be considered the offeror’s official offer and will be considered binding.

(d) Solicitation instructions and proposal information.

(1) Proposals are expected to conform to all solicitation requirements and the instructions contained in this Section L. The Government will evaluate proposals on the basis of the information provided in the proposal. The Government will not assume that an offeror possesses any capability unless set forth in the proposal. This applies even if the offeror has existing contracts with the Federal government, including the Department of Energy.

(2) These instructions are not evaluation factors. Evaluation factors are set out in Section M, Evaluation Factors for Award, of this solicitation. However, failure to provide the requested information may make an offeror ineligible for award or adversely affect the Government’s evaluation of an offeror’s proposal. In addition, a proposal may be eliminated from further consideration before the initial rating if the proposal is so grossly and obviously deficient as to be totally unacceptable on its face. For example, a proposal may be deemed unacceptable if it does not represent a reasonable initial effort to address the essential requirements of the solicitation, or if it clearly demonstrates that the offeror does not understand the requirements of the solicitation.

(e) Proposal volumes and page limitations.

(1) The overall proposal shall consist of separate volumes, organized and individually entitled as stated below, with the following page limitations:

(i) Volume I, Offer and Other Documents – No page limit.

(ii) Volume II, Technical and Management Proposal - 60 page limit (as specified in the Volume II Instructions to Offerors.

(iii) Volume III, Cost Proposal – No page limit.

(2) All attachments, annexes, and appendices shall be counted toward any page limitation set forth above, unless otherwise stated. The following do not count toward the page limitations: table of contents, title pages, cover pages, glossary, divider

tabs, blank pages, and the cross reference matrix. Those pages that exceed the limits set forth above will not be considered in the evaluation; page counting will begin with the first page of each volume and continue up to the page limitation. No material may be incorporated by reference as a means to circumvent the page limitations.

(3) Except as may be provided elsewhere in the solicitation (including paragraph (f)(2) below), Offerors shall not cross-reference to other volumes of the proposal and shall provide complete information within the appropriate volume. All cost and pricing information shall be submitted and addressed only in Volume III, Cost Proposal, unless otherwise specified.

(f) Proposal specifications.

(1) Table of contents. Each volume shall contain a table of contents and a glossary of abbreviations and acronyms. The table of contents in each volume shall identify the section, subsection, paragraph titles, and page numbers, as well as all spreadsheets, charts, tables, figures, diagrams, design drawings, and graphs.

(2) Cross reference matrix. The offeror shall provide a cross reference matrix which correlates the proposal by page and paragraph number to the Technical and Management Proposal Section L instructions, and Section M evaluation factors. The cross reference matrix shall be inserted immediately following the table of contents of the corresponding volume of the offeror's proposal.

(3) Page size shall be 8½ x 11 inches for text pages (when printed). When 8½ x 11 inch pages contain text on both front and back, this is considered two pages.

(4) Print type. Text shall be 12 point or larger, single-spaced, using Times New Roman font type. Headers and footers, spreadsheets, charts, tables, diagrams or design drawings, and graphs must be 10 point or larger using Times New Roman font type. The 12 point font is mandatory to ensure readability of the proposal and is intended for the proposal body text and lists. It is not the Government's intent to require an offeror to redo their graphics to conform to this font size. However, readability is at the risk of the offeror and graphics with less the specified font may not be considered in evaluation of the proposal if they are not legible and clear to the evaluator.

(5) Page margins. Page margins for text pages shall be a minimum of one inch at the top, bottom, and each side. Each page shall, within the one inch top or bottom margins, set forth the solicitation number; name of the offeror; and, as applicable, the legend in accordance with paragraph (e)(2), Restriction on disclosure and use of data, of the provision at FAR 52.215-1, Instructions to Offerors – Competitive Acquisition. This is the only information that can be displayed within the top margin. Volume number, file number, and page numbers are acceptable in the bottom margin. Two columns of text per page and use of boldface type for paragraph headings are acceptable.

(6) Page numbering. All pages shall be sequentially numbered by volume.

(7) File format. Files shall be submitted in readable and searchable Microsoft Word, Adobe Acrobat PDF, or Microsoft Excel, as appropriate, in formats compatible with the current version of the software (2016 or earlier).

(g) Classified Information. The offeror shall not provide any classified information in response to this solicitation unless specifically required to do so in other parts of this solicitation.

(h) Questions.

(1) Questions regarding this solicitation must be submitted via FedConnect no later than May 14, 2019. Each question shall clearly specify the solicitation area to which it refers. Responses to questions, as appropriate, will be posted on FedConnect as soon as practicable. The Government will not identify prospective offerors submitting questions. Offerors must check FedConnect periodically to ascertain the status of answers to questions.

(2) This solicitation is considered complete and adequately describes the Government's requirements. If an offeror believes that there is an error in the solicitation, or an omission, the offeror shall submit a question through FedConnect.

(i) False Statements. Proposals must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001.

(j) Examination of data. By submission of a proposal, the offeror grants to the Contracting Officer, or an authorized representative of the Contracting Officer, the right to examine, for purposes of verifying the data submitted, those books, records, documents, and other supporting data (regardless of form) which will permit an adequate evaluation of the proposal. This right may be exercised in connection with any reviews deemed necessary by the Contracting Officer prior to award.

(k) Commitment of Public Funds. The Contracting Officer is the only individual who can legally award a contract and commit the Government to the expenditure of public funds in connection with the proposed acquisition. Any other commitment, either explicit or implied, is invalid.

(l) Content of resulting contract. Any contract awarded as a result of this solicitation will contain the following sections of the solicitation: Part I – The Schedule; Part II – Contract Clauses; Part III, Section J – List of Documents, Exhibits and Other Attachments; and Part IV, Section K – Representations, Certifications, and Other Statements of Offerors. These sections will be incorporated into the contract by reference.

### **L.31 PROPOSAL PREPARATION INSTRUCTIONS - OFFER AND OTHER DOCUMENTS - VOLUME I**

#### **(a) General**

Volume I, Offer and Other Documents, consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgements, justification for non-competitive proposed subcontracts, identification of technical data to be withheld, request for waiver of patent clauses, and any exceptions or deviations taken.

#### **(b) Format and Content**

For consistency, the Offeror is instructed to use the file names specified below. File name extensions shall clearly indicate the software applications used for preparation of the documents (i.e. ".pdf" for Adobe Acrobat (version 11.0 or earlier) or ".doc" or ".docx" for Word (version 2016 or earlier).

Volume I, Offer and Other Documents, must include the following documents (in the order listed):

FILE	FILE NAME
File 1 Offer Cover Sheet	<company name>Vol I File 1 Offer Cover Sheet.
File 2 SF33 Form -- Solicitation, Offer and Award	<company name>Vol I File 2 SF33.---
File 3 Fill in of Contract Clauses	<company name>Vol I File 3 Fill In.---
File 4 Financial Responsibility	<company name>Vol I File 4 Financial.---
File 5 Systems	<company name>Vol I File 5 Systems.---
File 6 Administrative Discussion	<company name>Vol I File 6 Administrative.---

#### **(c) FILE 1, OFFER COVER SHEET**

The filename shall be in this format <company name>Vol I File 1 Offer Cover Sheet.---

The Offer Cover Sheet shall contain the following information:

- Solicitation number and title: 89243318RAU000002, TECHNICAL, ANYALYTICAL, COMMUNICATIONS SECURITY, ADMINISTRATIVE, & CYBER SUPPORT FOR THE DEPARTMENT OF ENERGY, TECHNICAL SECURITY PROGRAM
- Offeror name, address, and DUNS
- Indicate the business size (e.g. small business, Veteran Owned Small Business, etc.)
- If proposing any kind of partnership, each individual member (including Limited Liability Corporations (LLC) and Joint Ventures (JV)), indicate the names, addresses, and DUNS of the partner companies and the date the partnership was approved. If the partnership is a JV and has not been approved by the Small Business Administration, provide the date the JV application was submitted for approval.
- If proposing major or critical subcontractors, indicate the name(s), address(s), business size, and DUNS of each major or critical subcontractor.

The Offeror shall include the Table of Contents (for each volume) and any required Cross Reference between volumes or files in the file submission for the cover sheet under File 1 for Volume I. Volume level glossary of acronyms and abbreviations shall also be included in this File 1 for Volume I.

(d) FILE 2, SF33 FORM - SOLICITATION, OFFER AND AWARD

The filename shall be in this format <company name>Vol I File 2 SF33.---.

The SF33 Form has been uploaded with the solicitation, as a separate Word document (SF33.doc), which can be used for the Offeror to complete, save and submit as File 2. The following areas must be completed on the SF33:

- (1) Offerors shall complete Blocks 12, 15A, 15B, 15C, 16, 18, and sign in block 17 (typed name of authorized organizational representative). The SF33 is to be fully executed, including the acknowledgment of amendments, if applicable.
- (2) The Offeror's Acceptance Period (See Block 12) entered shall not be less than 180 calendar days.
- (3) Signature Authority. The person signing the SF33 must have the authority to commit the Offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the solicitation, to make an award without further discussion if it so elects. Proposals submitted through FedConnect constitute submission of electronically signed proposals. The name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the Offeror to the conduct of a project) must be typed in the signature block on the form to be accepted as an electronic signature. A scanned copy of the signed document is not required.

(e) FILE 3, FILL IN OF CONTRACT CLAUSES

The filename shall be in this format: <company name>Vol I File 3 Fill In.---.

A separate Word document (Fill In.docx) has been uploaded with the solicitation, which contains items that are to be completed by the Offeror, saved, and submitted as File 3. This file contains the following:

1. Certain solicitation clauses - All areas marked as "[TBD]" in these clauses are to be filled in by the Offeror, this information shall then be utilized to complete these specific areas prior to contract award.

Position Qualifications - All areas marked as "[TBD]" are to be filled in by the Offeror. If the proposal is selected for award, the labor category and minimum position qualifications proposed by the Offeror will be incorporated into (and/or replace) the list in Part III, Section J, attachment entitled "Position Qualifications." It is expected that the position descriptions and minimum qualifications will apply to all individuals assigned to the specified labor category regardless of their employer (e.g. if subcontracted for a specific labor category, the subcontract must provide personnel who meet or exceed the minimum qualifications stated). Any exceptions or deviations shall be identified in the Volume I, Administrative Discussion (see File 6 below).

For each position identified (by the Government), propose the minimum position qualifications and provide a brief job position description. Proposed job position descriptions and minimum qualifications shall meet or exceed the minimum requirements of the RFP identified in Part III, Section J, attachment entitled "Position Qualifications." The proposed job position descriptions shall depict the type of work to be performed by each labor category. The job position descriptions shall not limit the Contractor in performance of the contract but merely provide a broad description of the expected duties intended to be performed. If additional labor categories (not already identified on the list) are expected to be utilized during performance of this contract, identify those position(s) on separate lines in alphabetical order, immediately following the categories provided by the Government and provide the position information as required above.

(f) FILE 4, FINANCIAL RESPONSIBILITY

The filename shall be in this format: <company name>Vol I File 4 Financial.---.

TABLE OF CONTENTS



This file shall include a Table of Contents to facilitate locating the elements of the proposal.

To demonstrate the organization's current financial strength and responsibility, the Offeror shall provide the financial data detailed below. NOTE: If the Offeror is a joint venture or partnership, financial information must be provided for each member of the joint venture or each partner.

- (a) published financial statements for the three prior annual accounting periods, including Balance Sheet, Statement of Operations (Profit and Loss Statement), and Statement of Changes in Financial Position, hyperlinks to publicly accessible statements are not authorized;
- (b) the estimated percentage this proposed contract will represent of the Offeror's total business for the first year of the contract;
- (c) a copy of the most recent 10K report filed with the Securities and Exchange Commission, if any; and
- (d) if the Offeror is a limited liability corporation or other partnership entity (including joint ventures) then a performance guarantee agreement is required for each individual entity making up the teaming arrangement. The performance guarantee shall be executed by a financially responsible guarantor, guaranteeing that all contractual obligations of the Offeror will be met. The performance guarantee(s) are required in order to determine financial responsibility. A model performance guarantee agreement is provided in Part III, Section J of this solicitation. The executed performance guarantee(s) shall replace the model agreement in the executed contract.

The DOE reserves the right to obtain additional financial information from Offerors in order to determine financial responsibility, and to more fully assess potential organizational conflicts of interest.

(g) FILE 5, SYSTEMS

The filename shall be in this format: <company name>Vol I File 5 Systems.---

1. Accounting System - The Offeror shall identify the name and type of accounting system and indicate if the system has been audited. If the Offeror is a joint venture or a partnership, also identify the respective corporate entity where the system is located. If the system has been audited, the Offeror shall provide, to the Government, a copy of the certification from the Offeror's cognizant Government Agency demonstrating that the Offeror has an approved accounting system for use under this contract. In the event that the Offeror does not have an approved accounting system, the Offeror shall indicate such and provide documentation sufficient to demonstrate to the Government its fiscal responsibility to identify and track costs.

2. Purchasing System – The Offeror shall identify the name and type of purchasing system and indicate if the system has been audited. If the Offeror is a joint venture or a partnership, also identify the respective corporate entity where the system is located. If the system has been audited, the Offeror shall provide, to the Government, a copy of the certification from the Offeror's cognizant Government Agency demonstrating that the Offeror has an approved purchasing system for use under this contract. In the event that the Offeror does not have an approved purchasing system, the Offeror shall indicate such and provide documentation sufficient to demonstrate to the Government purchasing procedures demonstrating sound business practices.

(h) File 6, ADMINISTRATIVE DISCUSSION

The filename shall be in this format: <company name>Vol I File 6 Administrative.---

TABLE OF CONTENTS

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

The Offeror's administrative discussion shall address the following:

Authorized Negotiators. The Offeror shall include the name, title, address, telephone (including cellular telephone, if available), fax number, email address, and company affiliation for all individuals authorized to negotiate on behalf of the Offeror.

Equal Employment Opportunity. The Offeror shall provide all of the information required to perform a pre-award on-site equal opportunity compliance evaluation in accordance with FAR 52.222-24. This information shall include, but not be limited to: the company name, address, phone number and the point of contact for equal employment opportunity matters. This information shall be provided for the Offeror, as well as, each joint venture member (if a joint venture is proposed), each individual member of a newly formed entity (including Limited Liability Corporations (LLC)) formed for the purpose of performing this contract, or members of similar entities.

Justification for non-competitive proposed subcontracts, identification of technical data to be withheld, and any request for waiver of patent clauses.

Exceptions and Deviations – Exceptions and deviations are not sought and the Government is under no obligation to enter into discussions. However, the Offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the resulting contract (as identified in Part IV, Section L, provision entitled Content of Resulting Contract), Offeror Representations and Certifications, and the requirements included in Volume I -- Offer and Other Documents, Volume II -- Technical and Management Proposal, and Volume III -- Cost Proposal. Any exceptions taken must contain sufficient justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Any exceptions or deviations to Section I of the RFP, or any FAR or DEAR clauses elsewhere in the RFP, will make the proposal non-responsive to this RFP. If the Offeror does not submit their Representations and Certifications electronically as indicated in Section K then the Offeror must submit them as an exception and include them in this file. This file shall also contain any justification for noncompetitive proposed subcontracts and any request for waiver of patent clauses.

NOTE: An Offeror's failure to submit a complete and sufficient offer, or an Offeror's taking of exceptions or deviations, or an Offeror indicating conditional assumptions, to the terms of this solicitation, may make the offer unacceptable for award without discussions. If an Offeror proposes exceptions, deviations, and/or conditional assumptions, DOE may make an award to another Offeror that did not take exceptions, deviations, and/or conditional assumptions of this solicitation.

## **L.32 PROPOSAL PREPARATION INSTRUCTIONS - TECHNICAL AND MANAGEMENT PROPOSAL VOLUME II**

### **(a) GENERAL**

- (1) Volume II – The Technical and Management Proposal consists of written information intended to present the Offeror's understanding, capabilities, and approach to satisfy the requirements of the Performance Work Statement (PWS). The Technical and Management Proposal should be specific and complete in every detail. The Technical and Management Proposal should be practical and be prepared simply and economically, providing a straightforward, concise delineation of the requested information.
- (2) The Technical and Management Proposal shall be evaluated strictly on the merit of the material submitted. The proposal shall not merely offer to perform work in accordance with the PWS, but shall clearly describe the rationale and benefits of the approach proposed. The PWS provides a general description of the required work elements; therefore, simply repeating the PWS without sufficient elaboration will not be acceptable.
- (3) **No contractual cost information is to be included in the Technical and Management Proposal.** Where estimated labor-hours and skill mixes will provide clarity, they shall be provided with no indication as to the cost (e.g. labor-hours shall be stated in direct productive labor hours (DPLH) figures only).

### **(b) FORMAT AND CONTENT**

The following provides instructions for submitting the Technical and Management Proposal. Information on the evaluation of the proposal is found in Section M. Failure to provide complete information may result in a lower evaluation score.

For consistency, the Offeror is instructed to use the file names specified below when submitting documents. All files must be in portable document format (i.e. ".pdf" for Adobe Acrobat (version 11.0 or earlier), ".doc or .docx" for Word (version 2016 or earlier), or ".xls or .xlsx" for Excel files (version 2016 or earlier)).

Volume II, Technical and Management Proposal, shall include the following components:

FILE	TITLE	FILE NAME
File 1	Staffing Approach & Key Personnel	<company name>Vol II File 1 StaffingApproach.---
File 2	Key Personnel Résumés	<company name>Vol II File 2 KPResumes.---
File 3	Commitment Letters	<company name>Vol II File 3 Letters.---
File 4	Management & Organizational Approach	<company name>Vol II File 4 Management&OrganizationalApproach.---
File 5	Relevant Experience	<company name>Vol II File 5 Experience.---
File 6	Relevant Past Performance	<company name>Vol II File 6 PastPerformance.---

The Technical and Management Proposal (inclusive of all files not listed as exceptions) shall be subject to the following page limitations:

CRITERIA	FILENAME	PAGE LIMIT
<b>Criterion 1</b>		
Staffing Approach & Key Personnel	<CompanyName>Vol II File 1 StaffingApproach	25 pages excluding Résumés
Key Personnel Résumés	<CompanyName>Vol II File 2 KPResume	Each Résumé is limited to 5 pages
Commitment Letters	<CompanyName>Vol II File 3 Letters	No page limit
<b>Criterion 2</b>		
Management & Organizational Approach	<CompanyName>Vol II File 4 Management&OrganizationalApproach	25 pages
<b>Criterion 3</b>		
Relevant Experience	<CompanyName>Vol II File 5 RelevantExperience	2 pages per contract/project per entity
<b>Criterion 4</b>		
Relevant Past Performance	<CompanyName>Vol II File 6 PastPerformance	<p>The Performance Reference Information Form (Exhibit E) is limited to the form and one (1) additional sheet.</p> <p>The Past Performance Questionnaire (Exhibit D) is limited to the form.</p> <p>Relevant past performance discussion is limited to 2 pages per contract/project, per entity.</p>

All attachments, annexes, and appendices shall be counted toward any page limitation set forth in Volume II, unless otherwise stated. The following do not count toward the page limitations: table of contents, title pages, cover pages, glossary, divider tabs, blank pages, and the cross reference matrix. Those pages that exceed the limits set forth above will not be considered in the evaluation; page counting will begin with the first page of each volume and continue up to the page limitation. No material may be incorporated by reference as a means to circumvent the page limitations. Proposal pages that exceed the identified page limitation listed in this solicitation shall not be evaluated and will be removed from the end of the respective file (end of the section counting towards the page limitation; e.g. items excluded from the page limitation such as a glossary appearing at the end of the file will not be removed, only those pages that count towards the page count and that exceed the authorized limit shall be removed). In addition, information contained in any of the files (regardless of the page limitations for each file/criterion) may be taken into consideration in the evaluation of any of the criterion of the Technical and Management Proposal.

Major or critical subcontractor: Any subcontractor proposed to perform a significant portion of a CLIN (proposed cost reimbursement or time and material type subcontract with an estimated cost in excess of \$1M per year).

(a) **CRITERION 1 –STAFFING APPROACH & KEY PERSONNEL** (<CompanyName>Vol II File 1 StaffingApproach.---

## **File 1, Staffing Approach & Key Personnel**

The Offeror's Staffing Approach and Key Personnel shall be submitted as File 1 of their Technical and Management Proposal, which has a maximum page limit 25 pages excluding résumés. To help facilitate the review process, and to ensure that all review criteria are addressed, the Offeror shall use the following format when preparing the management, organization, and staffing approach file. The filename shall be in this format <company name>Vol II File 1 StaffingApproach.---. This format relates to the technical evaluation criteria found in Part IV – Section M. Additional headings may be included as desired.

### **COVER PAGE**

This file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. All subsequent pages shall be appropriately numbered and identified with the name of the Offeror, the date, and the solicitation number to the extent practicable.

### **TABLE OF CONTENTS**

This technical discussion file shall include a Table of Contents to facilitate locating the elements of the proposal. All exhibits, figures and tables should be identified.

## **STAFFING APPROACH & KEY PERSONNEL**

**Staffing Approach** - The Offeror shall propose a staffing plan that depicts their staffing by CLIN including an organizational chart to show where labor categories fall within the organization and how the lines of communication are implemented from a chart viewpoint. The Offeror is provided the flexibility to develop this staffing plan to demonstrate their innovative techniques and performance efficiencies to improve the levels of effort required while providing an experienced, qualified, effective, and efficient staff. A narrative staffing plan summary shall also be provided and shall include how the staffing plan aligns with the Offeror's approach to performing the PWS requirements; labor category position titles; proposed labor hours (Direct Productive Labor Hours (DPLH)); company affiliation; lines of authorities; and level of commitment (full-time; part-time; number of hours per year) to the contract. The Offeror shall describe its proposed staffing approach to provide diversity of technical expertise, ensure flexibility in the work force and capability to respond to evolving program initiatives. The discussion should address the proposed labor mix, including subcontractors, of the contract workforce, to complete all the requirements of the PWS. The Offeror shall describe its plan to develop a highly skilled and flexible workforce that can adjust (attract and retain) in order to meet the management and support requirements of the work described in the PWS as well as how it will utilize contract personnel with specialized expertise and experience to achieve enhanced contract performance. For example, the Offeror should describe its plan to facilitate the exchange of expert nuclear weapon knowledge between guidance writing teams and document review teams; to select the best individuals for various task, based on specific type of information that must be reviewed and/or analyzed; and how it will facilitate enhanced interaction between the guide writers and the guide users (document reviewers) that will result in more comprehensive guidance documents that better respond to real-file scenarios and current declassification issues. The Offeror shall also include in their staffing plan the security clearance of the personnel proposed to perform work under this contract. The staffing plan should be complete with positions identified for all staff including management. All positions proposed to be filled with subcontractor staff shall be clearly identified.

**Key Personnel** - Key personnel are those personnel who are critical to the overall success of the contract. The Offeror shall identify their key personnel that are considered necessary for performance on this contract. See the list below for the minimum Key Personnel positions. In addition to those minimum positions, the Offeror may propose other positions that are critical to the overall successful performance of the contract and that meet the requirements of Key Personnel.

The Offeror shall discuss the qualifications and experience of key personnel to accomplish the Performance Work Statement (PWS); this shall include the personnel's relevant education, experience, and professional development that encompass pertinent skills, years of experience and training. The Offeror shall provide documented background of work experience in areas relevant to that required by the PWS with specific emphasis on the last 15 years, and how this experience will be used to support DOE. If subcontracting (or teaming) is anticipated, the Offeror shall discuss, in the same level of detail as indicated above, the potential subcontractors' (team members') key personnel. Key personnel, regardless of organizational affiliation, will be evaluated in this criterion. Résumés of these individuals shall be included in File 2 and letters of commitment shall be included in File 3. Résumés shall clearly demonstrate the qualifications relative to the proposed job function and not simply list prior work positions and locations of the individual. Key personnel should demonstrate a clear commitment to the contract through the signed letters of commitment.

Proposed Key personnel will be incorporated into Part I, Section H, “Key Personnel/Program Manager.” The Offeror shall provide detailed information on the proposed key personnel, including organizational job titles. Because key personnel are important to decisions concerning the contract selection, and operation, the Offeror shall discuss its willingness to commit key personnel to this contract for a minimum of twenty-four (24) months after contract award. The Offeror shall provide Letters of Commitment/Intent (File 3) for those persons designated to fill key positions. In the event any of the key personnel will not be committed full time to this contract, the reasons should be stated. The Offeror should describe its ability and process to expeditiously replace key personnel, as necessary, with individuals of comparable quality and experience.

At a minimum, the following Key Personnel shall be proposed and candidates shall meet the minimum qualifications identified. If the Offeror proposes a single individual to fill more than one (1) Key Personnel position or multiple individuals to fill one (1) Key Personnel position, then the Offeror must clearly explain the benefits and rationale for this approach.

- Program Manager (PM)
- Senior Technical Security Specialist (STSS)

Proposed Key Personnel who do not meet the minimum qualifications identified in this solicitation may be identified as a weakness or significant weakness in evaluation of the proposal.

## **File 2, Key Personnel Résumés**

Key Personnel Résumés are part of Criterion 1 and shall be submitted as part of the Technical and Management Proposal as File 2. The filename shall be in this format <company name>Vol II File 2 KPResume.---. Resumes shall be provided for all key personnel of the Offeror’s Technical and Management Proposal. Resumes are not included in the page limitation for the Technical and Management proposal; however, are limited to the five (5) pages per Resume.

### **COVER PAGE**

The Résumés file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. All subsequent pages shall be appropriately numbered and identified with the name of the Offeror, the date, and the solicitation number to the extent practicable.

### **TABLE OF CONTENTS**

The Résumés file shall include a Table of Contents to facilitate locating the elements of the proposal.

### **RÉSUMÉS**

The Offeror shall provide résumés for all Key Personnel committed to the contract; do not provide résumés of non-key personnel. Each résumé shall describe the education (must demonstrate education to meet minimum requirements), technical expertise, and relevant experience (must demonstrate experience to meet minimum experience requirements) of Key Personnel on work similar to the work identified in the PWS and should be commensurate with the proposed position. These are to be demonstrative type résumés and should not simply list previous positions and work locations of the individual. Résumés shall describe how work experience relates to contract scope and the individual's capability to function effectively in the proposed position. The résumé should not just identify where the person has worked, it should also describe the type of work performed and indicate the advancements, education, personal accomplishments, pertinent publications, and qualifications relevant to the position for which the applicant is proposed. The résumé should answer the question, “How does my experience qualify me for the proposed position under this contract?”

The résumé shall be in the following format:

**NAME:** Individual’s full name

**PROPOSED POSITION:** Title and Description

**ORGANIZATION AFFILIATION:** Specify whether Offeror’s Organization, Subcontract, or Team/Partner

**EXPERIENCE:** Provide a summary of the overall relevant experience and capabilities applicable to the work identified in the PWS. List specific examples of work performed, accomplishments, achievements, responsibilities and authority gained.

**EDUCATION:** Identify institution, degree or certificate earned, and dates. Only degrees from accredited institutions shall be cited.

Degrees from institutions that are not accredited will not be considered.

**PROFESSIONAL AND/OR TECHNICAL TRAINING:** For each relevant training course cited, list the title of the training, the training institution, the date of the training, and any special certifications or licensing received for the training.

**PROFESSIONAL REGISTRATION/CERTIFICATION:** Identify professional membership, special training, professional registrations, awards, etc. For each relevant professional registration/certification, list Title, State/Society, Year, and a brief statement detailing activities/accomplishments.

**LIST OF PERTINENT PUBLICATIONS, HONORS, AWARDS, AND OTHER ACHIEVEMENTS:** Provide a brief statement detailing relevant accomplishments, publications, awards, honors, etc.

(e) **FILE 3: COMMITMENT LETTERS** (<company name>Vol II File 3 Letters.---)

Letters of commitment shall be submitted as File 3 of the Technical and Management Proposal. The filename shall be in this format <company name>Vol II File 3 Letters.---. Letters of commitment are not included in the page limitation.

**COVER PAGE**

The Letter file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. All subsequent pages shall be appropriately numbered and identified with the name of the Offeror, the date, and the solicitation number to the extent practicable.

**TABLE OF CONTENTS**

The Letter file shall include a Table of Contents to facilitate locating the elements of the proposal.

**COMMITMENT LETTERS**

- 1) Key Personnel - Letters of commitment for Key Personnel shall demonstrate their availability, priority of this effort within their organization, and commitment to the contract for a minimum of twenty-four months. The letters of commitment shall also specify the percentage of time each of the key personnel will dedicate to the contract. For those individuals who are not already employees of the proposing organization, the letter of commitment shall demonstrate their availability and willingness to accept the position proposed and remain committed to the contract for a minimum of twenty-four months. All letters of commitment shall be signed by the proposed key person and be submitted in .pdf format. Failure to submit the required Letter of commitment for any Key Personnel may result in the Offeror receiving a lower rating for Criterion 1.

**File 4, Management & Organizational Approach**

(b) **CRITERION 2 – MANAGEMENT & ORGANIZATIONAL APPROACH**

The Offeror's Management & Organizational Approach shall be submitted as File 4 of their Technical and Management Proposal, which has a maximum page limit 25 pages. The filename shall be in this format <company name>Vol II File 4 Management & Organizational Approach.---.

The Offeror's proposal shall provide a clear vision for the technical security support services to DOE and lay out its plan for implementing that vision. The Offeror shall describe and discuss the proposed approach to managing and implementing the contract as-a-whole, including, but not limited to, technical, administrative, business, etc., elements and functions required for executing the CLINs and underlying work components as they relate to the types of support identified in the PWS requirements. The Offeror shall provide a concise narrative that presents a clear understanding of the work's content, nature and complexity, the rationale for selection of the proposed approaches, and a description of why the proposed approach is considered to be the most effective. DOE does not view the PWS structure as defining constructs for the proposals of management and/or organizational structures and encourages the Offeror to propose and explain management and organizational structures that will provide the most productive and cost-effective implementation of the PWS over the term of the contract.

**Management Approach** - The Offeror shall provide a discussion of the management approach to ensure efficient, timely, and responsive execution of work and cost-effective management control and oversight. The Offeror shall describe the control procedures for proper management, systems utilized, and procedures to address: cost, manpower, schedule planning and control, resource allocation, work monitoring, reporting, and quality control.

If subcontracting (or teaming) is anticipated, the Offeror shall provide a narrative that describes the work the Offeror and subcontractors are expected to perform and provide the rationale as to why this is considered an effective approach (including cost effectiveness) for performing requirements of the contract.

The Offeror shall present its understanding of what is required for an acceptable work request fulfillment, including work definitions and deliverables. The Offeror shall describe how it will provide and apply day-to-day operating and special response procedures for quick reaction requirements to Government needs. The discussion should describe the measures proposed that address management of the contract requirements as they relate to both administration and program management.

The Offeror shall also describe its approach to responding to fluctuations in the different work areas of document review and guidance development. The Offeror should describe its ability to shift employees between tasks depending on work flow, taking into consideration potential periodic reduction or surges in the different contract areas. The proposal should also indicate how key personnel will be made available to perform the effort required during peak workloads, overlapping or simultaneous tasks, sick or vacation leave, etc. as it relates to staff/position coverage.

**Corporate Approach** – The Offeror shall propose a corporate organizational plan that describes any corporate resources from parent organization(s) (e.g. including LLC team members that will be used), how the corporate resources will be used; and the benefit of such to the performance of the contract. The plan shall include the flow down of authorities from the parent organization(s) to the contract Program Manager and how the corporate resources will be assessed, if needed.

**Transition Approach** - The Offeror shall include a description of the approach for planning and staffing of a transition plan and transfer of duties from the incumbent Contractor(s), with minimal disruption to ongoing work and activities at DOE. The Offeror shall describe its Human Resource approach, the manner in which it proposes to fill the staffing positions and anticipated uncertainties to achieve successful transition. For discussion purposes, the Offeror should assume a nominal 90-day transition period. The transition would begin at contract award and be through the effective date of the contract which would be the date that full operational control is assumed by the incoming contractor.

**Quality Assurance Approach** - The proposal shall provide a detailed discussion of the Offeror's approach to developing, implementing, and managing a Quality Assurance (QA) programs. This shall include a discussion on assisting DOE in maintaining its Quality Control processes. Included shall be a discussion detailing the Offeror's approach to quality assurance and how it will interface and complement DOE's quality programs.

(f) **FILE 5: EXPERIENCE** (<company name>Vol II File 5 Experience.---)

### **EXPERIENCE (CRITERION 3)**

Offerors shall include the following information related to Offeror's experience:

- a) Offeror's experience. The Offeror shall provide a description and discussion of the organizational experience, expertise, capabilities and qualifications being offered to perform and manage the work identified in the Performance Work Statement (PWS). The Offeror shall describe prior experience, expertise and capabilities in performing work similar to the work described in the PWS. The discussion shall include the organization's technical experience and capabilities related to the PWS as well as the management/administrative expertise and knowledge required to provide effective oversight and management of the contract as-a-whole. The discussion of organizational capabilities shall include a delineation of experience, knowledge, databases and specialized systems deemed to be necessary to perform the work elements contained in the PWS. The discussion shall emphasize organizational capabilities and experience directly related to implementing the contract CLINs and the associated classification support services.
- b) Subcontractor and other entity experience. In addition to the Offeror's experience, the Offeror shall describe the experience of any proposed named subcontractors and any other named entities that are proposed to perform work under the contract. The Offeror shall describe the experience in relation to that portion of work proposed to be performed by the subcontractor or other entity. Other entities may include, for example, members of a limited liability company (LLC) or joint venture, an affiliate of the Offeror, or other major and/or critical subcontractor. In describing experience, subcontractors or other entities shall describe the outcomes of specific work experience, e.g. level to which they performed the work identified.

c) Key Personnel experience will be evaluated under Criterion 1.

**(g) FILE 6: RELEVANT PAST PERFORMANCE (<company name>Vol II File 6 PastPerformance.---)**

**PAST PERFORMANCE (CRITERION 4)**

The Offeror's Relevant Past Performance shall be submitted as File 6 of the Technical and Management Proposal. The filename shall be in this format <company name>Vol II File 6 PastPerformance.---. The following page limitations apply for Relevant Past Performance:

- Performance Reference Information Form (Exhibit E) is limited to the form and one (1) additional sheet.  
\* Note: Exhibit E shall be completed by the Offeror and all major or critical subcontractor(s)
- Past Performance Questionnaires (Exhibit D) is limited to the form only.
- Relevant past performance discussion is limited to 2 pages per contract/project, per entity.

The Past Performance Questionnaires that are completed by the reference point(s)-of-contact are not subject to the Section L provision entitled "52.215-1 Instruction to Offerors – Competitive Acquisition" related to late proposals. However, all other performance information (e.g. performance reference information form and relevant past performance discussions that are completed by the Offeror and/or major or critical subcontractors, etc.) not received by the deadline will be considered late and may result in the Offeror receiving a lower rating for this criterion.

To help facilitate the review process and to ensure addressing all the review criteria, the Offeror shall use the following format when preparing File 6.

**COVER PAGE**

This file shall include a cover page indicating the solicitation number, name of the Offeror, and file name. All subsequent pages shall be appropriately numbered and identify the solicitation number and the name of the Offeror.

**TABLE OF CONTENTS**

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

**RELEVANT PAST PERFORMANCE**

The Offeror shall provide no more than three contracts for similar services, to be evaluated as relevant past performance. If the Offeror is a new business entity, subsidiary, teaming arrangement (Limited Liability Corporation (LLC) or Joint Venture (JV)), then the Offeror shall provide no more than three (3) contracts for each of the member organizations making up the Offeror's business unit (e.g., two team members join together to form a JV then each member of the JV shall provide no more than three contracts, for a total of six in this example, and submit those for consideration). The Offeror and all major or critical subcontractors shall describe their past performance in performing relevant work from the same contracts identified as experience. In addition to the three contracts submitted for the Offeror organization, the Offeror shall provide no more than three contracts for similar services that are active or have been completed during the past five years, prior to the closing date of this solicitation, for each major or critical subcontractor proposed to perform under any of the Contract Line Items (CLINs) or expected to perform on the CLINs of this contract (e.g. prime contractor shall have up to three contracts identified relevant to the work it plans to perform, major or critical subcontractor A shall have up to three contracts identified relevant to the work it plans to perform, major or critical subcontractor B shall have up to three contracts identified relevant to the work it plans to perform for a total of (including the Offeror's) not more than nine contracts identified for this example.)

The Offeror and all major or critical subcontractors shall describe their past performance in performing relevant work (similar in size, scope, and complexity) to that described in the PWS. Relevant past performance shall be similar in size (dollar value or staffing levels, and contract duration), scope (type and nature of work), and complexity (risk) to the work described in the PWS (all three must be similar in order to be considered relevant). The Offeror shall include a rationale of how they determined each referenced contract to be similar in size, scope, and complexity. To be considered recent past performance the contract shall either be currently active or completed within the past five years, from the closing date of this solicitation. The Offeror and all major or critical subcontractors bear the burden of demonstrating the relevancy of their past performance information.



The Offeror and all major or critical subcontractors shall provide Exhibits C, D, and E for each contract or project cited, to the appropriate point of contact for that contract or project. The reference point of contact for each contract or project should complete and submit the Past Performance Questionnaire (Exhibit D) (completed by the reference point-of-contact) directly to the Contracting Officer identified in the Past Performance Information Questionnaire cover letter, prior to the closing date of the RFP. Past Performance Questionnaires (completed by the reference point-of-contact) not submitted in this manner may not be considered. The contract or project information provided to the point of contact for completion of the questionnaire must be sufficient to enable cross-referencing of the Past Performance Reference Information Forms and the returned questionnaires.

<b>Exhibit</b>	<b>Item</b>	<b>Purpose</b>	<b>Completed By:</b>
C	Past Performance Information Questionnaire Cover Letter	Informs the identified reference that past performance information is being collected and identifies who past performance information is being collected on and the address and completion date for submission.	The Offeror and all major or critical subcontractors complete the information in the exhibit and provide it to the identified reference along with the appropriate relevant past performance forms (Exhibits D and E).  NOTE: The identified reference does not need to include this exhibit back to the Government when submitting the relevant past performance forms.
D	Past Performance Questionnaire	Collects past performance information on the contract or project cited.	The identified references specific to the contract or project cited for the references complete and return directly to the Government as instructed in the cover letter.
E	Performance Reference Information Form	Identifies information on the contract or project for which relevant past performance information is being collected.	The Offeror and all major or critical subcontractors.  Submitted directly from the Offeror as part of File 6 and provided to the POC for each referenced contract.

In addition, the Offeror and all major or critical subcontractors shall submit the following relevant past performance information to supplement the information collected in Exhibit E, Past Performance Reference Information Form:

- clearly indicate if the work was performed as the Prime or as a subcontractor
- list of major subcontractors and their specific role and responsibility in the project;
- period of performance: start date and end date;
- places of performance (city, state, country) if different than the location identified in block 2 of the reference information

- form;
- staffing level;
- types of deliverables; and
- information on problems encountered on the identified contracts and subcontracts and the corrective actions taken to resolve those problems.

The Government may contact some or all of the references provided as well as other sources to obtain past performance information to be evaluated. References other than those identified by the Offeror and major or critical subcontractors may be contacted by the Government and used in the evaluation of past performance. The Government may obtain information from federal databases regarding past performance and use that information in its evaluation.

### **L.33 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME III COST PROPOSAL**

A. General. Volume III, Cost Proposal, shall consist of the Offeror's proposed fixed-price and estimated costs to perform the desired work as set forth in the Performance Work Statement (PWS). The following instructions are provided to assist in the preparation of a comprehensive fully-supported cost proposal. The cost proposal shall be evaluated in accordance with Section M of this solicitation. The cost proposal must be accurate, complete, and well documented to allow an adequate evaluation. Inadequate proposals may be rejected by the Contracting Officer and therefore not considered for award.

The Contracting Officer has determined that certified cost and pricing data is not required for this solicitation. However, in accordance with FAR 15.403-3 and 15.403-5, information other than certified cost and pricing data is required to determine if the proposed costs are reasonable, realistic, and reflect a clear understanding of the solicitation requirements. Therefore, the Offeror shall submit the other than certified cost and pricing data (including supporting documentation/attachments) in accordance with the cost proposal preparation instructions/format provided herein.

The Cost/Price Exhibit Templates provide the format for responding to the solicitation. In addition, the PWS includes resource load information with historical data representative to provide the Offeror an idea of the volume of work or type of skills required to perform the work required. Limited information is required for the fixed-price CLINs and more detailed information is required for the cost-plus-award-fee CLINs.

B. Definitions: Refer to FAR Part 31, Contract Cost Principles and Procedures, for definitions of cost elements. In addition, the following terms are defined for use in preparing a cost proposal under this RFP.

1. Cost Proposal: The cost proposal shall consist of the Offeror's proposed fixed-price for fixed-price CLINs and estimated cost to perform the cost-plus-award-fee CLINs. Each activity is described in the PWS. **Contractual cost/price information is not to be included in the Technical Proposal.** The transition activities are to be proposed with no profit/fee.
2. Detail: All of the cost/price and profit/fee information shall be included in Volume III of the proposal. None of the information contained in Volume III should be included in any other proposal volumes unless specifically requested in the solicitation (e.g., Limitations of Indirect Rates are requested as part of Volume I, Fill in of Clauses).
3. Performance Site: The main location of performance of work under this contract will be the DOE Germantown facility in Germantown, Maryland, with occasional work at the Forrestal Building in Washington, DC. Occasional travel among DOE sites (domestic and international) will be required.
4. Cost Exhibits: The cost exhibits included in Section L, Exhibit B provide the format to be used in the development of the cost proposal detail. Cost Exhibits are the required format (except as noted herein) for the development of the cost proposal detail. The information requested in the Cost Exhibits includes the other than certified cost and pricing data necessary for complete evaluation of the proposal.
5. Identification: All forms, tables, and exhibits must be identified and listed in the table of contents or index. All pages of the cost proposal, including forms, must be numbered. There is no page limitation to the cost proposal.

6. Modification to Cost Proposal: Any modification to the cost proposal shall clearly indicate the cost impact of the modification to the same level of detail shown in the original proposal. Tables or exhibits impacted by any change shall be clearly identified.
7. Major or Critical Subcontractors: Any subcontractor proposed to perform a significant portion of a CLIN (proposed cost reimbursement or time and material type subcontract with an estimated cost in excess of \$1M per year).
8. Direct Productive Labor Hours (DPLH): The Offeror shall identify the proposed Direct Productive Labor Hours (DPLH). Direct labor shall be proposed on the basis of Direct Productive Labor Hours (DPLH), i.e., estimated number of hours on the job.
9. Direct Labor Categories: The Offeror shall identify proposed direct labor rates for each of the Offeror labor categories performing on the contract, in accordance with the Offeror's accounting system. Direct labor rates of each Major or Critical Subcontractor shall be identified with the same level of detail as for the Offeror.
10. Non-Productive Labor Hours: The estimated number of non-productive labor hours (e.g. vacations, holidays, sick leave, etc.) that are charged indirectly.
11. Other Direct Costs: The Other Direct Costs include materials, training, travel, and subcontracts. The subcontracts cost category shall not include labor cost for DPLH of Major or Critical Subcontractor(s). It is expected that any subcontract or consultant cost included in this section is for fixed price or time and material fixed rate subcontracts or consultants and not subject to any fee sharing and for work that does not rise to the level of what is expected for a Major or Critical Subcontractor.
12. Facilities Capital Cost of Money (FCCOM): Refer to 48 CFR 9904.414--Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.
13. Full Time Equivalent (FTE): An FTE is considered a 100% dedicated individual performing on a full-time basis with all hours performed on this contract. For example, an FTE employee may equate to 1860 DPLH and 220 non-productive labor hours (total 2,080 labor hours).
14. Key Personnel: Key Personnel are employee(s) considered essential to the successful accomplishment of the work to be performed under the contract. Key Personnel will be incorporated into Part I, Section H, clause "Key Personnel/Program Manager" and be subject to Part II, Section I, clause "DEAR 952.215-70 Key Personnel."
15. Labor Hours: The total number of hours that can be worked based on a typical work schedule. For example, the annual labor hours may be expressed as 52 weeks X 40 hour work week = 2,080 labor hours.
16. Off-Site: Includes any location not on one of the DOE sites as defined in on-site below.
17. Off-Site Overhead Rate: The indirect rate used for work performed at off-site location(s).
18. On-Site: Federally-owned or operated DOE sites in Germantown, MD; College Park, MD; Washington, DC; & Chantilly, VA.
19. On-Site (DOE Specific) Indirect Rate: The DOE specific on-site overhead rate, which shall include the Contractor's cost elements to perform work on-site at DOE taking into consideration the facilities, property, and services provided by DOE for on-site support. Since this rate is specific to this requirement, it is not expected that there will be any conflict with the Contractor's audited rate structure.
20. Performance Work Statement (PWS): The performance-based work statement used to identify the work requirements.
21. Total Evaluated Price: The total evaluated price is the sum of the firm-fixed price CLINs and most probable cost plus the proposed maximum award fee for the base and all option periods.
22. Limitation on Indirect Rates: The Offeror is required to provide limitations for all indirect rates proposed (excluding

separately applied fringe benefit rates) and for all potential contractor fiscal years for the potential five (5) year contract period. The indirect rate ceilings of the Offeror may be used by the Government in developing the most probable cost analysis.

23. Rounding: Final monetary extensions shall be expressed in whole dollars.

24. Start Date: For cost proposal preparation, the estimated start date of contract performance is the fourth (4th) Quarter of Fiscal Year (FY) 2019.

C. Content: The cost proposal (inclusive of other than certified cost and pricing data) shall consist of the following:

- Contract Pricing Proposal Cover Sheet
- Cost/Price Exhibit Templates inclusive of:
  - Estimated cost plus award fee (CPAF) to perform the work set forth in the performance work statement (PWS) by year for the base period and each option period for CLIN one (1)
  - Firm-fixed Price for CLINs two (2) & three (3);
  - Escalation Rate(s)
  - Indirect rates (e.g. fringe benefits, on-site (DOE Specific) overhead, off-site overhead, General and Administrative (G&A), and any other indirect rates proposed by the Offeror and/or major or critical subcontractors)
  - Limitations on indirect rates (e.g. indirect rate ceilings)
  - Key Personnel labor and relocation costs (if applicable)
- Cost Discussion
- Indirect Rate Agreement(s), as applicable

All of the cost and fee information shall be proposed in accordance with the Offeror's and/or major or critical subcontractors established accounting and estimating practices.

None of the cost/price information contained in Volume III should be included in any other proposal volumes unless specifically requested in the RFP (e.g. Maximum Award Fee and Limitations of Indirect Rates for the Offeror are requested as part of Volume I, "Fill in of Contract Clauses", and staffing direct productive labor hours (DPLH)/full-time equivalent (FTE) information may be necessary in Volume II, Technical and Management Proposal but the Technical and Management Proposal shall not contain any associated cost/price information).

D.Exceptions and Deviations: Identify and explain (including the benefit to the Government) any exceptions and/or deviations taken to the cost proposal preparation instructions for this RFP or to any other part of this RFP, which could have an impact on the cost proposal in the Administrative Discussion (File 5) required under Volume I, Offer and Other Documents.

E.Adjustments: In the event the cost proposal does not adhere to these cost proposal preparation instructions, but is not so deficient to be determined non-responsive, treatment during evaluation will be subject to the following:

Other than certified cost and pricing data will be used to determine if the proposed costs (inclusive of escalation and indirect expenses) are reasonable, realistic and complete. The Government may make upward or downward adjustment of the proposed cost (excluding fee) to realistic levels based on the cost realism evaluation in the determination of most probable cost. It is further noted that for purposes of determining most probable cost, any upward adjustment to the proposed on-site (DOE specific) overhead and G&A rates (or other indirect rates), based on the cost realism evaluation, will not result in rates that exceed the proposed ceiling rates (limitation of indirect rates). In addition, it is noted that the Government may use the ceiling rates (limitation of indirect rates) for the Offeror in the development of the most probable cost. Consequently, the failure to provide ceiling rate may result in the proposal being found inadequate and not considered for award.

While fee is not subject to adjustment in the determination of the most probable cost based on percentage of adjusted costs, fee will be adjusted (only) in the event that fee is proposed on elements that have been identified as not fee bearing (e.g. fee applied to transition, travel or training costs).

**F.Format and Content.** For consistency, the Offeror and all major or critical subcontractors submitting separately are instructed to use the file names specified below. Filename extensions shall clearly indicate the software application used for preparation of the documents, i.e. ".pdf" for Adobe Acrobat (version **11.0** or earlier), **".doc or .docx"** for Word (version **2016** or earlier), or **".xls or .xlsx"** for Excel files (version **2016** or earlier).

Volume III, cost proposal, shall include the following components:

MANDATORY FILES	FILE NAME*
File 1 Contract Pricing Proposal Cover Sheet	<company name>Vol III File 1 Cover Sheet.---
File 2 Cost Exhibits A through D	<company name>Vol III File 2 Cost Exhibits.xls
File 3 Cost Discussion	<company name>Vol III File 3 Cost Discussion.---

The following file is required if the Offeror and/or Major or Critical Subcontractor has an Indirect Rate Agreement.

File 4 Indirect Rate Agreement	<company name>Vol III File 4 Rate Agreement.---
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**All cost exhibits must be generated using EXCEL, and all formulas/algorithms used to develop the proposed costs must be viewable in these EXCEL files for DOE's review. The Offeror is instructed not to utilize any hidden fields in the EXCEL documents.**

The cost discussion can be provided as a WORD or Adobe Acrobat PDF document.

\*For Major or critical subcontractors, both the Offeror and the Major or Critical Subcontractor company names should precede the specified file name, example <company name>< major or critical subcontractor>Cover Sheet.---

**1. File 1 – CONTRACT PRICING PROPOSAL COVER SHEET (<company name>Vol III File 1 Cover Sheet.---**

Submit one (1) fully executed Contract Pricing Proposal Cover Sheet as File 1 of the cost proposal. Ensure the total proposed cost/price is reflected in block 6 and the cost/price breakdown for each CLIN is identified in block 8 consistent with the cost/price proposed in the Cost Exhibits. The Contract Pricing Proposal Cover Sheet (NETL F 534.1-1) is available for downloading on NETL's homepage at: <http://netl.doe.gov/business/business-forms#acquisition> then scroll and use form 534.1-1.

**2. File 2 – MANDATORY COST EXHIBITS A through D (<company name>Vol III File 2 Cost Exhibits.---**

File 2 shall consist of Exhibits A through D in the format provided in this solicitation. Sample formats for each Exhibit are contained in Section L, Exhibit B **Do not provide spreadsheets where formulas cannot be viewed, such as macros.**

**Exhibit A** -- Summary of Cost-Plus-Award-Fee and Proposed Fixed-Price by Year

The Offeror shall provide a summary (Exhibit A) for the total contract, which includes the total costs and firm-fixed price. The Exhibit provides for subtotals for the base period and each option period. A separate Exhibit A must also be prepared for each major or critical subcontractor at the same level of detail required by the Offeror if a major or critical subcontractor is proposed to perform work on the cost reimbursable CLIN. Additional cost elements may be added as needed to reflect the Offeror's and major or critical subcontractor's accounting system. If Facilities Capital Cost of Money (FCCOM) is proposed, the calculations including the Treasury rate used (as published in the Federal Register) shall be provided.

#### Exhibit B1 – Detailed Costs for CLIN 1 – Technical Support Services

Exhibit B1 is required to be prepared and submitted by the Offeror and all major or critical subcontractors. The Cost Exhibit template provides rows for each year of the contract.

The Offeror is provided historical information in the PWS resource load for use as a basis for proposing their DPLH to perform the work. The cost exhibit DPLH shall be consistent with that proposed by the Offeror in their staffing approach. Differences between the staffing approach and the proposed costs may result in receiving a lower evaluation in the technical evaluation and adjustments made to the most probable cost. A breakdown of the separate rates shall be provided in a footnote to the schedule. In addition, any assumptions about escalation of labor rates or other cost factors shall be explained in the Cost Discussion document.

#### Exhibit B2 – Fixed-Price for CLIN 2 – Contract Administration, General Administrative Support

Proposed fixed-price for contract administration, general administrative, and file room/mail room support. Each Offeror is reminded to include all costs relative to fulfilling the requirements of the PWS, including any applied indirect rates and profit. Each Offeror shall completely fill in the spaces provided in the cost exhibits B2 with their proposed fixed-price developed based on the labor categories, other planned direct costs, indirect rates, and profit. It is expected that the proposed fixed-price is inclusive of all anticipated and necessary costs to complete the PWS.

#### Exhibit B3 – Fixed-Price for CLIN 3 – Transition Activities

The Offeror shall propose a firm-fixed-price for the transition activities. The Offeror's firm-fixed-price shall be based on the PWS. The Offeror shall identify all appropriate price elements specifically related to the transition plan proposed in Volume II, Technical and Management Proposal. Examples of transition price elements could include, but are not limited to, transition team costs, travel, office space and equipment rental for the transition team, supplies, and other costs such as recruiting and training new personnel. Transition team costs might include the labor (hours and rate per hour) and related costs such as fringe benefits and overhead of the Key Personnel, human resource personnel, etc., needed to execute the transition plan.

Exhibit B3 is given as an optional template for presenting the transition price. However, format of this schedule is up to the Offeror but should be designed to clearly show all of the proposed transition functions and associated price to demonstrate reasonableness of the lump sum price. **This shall be a no profit (no fee) price to conduct an orderly and efficient transition of the work.**

#### Exhibit C1 through C4 -- Indirect Rates

Exhibits C1 through C4 shall be utilized to provide for the proposed indirect rates. While the Cost Exhibits for fringe benefit, on-site (DOE specific) overhead, off-site overhead, and G&A rates are required exhibits, the format of these exhibits can be modified to reflect the Offeror's and/or major or critical subcontractor's accounting system(s). If other indirect rates such as material handling or subcontractor handling are proposed, create additional indirect rate exhibits in the same level of detail required for the other indirect rates. As additional exhibits are created, the numbering format should continue in sequence (e.g. C5, C6, etc.).

For each indirect rate required below and for any other indirect rate proposed, use the appropriate Cost Exhibit to provide 1) the indirect costs (by individual cost element) that comprise the cost pool for the rate for the most recently completed contractor fiscal year, current (projected) fiscal year, and subsequent five years itemized by the individual expense items by cost element and dollar amount, 2) 2) allocation base consistent with the Offeror's accounting system, 3) calculated percentage for the indirect rate and 4) percentage for the indirect rate ceilings (consistent with the ceilings proposed in Volume I, "Fill in of Contract Clauses") for all indirect rates except fringe benefits.

#### Exhibit C1 -- Fringe Benefits

Exhibit C1 shall be utilized to propose fringe benefits. NOTE: If applicable, ensure the costs of the fringe benefits required by Wage Determinations (WDs)/Collective Bargaining Agreements (CBAs) are satisfied.

In the event that fringe benefits are proposed in the on-site (DOE specific) overhead rate, a note to this effect shall be indicated on this exhibit.

#### Exhibit C2 -- On-Site (DOE specific) Overhead Schedule

Exhibit C2 shall be utilized to propose an on-site (DOE specific) overhead rate. Also, identify the on-site (DOE specific) overhead ceilings consistent with the ceilings proposed in Volume I, "Fill In of Contract Clauses".

The on-site (DOE specific) rate shall include an overhead rate for on-site work. Exceptions or deviations to the on-site (DOE specific) overhead rate costs must be addressed in the Administrative Discussion (File 6) required under Volume I, Offer and Other Documents.

The requirement for an on-site (DOE specific) indirect rate shall flow down to all major or critical subcontractors performing cost reimbursement work on-site.

#### Exhibit C3 -- Off-Site Overhead

Exhibit C3 shall be utilized to propose an off-site overhead rate for work to be performed at off-site location(s). Also, identify the off-site overhead ceilings consistent with the ceilings proposed in Volume I, "Fill In of Contract Clauses". Although the solicitation includes work to be performed on-site, there is an expectation that some work will be required to be performed off-site. DOE is requiring that off-site overhead rates and ceilings be established. It is expected that these rates will not be applied to work performed on-site.

#### Exhibit C4 -- G&A

Exhibit C4 shall be utilized to propose G&A. Also, identify the G&A ceilings consistent with the ceilings proposed in Volume I, "Fill In of Contract Clauses."

#### Exhibit D – Summary Cost Detail for Program Manager

Exhibit D shall be utilized to provide summary cost information for the Program Manager. The labor costs should already be included in on-site (DOE specific) overhead rate (Exhibit C2) and the relocation costs should already be included in the support documentation provided for the Transition Price (Exhibit B3). For the Program Manager proposed, provide the individual (employee) name, company where employed, and proposed unburdened labor rate/salary and relocations costs consistent with the price included in Exhibits B3 and C2.

### **3. File 3 – COST DISCUSSION (<company name>Vol III File 3 Cost Discussion.---)**

Submit the Cost Discussion as File 3 of the cost proposal. The Cost Discussion may be provided as a WORD or Adobe Acrobat file. The Cost Discussion shall be submitted in one (1) file with one (1) exception. Electronic copies of existing company publications of company compensation policies (only) may be submitted as attachment(s) to the Cost Discussion.

All pages of the Cost Discussion must be numbered.

To help facilitate the review process and to ensure addressing all the review criteria, the Offeror shall use the following outline when preparing File 3. Ensure the elements are addressed in the order as they appear below. If an element is not proposed, do not eliminate the discussion section; simply indicate "Not Proposed."

#### COVER PAGE

This file shall include a cover page indicating the RFP number, name of the Offeror, and file name. All subsequent pages shall be appropriately numbered and identify the RFP number and the name of the Offeror.

#### TABLE OF CONTENTS

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

Submit a Cost Discussion adhering to the following outline:

- A. **Estimating Procedure** - Provide an explanation of the estimating procedures used, describing, at a minimum, 1) the existing data used as the basis of estimating the cost/price, 2) the judgmental factors applied in projecting from known data to the estimate, and 3) the assumptions used in estimating the proposed costs/prices.
- B. **General**
- i. Discuss any differences in the treatment of exempt and non-exempt employees.
  - ii. Discuss any differences in the price/cost proposal of any major or critical subcontractor's information/cost exhibits to the cost included in the Offeror's Cost Exhibits. In the event that differences are not explained or identified, treatment during evaluation will be subject to the process described above in the adjustment section. NOTE: Exceptions or deviations to any aspect of the cost proposal must be addressed in the Administrative Discussion (File 6) required under Volume I, Offer and Other Documents.
- C. **Labor Cost**
- i. Identify the DPLH for a FTE and provide rationale for the DPLH utilized. This discussion shall clearly indicate how the number of hours associated with a FTE (e.g. 1860, 1820, 1920, etc.) were derived and how that annual amount was estimated by month.
  - ii. Identify the source of the proposed labor rate (e.g. bidding rates, average labor rates, etc.). Taking into consideration Section I, clause entitled "52.222-17 Nondisplacement of Qualified Workers", include a discussion on how the proposed rates are reflective of hiring incumbent employee(s). In addition, furnish any supporting information that the wage and salary structure is competitive with local conditions. If the Offeror and/or any major or critical subcontractor are performing a Government contract in the local area or at the same site of performance as this contract, identify the award number, explain any difference in the proposed wage and salary plan including fringe benefits, and provide the rationale for these differences.
- D. **Escalation** – Identify the escalation rate that is being proposed for each contract year on direct labor and indirect expenses and the rationale, assumptions, and methodology for how the rate was established. Indicate historical escalation rates for the previous three years. If escalation is based on industry indices or other national standards, provide the reference to the appropriate resource. If no escalation is proposed, indicate that decision and discuss the rationale supporting the position including risk associated with mandatory changes associated with Department of Labor wage, health, and welfare increases. Also, discuss the timing of when and how escalation is applied indicating if this is consistent with your corporate policies.
- E. **ODCs** – Provide a discussion of the following elements. It is expected that all ODCs would be included on the Prime Contractor's cost proposal and no ODCs would be included in separate cost exhibits submitted by major or critical subcontractors.
- i. **Subcontracts** – If proposed provide 1) a summary listing of anticipated subcontracts (non-major/non-critical subcontractors) or types of subcontracts (with estimated cost/price listed for each subcontract), 2) a rationale/justification for the subcontracts proposed, and 3) the basis of rates used (e.g. verbal or written quote, historical information, engineering estimate, etc.). The Offeror shall describe how it derived the amount proposed and how its approach will satisfy the requirement of PWS.
  - ii. **Consultants** – If proposed, provide 1) a summary listing of anticipated consultants, 2) a rationale/justification for the consultants proposed, 3) the basis of rates used (e.g. most favored customer rate), and a statement of need including the reason why in-house or teaming resources are unavailable to perform the effort.
  - iii. **Travel** – If proposed, provide 1) a listing of destinations, duration of travel, number of travelers, and number of trips for each anticipated travel destination (including a breakdown of air fare (each trip), per diem, car



rental, ground transportation, and miscellaneous expenses) with estimated cost, 2) a rationale/justification for the travel proposed, and 3) the basis of rates (rates shall be in accordance with the Federal Travel Regulations and all other applicable Federal regulations). NOTE: The Offeror's Cost Discussion shall include a separate travel discussion (in the same level of detail noted above) for travel proposed for any major or critical subcontractor.

- iv. **Training** – If proposed, provide 1) a summary listing of the anticipated training requirements with estimated cost, 2) the rationale/justification for the training proposed, and 3) the basis of rates used. NOTE: The Offeror's Cost Discussion shall include a separate training discussion (in the same level of detail noted above) for training proposed for any major or critical subcontractor.

F. **FCCOM** – If proposed, provide 1) the calculations and 2) the rate applied, and 3) the Treasury rate used (as published in the Federal Register).

G. **Fee** - Provide a detailed rationale as to how/why the Offeror selected the fee proposed and discuss how fee was applied (e.g. fee is applied to all costs except travel and training, fee is applied to direct labor costs only, or fee is applied to loaded labor costs, etc.).

H. **Indirect Rates**

- i. Indicate if proposed indirect rates are covered by indirect rate agreement. NOTE: Ensure a copy of any indirect rate agreement indicated in this discussion is attached as File 4 (see below).
- ii. Identify your fiscal year (e.g. January 1 through December 31 or October 1 through September 30).

iii. **Fringe Benefits**

- For each cost element included in the fringe benefits cost exhibit, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed fringe benefits include FICA at \$22,950 for the first year, the breakdown might show 7.65% applied to \$300,000 in labor costs.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of fringe benefits shall be clearly discussed (e.g. fringe benefits are not applied to exempt employees or there are multiple fringe benefit rates proposed to account for differences in the treatment of paid time off). If applicable, discuss how the minimum health and welfare benefits required by WDs/CBAs are satisfied.
- Detail how the allocation base was derived
- Describe approach to crediting employees' service with the current Contractor toward any length of service requirements for such fringe benefits as vacation, sick leave, and severance pay allowance for employees of the current Contractor who may continue on the contract with the Offeror and/or major or critical subcontractor(s).

iv. **On-Site (DOE Specific) Overhead**

- For each cost element included in the on-site (DOE specific) overhead cost exhibit, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed on-site (DOE specific) overhead rate includes Indirect Labor costs of \$350,000 for the first year, the breakdown might show \$100,000 for Program Manager, \$75,000 for human resource manager, \$100,000 for business manager, and \$75,000 for accounting personnel.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of the on-site (NETL specific) overhead rate shall be clearly discussed (e.g. overhead rate includes fringe benefits for all direct labor).

- Detail how the allocation base was derived.

v. **Off-Site Overhead Rate**

- For each cost element included in the off-site overhead rate, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed off-site overhead includes Utility expenses at \$50,000, the breakdown might reflect \$15,000 for electric, \$10,000 for natural gas, \$10,000 water and sewage, \$10,000 for telecommunications, and \$5,000 for non-hazardous waste disposal.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of the off-site overhead shall be clearly discussed, including the use of multiple off-site rates (e.g. if multiple off-site rates are utilized provide a rationale that clearly articulates how and when each rate is utilized such as: company A uses three off-site rates established by cost centers (10, 11, and 12). The use of cost center 10 applies to work completed from the Houston office for labor categories X, Y, and Z; the use of cost center 11 applies to work completed from the Richmond office for labor categories L, M, and Z; and the use of cost center 12 applies to work completed from our professional labor categories authorized to work from home).
- Detail how the allocation base was derived.

vi. **G&A**

- For each cost element included in the G&A, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed G&A includes Bid and Proposal expenses at \$250,000 for the first year, the breakdown might reflect \$125,000 for two bid proposals.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of the G&A shall be clearly discussed (e.g. G&A not applied to subcontractor costs).
- Detail how the allocation base was derived.

vii. **Any Other Proposed Indirect Rate(s)**

- For each cost element included in the indirect rate, provide the breakdown (and basis, if applicable) of the cost.
- Discuss the methodology for the rate calculations. Any anomalies associated with the application of the rate shall be clearly discussed.
- Detail how the allocation base was derived.

I. **Indirect Rate Ceilings**

- Indirect Rate Ceilings – For the on-site (DOE specific) overhead ceiling, off-site overhead ceiling, G&A ceiling, and ceilings proposed for any other indirect rate (other than fringe benefits), provide the rationale for the proposed ceiling. If the ceiling is established at the same rate as the proposed rate, discuss the basis for that decision and address the risk associated with proposing ceilings that have no room for growth or uncertainty. Indirect rate ceilings may be used in the Government’s determination of most probable costs. Inadequate rationale for the development of the indirect rate ceilings will not in-of-itself render an Offeror’s proposal insufficient.

J. **Company Compensation Policies - Describe company compensation policies in the following areas (existing company publications may be furnished, including submission of the Total Compensation Plan for meeting the requirements of FAR 52.222-46):**

- i. Salary increases:
  - Merit
  - Cost-of-Living
  - General
  - Other
- ii. Fringe Benefits:
  - Paid absences (vacations, sick leave, etc.) including the corporate procedure to be utilized in the event of site closures, inclement weather, early dismissals (if issued for Federal work force), administrative leave procedures, and infrequent leave policies.
  - Insurance contribution
  - Retirement contribution (e.g. 401k, pension plan, etc.)
  - Other
- iii. Travel/Per Diem
- iv. Relocation
- v. Bonuses/Other Employee Incentives
- vi. Severance
- vii. Overtime
- viii. Uncompensated overtime
- ix. Shift Premium

**4. File 4 Indirect Rate Agreement(s) (<company name>Vol III File 4 Rate Agreement.---)**

Submit any current Indirect Rate Agreements (including forward pricing agreements) or notices established by your Cognizant Federal Agency as required by Section H, clause "Annual Indirect Rate Submissions" as File 4 of the cost proposal.

**L.34 DOE-L-2019 SITE VISIT (OCT 2015)**

Site visits are not required in order to respond to this solicitation.

**L.35 FAR 52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME (MAR 2015)**

(a) Definitions. As used in this provision—

“Adjusted hourly rate (including uncompensated overtime)” is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week which includes uncompensated overtime hours over and above the standard 40-hour work week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ( $\$20.00 \times 40$  divided by 45 = \$17.78).

“Uncompensated overtime” means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

- (b) (1) Whenever there is uncompensated overtime, the adjusted hourly rate (including uncompensated overtime), rather than the hourly rate, shall be applied to all proposed hours, whether regular or overtime hours.

(2) All proposed labor hours subject to the adjusted hourly rate (including uncompensated overtime) shall be identified as either regular or overtime hours, by labor categories, and described at the same level of detail. This is applicable to all proposals whether the labor hours are at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

### **L.36 LIST OF EXHIBITS**

EXHIBIT	DESCRIPTION
A	Performance Guarantee
B	Cost Exhibits
C	Past Performance Information Questionnaire Cover Letter
D	Past Performance Information Questionnaire
E	Past Performance Reference Information Form

## **L.36A EXHIBIT A – PERFORMANCE GUARANTEE**

### **PERFORMANCE GUARANTEE AGREEMENT**

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-\_\_\_\_\_ for the \_\_\_\_\_ (Contract dated, \_\_\_\_\_, by and between the Government and \_\_\_\_\_ (Contractor), the undersigned, \_\_\_\_\_ (Guarantor), a corporation incorporated in the State of \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder. Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on \_\_\_\_\_

NAME OF CORPORATION  
NAME AND POSITION OF OFFICIAL  
EXECUTING PERFORMANCE  
GUARANTEE AGREEMENT ON BEHALF OF GUARANTOR  
ATTESTATION INCLUDING APPLICATION  
OF SEAL BY AN OFFICIAL OF  
GUARANTOR AUTHORIZED TO AFFIX  
CORPORATE SEAL

**L.36B EXHIBIT B – COST EXHIBITS**

The cost exhibits are provided in a separate file attachment entitled “**Sol\_89243318RAU000002-Cost-Exhibits.xlsx.**”

### **L.36C EXHIBIT C – PAST PERFORMANCE INFORMATION QUESTIONNAIRE COVER LETTER**

The Department of Energy is seeking your assistance on a very important procurement.

[insert name of Offeror or Major or Critical Subcontractor] is participating in a proposal for a DOE contract. [insert name of Offeror or Major or Critical Subcontractor] has identified you as someone who is familiar with their past performance on similar work. We are asking you to complete the attached Past Performance Information Questionnaire to help DOE evaluate [insert name of Offeror or Major or Critical Subcontractor]'s past performance.

We greatly appreciate your time and assistance in completing this questionnaire. In accordance with Part 15.506 of the Federal Acquisition Regulation, the names of individuals providing reference information about past performance will not be disclosed.

Please return the completed questionnaire by May 24, 2019 closing date for proposals to the contact point listed below (mail or email). Information received after the closing date may not be considered.

US Department of Energy  
National Energy Technology Laboratory  
3610 Collins Ferry Road  
PO Box 880  
Morgantown, WV 26507-0880  
Attn: George.Lemasters, Contract Specialist, Mailstop B26, Office #130

Or email: [George.lemasters@netl.doe.gov](mailto:George.lemasters@netl.doe.gov)



## L.36D EXHIBIT D – PAST PERFORMANCE QUESTIONNAIRE

<b>4 = Outstanding</b>	Performance was substantially and consistently above contract requirements. Contractor displayed an overall superior understanding of contract requirements, and used innovative approaches leading to enhanced performance.
<b>3 = Good</b>	Performance was above minimum contract requirements. Contractor displayed a thorough understanding of contract requirements.
<b>2 = Satisfactory</b>	Performance met minimum contract requirements.
<b>1 = Marginal</b>	Performance was below minimum contract requirements. Contractor displayed a lack of thorough understanding of contract requirements in one (1) or more significant performance areas.
<b>0 = Unsatisfactory</b>	Performance completely failed to meet the minimum contract requirements. Contractor displayed a total lack of understanding of contract requirements.
<b>NA = Not Applicable</b>	
<b>DK = Don't Know</b>	No knowledge available to respond to this question.

For any rating(s) less than 2, please attach an explanatory narrative. We greatly appreciate your time and assistance in completing this questionnaire.
Past Performance Information Questionnaire for: <u>[Insert Name of Offeror or Major or Critical Subcontractor]</u>

1. How would you rate the Contractor's performance in the following areas: Meeting contract milestones? Submitting deliverables timely? Adherence to contract schedules?	
	[4] [3] [2] [1] [0] [NA] [DK]
	[4] [3] [2] [1] [0] [NA] [DK]
	[4] [3] [2] [1] [0] [NA] [DK]
2. How would you rate the Contractor's ability to perform within the contract ceiling or estimated cost?	[4] [3] [2] [1] [0] [NA] [DK]
3. Did the Contractor utilize cost efficiencies in performance of your contract?	[4] [3] [2] [1] [0] [NA] [DK]
4. How would you rate the Contractor's cost performance?	[4] [3] [2] [1] [0] [NA] [DK]
5. Did the Contractor submit accurate and timely invoices?	[4] [3] [2] [1] [0] [NA] [DK]
6. If proposals were generated for changes, requests for equitable adjustment, or claims, how would you rate the reasonableness of	[4] [3] [2] [1] [0] [NA] [DK]

the pricing?	
7 How would you rate the Contractor's key personnel performance?	[4] [3] [2] [1] [0] [NA] [DK]
8 How would you rate the Contractor's ability to recruit and retain strong, well-qualified key personnel?	[4] [3] [2] [1] [0] [NA] [DK]
9. Did the Contractor utilize an effective project management system that included planning, budgeting, status tracking, reporting, baseline management, critical path analysis, and work breakdown structure?	[4] [3] [2] [1] [0] [NA] [DK]
10. Has there been a positive or negative trend in contract performance ("0" would be a very negative trend, "4" would be a very positive trend)	[4] [3] [2] [1] [0] [NA] [DK]
11. How would you rate the Contractor's ability to create teaming/partnering relationships to achieve project goals?	[4] [3] [2] [1] [0] [NA] [DK]
12. How would you rate the Contractor's ability to integrate activities with other Contractors on multiple Contractor sites?	[4] [3] [2] [1] [0] [NA] [DK]
13. Was the Performance Work Statement executed effectively by the Contractor in a consistently high quality manner?	[4] [3] [2] [1] [0] [NA] [DK]
14. How would you rate the Contractor's responsiveness to technical direction?	[4] [3] [2] [1] [0] [NA] [DK]
15. Was the Contractor's Environment Safety & Health (ES&H) program in compliance with contract requirements and protective of workers, public, and the environment?	[4] [3] [2] [1] [0] [NA] [DK]
<b>Past Performance Information Questionnaire for: <u>[Insert Name of Offeror or Major or Critical Subcontractor]</u></b>	
16. Was the Contractor effective in subcontract management and did it meet subcontracting goals?	[4] [3] [2] [1] [0] [NA] [DK]
17. Did the Contractor provide an effective and efficient transition from the previous Contractor?	[4] [3] [2] [1] [0] [NA] [DK]
18. Did the Contractor effectively manage regulatory compliance programs and regulatory interfaces?	[4] [3] [2] [1] [0] [NA] [DK]
19. Did the Contractor's corporate office effectively support your contract?	[4] [3] [2] [1] [0] [NA] [DK]
20. Did the Contractor develop and implement an effective quality assurance program?	[4] [3] [2] [1] [0] [NA] [DK]
21. Did the Contractor effectively implement human resources requirements and manage labor relations?	[4] [3] [2] [1] [0] [NA] [DK]
22. Did the Contractor manage effectively including cooperation with	[4] [3] [2] [1] [0] [NA] [DK]

the technical representatives, the Contracting Officer, and other stakeholders showing flexibility and responsiveness?

23. Was the Contractor effective in working with organized labor, community groups, media, and other stakeholders?

[4] [3] [2] [1] [0] [NA] [DK]

24. Provide an overall assessment of the Contractor's performance.

[4] [3] [2] [1] [0]

25. Would you hire this Company again?

[ ] Yes [ ] No

Please Provide Any Additional Comments Below

**L.36E EXHIBIT E – PAST PERFORMANCE REFERENCE INFORMATION FORM**

1. Complete name of Government agency, commercial firm, or other organization	
2. Complete address	
3. Contract number or other reference and type	4. Date of contract
5. Date work commenced	6. Date work was completed or scheduled to be completed
7. Contract Type and Contract Value	8. Final amount invoiced or amount invoiced to date
9a. Technical point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)	9b. Contracting point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)
9c. Environmental Regulator point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)	10. Consultants and partners/subcontractors used (names, addresses, and phone numbers)
11. Project/Contract Title	
12. Description of contract work (Describe nature and scope)	
13. Current Status of Contract (choose one) <input type="checkbox"/> Work Continuing, On Schedule <input type="checkbox"/> Work Continuing, Behind Schedule <input type="checkbox"/> Work Completed, No further Action Pending or Underway <input type="checkbox"/> Work Completed, Routine Administrative Action Pending or Underway <input type="checkbox"/> Work Completed, Litigation Pending or Underway <input type="checkbox"/> Terminated for Convenience <input type="checkbox"/> Terminated for Default <input type="checkbox"/> Other (explain):  Attach additional sheet if necessary (one additional sheet maximum)	

## Instructions for Completing the Reference Information Worksheet

- Item 1. Insert the complete name and address of the customer, including parent organization, if any. Do not use acronyms.
- Item 2. Insert the customer's complete address, including both post office box and street address, if applicable.
- Item 3. Insert any contract number or other contract reference used by the customer and contract type.
- Item 4. Insert the date on which the contract came into existence.
- Item 5. Insert the date on which you started to perform the work.
- Item 6. Insert the date on which the customer agreed that the work was satisfactorily completed (including substantial completion), aside from any pending or on-going administrative actions, claims negotiations, or litigation.
- Item 7. Insert the contract type and contract value (separately listing fee if cost-type).
- Item 8. Insert the final sum of all invoices, or the sum of all invoices to date, including agreed upon and disputed amounts, paid and awaiting payment.
- Item 9a. Insert the name, title, company/agency, address, telephone number, facsimile number, and e-mail address (if available) of the program or project manager, quality assurance representative, or other customer technical representative who is most familiar with the quality of your work under the contract.
- Item 9b. Insert the name, title, company/agency, address, telephone number, facsimile number, and e-mail address (if available) of the contracting officer, purchasing agent, or other customer contracting or purchasing representative who is most familiar with your work under the contract.
- Item 9c. Insert the name, title, company/agency, address, telephone number, facsimile number, and e-mail address (if available) of (a) lead environmental regulator(s) or a State regulatory office director under whose authority environmental regulations would be enforced.
- Item 10. Insert names and phone numbers of consultants and partners/subcontractors used.
- Item 11. Insert the title of the project and/or contract.
- Item 12. Describe the nature and scope of the work. Describe the relevance of the work to the current acquisition and discuss performance. The objective is to show how the work that you did or are doing is similar in nature and scope to the work that is to be performed under the contract contemplated by the request for proposals. Describe any unusual circumstances of performance or problems that may be relevant to the work that is to be performed. Tell your side of the story of any conflicts with the customer concerning which they may make adverse remarks about your performance. Describe any actions that you have taken or plan to take to correct any shortcomings in your performance.
- Item 13. Check the box which most accurately describes the current contract status.

## **Section M - Evaluation Factors for Award**

### **M.1 PROPOSAL EVALUATION - GENERAL**

The Offeror selected for award will be the responsible Offeror whose proposal is determined to be the best overall value to the Government based on the evaluation criteria set forth in this section. Only proposals offering the full range of services in the Performance Work Statement, all items identified in Part I, Section B for the base period and option periods are eligible for award.

### **M.2 COMPLIANCE WITH THE REQUEST FOR PROPOSAL**

Volume I Offer and Other Documents will not be point scored or adjectively rated. The proposal preparation instructions contained in Section L are designed to provide guidance to Offerors concerning the type and depth of information the Government considers necessary to conduct an informed evaluation of each proposal.

The Offeror's compliance with the proposal instructions as outlined in Volume I, Offer and Other Documents (such as format and content) will be reviewed and serve as the basis for a determination of responsiveness to the requirements contained in this solicitation. If applicable, an Offeror's Corporate Governance and/or Performance Guarantee Agreement will be reviewed in support of a Contractor responsibility determination.

If the proposal fails to comply with material RFP requirements or to meaningfully address major portions of the RFP, it may be eliminated from further consideration before a detailed evaluation is performed. Deviations/exceptions taken to this solicitation will not necessarily cause a proposal to be considered unacceptable. However; a large number of deviations/exceptions or one or more significant deviations may result in the rejection of the proposal as unacceptable. In the event a proposal is rejected; a notice will be sent to the Offeror stating the reason(s) that the proposal will not be considered for further evaluation.

### **M.3 BASIS FOR CONTRACT AWARD**

The Government intends to award one contract to the responsible Offeror whose proposal is responsive to the solicitation and is determined to be the best value to the Government; however, as stated in Part IV, Section L, Number of Awards, the Government reserves the right to make any number of awards, or no award, if considered to be in the Government's best interest to do so.

Selection of the best value to the Government will be achieved through a process of evaluating the strengths and weaknesses of each Offeror's proposal in accordance with the Evaluation Criteria set forth in this Section M. In determining the best value to the Government, the Technical and Management Proposal Criteria are significantly more important than the Total Evaluated Price/Cost (e.g. the total evaluated price is the sum of the total firm-fixed price, most probable cost plus the proposed maximum award fee for the base and all option periods).

In determining potential trade-offs to arrive at the best value selection, the Government will assess the strengths, weaknesses, and deficiencies between or among competing Technical and Management Proposals and determine which proposal represents the greatest overall benefit to the Government considering the relative merits of Technical and Management Proposals and Total Evaluated Price. The Government is more concerned with obtaining a superior Technical and Management Proposal than making an award at the lowest Total Evaluated Price/Cost. However, the Government will not make an award at a price premium it considers disproportionate to the benefits associated with the evaluated superiority of one Technical and Management Proposal over another. Thus, to the extent that Offerors' Technical and Management Proposals are evaluated as technically equivalent (equal or so close to be considered equal in merit), the Total Evaluated Price/Cost is more likely to be a determining factor.

### **M.4 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA**

Volume II Technical and Management Proposal is of greater importance than the Volume III Cost Proposal.

Volume II, Technical and Management Proposal will be adjectively rated. The relative importance of the Technical and Management Proposal Criteria is as follows:

Criterion 1 is most important. Criterion 2 is more important than Criterion 3 and Criterion 4. Criterion 2, Criterion 3, and Criterion 4 when combined are of equal importance to Criterion 1. Criterion 3 and 4 are of equal importance. The individual elements that comprise Criteria 1, 2, 3, and 4 are not listed in order of importance and will not be individually weighted, but rather will be

considered as-a-whole in developing an overall rating for each criterion.

## **M.5 EVALUATION CRITERIA – TECHNICAL AND MANAGEMENT PROPOSAL**

The Technical and Management Proposal will be evaluated in accordance with the following criteria. In addition, information contained in any of the files may be taken into consideration in the evaluation of any criterion of the Technical and Management Proposal.

### **TECHNICAL CRITERION 1: STAFFING APPROACH & KEY PERSONNEL**

DOE will evaluate the Offeror's proposed staffing approach and key personnel. DOE will evaluate the Offeror's staffing approach to provide a high quality technical, business, and administrative workforce to implement and administer the technical support services contract. The Offeror's proposed staffing plan will be evaluated based on the expertise proposed as well as the alignment of the expertise to the diverse needs of the technical, administrative, and business requirements outlined in the PWS and ability to enhance contractor responsiveness or provide performance efficiencies. The staffing approach will also be evaluated on the rigor of the approach to attract and retain a highly skilled and diversified workforce as it relates to the positions required to meet the requirements of the performance-work statement for both continuous support as well as support that may be needed to address changing organizational priorities. DOE will rate an Offeror higher who propose active "Q" cleared or "Active Top Secret (TS)" personnel than an Offeror who proposes personnel who must obtain their clearance(s) during transition.

DOE will evaluate the Offeror's proposed Key Personnel on the extent, depth, and quality of the proposed individual's qualifications, capabilities and experience. Key Personnel will be reviewed to determine if they meet the minimum qualifications as addressed in Sections H, J, and L of this RFP. Key personnel who do not meet the minimum requirements will result in the Offeror receiving a lower rating. All Key Personnel will be evaluated under this criterion, regardless of company affiliation. The Key Personnel shall be evaluated in the areas of relevant education, experience, and professional development that encompass pertinent skills, years of experience, and training that are needed to accomplish the range of work elements delineated in the PWS. The Offeror will be evaluated as to the extent to which the Offeror's Key Personnel demonstrate relevant hands-on work experience (i.e., technical, business, administrative, management, etc.) and successful performance through continued advancement to positions of comparable responsibility for projects of similar complexity. Relevant professional certifications and documentation of honors, awards, or special forms of professional recognition bestowed from fellows, peers, or professional, educational, government or scientific organizations will be considered in the evaluation. Key Personnel may include those performing critical management functions. The Offeror will be evaluated on the extent to which there is clear evidence that the proposed individual has the breadth, depth and quality of technical knowledge sufficient to satisfy the requirements of the position for which they are proposed. The Offeror shall also be evaluated based on commitment (e.g., length of proposed commitments, etc.) and availability proposed (full or part-time). Commitments that do not meet the minimum requirements stated may result in the Offeror receiving a lower rating.

### **TECHNICAL CRITERION 2: MANAGEMENT & ORGANIZATIONAL APPROACH**

DOE will evaluate the Offeror's proposed management and organizational approach to effectively and efficiently administer, manage, and implement the contract as-a-whole, including, but not limited to, technical, administrative and business elements and functions required for executing the CLINs and underlying work components as they relate to the types of support identified in the PWS requirements.

The Government will evaluate the breadth and effectiveness of the Offeror's subcontracting and/or teaming approach as applicable for implementing the requirements of the PWS

DOE will evaluate the demonstrated strength of the management team's ability to identify and address the critical components of managing complex and diverse work requirements that are performed at sites in multiple locations, maintaining detailed and accurate financial and contract reporting requirements and supporting successful and efficient operations. This includes the ability to identify and access the appropriate knowledge, data, and systems necessary to perform the work. The Offeror will be evaluated on its technical analysis of the PWS elements, including but not limited to, its understanding of scope and complexity of what is required for an acceptable scope fulfillment, including work definition, deliverables, and how the Offeror will provide and apply day-to-day operating and special response procedures for quick reaction requirements to the Government needs.

The Offeror will also be evaluated on its approach to ensure smooth contract program management, to responding to fluctuations in the different work areas of document review and guidance development, and how Key Personnel will be made available to perform

the effort required during peak workloads, overlapping, or simultaneous tasks, as well as sick and vacation leave as it relates to staff/position coverage.

DOE will evaluate the organizational approach to determine the reasonableness of the corporate organization structure including how that corporate structure interacts with the management on this contract. DOE will evaluate the reasonableness, effectiveness, and efficiency of corporate reach-back services that are available to the management of this contract and the process to engage those resources. The Offeror's proposed organizational approach will be evaluated based on the clarity and logic of the lines of communication and authority, roles and responsibilities and the degree to which corporate management oversight is provided or engaged in performance of this contract.

The Offeror's proposed transition approach will be evaluated based on the potential effectiveness and efficiencies of staffing and managing the transfer of duties and contract functions from the incumbent Contractor with minimal disruption to ongoing work and activities at DOE. The transition plan will also be evaluated on how the Offeror will ensure that all required security clearances are obtained prior to assuming full performance of the contract (i.e. during the ninety (90) day transition period).

The Offeror's discussion on their proposed Quality Assurance approach (QA) will be evaluated on plan development, implementation and management to supporting DOE in adhering to its Quality Control processes.

### TECHNICAL CRITERION 3: EXPERIENCE

DOE will evaluate the extent and merit of the Offeror and major or critical subcontractors', experience, expertise and capabilities as it pertains to its ability to perform and manage the work specified in the PWS. Experience includes work performed similar to that described in the PWS. DOE shall consider prior background and experience in providing services and support of similar scope to government agencies (or other large organizations) directly related to classification support services. The evaluation shall include an assessment of business, management and administrative experience, expertise and capabilities relevant to the PWS. DOE will also consider the availability and technical expertise and capabilities that can be accessed to support the scope described under the PWS.

- a) Offeror. The offeror will be evaluated on its experience performing work similar to that described in the PWS. DOE will evaluate the offeror's experience to determine the level of expertise as specifically related to classification/declassification support services.
- b) Major or critical subcontractor. In addition to evaluation of the offeror's experience, the offeror's proposed major or critical subcontractors that are proposed to perform work under the contract will be evaluated on the degree of their experience, , in performing work similar scope to that proposed to be performed by that individual entity.

### TECHNICAL CRITERION 4: PAST PERFORMANCE

- a) Offeror. The offeror will be evaluated on the currency, relevancy, and quality of its past performance, in performing work similar in size, scope, and complexity to that described in the PWS (for the work that they are proposed to perform). The evaluation will be to assess the offeror's potential success in performing the work required by the contract. Similar size, scope, and complexity are defined as follows: Size (dollar value, staffing level, and contract duration), Scope (type of work), and Complexity (performance challenges and risk); all three must be similar in order to be considered relevant. Relevancy shall be determined based on comparison to the work proposed be performed by the entity specified.
- b) Major or critical subcontractor. In addition to evaluation of the offeror's relevant past performance, the offeror's proposed major or critical subcontractors that are proposed to perform work under the contract will be evaluated on the quality of their recent respective past performance in performing work similar in size, scope, and complexity to that proposed to be performed by that individual entity.
- c) Newly formed entity. If the offeror, subcontractors, or other performing entities are a newly formed joint venture type entity, with no record of relevant past performance, the evaluation of past performance may be based on the past performance of the member organizations in the joint venture, LLC, or other similar type newly formed entity consistent with the evaluation described in paragraphs (a) and (b) above, provided that the member organization is proposed to perform the work identified from the past performance reference. Past performance of predecessor companies resulting from mergers and acquisitions may also be considered, provided that the entity is proposed to perform work under this requirement.



- d) No record of past performance. If the offeror, subcontractors, or other performing entities do not have a record of relevant past performance or if information is not available, the offeror will be evaluated neither favorably nor unfavorably.
- e) Sources of past performance information. The Government will evaluate past performance information provided by the offeror. The Government may contact any or all of the references provided by the offeror and will consider such information obtained in its evaluation. The Government may also consider past performance information from sources other than those provided by the offeror, such as commercial and government clients, government records, regulatory agencies, and government databases such as the Government's Contractor Performance Assessment Reporting System. The Past Performance Reference Information Form, and Past Performance Information Questionnaire identified in Part III, Section L will be used to collect information. DOE may evaluate past performance on less than the total number of contracts/references if all the completed questionnaires are not received.

## **M.6 EVALUATION CRITERIA – COST**

Volume III, Cost Proposal will neither be point-scored, nor adjectively rated, but will be evaluated to determine reasonableness for the fixed-price CLINs and cost realism for the cost-plus-award fee CLIN. The Government will determine the total evaluated price by adding the firm-fixed price CLINs to the most probable cost determined for the cost-plus-award fee CLIN.

DOE will evaluate each Offeror's proposed price, using one or more of the techniques defined in FAR 15.404, in order to determine if the proposed price is reasonable. DOE will evaluate each Offeror's proposed costs, using one or more of the techniques defined in FAR 15.404, in order to determine if the proposed costs are reasonable, realistic, and complete. The evaluation of cost realism, for the cost-plus-award-fee activities, includes an analysis of specific elements of each Offeror's proposed cost to determine whether the proposed estimated cost elements are sufficient for the work to be performed; reflect a clear understanding of requirements; and are consistent with the methods of performance and materials described in the Offeror's technical proposal.

For evaluation purposes, DOE will compute the most probable cost associated with the Offeror's proposal relative to the cost realism completed on the cost-plus-award-fee activities. The most probable cost, for the basic contract term and all options, will be determined based on the Offeror's proposal and any upward or downward adjustments required from the evaluation of reasonableness, realism, and completeness. Cost and fee will not be adjectively rated or scored, but will be evaluated for consistency with the technical proposal and will be used to determine which proposal will represent the best value to the Government.

The total evaluated price will be inclusive of the fixed-price proposed for all fixed-price activities (base and option years), plus the most-probable-cost-plus-fee for all cost-plus-award-fee activities (base and option years)

The proposed fee will be evaluated based on reasonableness of approach and application of fee.

Escalation Rates, Indirect Rates and Ceilings: DOE will evaluate the escalation rates, indirect rates and ceilings proposed as part of its best value determination in accordance with the following:

The proposed escalation rates, indirect rates and ceilings will not be point scored or adjectively rated but will be evaluated for consistency and reasonableness and realism. The proposed escalation rates, indirect rates and ceilings will be used in determining which proposal represents the best value to the Government. Indirect rates will be included as part of the total evaluated price for the cost-plus-award-fee CLINs. The escalation rates and indirect ceilings proposed will be evaluated separately in accordance with the above regarding consistency, reasonableness, and realism.

## **M.7 FAR 52.217-5 EVALUATION OF OPTIONS. (JUL 1990)**

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

## **M.8 RATING DEFINITION TABLES**

The following tables will be used in the evaluation of the Technical and Management proposals.

### Strength/Weakness/Deficiency Definitions

<b>Significant Strength</b>	An attribute that appreciably increases the probability of successful contract performance. A number of strengths within a criterion, when considered together based on the nature of the strengths, may constitute a significant strength.
<b>Strength</b>	An attribute in the proposal that increases the probability of successful contract performance.
<b>Weakness</b>	A flaw in the proposal that increases the risk of unsuccessful contract performance (FAR 15.001).
<b>Significant Weakness</b>	A flaw that appreciably increases the risk of unsuccessful contract performance (FAR 15.001). A number of weaknesses within a criterion, when considered together based on the nature of the weaknesses, may constitute a significant weakness.
<b>Deficiency</b>	A material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that significantly increases the risks of unsuccessful contract performance to an unacceptable level (FAR 15.001).
<b>Clarification Questions</b>	Clarification questions relate to aspects of a proposal, which if the proposal had made clearer, would enhance the Government's understanding of the proposal; allow a reasonable interpretation of the proposal; and facilitate the Government's evaluation. Such clarification questions may relate to (1) minor or clerical errors; or (2) ambiguities that reflect omissions, mistakes, or insufficient information in the proposal which are not addressed by the advisor under the category of a weakness, significant weakness, or a deficiency.

### Ratings - Technical Evaluation Criteria (Other than Past Performance)

<b>Rating Category</b>	<b>Rating Definitions and Proposal Characteristics</b>
	The proposal characteristics contain words that describe, to a certain extent, a quantitative aspect related to the number of strengths and weaknesses. However, the number of strengths and weaknesses are not in themselves necessarily indicative of the overall strength or weakness of the proposal for a particular criterion. Rather, the significance of a particular strength(s) or weakness(s) is addressed in the description of strength(s) or weakness(s). The elements of the proposal characteristics specified below are intended to be considered collectively in arriving at the appropriate rating.
Outstanding	The proposal demonstrates a comprehensive understanding of the contract requirements and a highly effective approach to perform the work that results in a very high probability of successful contract performance with a likelihood that performance expectations will be significantly exceeded. Such a proposal would normally exhibit very limited risk, significant strengths and/or strengths, and no significant weaknesses and/or few if any weaknesses.
Good	The proposal demonstrates a good understanding of the contract requirements, and an effective approach to perform the work that results in high probability of successful contract performance with a likelihood that performance expectations will be exceeded. Such a proposal would normally exhibit limited risk, significant strengths and/or strengths, and few, if any significant weaknesses and/or weaknesses.
Satisfactory	The proposal demonstrates a satisfactory understanding of the contract requirements, and an acceptable approach to perform the work that results in a likely probability of successful contract performance which will also meet performance expectations. Such a proposal would normally exhibit some risk, significant strengths and/or strengths, and offsetting significant weaknesses and/or weaknesses or by few, if any strengths or weaknesses.
Marginal	The proposal demonstrates a limited understanding of the contract requirements, and a minimal approach to perform the work that results in an unlikely probability of achieving successful contract performance and meeting performance expectations. Such a proposal would normally exhibit significant risk, significant weaknesses

	and/or weaknesses, and few, if any significant strengths and/or strengths. A deficiency or deficiencies may exist
Unsatisfactory	The proposal demonstrates an inadequate understanding of the contract requirements, and an inadequate approach to perform the work that results in a highly unlikely probability of achieving successful contract performance and meeting performance expectations. Such a proposal would normally exhibit an unacceptable level of risk, no significant strengths and/or strengths, numerous significant weaknesses and/or weaknesses, and at least one deficiency.

#### Ratings - Past Performance

<b>Rating</b>	<b>Past Performance Record</b>
Outstanding	Record of past performance is highly favorable, with little or no unfavorable data. The offeror's record of past performance supports the Government's expectation of outstanding performance and customer satisfaction with very limited risk.
Good	Record of past performance is more favorable than unfavorable. The offeror's record of past performance supports the Government's expectation of good performance and customer satisfaction with limited risk.
Satisfactory / Neutral	Record of past performance is either average, unavailable, or the offeror has no record of relevant past performance (FAR 15.305(a)(2)(iv)). The offeror's record of past performance supports the Government's expectation of satisfactory performance and customer satisfaction with some risk.
Marginal	Record of past performance is more unfavorable than favorable. The offeror's record of past performance supports the Government's expectation of satisfactory performance and customer satisfaction with significant risk.
Unacceptable	Record of past performance is highly unfavorable. The offeror's record of past performance supports the Government's expectation of unacceptable performance and customer satisfaction with an unacceptable level of risk.