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Section B - Supplies or Services/Prices

B.1 DOE-B-2012 SUPPLIES/SERVICES BEING PROCURED/DELIVERY REQUIREMENTS (OCT 2014): STRATEGIC ANALYSIS (SA) SUPPORT SERVICES

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set for in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of work as described in Section C, Performance Work Statement (PWS) for the contract period of performance specified in Section F, Period of Performance, and fulfill the other requirements of the contract including contract reporting set forth in Section J, Reporting Requirements.

The level of effort specified for the base period and option periods is the present level of effort estimated for the performance of work set forth in the 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 (CLINs) listed below. This contract is to be available for the Government to obtain services for the period of performance, even if the level of effort and/or the estimated cost as originally specified is insufficient. This 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, 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 is inclusive of all items (e.g. labor, supplies, materials, subcontracts, indirect rates, and other direct costs (ODCs), etc.).

All work under this contract shall be performed under the general guidance and technical direction of the DOE Contracting Officer’s Representative (COR) (and lower-tiered CORs) whose responsibilities are set for in Section H, Technical Direction clause. Such guidance and technical direction shall not, however, effect any change in the contract schedule, PWS, contract reporting requirements, or other terms and conditions of this contract. Such changes shall only be made by the expressed written direction of the Contracting Officer.

Nothing in this clause shall be construed to constitute authorization for work not in accordance with the “Limitation of Cost”, “Limitation of Funds”, “Completion Dates”, or “Term of Contract” clauses of the contract.

Base Period (Effective date of award through 36 months)

CLIN 1 SA Support Services (Cost-Plus-Award-Fee) (Award Fee is identified in Clause B.6)

Estimated Cost (based on level of effort) $(TBD)

Estimated DPLH (TBD)

Option Period (37th month through 60th month)

CLIN 1 SA Support Services (Cost-Plus-Award-Fee) (Award Fee is identified in Clause B.6)

Estimated Cost (based on level of effort) $(TBD)

Estimated DPLH (TBD)

Award date through Effective date of award\*

CLIN 2 Transition (No Fee)

Estimated Cost (based on level of effort) $(TBD)

Estimated DPLH (TBD)

\*Transition is awarded as a separate CLIN. Transition period will begin after award notification and be completed upon full assumption of contract performance. The full assumption of contract performance will be the effective date of award and will begin the base period of performance.

(End of clause)

## B.2 ESTIMATED TOTAL COST OF CONTRACT

The estimated total cost of this contract, inclusive of all CLINs, options, and Maximum Available Award Fee Pool is $(TBD). This is an estimated total cost 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 as described in the Federal Acquisition Regulation (FAR), Section 16.503.

(End of clause)

## B.3 LIMITATION OF FUNDS -- COST PLUS AWARD FEE

Pursuant to FAR 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].

(End of clause)

B.4 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

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.

(End of clause)

B.5 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may 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 five (5) years.

(End of clause)

B.6 DISTRIBUTION OF PERFORMANCE AWARD FEE

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 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 | \* | \*\* |

\*Reference paragraph C contained in Section H, clause entitled 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 (e.g., all Cost Plus Award Fee CLINs with performance during the specified fee period dates will have the fee (negotiated, agreed upon, and identified on the CLINs) 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. For example, if a cost plus award CLIN has a twelve month period of performance (example: 08/01/2020 through 07/31/2021) which included a negotiated award fee of $2M a month, then the total available award fee pool for that CLIN is $24M for fee period 1.

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

Using the above example, if the Contractor earns $21M in award fee from the available award fee pool identified for fee period 1 ($24M), the unearned fee ($3M) 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 under all of the CLINs 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.

(End of clause)

Section C - Description/Specifications

# PERFORMANCE WORK STATEMENT

The Performance Work Statement (PWS) is located in Part III -- Section J, Attachment A-2 to this contract. To assist with an understanding of NETL, an introduction has been included and is located in Part III – Section J, Attachment A-1.

(End of clause)

C.2 DOE-C-2003 REPORTS (OCT 2014)

The Contractor shall prepare and submit reports in accordance with the Reporting Requirements Checklist and Instructions in Part III – Section J, Attachment B, and as specified in other clauses in the contract.

(End of clause)

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.

(End of clause)

Section E - Inspection and Acceptance

# 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 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.

(End of clause)

E.2 52.246-5 INSPECTION OF SERVICES - COST-REIMBURSEMENT (APR 1984)

(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.

(End of clause)

Section F - Deliveries or Performance

## F.1 DOE-F-2003 PERIOD OF PERFORMANCE (OCT 2014)

The Contractor shall commence performance of this contract in accordance with the contract terms and conditions as described below:

TRANSITION

The transition shall commence on the award date and continue through the full assumption of contract performance (effective date of award). It is expected that this shall be approximately a 90-day transition.

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 and shall continue for **thirty-six (36) months**. NOTE: The Government may elect not to exercise the option period.

OPTION I

If Option I is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of **twenty-four (24) months** **(**months thirty-seven (37) through sixty (60)).

(End of clause)

## F.2 DOE-F-2002 PLACE OF PERFORMANCE – SERVICES (OCT 2014)

The principal places of performance under this contract shall be at the National Energy Technology Laboratory, research centers in Morgantown, WV; Pittsburgh, PA; and Albany, OR. The contractor shall be required to travel among sites. NETL may also require services at other locations, therefore the Contractor may be required to travel between, and provide services to various other locations in the United States.

(End of clause)

F.3 52.242-15 STOP-WORK ORDER. (AUG 1989) - ALTERNATE I (APR 1984)

(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.

(End of clause)

Section G - Contract Administration Data

## G.1 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:

1. 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.

1. Property Correspondence

Property correspondence (as used herein, this term includes correspondence which addresses matters which relate to property issues which come under the contract’s Government property provisions) shall be addressed to the DOE Property Administrator, with information copies of the correspondence to the DOE Contracting Officer’s Representative and the DOE Contract Specialist.

1. 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.

1. Correspondence on Patent or Technical Data Issues

Subject inventions shall be reported to the Office of Intellectual Property Law, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Building 201, Argonne, IL 60439.

All other correspondence concerning patent or technical data issues shall be addressed to the NETL Patent Attorney, the DOE Contract Specialist, and the Contracting Officer’s Representative.

1. 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.

1. Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., 89243321RFE000050 and identifying the specific contract action requested.

(End of clause)

G.2 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.

(End of clause)

G.3 DOE-G-2002 CONTRACTING OFFICER'S REPRESENTATIVE (OCT 2014)

Pursuant to the clause at DEAR 952.242-70, Technical Direction, 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.

(End of clause)

## G.4 PAYMENT OF PERFORMANCE AWARD FEE

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.

(End of clause)

## G.5 SUBMISSION OF VOUCHERS/INVOICES

1. 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 on the NETL website at <http://www.netl.doe.gov/business/forms.html>. 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/vendor
2. Invoice date
3. Contract number or other authorization for delivery of property or service
4. Description, price and quantity of property and services actually delivered or rendered
5. Shipping and payment terms
6. Name (where practicable), title, phone number and complete mailing address of responsible 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 complete mailing address of the person to be notified in the event of a defective invoice.
8. Other substantiating documentation or information as required by the contract.
9. 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. If this is a cost-plus-fixed-fee contract, the amount claimed for the fixed fee should be based on a percentage of completion of the work. If this is a cost sharing contract, the “Government Share” must agree with the amount billed on the SF 1034. Any cost sharing or in-kind contributions incurred by the Contractor and/or third party during the billing period must be included in the invoice and adequately supported. 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.

1. 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. Indirect rate information and supporting documentation shall be submitted directly to the Contract Specialist or Contracting Officer.

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.

The contractor shall include a cumulative roll up of the cost-incurred-to-date which shall include separate lines for costs incurred, fixed priced task, fixed fee, award fee, and DPLH as indicated below:

Current Period Cumulative Amount

Cost Incurred XXXX XXXX

Award Fee XXXX XXXX

DPLH XXXX XXXX

1. Submission of Voucher

Submit the original voucher including the Supporting Documentation through the Vendor Inquiry Payment Electronic Reporting System (VIPERS) available to Contractors at the following website: [https://vipers.doe.gov/](https://vipers.oro.doe.gov/). Contractors must have a Federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system. In the event that an electronic submission cannot be completed, send a hard copy to:

U.S. Department of Energy

Oak Ridge Financial Services Center

P.O. Box 6017

200 Administration Road

Oak Ridge, TN 37831

In addition, submit an electronic copy to the Contract Specialist and the COR of the voucher including the Supporting Documentation to the designated electronic folder location. If an electronic copy cannot be completed, send a hard copy to the following address:

U.S. Department of Energy

National Energy Technology Laboratory

3610 Collins Ferry Road, P.O. Box 880

Morgantown, WV 26507-0880

1. 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.

1. 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.

1. 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.

1. 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.

1. 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].

(End of clause)

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

A support service Contractor performs the function of processing of all invoices submitted to the National Energy Technology Laboratory, 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.

(End of clause)

## G.7 ACCOUNTABILITY OF COSTS/SEGREGATION

All costs incurred by the Contractor under this contract shall be segregated by each CLIN. The Contractor shall, therefore, establish separate “Job Order Accounts and Numbers” for each CLIN issued and shall record all incurred costs in the appropriate job order account assigned each CLIN.

(End of clause)

G.8 DOE-G-2047 FEDERAL HOLIDAYS AND OTHER CLOSURES – ALTERNATE I (FEB 2017)

(a) Designated Federal holidays. Federal employees observe the following Federal holidays:

(1) New Year's Day;

(2) Birthday of Martin Luther King, Jr.;

(3) Washington's Birthday;

(4) Memorial Day;

(5) Juneteenth Day;

(6) Independence Day;

(7) Labor Day;

(8) Columbus Day;

(9) Veterans Day;

(10) Thanksgiving Day; and

(11) Christmas Day.

Generally, Federal holidays that fall on Saturday are observed on the preceding Friday; and holidays that fall on Sunday are observed on the following Monday. The exact calendar day and/or date on which any of the listed holidays are observed may change year to year.

(b) Other Federal Holidays. In addition to the holidays specified above in paragraph (a), Federal employees may observe other holidays designated by Federal Statute, Executive Order, or Presidential Proclamation as a one-time, day-off such as Inauguration Day for the President of the United States.

(c) Unscheduled closures. Occasionally, an individual Federally-owned or -controlled site or facility will be closed or have an early closure on a normal work day for other reasons such as inclement weather or facility conditions. If an unplanned closure occurs, the Contractor will be notified as soon as possible after the determination that the Federally-owned or -controlled site or facility will be closed.

(d) The Contractor shall provide the services required by the contract at Federally-owned or -controlled sites or facilities on all regularly scheduled Federal work days and other days as may be required by the contract. The Contractor shall not provide the services required by the contract on those days, or portions thereof, specified in paragraphs (a), (b) and (c), except as required under paragraph (e). Accordingly, the Contractor's employees, whose regular duty station in performance of this contract is a Federally-owned or -controlled site or facility, shall not be granted access to the facility during those times specified in paragraphs (a), (b) and (c), unless required by paragraph (e) below.

(e) There may be times that the Contractor is required to perform the services required by the contract on a Federal holiday or other closure times. In the event that such performance is required, the Contracting Officer will notify the Contractor, in writing, and specify the extent to which performance of the contract will be required. The Contractor shall provide sufficient personnel to perform the contractually-required work on those days, as directed by the Contracting Officer.

(f) In accordance with the payment and other applicable clauses of the contract, the Government will not pay the Contractor for its employees' regularly scheduled work hours not actually provided directly in performance of the contract due to an unscheduled closure as contemplated in paragraphs (b) and (c) above.

(g) In accordance with the payment and other applicable clauses of the contract, the Government will not pay the Contractor for its employees' regularly scheduled work hours not actually provided directly in performance of the contract due to an unscheduled closure as contemplated in paragraphs (b) and (c) above unless the Contractor has a telework policy, approved by the Contracting Officer, that allows for the employees to provide services for such work hours via telework and requires the Contractor to pay its employees for such work hours.

(End of clause)

## G.9 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.

(End of clause)

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.

(End of clause)

## H.2 TECHNICAL DIRECTION

1. Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer’s Representative (COR). The term “technical direction” is defined to include, without limitation:
   1. Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Performance Work Statement.
   2. Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
   3. Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
2. 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 which:
   1. Constitutes an assignment of additional work outside the Performance Work Statement;
   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 fixed 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.
3. All technical directions shall be issued in writing by the COR.
4. The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within the 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 (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
   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; or
   2. Advise the Contractor within a reasonable time that the Government will issue a written change order.
5. A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled “Disputes - Alternate I.”

(End of clause)

### H.3 952.242-70 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.”

(End of clause)

## H.4 GOVERNMENT PROPERTY

1. Regardless of the performer of the work, the Contractor is responsible for complying with the requirements of the Department of Energy (DOE) personal property management program and the Federal Acquisition Regulations. The Contractor is responsible for flowing down the requirements to subcontractors at any tier to the extent necessary to ensure the Contractor’s compliance with the requirements.
2. Acquisition Authorization Requirements - The Contractor is not authorized to acquire as a direct charge item under this contract any equipment (including office equipment), furniture, fixtures or other personal property items without the express written consent of the Contracting Officer (CO) or as otherwise noted in this clause.
   1. In the course of performance of this contract, the Contractor may only acquire and direct charge to this contract replacement items for those items on the “Government Furnished Property (GFP) list” as directed by the CO or their designee (acquisition for replacement items will only be considered when it is not economically reasonable to repair).
   2. The Contractor may request authorization for acquisition of additional items (Contractor acquired property - not already on the GFP list) from the Contracting Officer. Request(s) for consideration shall be in written format and include a description of the item (including manufacturer and model number, serial number, and/or National Stock Number (NSN)), unit acquisition cost, quantity and unit of measure, and a brief rationale on the need for the item. Any such request shall include an analysis of the most economical method of acquisition (e.g., lease versus purchase) and shall describe any material equity arising from any proposed lease arrangement, such as option credits.
   3. In accordance with section D of this clause or upon request of the CO, the Contractor shall be required to provide a listing of all property under the control of the Contractor
   4. Authorization to acquire does not constitute consent to the placement of a subcontract.
3. Government Property (Government Furnished Property and Contractor Acquired Property)
   1. Government property includes all “GFP” and “Contractor Acquired Property” that is a direct charge to this contract.
   2. The Contractor shall establish, implement, and maintain a cost-effective, risk-based personal property management program to manage personal property from receipt, to use, to final disposition processing by acceptable means. The personal property management program is to be used for all Government property under this contract (GFP and Contractor Acquired Property).
   3. Contractors may use Voluntary Consensus Standards (VCS), such as ASTM International, or Industry Leading Practices (ILP), to the greatest degree practical for the management of personal property, as deemed appropriate by the Property Administrator (PA)/Organizational Property Management Officer (OPMO) as designated by the CO.
   4. In accordance with FAR Part 45 Government property that is incidental to the place of performance (i.e. office space, chairs, telephones, computers, printers, and fax machines) are not covered by this clause - when the contract requires Contractor personnel to be located on a Government site or installation, and when the property used by the Contractor at the location remains accountable to the Government.
   5. Contractors are responsible for ensuring personal property items that may reveal classified or controlled unclassified information (i.e., Official Use Only or Unclassified Controlled Nuclear Information) are managed and controlled in accordance with the requirements found in other DOE directives or Agency regulations.
   6. Whenever practical, Government personal property (GFP and Contractor Acquired Property) shall be identified or tagged as U.S. Government property (or U.S. DOE property). The Contractor shall remove or permanently cover, to the extent practical, tags before formal release from DOE inventory/ownership.
   7. Except as otherwise authorized by the Contracting Officer in writing, only that property specifically included in the “GFP List” shall be furnished.
   8. A copy of the current “GFP List” is located on the Internet at <http://netl.doe.gov/business/site-support> and will be maintained at that site for availability during the solicitation phase of this contract. GFP is provided as-is/where-is and the Contractor is responsible for determining suitability for use.
   9. The “GFP List” is broken into categories:
      1. Capitalized Property – The capitalization threshold for items acquired prior to October 1, 2011 is $50,000. For items acquired on or after October 1, 2011, the threshold is $500,000. Capital equipment is to be managed in accordance with the DOE Financial Management Handbook.
      2. Accountable Property – Accountable Property is identified as personal property that exceeds the acquisition cost threshold (currently $10,000 or more) and administratively controlled items, identified by NETL, necessary for controlling items under the acquisition cost threshold to protect against unauthorized use, disclosure, or loss. These items are items such as radios, equipment with recording capabilities, cameras, or cellular type devices.
      3. Non-Accountable Property (Other GFP) – Non-Accountable Property is identified as other personal property with an acquisition cost less than the threshold for Accountable Property and not included on the property matrix list. These items are provided for the Contractor’s use in performing the contract requirements and are titled to the Government.
      4. 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.
      5. The “GFP List” is incorporated into this contract by reference in its entirety. No hard copy of the GFP List or the property matrix will be attached to this contract.
   10. When additional property items are acquired by the Contractor, the items shall be categorized as Capitalized Property (see definition above); Accountable Property (see definition above); Non-Accountable Property (see definition above); Sensitive Property (as defined above); or High Risk Personal Property (as defined in Federal Management Regulations).
   11. In addition, the Contractor may be required to acquire or utilize “Precious Metals” in performance of the contract requirements. Precious metals are required to be managed and controlled in accordance with DOE and NETL precious metals guidance and regulations.
   12. Physical Inventories shall be properly planned and executed to continuously monitor property condition and operational availability, and validate accountable property record accuracy. The scheduling, type, method, and scope of the physical inventory process are to align with management expectations and risks.
       1. Capitalized and Sensitive Property – Capitalized and sensitive property shall be inventoried at least annually with an accuracy expectation of 100%. Inventory method must be approved by the CO (or as designated to the PA/OPMO) and take into consideration the property condition, classification, and location.
       2. High Risk Personal Property (HRPP) – HRPP shall be inventoried at least annually. However, when a complete physical inventory (existence testing) is not appropriate, a sampling method can be used on a graded approach based on the assessed risk (safety considerations, restricted access, exposure to contamination, etc.). Inventory method must be approved by the CO (or as designated to the PA/OPMO) and take into consideration the property condition, classification, and location.
       3. Accountable Property – Accountable Property shall be inventoried at least every three years with an accuracy expectation of 98%. Inventory method must be approved by the CO (or as designated to the PA/OPMO) and take into consideration the property condition, classification, and location.
       4. Non-Accountable Property (Other GFP) – Non-Accountable Property shall be inventoried upon request of the CO or within the last year of contract performance in order to complete the required reporting of all Government Property in the control of the Contractor.
       5. Physical inventories of spares or stores are required to be conducted on a frequency and method approved by the CO (or as designated to the PA/OPMO).
       6. Inventory methods may take different forms, including wall-to-wall, cyclic, sampling, and “by exception” methodologies (use of actions or transactions as an inventory event). Sampling may be used, where appropriate, provided the sampling approach achieves the statistically valid results.
       7. An independent group must validate the results of the physical inventory.
       8. Physical inventories shall be reconciled with financial records, as applicable.
       9. The Contractor shall submit inventory results and requested write-offs (of personal property not found) to the CO (or as designated to the PA/OPMO) for acceptance within 60 days of concluding the inventory. If the Contractor does not operate within acceptable tolerances, the Contractor shall use a graded approach to identify opportunities for improvement.
   13. Accountable property records shall be maintained as a system of record and shall include at a minimum: Property control number (item unique identification); contract number; receipt date; description; manufacturer and model number, serial number, and/or NSN; unit acquisition cost; quantity and unit of measure; custodian; location; use status (active, storage, excess, retired, etc.); High risk designation, export control jurisdiction, and relevant export regulation citation (if applicable); and condition code.
   14. In accordance with FAR 52.245-1, the Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract.
   15. Loaning of Personal Property may be authorized provided the property is:
       1. Not excess.
       2. Used in performing research, studies, and other efforts that result in benefits to both the U.S. Government and the borrower.
       3. Used by local agencies in support of health, safety, or security requirements in emergency conditions or upon appropriate Departmental notification of emergency conditions.
       4. Loaned to another DOE organization, Contractor, Government agency, or organization that has a valid Federal contract, financial assistance agreement, treaty, international or collateral agreement.
       5. Approved using the a properly completed loan package including DOE F 4420.2 Loan Agreement form which must document that high risk, export control, and hazardous reviews have been completed (foreign loans are prohibited).
   16. Loss (to include theft), damage, or destruction of personal property shall be reported as soon as practical to the CO (or as designated to the PA/OPMO), and in accordance with local NETL procedures (and to security in the case of loss or theft). Reporting of loss, damage, or destruction is essential to the accountable property record audit trail and is required to formally reconcile accountable property records.
   17. Disposition of property shall be coordinated with the NETL PA/OPMO.
4. Reporting Requirements

The reports required shall be submitted in accordance with FAR 52.245-1, 41 CFR 109 and the reporting requirements set forth in Part III, Section J, Attachment B. The reports are to include all capital equipment and sensitive items acquired or furnished under this contract, whether or not listed on the attachments referenced above.

180 days prior to the end of the contract, the Contractor shall be required to provide a listing of all Government property (GFP and Contractor Acquired Property) still under the control of (assigned to) the Contractor. The listing shall include the Purchase Order number utilized to acquire the property, acquisition cost, property identification numbers, and current location of property. The listing shall be completed in a spreadsheet manner that can be sorted by the Government (recommend Excel Spreadsheet) and shall be broken into categories as identified in Section C-9 above.

(End of clause)

## H.5 OBSERVATION OF NETL REGULATIONS

In the performance of work under this contract, while on NETL property, the Contractor and its employees shall observe all the rules and regulations of NETL pertaining to conduct, safety, and security.

(End of clause)

## H.6 IDENTIFICATION BADGES - NETL

All personnel working at the National Energy Technology Laboratory will be required to wear identification badges at all times. Identification badges will be assigned to a Contractor official for issuance to the personnel employed for work under this contract.

(End of clause)

H.7 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 maybe 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.

(End of clause)

## H.8 CONSERVATION OF UTILITIES

The Contractor shall not waste utilities. The Contractor shall instruct Contractor employees in utilities conservation practices. If waste is observed, a verbal warning will be given by the COR; a second observation will result in written warning; and a third observation may result in termination of the contract or a reduction in contract price to account for the cost of the waste.

(End of clause)

H.9 GOVERNMENT FURNISHED ON-SITE FACILITIES OR SERVICES

The Contractor is authorized to use The Government-owned, Government-controlled equipment and facilities indicated below on a no-charge basis in the performance of this contract.  In accordance with FAR Part 45.000(5) office space and items provided specifically for on-site use are considered incidental to the place of performance and remain in the control and accountable to the Government.  As such, specific space assigned may change throughout the contract depending on the space management by the Government.

NETL plans to utilize a hybrid space management approach through providing a specified amount of office space available for your organization to utilize.  Your organization may use this assigned space in a combination of assigned space (for fully on-site staff) or as hotel space (for a mixture of telework and remote support staff).  As such, office/work spaces are to be provided in the following quantities at each identified site:  5 Office’s and 30 Cubicle style space at the Pittsburgh site, 6 Office’s and 14 Cubicle style space at the Morgantown site, and 2 Office’s and 0 Cubicle style space at the Albany site.  Office space will be defined as having four walls and door for privacy.  NETL will also provide furniture, computers, monitors, and standard office equipment for the on-site work spaces identified.  For on-site support, the contractor will also be provided the services described in the clause entitled “Government Provided Services.”  NETL will provide computers and monitors for those individuals who are identified in an approved telework or remote program for them to utilize at their telework or remote location.

Badging and identification required for site access will be provided to all employees who are identified in a telework or on-site status.  Full remote employees who are not in the local area for site access will not require badging without additional justification.  The contractor will be responsible for the distribution and return of any Government computer equipment provided to telework or remote location employees.  For local telework employees, this can be accomplished by pickup at their homesite location identified when on-boarding.

The contractor is responsible for proper allocation of all telework and remote employees in the appropriate indirect rate structure.  For example, telework or remote employees should not have an off-site rate applied that includes facilities costs and would be expected to be included in an on-site (client site) rate or a separately created rate for hybrid on-site-telework or remote (client site) rate for application of indirect rates.  In such a scenario, the contractor may have multiple indirect rate structures for the various types of employees: 1) typical on-site (client site) rate for staff working full-time on-site at a NETL location; 2) typical off-site (contractor site) rate for staff working full-time at a contractor site location; 3) a rate established for fully remote or fully telework staff; and/or 4) a hybrid rate for telework staff who may also utilize NETL provided space for hoteling when on-site at a NETL location.

(End of clause)

## H.10 MOVEMENT OF GOVERNMENT PROPERTY OFF-SITE -- NETL

No Government-owned property, equipment, or materials will be removed from the National Energy Technology Laboratory without the completion of NETL Form 580.1-6, Property Pass and the prior written permission from the Contracting Officer or his/her designee and NETL’s Property Administrator, excluding Government vehicles assigned to the contractor.

(End of clause)

## H.11 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.

* + - 1. WBS Structure Use – The Contractor shall use the WBS structure approved by the COR as the basis for all contractual reporting, invoicing, and accounting;
      2. 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;

* + - 1. 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.
   * + 1. Example:
   1. WBS Level 1: Contract Level Reporting
   2. WBS Level 2: Task Level Reporting
   3. WBS Level 3: Subtask Level Reporting (if needed)
   4. WBS Level 4: Activity Level Reporting (if needed)

Further levels as appropriate.

(End of clause)

## H.12 KEY PERSONNEL/PROGRAM MANAGER

1. Introduction

The key personnel, which include the Program Manager, specified below, are considered to be essential 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, “DEAR 952.215-70 Key Personnel.” Any changes to these personnel require prior DOE Contracting Officer’s written approval.

1. 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.

1. 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.

1. Contract Award Fee Reductions for Changes to Key Personnel
2. Notwithstanding approval by the Contracting Officer, anytime the Program Manager (the initial Program Manager or any 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 cost plus award fee tasks issued), may be permanently reduced, for the fee period in which the change occurs, by $500,000 for each and every occurrence of a change to the Program Manager.
3. Notwithstanding approval by the Contracting Officer, anytime a Key Person other than the Program Manager (any initial Key Person or any 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 cost plus award fee tasks issued), may be permanently reduced, for the fee period in which the change occurs, by $100,000 for each and every occurrence of a change to the Key Person.
4. 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.
5. 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.

Name Position/Title

[TBD] Program Manager

[TBD] Business Manager

Prior to diverting any of the specified individuals, 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.

(End of clause)

## H.13 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 must be pre-approved by the Contracting Officer’s Representative (COR) or designee. The Contractor shall submit travel requests at least thirty (30) days in advance of the start of travel.

(End of clause)

## H.14 INDIRECT COSTS

Pending establishment of final indirect cost rates (e.g., G&A, NETL 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.

NETL requires the use of an NETL on-site overhead rate. For clarification purposes, the following two definitions are provided.

Project Management Office (PMO) - The PMO shall include all cost associated with Key Personnel and administrative support personnel (e.g., HR, Procurement, Property, Time Keeping, Project Control, Reporting Requirements, Contract Management (including contract level reporting), Property Management (contract level reporting and property inventories associated with Government Furnished and Contractor Acquired property), Integrated Safety Management, Quality Assurance oversight, and Environmental Safety and Health oversight etc.) necessary for the overall management of the contract. For audit and application consistencies, the Individuals performing these functions shall not be charged as direct costs to any of the CLINs issued (shall be included in the NETL specific on-site overhead rate).

NETL Specific On-Site Overhead Rate - The NETL specific on-site overhead rate shall include the Contractors cost elements, inclusive of PMO cost elements, to perform work on-site at NETL taking into consideration the facilities, property, and services provided by NETL for on-site support. Since this rate is specific to this requirement it is not expected that there will be any conflict with a Contractor’s audited rate structure.

(End of clause)

## H.15 LIMITATION OF INDIRECT COST

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.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Percentage of Overall Rate  Entity[TBD] | | Indirect Cost Ceiling Rate(s) per Contractor’s Fiscal Year (1) | | | | | |
| Indirect Cost | Base of Application | | FY[TBD] | FY[TBD] | FY[TBD] | FY[TBD] | FY[TBD] |
| NETL Site Specific On-Site Overhead | $[TBD] | | [TBD]% | [TBD]% | [TBD]% | [TBD]% | [TBD]% |
| Off-Site Overhead (Contractor’s site) | $[TBD] | | [TBD]% | [TBD]% | [TBD]% | [TBD]% | [TBD]% |
| G&A | $[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) | | | | |
| Indirect Cost | Cost Element | | FY[TBD ] | FY[TBD] | FY[TBD] | FY[TBD] | FY[TBD] | |
| NETL 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 | |
| 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 | |
| G&A | [TBD] | | [TBD]% of growth allowed | [TBD]% of growth allowed | [TBD]% of growth allowed | [TBD]% of growth allowed | [TBD]% of growth allowed | |

*(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.

(End of clause)

## H.16 ANNUAL INDIRECT RATE SUBMISSIONS

* + 1. 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.
   * 1. 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

National Energy Technology Laboratory

626 Cochrans Mill Road

P.O. Box 10940

Contracting Officer for Indirect Rate Cost Management

Building 921-107

Pittsburgh, PA 15236-0940

* + 1. 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.)

* 1. 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.
  2. The settlement of the final indirect rates and indirect costs shall be accomplished prior to the Contracting Officer’s approval of the final payment.
  3. Pending settlement of the final indirect expense 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).
  4. 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.
  5. 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.
     1. Requirements when DOE is not the CFA
  6. 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, 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.
  7. 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.

(End of clause)

## H.17 INCORPORATION OF CONTRACTOR’S VALUE ADDED APPROACHES OR METHODOLOGIES AND CONTRACTOR’S RESOURCES AND COMMITMENTS

* + 1. As part of its proposal, the Contractor offered certain approaches or methodologies that are of significant benefit to NETL. The following list of approaches or methodologies have been proposed by the Contractor and accepted by the Government:

(TBD)

* + 1. As part of its proposal, the Contractor offered certain resources and commitments at no cost to the Government to support mission specific activities of significant benefit to NETL. The following list of resources and commitments have been proposed by the Contractor and accepted by the Government:

[TBD]

* + - 1. The Contractor shall provide to the Contracting Officer an annual report of accomplishments against the commitments specified above at the end of each Government fiscal year. The Contractor agrees that such reports may be made available to the public. The Contractor shall make available to DOE data that will validate the accomplishments of these commitments. A final report documenting and certifying the total commitments provided by the Contractor to NETL shall be submitted to NETL thirty (30) days prior to the end of the contract period. The annual reports and final report shall constitute deliverables under this contract.
      2. The costs associated with the Contractor’s efforts in achieving its commitment under this clause are not allowable as direct or indirect charges against this contract or any other government contract or agreement.
    1. In the event it is determined by NETL, that the Contractor failed to achieve its commitment on an annual basis, NETL shall notify the Contractor in writing and the Fee Determination Official may elect to reduce the fee for the final fee period of that particular year. If the Government must acquire a contractor committed resource at its own expense, the Contractor shall also be liable to the Government for the cost of the resource plus the Government’s cost of acquiring the resource.

(End of clause)

## H.18 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.

(End of clause)

## H.19 SUBCONTRACTOR FACILITIES CAPITAL COST OF MONEY

1. 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.
2. 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:
   1. Waiver of Facilities Capital Cost of Money (FAR 52.215-17, OCT 1997)
   2. The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.
3. 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.

(End of clause)

## H.20 PERFORMANCE EVALUATION AND MANAGEMENT PLAN (PEMP)

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 Management Plan included in Part III, Section J, Attachment C. 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.

Provided that the contractor is making progress toward and fulfilling all requirements set forth in the PEMP, the contract provides for an annual performance evaluation schedule to include: (a) a semi-annual (i.e. mid annual cycle) interim adjectival performance assessment, followed by a provisional payment of available fee for incentive if deemed appropriate by the Contracting Officer, and (b) a final annual adjectival and percentage rating of performance and adjusted final earned payment of fee to occur following the completion of the annual performance evaluation period.

Provision related to the Contractor’s performance evaluation and award fee schedule are further detailed in the contract PEMP (Section J) and clause H.21 Performance Based Award Fee.

(End of clause)

## H.21 PERFORMANCE BASED AWARD FEE

1. AWARD FEE DETERMINATION

The Government shall, following a six-month provisional assessment period, and at the conclusion of each evaluation period, evaluate the Contractor’s performance for a determination of performance-based award fee earned.

Provisional payment of fee for an incentive means the Government’s paying available fee to the Contractor for making progress towards meeting the performance measures for the incentive before the Contractor has earned the available fee. As “an authorized Government disbursement of monies to a contractor prior to acceptance of supplies and services by the Government,” a provisional payment of fee falls under the category of a contract financing payment as stated in the Definitions section of FAR Part 32.

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 I Section H.

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.

(By way of example, in the ES&H area, the FDO may prohibit the Contractor from earning part or all fee for the evaluation period in which the Contractor’s negligent or poor performance results in: (1) creation of a dangerous work environment; (2) liability, or risk thereof, to the Government; (3) death or injury to one or more workers; or, (4) notice(s) of violations being issued by regulatory agencies.)

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

B. CALCULATION OF AVAILABLE AWARD FEE AND PROVISIONAL FEE

The maximum available fee pool will be established for each CLIN under this contract and is set forth in Part I Section B. The pool is expressed as a discreet dollar amount, not as a percentage of the plan.

The determination of provisional fee for each interim performance period is as follows:

The Government’s determination that the Contractor has met the requirements for the provisional payment of fee for an incentive has no implications for the Government’s eventual determination that the Contractor has or has not earned the associated available fee for the incentive. Provisional payment of fee is a separate and distinct concept from earned fee. Before a contract may provide for provisional payment of fee for an incentive, the Contractor must meet the specific requirements outlined in the PEMP to earn the fee for the incentive, before the Government is obligated to pay a provisional fee for incentive to the Contractor, and for the Contractor to have any right to retain the provisionally paid fee.

Regarding the calculation of each provisional fee payment for an incentive, the Contracting Officer, at his/her sole discretion, first determines if the Contractor has met the performance requirements as outlined in the PEMP. Following that determination, the Contracting Officer’s calculation of the amount of each provisional fee payment: will never be a set percentage, a fixed amount, or any other constant value and will be directly and expressly linked to continued performance, that is, to continued progress towards eventually earning the available fee for the incentive; will be accomplished per explicit procedures expressed in the contract; and with each successive payment, if any, will reflect the Contractor’s cumulative performance to date.

C. REVIEW AND ADJUSTMENT OF AVAILABLE AWARD FEE POOL

A meeting with the COR, CO, and Contractor will be held immediately following release of the Cost Management Report (CMR) for the tenth month of the annual period to review. The meeting will discuss any new activities issued during the fee period to determine if activity performance is to be started during the fee period and if an adjustment to the available award fee pool (total of all CLIN Annual Work Operating Plans) is warranted based on inclusion of the activity for the months of performance within this fee period. This meeting will also take into account any and all performance and cost-related information that may be associated to an interim performance assessment and provisional fee payments for an incentive. In addition, the meeting will be to review, on a CLIN basis, any significant variances between estimated cost and actual cost incurred for the first ten months of the performance period. In the event that a variance of greater than 10% is identified for a specific CLIN then the available award fee pool shall be reviewed for that CLIN Annual Work Operating Plan to determine if an adjustment is warranted. The COR and the Contractor will provide the CO with information concerning the variance(s) such that a determination may be made as to whether an adjustment in the fee pool for a particular CLIN is appropriate.

Fee shall not be adjusted based solely on a variance of costs incurred, therefore, the COR shall provide variances between planned and actual DPLH in performance during the first ten-month performance period. Variances are assumed to fall into one of the following categories:

1. Actuals 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 Annual Work Operating 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 should migrate with the work and a straight-line adjustment to the available fee may be appropriate.

3. Actuals 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 shall 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.

D. INTERIM ASSESSMENT PROCESS

The Principal COR notifies and solicits feedback from each Performance Evaluation Board (PEB) member and CLIN COR/SubCLIN COR no later than 30 calendar days before the midpoint of the interim assessment period. COR consolidates and submits an assessment report to the PEB Chair no later than 20 calendar days after this notification. The PEB Chair determines the interim assessment results and notifies the contractor of the strength and weaknesses for the current assessment period. The CO may also issue letters at any other time when it is deemed necessary to highlight areas of Government concern.

E. DISCLOSURE OF PROVISIONAL PAYMENT OF FEE FOR INCENTIVE

Before providing for provisional payment of fee for an incentive in a contract, the Contractor must meet the requirements outlined in J.7 ATTACHMENT C - PERFORMANCE EVALUATION AND MANAGEMENT PLAN of the contract to earn the fee for the incentive. After that requirement is met, if a contract provides for provisional payment of fee, the following clause shall apply:

Notwithstanding any other term or condition of this contract to the contrary, this clause applies to and has precedence over all other terms and conditions of this contract that provide for provisional payment of fee.

The Contractor must notify the Contracting Officer immediately if it believes any incongruence exists between this clause and any other term or condition of this contract that provides for provisional payment of fee. If a term or condition of this contract provides for provisional payment of fee but fails to include all of the requirements of this clause, that term or condition will be considered to include the omitted requirements.

This clause conforms to the Federal Acquisition Regulation and Department of Energy fee policy and constructs. The following definitions and concepts apply:

* Price means cost plus any fee or profit applicable to the contract.
* The terms profit and fee are synonymous.
* Incentive means a term or condition whose purpose is to motivate the Contractor to provide supplies or services at lower costs, and in certain instances with improved delivery or technical performance, by relating the amount of profit or fee earned to the Contractor’s performance.
* Earned fee for an incentive means fee due the Contractor by virtue of its meeting the contract’s requirements entitling it to fee. Earned fee does not occur until the Contractor has met all conditions stated in the contract for earning fee.
* Available fee for an incentive means the fee the Contractor might earn but has not yet earned.
* Provisional payment of fee for an incentive means the Government’s paying available fee for an incentive to the Contractor for making progress towards meeting the performance measures for the incentive before the Contractor has earned the available fee.
* Provisional payment of fee has no implications for the Government’s eventual determination that the Contractor has or has not earned the associated available fee. Provisional payment of fee is a separate and distinct concept from earned fee. The Contractor could, for example, receive 100% of possible provisional fee payments yet not earn any fee (the Contractor would be required to return all of the provisional fee payments). The Contractor could, for example, receive 0% of possible provisional fee payments yet earn the entire amount of available fee (it would not receive any fee payments until the Government’s determination that the Contractor had earned the associated available fee for the incentive).
* Clause means a term or condition used in this contract.

This contract’s price, incentives included in its price, and all other terms and conditions reflect the Government’s and the Contractor’s agreement to link, to the maximum extent practical, the Contractor’s earning of fee to its achievement of final outcomes rather than interim accomplishments.

Certain terms and conditions of this contract provide for provisional payment of fee for certain incentives. Other terms and conditions of this contract provide for each such incentive the requirements the Contractor must meet to earn the fee linked to the incentive. The terms and conditions of this contract that provide for provisional payment of fee for certain incentives include for each such incentive the requirements the Contractor must meet before the Government is obligated to pay fee, provisionally, to the Contractor and for the Contractor to have any right to retain the provisionally paid fee.

The Contracting Officer, at his/her sole discretion, will determine if the Contractor has met the requirements under which the Government will be obligated to pay fee, provisionally, to the Contractor and for the Contractor to have any right to retain the provisionally paid fee.

If the Contracting Officer determines the Contractor has not met the requirements to retain any provisionally paid fee and notifies the Contractor, the Contractor must return that provisionally paid fee to the Government within 30 days:

* the Contactor’s obligation to return the provisional paid fee is independent of its intent to dispute or its disputing the Contracting Officer’s determination; and
* if the Contractor fails to return the provisionally paid fee within 30 days of the Contracting Officer’s determination, the Government, in addition to all other rights that accrue to the Government and all other consequences for the Contractor due to the Contractor’s failure, may deduct the amount of the provisionally paid fee from: amounts it owes under invoices; amounts it would otherwise authorize the Contractor to draw down under a Letter of Credit; or any other amount it owes the Contractor for payment, financing, or other obligation.

If the Contractor has earned fee associated with an incentive in an amount greater than the provisional fee the Government paid to the Contractor for the incentive, the Contractor will be entitled to retain the provisional fee and the Government will pay it the difference between the earned fee and the provisional fee.”

Refer to clause B.6, “Distribution of Performance Award Fee,” for specifics on award fee distribution.

(End of clause)

## H.22 GOVERNMENT PROVIDED SERVICES

The Government shall provide the following on-site services. The Contractor shall use these services for official use only, in performance of the required services specified in this PWS.

1. Utilities: The Government shall provide electricity, water, lights, sewage, and heating or cooling.
2. Mail Distribution: The Government shall provide mail pick-up and delivery of official mail.
3. Postage: Government-provided postage is restricted to official correspondence.
4. Telephone: Telephones shall be provided for contractor-personnel to make official local and long-distance calls.
5. Custodial Service: The Government shall provide custodial services to include emptying of trash cans and vacuuming and shampooing of carpeted areas in Government-furnished facilities.
6. Refuse Collection: The Government shall provide refuse collection at Government-furnished facilities.
7. Insect and Rodent Control: The Government shall provide insect and rodent control in Government-furnished facilities. The Contractor shall notify the COR if the facilities appear to be infested.
8. Printing and Reproduction: Office copiers shall be provided according to Government policies for their use. The Contractor shall use NETL’s Graphics and Printing facilities for the productions of documentation required in support of this PWS.
9. Equipment Maintenance: The Government shall maintain equipment (unless stated otherwise in the approved Contractor Annual Work Operating Plan).
10. Security Police and Fire Protection: In case of emergency, the Contractor shall notify the Security Office immediately. The Contractor shall obtain these phone numbers from the COR and keep them posted and up to date at all times.
11. Transportation: NETL has a pool of GSA vehicles, to which the Contractor will have reasonable access for Official Government business in performance of services required under this Contract.
12. IT Services: The Government shall provide basic office automation tools to include an office computer connected to the NETL administrative network and loaded with an office software suite (presently MS Office); access to enterprise email and calendaring software (presently Novell GroupWise); access to enterprise applications as required; access to network file and print services; access to Internet services; office telephone and voice mail services; access to convenience copier and copy center services; access to library services; access to video teleconference and teleconference meeting resources as required; and access to helpdesk services.
13. Software applications: The Government will provide on-site support contractors access to key computer based applications, as determined necessary for performance of the PWS (e.g., AutoCad, FIMS, CHAMPS, PAMS, CAIS, etc.).

(End of clause)

## H.23 SECURITY AND PERSONNEL REQUIREMENTS

1. GENERAL RESPONSIBILITIES

The Contractor shall be responsible for complying with the provisions of NETL’s unclassified security program. The Contractor shall cooperate with the Computer Security Program Manager (CSPM) and the Contracting Officer’s Representative (COR) in all information security matters.

1. CLASSIFIED MATERIAL

Performance under the contract may involve access to classified material. If access to classified material is required, the Contractor shall be required to obtain necessary security clearances for personnel who will have access to classified material. For unclassified material, the Contractor shall abide by all provisions of the Department of Energy (DOE) Order 205.1 “Unclassified Computer Security Program” (incorporated by reference) or as revised.

1. ACCESS TO FACILITIES

The Contractor shall prohibit access to Government-furnished facilities of any persons other than authorized Government and Contractor employees, unless prior approval is obtained from the Contracting Officer (CO) or appropriate COR.

The Contractor shall maintain the security within the facility. Anyone entering the facility who does not have a valid NETL identity badge must be processed through NETL’s Visitor Registration process at NETL’s Security Office or main lobby and must obtain a visitor identification badge and be escorted by a NETL representative. All personnel who have not been issued a NETL identity badge shall be escorted.

1. PHYSICAL SECURITY

The Contractor shall be responsible for safeguarding and securing all Government property provided for use under this contract. The Contractor shall notify the COR and submit a completed loss/theft report using the NETL standardized form (currently NETL-F 470.1-1-1) with NETL Security within 24 hours after discovery of any missing Government property.

1. KEY CONTROL

The Contractor shall ensure there is adequate control of keys and access cards to preclude the loss, misplacement or unauthorized use and access to Government equipment and facilities. The Contractor shall not duplicate keys issued by the Government.

In the event the Contractor loses Government keys, the Government shall replace, or re-key, all keys or locks, as the Government deems necessary. The Government shall deduct the total cost for replacing locks and keys from the monthly payment due the Contractor. In the event a master key is lost or duplicated, the Government shall replace all locks and keys for that system and deduct the total cost for replacement from the monthly payment due to Contractor; or at the Government’s discretion, the Government shall require the Contractor to replace locks and keys to the COR’s satisfaction.

The Contractor shall report any occurrence of a lost or misplaced key to the COR within 4 hours of discovering that a key has been lost or misplaced. The Contractor shall provide a follow-up report, in writing, to the COR within 24 hours.

The Contractor shall prohibit the use of Government-issued keys by any persons other than the Contractor’s authorized employees.

1. COMBINATION CONTROL

The Contractor shall ensure there is control of combinations for cipher locks. The Contractor shall notify the COR within one workday after termination of employment of all Contractor employees who have access to the combination. The Contractor shall establish and implement methods to ensure that no lock combinations are revealed to unauthorized persons. The procedures shall be included in the Contractors Quality Control Program.

1. PERSONNEL AND SECURITY
   1. Building Access: The Contractor shall require all contract employees’ to complete the appropriate forms for computer and Building access security.
   2. Identification Badge: The Contractor shall obtain an identification badge for each Contractor employee from NETL Security prior to entry on duty. Contractor employees shall display this identification badge at all times within NETL facilities. Contractor shall be responsible for returning badge of departing employee to Security.
2. DATA SECURITY

All information, whether stored in the computer, in hard copy form, or on magnetic media, shall be protected from unauthorized disclosure, and unauthorized modification or destruction at all times. Contractor personnel shall take all precautions to protect the information and programs and shall report all suspected violations to the COR or CSPM. The Contractor shall immediately verbally notify, and notify in writing before the close of business of the next day, the Government COR or the CO or his authorized representative, in the event that the Contractor has or has reason to suspect a breach of data security occurred.

Information processed and stored by these Information Resource systems shall include some information that must be safeguarded from disclosure and alteration. That information is subject to protection by various laws, regulations and agreements. The Contractor agrees, in the performance of this contract, to keep sensitive information in the strictest of confidence and to protect it from unauthorized modification or destruction. The Contractor also agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form, and not to authorize or permit others to do so. The Contractor shall take such reasonable measures as are necessary to restrict access to this information, while in his possession, to those employees needing such information to perform the work provided herein (e.g., on a “need to know” basis). The Contractor shall immediately verbally notify, and notify in writing before the close of business of the next day, the Government COR or the CO or his authorized representative, in the event that the Contractor has or has reason to suspect a breach of data security occurred.

(End of clause)

## H.24 ACCESS TO DOE–OWNED OR LEASED FACILITIES

* + 1. 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.
     1. The Contractor shall assure:
  8. 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.
  9. 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.
     1. 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.
     2. 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.
     3. 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 NETL Security Officer.

(End of clause)

## H.25 ENVIRONMENTAL, SAFETY, AND HEALTH MANAGEMENT SYSTEM POLICY AND ENVIRONMENTAL ASPECT AND OBJECTIVE/TARGET CONSIDERATIONS

The contractor must be knowledgeable of NETL’s environment, safety, and health management system policy, aspects, objectives and targets and consider how their work could affect or create additional aspects or objectives. The contractor shall support NETL’s ISO 14001 and OHSAS 18001 certifications by ensuring that his/her employees and work practices support the NETL ES&H policy, plans, procedures and the objectives and targets.

(End of clause)

## H.26 ENVIRONMENTAL, SAFETY, AND HEALTH ON-SITE SERVICE CONTRACTS

* + 1. The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of his/her employees, other NETL employees, and the public, and to prevent damage to the environment and NETL-owned materials, supplies, equipment, facilities, and any other NETL-owned property.
    2. The Contractor shall comply with the requirements of NETL’s environment, safety, and health (ES&H) programs as implemented through NETL directives (orders, operating plans and procedures). These programs are based on conforming to the requirements listed on NETL’s focused standards list (reference Part II, Section H, clause entitled Focused Standards List), which is a compendium of applicable Federal, State, and local regulations; consensus standards; and DOE directives. In particular, the Contractor shall comply with the procedural, recordkeeping, and reporting requirements of these ES&H programs and their supporting directives. Where conflict exists among the standards’ requirements, the most protective shall be adopted, unless relief is provided by the contracting officer.
    3. The Contractor shall generate and implement an integrated safety management (ISM) plan describing how the Contractor will implement NETL’s ES&H policy and the DOE ISM philosophy, as outlined in ISM directives, into the planning, budgeting, execution, and assessment of work activities. The plan shall describe the Contractor’s approach to:
  1. The integration of ISM’s five functions: defining the scope of work, analyzing the hazards, developing and implementing controls, performing work safely, and ensuring performance into its everyday work activities, and
  2. Demonstrating ISM’s seven guiding principles: workforce responsibility and accountability; clear roles, responsibilities, and authorities; competence commensurate with responsibilities, balanced priorities, identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization.

The Contractor shall describe in this plan how the Contractor’s work will be integrated with NETL’s ISM System. The Contractor shall submit the plan to the Contracting Officer or his/her representative for review and approval within 30 days after the date of contract award. This plan shall be updated annually and resubmitted to the Contracting Officer or his/her representative for review and approval.

* + 1. The Contractor shall comply with NETL directives on conducting safety analysis and reviews for research and development projects, support operations, and facility construction and maintenance and shall implement the requirements resulting from the analysis and review.
    2. Contractor employees shall complete mandatory ES&H training as required by the nature of job being performed or by legal, DOE or NETL requirements. The Contractor shall maintain training records for his/her employees to demonstrate that training has been completed.
    3. The Contracting Officer shall notify the Contractor, in writing, of any non-conformance with the ES&H requirements of this contract. After receipt of such notice, the Contractor shall immediately take corrective action. In the event that the Contractor fails to comply with NETL’s environment, safety, and health requirements, the Contracting Officer may, without prejudice to any other legal or contractual rights of the DOE, issue an order stopping all or any part of the work; thereafter, a start order for work resumption may be issued by the Contracting Officer. The Contractor shall make no claim for an extension of time, or for compensation or damages by reason of, or in conjunction with, such work stoppage.
    4. The Contractor shall include this environment, safety, and health clause in all subcontracts requiring work at the NETL sites and shall be responsible for ensuring that subcontractors adhere to these ES&H requirements.
    5. The DOE or its authorized representative shall have the right to inspect any work areas or facilities occupied by the contractor.
    6. The Contractor keep records such as raw data, interpreted results, reports, correspondence, and other materials proving regulatory and standard compliance, according to DOE records management schedules.
    7. Accidents or incidents resulting in human injury or property damage are to be reported immediately to the Contracting Officer or his/her representative. Notification, recording, and reporting requirements for accidents or incidents shall be conducted in accordance with 29 CFR 1904 and 1910 and the associated NETL directives. The Contracting Officer or his/her representative shall be provided with copies of all required documentation within 10 days of the accident or incident.
    8. The Contractor shall maintain an accurate record of onsite hours worked and shall provide this information to the Contracting Officer or his/her representative upon request in order to calculate hours-based ES&H statistics.
    9. The Contractor shall collect metrics on environment, safety, and health performance as determined by NETL in addition to those contained in their ISM plan. These metrics may change with time. The following are examples and may not represent the actual metrics that will be required to be reported: recordable injury/illness rate (total number of OSHA-defined recordable injuries and illnesses/total hours worked); days away or restricted time rate (total number of OSHA-defined lost work day cases or restricted days cases/total hours worked); and hazardous waste generated (total cubic feet of hazardous waste shipped); number of employees who have completed ES&H training on-time; number of inspections/assessments conducted; and number of employees participating in the emergency response program. The metrics shall be provided to the Contracting Officer or his/her representative.
    10. NETL depends on volunteers to staff its emergency response organization (ERO), including the HAZMAT/rescue team. The Contractor shall allow participation of his/her employees in NETL’s site-wide emergency response program. Participants shall be allowed the time necessary to fulfill ERO training obligations. The Contractor whose employees participate in emergency response functions shall be responsible for providing any additional liability insurance or supplemental insurance deemed appropriate by the Contractor for the ERO positions that their employees occupy.

(End of clause)

## H.27 QUALITY ASSURANCE – SITE SUPPORT

The Contractor shall maintain an effective Quality Assurance (QA) Program during the course of the contract. A QA Management Plan is required in accordance with the Reporting Requirements Checklist, Part III, Section J, Attachment B. The QA Management Plan shall address both technical and administrative deliverables and services. The Government will not serve in the quality control function for the Contractor. Downward adjustments in fee may be assessed if the QA Management Plan is not followed and a deliverable or service provided by the Contractor to the Government requires rework or is unacceptable due to poor quality. Poor quality work contain errors which include but are not limited to typographical errors, grammatical errors, operational errors, programming errors, and errors of fact.

(End of clause)

## H.28 SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION

1. The Contractor shall implement the DOE work in accordance with all applicable Federal, State and local laws, including codes, ordinances and regulations, covering safety, health and environmental protection.
2. The Contractor agrees to include paragraph (A) of this clause in first-tier subcontracts and agrees to enforce the terms of this clause.

(End of clause)

## H.29 INDEMNITY -- ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS

Should the Contractor, in the performance of work under this contract, fail to comply with the requirements of environmental permits, local laws or regulations, State laws or regulations, Federal laws or regulations, the performance work statement and its attachments, and cause any environmental, health, or safety liability to be assessed against the Government, the Contractor agrees to indemnify the Government for this liability. This requirement shall be placed in all subcontracts awarded by the Contractor under this contract. The provisions of this clause are limited to liabilities not otherwise addressed by other provisions of this contract.

(End of clause)

## H.30 COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL REQUIREMENTS

In performing work under this contract, the Contractor shall comply with all relevant Federal, State, and local statutes, ordinances, laws, and regulations and DOE/NETL directives (e.g., orders, policies, and procedures).

(End of clause)

## H.31 COMPLIANCE WITH INTERNET VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The Contractor agrees that:

* 1. All deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and
  2. It has IPv6 technical support for development and implementation and fielded product management available.

Should the Contractor find that the performance work statement or specifications of this contract do not conform to the IPv6 standard, it must notify the Contracting Officer of such nonconformance and act in accordance with instructions of the Contracting Officer.

(End of clause)

## H.32 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) USAGE

ADPE requirements which were not included in the Contractor’s original proposal may not be acquired (leased or purchased) without the prior written consent of the Contracting Officer. Whenever Contracting Officer written consent is required, the Contractor will furnish to the Contracting Officer information concerning the need for and selection of such ADPE, the specific make(s) and model(s), and the lease versus purchase determination.

(End of clause)

## H.33 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) LEASING

If the Contractor leases ADPE equipment for use under this contract, the Contractor shall include a provision in the rental contract stating that the Government shall have the unilateral right to exercise any purchase option under the rental contract between the Contractor and the ADPE equipment vendor and to realize any other benefits earned through rental payments.

(End of clause)

## H.34 LIMITATION ON SOFTWARE

The Contractor shall not violate license agreements (express or implied), copy, change (with the exception of vendor-supplied updates or maintenance requirements), or release to a third party, Government-furnished software, including other vendors’ proprietary software, for any purpose other than that for which it was provided to the Contractor under the terms of this contract.

Unless provided as Government-furnished software, the Contractor shall not use software in which the Contractor holds proprietary rights, or rights as a licensee, without the prior written authorization of the Contracting Officer or designee.

The Contractor agrees not to restrict the design and development of software in such a fashion that it shall unreasonably favor specific vendor hardware and software.

The Government may require the Contractor to register the copyright on software developed for the Government under this contract.

(End of clause)

## H.35 WORK HOURS

A. HOURS OF OPERATION

Normal working hours at the site are between 6:00 a.m. and 6:00 p.m. Local Standard Time, Monday through Friday, unless otherwise specified in the Performance Work Statement (PWS) and/or at the task level, holidays excepted. However, this is not to be construed that the project can be completed within the contract time by utilizing normal working hours since it is the Contractor’s responsibility to work the necessary hours to complete the project within the contract time. To work at times other than the normal hours the Contractor shall give the Contracting Officer at least three hours advance notice in order to permit proper coverage of the activity by the Government.

(End of clause)

## H.36 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.

1. 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.

1. 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 form NETL F 142.1-1 Request for Unclassified Foreign National Visit, Assignment, 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.

1. 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

(End of clause)

## H.37 FOREIGN GOVERNMENT TALENT RECRUITMENT PROGRAMS

In accordance with DOE Order 486.1, the contractor is required to utilize due diligence to ensure that neither it, nor any of its employees, subcontractors, or subcontractor employees (working at any level) participate in a foreign government talent recruitment program of a foreign country of risk while performing work within the scope of the DOE contract.

The contractor is required to submit an initial report stating whether it or any such employees are participants in a foreign government talent recruitment program of a foreign country of risk, or whether the contractor has a reasonable basis to report such employees as a participant in a foreign government talent recruitment program of a foreign country of risk.

In addition to the initial report, the contractor shall submit quarterly (at the end of each calendar quarter) a report restating whether it or any such employees are participants in foreign government talent recruitment program of a foreign country of risk and verify that new hires have been determined not to be a participant in a foreign government talent recruitment program of a foreign country of risk.

If the contractor learns, at any time, that any of its employees, subcontractors, or subcontractor employees (working at any level) are or are believed to be participants in a foreign government talent recruitment program of a foreign country of risk, then they must notify (in writing) the Contracting Officer within 5 business days. Upon DOE review of any such notification, and within 30 days of DOE’s response, the contractor will be required to take appropriate action to ensure that neither it nor any such employees are participants in a foreign government talent recruitment program of a foreign country of risk while performing work within the scope of the DOE contract.

Failure by the contractor to reasonably ensure that neither it nor any of its employees are participants in a foreign government talent recruitment program of a foreign country of risk may result in DOE exercising contractual remedies in accordance with federal regulations and the terms of this contract.

The contractor must flow this clause to R&D or Demonstration subcontracts at any tier where the subcontractor’s work within the scope of the DOE contract is performed on or at a DOE facility or DOE contractor leased space. To the extent corporate resources are made available under the contract or subcontract, the individuals made available as corporate resources must be included and reported by the contractor. This clause does not apply to ministerial corporate resource support (e.g. HR, Legal, Travel Personnel, Timekeeping Personnel, Benefits Personnel, etc.).

Key Definitions:

Foreign Country of Risk: Any foreign country determined to be of risk by the Office of Science in consultation with the Under Secretary for Science; the Under Secretary of Energy; the Under Secretary for Nuclear Security; and the Office of Intelligence and Counterintelligence.

Foreign Government Entity: Includes country, regional, or local level foreign governments, certain foreign corporations, and foreign public universities.

Foreign Government Talent Recruitment Program: In general, such programs include any foreign-state-sponsored attempt to acquire U.S. scientific-funded research or technology through foreign government-run or funded recruitment programs that target scientists, engineers, academics, researchers, and entrepreneurs of all nationalities working or educated in the United States. These recruitment programs are often part of broader whole-of-government strategies to reduce cost associated with basic research while focusing investment on military development or dominance in emerging technology sectors.

Distinguishing features may include:

* Compensations provided by the foreign government to targeted individuals in exchange for the individual transferring their knowledge and expertise to the foreign country.
* Active engagement in attracting targeted individuals to join the foreign-sponsored program and transfer their knowledge and expertise to the foreign country.
* Incentivizing the targeted individual to physically relocate to the foreign country. Of particular concern are those programs that allow for continued employment at U.S. research facilities or receipt of DOE research funds while concurrently receiving compensation from the foreign country.

(End of clause)

H.38 DOE-H-2016 PERFORMANCE GUARANTEE AGREEMENT (OCT 2014)

The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance of the contract as evidenced by the Performance Guarantee Agreement incorporated in the contract as Exhibit A in Section L.

If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent(s) or all member organizations shall assume joint and severable liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

(End of clause)

H.39 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 D except as the Contracting Officer may otherwise authorize.

(End of clause)

H.40 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 Water Sense Labeled Products).

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

(1) Recycled Products are described at https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

(2) Biobased Products are described at https://www.biopreferred.gov/BioPreferred/.

(3) Energy efficient products are described at https://www.energystar.gov/products for Energy Star products.

(4) FEMP designated products are described at https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies

(5) Environmentally Preferable Computers are described at https://www.epeat.net.

(6) Non-Ozone Depleting Alternative Products are described at https://www.epa.gov/ozone-layer-protection.

(7) Water efficient plumbing fixtures are described at https://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.

(End of clause)

H.41 DOE-H-2048 PUBLIC AFFAIRS - CONTRACTOR RELEASES OF INFORMATION (OCT 2014)

In implementation of the clause at DEAR 952.204-75, Public Affairs, all communications or releases of information to the public, the media, or Members of Congress prepared by the Contractor related to work performed under the contract shall be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least 30 calendar days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned communications or releases of information to the public, the media, or Members of Congress related to work performed under this contract. The Contracting Officer will obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

(End of clause)

H.42 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (OCT 2014) - ALTERNATE I (OCT 2014)

(a) Pursuant to the clause at FAR 52.204-9, Personal Identity Verification of Contractor Personnel, the Contractor shall comply with applicable DOE regulations, policies and directives regarding identification, credential and access management for its personnel who have routine physical access to DOE-owned or -controlled sites or facilities or routine access to DOE information systems.

(b) The Contractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives.

(End of clause)

H.43 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.

(End of clause)

H.44 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM (OCT 2014) - ALTERNATE I (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 elsewhere in the contract pursuant to the clause at DEAR 970.5204-2, Laws, Regulations and DOE Directives.

(End of clause)

Section I - Contract Clauses

I.1 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): <https://www.acquisition.gov/dears>

(End of clause)

I.2 52.202-1 DEFINITIONS (JUN 2020)

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;

(d) The word or term is defined in FAR part 31, for use in the cost principles and procedures; or

(e) The word or term defines an acquisition-related threshold, and if the threshold is adjusted for inflation as set forth in FAR 1.109(a), then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment; see FAR 1.109(d).

(End of clause)

I.3 952.202-1 DEFINITIONS

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.

(End of clause)

I.4 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.

(End of clause)

I.5 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.

(End of clause)

I.6 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUN 2020)

(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, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

(End of clause)

I.7 52.203-7 ANTI-KICKBACK PROCEDURES (JUN 2020)

(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 paragraph (c)(5) but excepting paragraph (c)(1) of this clause, in all subcontracts under this contract that exceed the threshold specified in Federal Acquisition Regulation 3.502-2(i) on the date of subcontract award.

(End of clause)

I.8 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.

(End of clause)

I.9 52.203-10 PRICE OR FEE ADJUSTMENT 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 conrtracts, 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.

(End of clause)

I.10 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 2020)

(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 contractor 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 under this contract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award. 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 that exceeds the threshold specified in FAR 3.808 on the date of subcontract award.

(End of clause)

I.11 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (JUN 2020)

(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 exceed the threshold specified in FAR 3.1004(a) on the date of subcontract award 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.

(End of clause)

I.12 52.203-14 DISPLAY OF HOTLINE POSTER(S) (JUN 2020)

(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*

DOE Hotline Poster: <https://energy.gov/ig/downloads/office-inspector-general-hotline-poster> (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 the threshold specified in Federal Acquisition Regulation 3.1004(b)(1) on the date of subcontract award, except when the subcontract-

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

(2) Is performed entirely outside the United States.

(End of clause)

I.13 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (JUN 2020)

(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 Federal Acquisition Regulation (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 FAR 3.908.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award.

(End of clause)

I.14 952.203-70 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.

(End of clause)

I.15 952.204-2 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 reapproved 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.

(End of clause)

I.16 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.

(End of clause)

I.17 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 SAM;

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

(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* 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 SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at *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.

(End of clause)

I.18 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.

(End of clause)

I.19 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUN 2020)

(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 benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

*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. 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 requires 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) (Federal Acquisition Regulation (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 valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, the Contractor shall report the following information at *http://www.fsrs.gov* for that first-tier subcontract. (The Contractor shall follow the instructions 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 valued at or above the threshold specified in FAR 4.1403(a) on the date of subcontract award, 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 *http://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 below the threshold specified in FAR 4.1403(a), on the date of subcontract award, 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.

(End of clause)

#### I.20 52.204-12 UNIQUE ENTITY IDENTIFIER 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.

(End of clause)

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

(a) *Definitions*. 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 SAM;

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

(End of clause)

I.22 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*. (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.

(End of clause)

I.23 952.204-70 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 Declassifier 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.

(End of clause)

I.24 952.204-73 FACILITY CLEARANCE (AUG 2016)

*Notices*

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.

(End of clause)

I.25 952.204-75 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.

(End of clause)

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

(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 [] 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.

(End of clause)

I.27 952.204-77 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.

(End of clause)

I.28 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020)

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

*Commercial and Government Entity (CAGE) code* means-

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract for each location of contract, including subcontract, performance. For contractors registered in the System for Award Management (SAM), the DLA Commercial and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with subpart 42.12. The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity (CAGE) Branch. Requests for changes shall be provided at *https://cage.dla.mil*. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at *http://www.nato.int/structur/AC/135/main/links/contacts.htm*) or NSPA at *https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx* to request CAGE changes.

(e) Additional guidance for maintaining CAGE codes is available at *https://cage.dla.mil*.

(f) If the contract includes Federal Acquisition Regulation clause 52.204-2, Security Requirements, the contractor shall ensure that subcontractors maintain their CAGE code(s) throughout the life of the contract.

(End of clause)

I.29 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.

(End of clause)

#### I.30 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDDED 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](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](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.

(End of clause)

I.31 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2020)

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

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g*., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (*e.g*., microwave) or wired (*e.g*., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means-

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means-

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g*., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (*e.g*., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition*. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions*. This clause does not prohibit contractors from providing-

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement*. (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report 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 (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer 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 information in paragraph (d)(2)(i) 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 covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

#### I.32 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](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3). 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.

(End of clause)

I.33 952.208-70 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).

(End of clause)

I.34 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUN 2020)

(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 Federal Acquisition Regulation (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 debars 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 the threshold specified in FAR 9.405-2(b) on the date of subcontract award, 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 the threshold specified in FAR 9.405-2(b) on the date of subcontract award, 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 the threshold specified in FAR 9.405-2(b) on the date of subcontract award; and

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

(End of clause)

I.35 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 (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via *https://www.sam.gov*.

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

(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 FAPIIS 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.

(End of clause)

I.36 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)](http://uscode.house.gov/), applied in accordance with the rules and definitions of [6 U.S.C. 395(c)](http://uscode.house.gov/).

      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](https://www.acquisition.gov/far/part-9#FAR_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.

(End of clause)

I.37 952.209-72 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 venturer, 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.

(End of clause)

I.38 52.210-1 MARKET RESEARCH (JUN 2020)

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

*Commercial item* and *nondevelopmental item* have the meaning contained in Federal Acquisition Regulation (FAR) 2.101.

(b) Before awarding subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, 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, nondevelopmental 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 nondevelopmental items could be incorporated at the component level.

(End of clause)

I.39 52.215-2 AUDIT AND RECORDS - NEGOTIATION (JUN 2020)

(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, as defined in FAR 2.101 on the date of subcontract award, 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.

(End of clause)

I.40 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.

(End of clause)

I.41 52.215-10 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because -

(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if -

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if -

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid -

(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

#### I.42 52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA-MODIFICATIONS (JUN 2020)

      (a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) [15.403-4](https://www.acquisition.gov/far/part-15#FAR_15_403_4)(a)(1) on the date of execution of the modification, except that this clause does not apply to any modification if an exception under FAR [15.403-1](https://www.acquisition.gov/far/part-15#FAR_15_403_1)(b) applies.

      (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2)a subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

      (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

      (d)

(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

                (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

                (ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

                (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

                (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

           (2)

(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if-

                     (A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor’s knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

                     (B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

                (ii) An offset shall not be allowed if-

                     (A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

                     (B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

      (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid-

           (1) Interest compounded daily, as required by [26U.S.C.6622](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under [26 U.S.C.6621(a)(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3); and

           (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

I.43 52.215-12 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (MAY 2020)

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that, when entered into, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-4(a)(1), the Contractor shall insert either-

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data - Modifications.

(End of clause)

#### I.44 52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA-MODIFICATIONS (JUN 2020)

      (a) The requirements of paragraphs (b) and (c) of this clause shall—

           (1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) [15.403-4](https://www.acquisition.gov/far/part-15#FAR_15_403_4)(a)(1) on the date of execution of the modification; and

           (2) Be limited to such modifications.

      (b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in FAR [15.403-4](https://www.acquisition.gov/far/part-15#FAR_15_403_4)(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR [15.403-4](https://www.acquisition.gov/far/part-15#FAR_15_403_4)(a)(1), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR [15.403-1](https://www.acquisition.gov/far/part-15#FAR_15_403_1)(b) applies. If the threshold for submission of certified cost or pricing data specified in FAR [15.403-4](https://www.acquisition.gov/far/part-15#FAR_15_403_4)(a)(1) is adjusted for inflation as set forth in FAR [1.109](https://www.acquisition.gov/far/part-1#FAR_1_109)(a), then pursuant to FAR [1.109](https://www.acquisition.gov/far/part-1#FAR_1_109)(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

      (c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR [15.406-2](https://www.acquisition.gov/far/part-15#FAR_15_406_2) that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

      (d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data in FAR [15.403-4](https://www.acquisition.gov/far/part-15#FAR_15_403_4)(a)(1) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

I.45 52.215-15 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be-

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which certified cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which certified cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g).

(End of clause)

I.46 RESERVED

I.47 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

(End of clause)

I.48 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall -

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(End of clause)

I.49 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA - MODIFICATIONS (JUN 2020)

(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 in Federal Acquisition Regulation (FAR) 15.403-4(a)(1) 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 paragraphs (a)(1)(i) and (ii) of this clause. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-4(a)(1) is adjusted for inflation as set forth in FAR 1.109(a), then pursuant to FAR 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. 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.

(End of clause)

I.50 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (JUN 2020)

(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 Federal Acquisition Regulation (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) Subcontracts. 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, as defined in FAR 2.101 on the date of subcontract award, except if the contract is with DoD, then insert in all costreimbursement subcontracts and fixed-price subcontracts, except those identified in FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in FAR 15.403-4(a)(1) on the date of subcontract award.

(End of clause)

I.51 952.215-70 KEY PERSONNEL (DEC 2000)

(a) The personnel listed below or elsewhere in this contract [] 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, Contractor's Organization, 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.

(End of clause)

I.52 52.216-7 ALLOWABLE COST AND PAYMENT (AUG 2018)

(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 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 [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"] 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 paragraph (b)(2) of the 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 forms 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) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(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 changed 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 section, 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, the 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.

(End of clause)

I.53 952.216-7 ALLOWABLE COST AND PAYMENT

As prescribed in 916.307(a), when contracting with a commercial organization modify paragraph (a) of the clause at 48 CFR 52.216-7 by adding the phrase "as supplemented by subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR)," after "FAR subpart 31.2".

(End of clause)

I.54 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; or http://www.sba.gov/hubzone*;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at *hubzone@sba.gov.*

(End of clause)

#### I.55 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JUN 2020)

      (a) This clause does not apply to small business concerns.

      (b) Definitions. As used in this clause—

      Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626(e)(1)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626(e)(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3).

      Commercial item means a product or service that satisfies the definition of commercial item in Federal Acquisition Regulation (FAR) [2.101](https://www.acquisition.gov/far/part-2#FAR_2_101).

      Commercial plan means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

      Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at [http://www.esrs.gov](http://www.esrs.gov/).

      Indian tribe means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C. 1601](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452(c)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452(e)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3).

      Individual subcontracting plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

      Master subcontracting plan means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

      Reduced payment means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

      Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

      Total contract dollars means the final anticipated dollar value, including the dollar value of all options.

      Untimely payment means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

      (c)

(1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

           (2)

(i) 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.

                (ii) 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–

                     (A) The subcontractor is registered in SAM; and

                     (B) 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.

                (iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

                (iv) 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.

      (d) The Offeror’s subcontracting plan shall include the following:

           (1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3):

                (i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

                (ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

                     (A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

                     (B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

                     (C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

                     (D) If the Contracting Officer does not receive a copy of the ANC’s or the Indian tribe’s written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

           (2) A statement of–

                (i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

                (ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

                (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

                (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

                (v) Total dollars planned to be subcontracted to HUBZone small business concerns;

                (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

                (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

           (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to-

                (i) Small business concerns;

                (ii) Veteran-owned small business concerns;

                (iii) Service-disabled veteran-owned small business concerns;

                (iv) HUBZone small business concerns;

                (v) Small disadvantaged business concerns; and

                (vi) Women-owned small business concerns.

           (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

           (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

           (6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with–

                (i) Small business concerns (including ANC and Indian tribes);

                (ii) Veteran-owned small business concerns;

                (iii) Service-disabled veteran-owned small business concerns;

                (iv) HUBZone small business concerns;

                (v) Small disadvantaged business concerns (including ANC and Indian tribes); and

                (vi) Women-owned small business concerns.

           (7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

           (8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

           (9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of the applicable threshold specified in FAR [19.702](https://www.acquisition.gov/far/part-19#FAR_19_702)(a) on the date of subcontract award, with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

           (10) Assurances that the Offeror will–

                (i) Cooperate in any studies or surveys as may be required;

                (ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

                (iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

                (iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at [http://www.esrs.gov](http://www.esrs.gov/). The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

                (v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

                (vi) Provide its prime contract number, its unique entity identifier, and the e-mail address of the Offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

                (vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor’s official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

           (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

                (i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

                (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

                (iii) Records on each subcontract solicitation resulting in an award of more than the simplified acquisition threshold, as defined in FAR [2.101](https://www.acquisition.gov/far/part-2#FAR_2_101) on the date of subcontract award, indicating-

                     (A) Whether small business concerns were solicited and, if not, why not;

                     (B) Whether veteran-owned small business concerns were solicited and, if not, why not;

                     (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

                     (D) Whether HUBZone small business concerns were solicited and, if not, why not;

                     (E) Whether small disadvantaged business concerns were solicited and, if not, why not;

                     (F) Whether women-owned small business concerns were solicited and, if not, why not; and

                     (G) If applicable, the reason award was not made to a small business concern.

                (iv) Records of any outreach efforts to contact-

                     (A) Trade associations;

                     (B) Business development organizations;

                     (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

                     (D) Veterans service organizations.

                (v) Records of internal guidance and encouragement provided to buyers through-

                     (A) Workshops, seminars, training, etc.; and

                     (B) Monitoring performance to evaluate compliance with the program’s requirements.

                (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

           (12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if–

                (i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

                (ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

           (13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

           (14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

           (15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see [52.242-5](https://www.acquisition.gov/far/part-52#FAR_52_242_5)).

      (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

           (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor’s lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

           (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

           (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

           (4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with [52.219-8](https://www.acquisition.gov/far/part-52#FAR_52_219_8)(d)(2).

           (5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor’s subcontracting plan.

           (6) For all competitive subcontracts over the simplified acquisition threshold, as defined in FAR [2.101](https://www.acquisition.gov/far/part-2#FAR_2_101) on the date of subcontract award, in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

           (7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

      (f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

           (1) The master subcontracting plan has been approved;

           (2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

           (3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

      (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror’s planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor’s commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government’s fiscal year.

      (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

      (i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in FAR [19.702](https://www.acquisition.gov/far/part-19#FAR_19_702)(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

      (j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](https://www.acquisition.gov/far/part-52#FAR_52_212_5), Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](https://www.acquisition.gov/far/part-52#FAR_52_244_6), Subcontracts for Commercial Items, under a prime contract.

      (k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns;" or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

      (l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at [http://www.esrs.gov](http://www.esrs.gov/). Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

           (1) ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

                (i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

                (ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704](https://www.acquisition.gov/far/part-19#FAR_19_704)(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

                     (B) If a subcontracting plan has been added to the contract pursuant to [19.702](https://www.acquisition.gov/far/part-19#FAR_19_702) a)(1)(iii) or [19.301-2](https://www.acquisition.gov/far/part-19#FAR_19_301_2)(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

                (iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

                (iv) The authority to acknowledge receipt or reject the ISR resides–

                     (A) In the case of the prime Contractor, with the Contracting Officer; and

                     (B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

           (2) SSR.

 (i) Reports submitted under individual contract plans–

                     (A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the subcontracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

                     (B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

                     (C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over the applicable threshold specified in FAR [19.702](https://www.acquisition.gov/far/part-19#FAR_19_702)(a), and the contractand contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

                     (D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

                     (E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

                     (F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

                (ii) Reports submitted under a commercial plan-

                     (A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

                     (B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

                     (C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

                     (D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

#### I.56 52.219-16 LIQUIDATED DAMAGES-SUBCONTRACTING PLAN (JAN 1999)

      (a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

      (b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor’s failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

      (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

      (d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

      (e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

      (f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

I.57 952.219-70 DOE MENTOR-PROTEGE PROGRAM (MAY 2000)

The Department of Energy has established a Mentor-Protege Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. 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 contract. 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.

(End of clause)

I.58 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.

(End of clause)

I.59 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.

(End of clause)

I.60 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*.

*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*.

(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.

(End of clause)

I.61 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*.

*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*.

*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.

(End of clause)

I.62 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (JUN 2020)

(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 Federal Acquisition Regulation (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 valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, 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.

(End of clause)

I.63 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)

(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 the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, 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.

(End of clause)

I.64 52.222-37 EMPLOYMENT REPORTS ON VETERANS (JUN 2020)

(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 Federal Acquisition Regulation (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 valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

I.65 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.

(End of clause)

I.66 52.222-50 COMBATING TRAFFICKING IN PERSONS (OCT 2020)

(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 $550,000.

(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*.

(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 employee, 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-

(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 $550,000.

(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.

(End of clause)

I.67 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.

(End of clause)

I.68 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (NOV 2020)

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

"Seasonal recreational equipment rental" means any equipment rental in connection with seasonal recreational services.

"Seasonal recreational services" means services that include: river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.

"United States" means the 50 states and the District of Columbia.

"Worker"-

(1) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 13658, and-

(i) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV);

(ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541; and

(iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(2) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(3) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) *Executive Order minimum wage rate*. (1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of $10.10 per hour beginning January 1, 2015.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor Web site), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3)(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than $30 a month in tips.

(c)(1) This clause applies to workers as defined in paragraph (a). As provided in that definition-

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to-

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e*. those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to-

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541); or

(iii) Seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands, except for lodging and food services associated with seasonal recreational services, in accordance with Executive Order 13838, Exemption from Executive Order 13658 for Recreational Services on Federal Lands (3 CFR, 2018 Comp., p. 831), as implemented by the U.S. Department of Labor regulations at 29 CFR 10.4(g).

(d) *Notice*. The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at *www.dol.gov/whd/govcontracts*, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) *Payroll Records*. (1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) *Access*. The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) *Withholding*. The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) *Disputes*. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) *Antiretaliation*. The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) *Subcontractor compliance*. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

#### I.69 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017)

      (a) Definitions. As used in this clause (in accordance with 29 CFR [13.2](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_2))-

      Child, "domestic partner", and "domestic violence" have the meaning given in 29 CFR [13.2](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_2).

      Employee–

           (1)

(i) Means any person engaged in performing work on or in connection with a contract covered by Executive Order (E.O.) 13706; and

                     (A) Whose wages under such contract are governed by the Service Contract Labor Standards statute ([41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)), the Wage Rate Requirements (Construction) statute ([40 U.S.C. chapter 31, subchapter IV](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)), or the Fair Labor Standards Act (29 U.S.C. chapter 8);

                     (B) Including employees who qualify for an exemption from the Fair Labor Standards Act's minimum wage and overtime provisions;

                     (C) Regardless of the contractual relationship alleged to exist between the individual and the employer; and

                (ii) Includes any person performing work on or in connection with the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

           (2)

(i) An employee performs "on" a contract if the employee directly performs the specific services called for by the contract; and

                (ii) An employee performs "in connection with" a contract if the employee's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

      Individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship has the meaning given in 29 CFR [13.2](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_2).

      Multiemployer plan means a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

      Paid sick leave means compensated absence from employment that is required by E.O. 13706 and 29 CFR Part 13.

      Parent, "sexual assault", "spouse", and "stalking" have the meaning given in 29 CFR [13.2](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_2).

      United States means the 50 States and the District of Columbia.

      (b) Executive Order 13706.

(1) This contract is subject to E.O. 13706 and the regulations issued by the Secretary of Labor in 29 CFR Part 13 pursuant to the E.O.

           (2) If this contract is not performed wholly within the United States, this clause only applies with respect to that part of the contract that is performed within the United States.

      (c) Paid sick leave. The Contractor shall-

           (1) Permit each employee engaged in performing work on or in connection with this contract to earn not less than 1 hour of paid sick leave for every 30 hours worked;

           (2) Allow accrual and use of paid sick leave as required by E.O. 13706 and 29 CFR Part 13;

           (3) Comply with the accrual, use, and other requirements set forth in 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5) and 13.6, which are incorporated by reference in this contract;

           (4) Provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account;

           (5) Provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken; and

           (6) Be responsible for the compliance by any subcontractor with the requirements of E.O. 13706, 29 CFR Part 13, and this clause.

      (d) Contractors may fulfill their obligations under E.O. 13706 and 29 CFR Part 13 jointly with other contractors through a multiemployer plan, or may fulfill their obligations through an individual fund, plan, or program (see 29 CFR 13.8).

      (e) Withholding. The Contracting Officer will, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this or any other Federal contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of E.O. 13706, 29 CFR Part 13, or this clause, including-

           (1) Any pay and/or benefits denied or lost by reason of the violation;

           (2) Other actual monetary losses sustained as a direct result of the violation; and

           (3) Liquidated damages.

      (f) Payment suspension/contract termination/contractor debarment.

(1) In the event of a failure to comply with E.O. 13706, 29 CFR Part 13, or this clause, the contracting agency may, on its own action or after authorization or by direction of the Department of Labor and written notification to the Contractor take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

           (2) Any failure to comply with the requirements of this clause may be grounds for termination for default or cause.

           (3) A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

      (g) The paid sick leave required by E.O. 13706, 29 CFR Part 13, and this clause is in addition to the Contractor's obligations under the Service Contract Labor Standards statute and Wage Rate Requirements (Construction) statute, and the Contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of E.O. 13706 and 29 CFR Part 13.

      (h) Nothing in E.O. 13706 or 29 CFR Part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under E.O. 13706 and 29 CFR Part 13.

      (i) Recordkeeping.

(1) The Contractor shall make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the following information for each employee, which the Contractor shall make available upon request for inspection, copying, and transcription by authorized representatives of the Administrator of the Wage and Hour Division of the Department of Labor:

                (i) Name, address, and social security number of each employee.

                (ii) The employee's occupation(s) or classification(s).

                (iii) The rate or rates of wages paid (including all pay and benefits provided).

                (iv) The number of daily and weekly hours worked.

                (v) Any deductions made.

                (vi) The total wages paid (including all pay and benefits provided) each pay period.

                (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(a)(2).

                (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests.

                (ix) Dates and amounts of paid sick leave taken by employees (unless the Contractor's paid time off policy satisfies the requirements of E.O. 13706 and 29 CFR Part 13 as described in 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(f)(5), leave shall be designated in records as paid sick leave pursuant to E.O. 13706).

                (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(d)(3).

                (xi) Any records reflecting the certification and documentation the Contractor may require an employee to provide under 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(e), including copies of any certification or documentation provided by an employee.

                (xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave.

                (xiii) The relevant contract.

                (xiv) The regular pay and benefits provided to an employee for each use of paid sick leave.

                (xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(b)(5), to relieve the Contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(b)(4).

           (2)

(i) If the Contractor wishes to distinguish between an employee’s covered and noncovered work, the Contractor shall keep records or other proof reflecting such distinctions. Only if the Contractor adequately segregates the employee's time will time spent on noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if the Contractor adequately segregates the employee's time may the Contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform noncovered work during the time he or she asked to use paid sick leave.

                (ii) If the Contractor estimates covered hours worked by an employee who performs work in connection with contracts covered by the E.O. pursuant to 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(a)(i) or (iii), the Contractor shall keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the Contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with noncovered work be excluded from hours worked counted toward the accrual of paid sick leave. If the Contractor estimates the amount of time an employee spends performing in connection with contracts covered by the E.O., the Contractor shall permit the employee to use his or her paid sick leave during any work time for the Contractor.

           (3) In the event the Contractor is not obligated by the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the Fair Labor Standards Act's minimum wage and overtime requirements, and the Contractor chooses to use the assumption permitted by 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(a)(1)(iii), the Contractor is excused from the requirement in paragraph (i)(1)(iv) of this clause and 29 CFR 13.25(a)(4) to keep records of the employee's number of daily and weekly hours worked.

           (4)

(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of E.O. 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

                (ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents shall also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

                (iii) The Contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(c)(1)(iv) (as described in 29 CFR [13.5](https://www.acquisition.gov/far/part-13#FAR_Subpart_13_5)(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

           (5) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

           (6) Nothing in this contract clause limits or otherwise modifies the Contractor's recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, the Family and Medical Leave Act, E.O. 13658, their respective implementing regulations, or any other applicable law.

      (j) Interference/discrimination.

(1) The Contractor shall not in any manner interfere with an employee's accrual or use of paid sick leave as required by E.O. 13706 or 29 CFR Part 13. Interference includes, but is not limited to-

                (i) Miscalculating the amount of paid sick leave an employee has accrued;

                (ii) Denying or unreasonably delaying a response to a proper request to use paid sick leave;

                (iii) Discouraging an employee from using paid sick leave;

                (iv) Reducing an employee's accrued paid sick leave by more than the amount of such leave used;

                (v) Transferring an employee to work on contracts not covered by the E.O. to prevent the accrual or use of paid sick leave;

                (vi) Disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave; or

                (vii) Making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the Contractor's operational needs.

           (2) The Contractor shall not discharge or in any other manner discriminate against any employee for–

                (i) Using, or attempting to use, paid sick leave as provided for under E.O. 13706 and 29 CFR Part 13;

                (ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under E.O. 13706 and 29 CFR Part 13;

                (iii) Cooperating in any investigation or testifying in any proceeding under E.O. 13706 and 29 CFR Part 13; or

                (iv) Informing any other person about his or her rights under E.O. 13706 and 29 CFR Part 13.

      (k) Notice. The Contractor shall notify all employees performing work on or in connection with a contract covered by the E.O. of the paid sick leave requirements of E.O. 13706, 29 CFR Part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the Contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

      (l) Disputes concerning labor standards. Disputes related to the application of E.O. 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 13. Disputes within the meaning of this contract clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the employees or their representatives.

      (m) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (m), in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

#### I.70 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (SEPT 2013)

      (a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless-

           (1) The product cannot be acquired-

                (i) Competitively within a time frame providing for compliance with the contract performance schedule;

                (ii) Meeting contract performance requirements; or

                (iii) At a reasonable price.

           (2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

                (i) Spacecraft system and launch support equipment.

                (ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

      (b) Information about this requirement and these products is available at [http://www.biopreferred.gov](http://www.biopreferred.gov/).

      (c) In the performance of this contract, the Contractor shall-

           (1) Report to [http://www.sam.gov](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

           (2) Submit this report no later than-

                (i) October 31 of each year during contract performance; and

                (ii) At the end of contract performance.

(End of clause)

#### I.71 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (FEB 2021)

      (a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No.313 (including revisions adopted during the term of the contract).

      (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

      (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

|  |  |
| --- | --- |
| Material (if none, insert *None*) | Identification No. |
|  |  |
|  |  |
|  |  |

      (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No.313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No.313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

      (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No.313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

      (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

      (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

      (h) The Government’s rights in data furnished under this contract with respect to hazardous material are as follows:

           (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to-

                (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

                (ii) Obtain medical treatment for those affected by the material; and

                (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

           (2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

           (3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

I.72 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.

(End of clause)

I.73 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.

(End of clause)

### I.74 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

As prescribed in 970.2305-4(a), the contracting officer shall insert the following provision:

Agreement Regarding Workplace Substance Abuse Programs at DOE Sites (DEC 2010)

(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.

(End of clause)

### I.75 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES

As prescribed in 970.2305-4(b), insert the following clause:

Workplace Substance Abuse Programs at DOE Sites (DEC 2010)

(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.

(End of clause)

I.76 52.223-10 WASTE REDUCTION PROGRAM (MAY 2011)

(a) *Definition*s. 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).

(End of clause)

I.77 52.223-15 ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (MAY 2020)

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

*Energy-efficient product*- (1) Means a product that-

(i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

(2) The term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

(b) The Contractor shall ensure that energy-consuming products are energy efficient products (*i.e.*, ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are-

(1) Delivered;

(2) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(3) Furnished by the Contractor for use by the Government; or

(4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless--

(1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or

(2) Otherwise approved in writing by the Contracting Officer.

(d) Information about these products is available for-

(1) ENERGY STAR® at *http://www.energystar.gov/products*; and

(2) FEMP at *https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies*.

(End of clause)

I.78 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018)

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, *https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program*. The list of EPA-designated items is available at *https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program*.

(End of clause)

I.79 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (JUN 2020)

(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, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

(End of clause)

I.80 52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)

The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

(End of clause)

I.81 952.223-76 CONDITIONAL PAYMENT OF FEE OR PROFIT - SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH (DEC 2010)

(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) and relating to the protection of worker safety and health, 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 Federal 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 or relating to the protection of worker safety and health, 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 or relating to worker safety and health pursuant to the degrees specified in paragraphs (c) and (d) of this clause.

(b) Reduction Amount.

(1) If in any period (see paragraph(b)(2) of this clause) 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 or relating to the protection of worker safety and health, 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) and 48 CFR 923.7002(a)(2)). The mitigating factors include, but are not limited to, the following (v), (vi), (vii), and (viii) apply to worker safety and health (WS&H) only:

(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; or of protecting WS&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status).

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, WS&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(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 [] 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 and relating to protection of worker safety and health.

(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 classified 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 classified 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 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.

(d) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the Contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

(ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the Contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g., Federal) oversight and/or reported per DOE Manual 231.1-2, Occurrence Reporting and Processing of Operations Information, or its successor, requirements, or internal oversight of DOE Order 470.2B, Independent Oversight and Performance Assurance Program, or its successor, requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant WS&H system breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(End of clause)

I.82 952.223-77 CONDITIONAL PAYMENT OF FEE OR PROFIT-PROTECTION OF WORKER SAFETY AND HEALTH (DEC 2010)

(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 protection of worker safety and health (WS&H), 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 Federal Government, if the Contractor fails to comply with the terms and conditions of this contract relating to the protection of worker safety and health, 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 worker safety and health pursuant to the degrees specified in paragraph (c) of this clause.

(b) Reduction Amount.

(1) If in any period (see paragraph (b)(2) of this clause) it is found that the Contractor has failed to comply with contract terms and conditions relating to the protection of worker safety and health, 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 923.7001(b)). 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 protecting WS&H and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial WS&H standards are routinely practiced (e.g., Voluntary Protection Program Star Status).

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., offsite emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain WS&H performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, WS&H programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(2)(i) Except in the case of performance based firm-fixed-price contracts (see paragraph (b)(3) below), 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 [] 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 protection of worker safety and health.

(c) Protection of Worker Safety and Health. Performance failures occur if the Contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the Contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A, Accident Investigations, or its successor).

(ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the Contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (e.g.,Federal) oversight and/or reported per DOE Manual 231.1-2, Occurrence Reporting and Processing of Operations Information, or its successor, requirements, or internal oversight of DOE Order 470.2B, Independent Oversight and Performance Assurance Program, or its successor, requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant WS&H system breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(End of clause)

I.83 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.

(End of clause)

I.84 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 design, 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 and any employee of 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.

(End of clause)

# I.85 52.225-5 TRADE AGREEMENTS (OCT 2019)

     (a) Definitions. As used in this clause-

      Caribbean Basin country end product—

           (1) Means an article that-

                (i)

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

                     (B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

                (ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C.2703(b)](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title19-section2703(b)&num=0&edition=prelim).

                     (A) For this reason, the following articles are not Caribbean Basin country end products:

                          (1) Tuna, prepared or preserved in any manner in airtight containers;

                          (2) Petroleum, or any product derived from petroleum;

                          (3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

                          (4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

                     (B) Access to the HTSUS to determine duty-free status of articles of these types is available at <https://usitc.gov/tata/hts/index.htm>. In particular, see the following:

                          (1) General Note3(c), Products Eligible for Special Tariff treatment.

                          (2) General Note17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

                          (3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note7(b).

                          (4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

           (2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

      Designated country means any of the following countries:

           (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)"), Ukraine, or United Kingdom);

           (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

           (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

           (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

      Designated country end product means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

      End product means those articles, materials, and supplies to be acquired under the contract for public use.

      Free Trade Agreement country end product means an article that-

           (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

           (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

      Least developed country end product means an article that-

           (1) Is wholly the growth, product, or manufacture of a least developed country; or

           (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

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

      U.S.-made end product means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

      WTO GPA country end product means an article that-

           (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

           (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

      (b) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled "Trade Agreements Certificate."

(End of clause)

I.86 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2021)

(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 *https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists*. 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 *https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information*.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

I.87 952.225-71 COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)

(a) The Contractor shall comply with all applicable export control laws and regulations.

(b) The Contractor's responsibility to comply with all applicable export control laws and regulations exists independent of, and is not established or limited by, the information provided by this clause.

(c) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations, including but not limited to—

(1) The Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*), as amended;

(2) The Arms Export Control Act (22 U.S.C. 2751 *et seq.*);

(3) The Export Administration Act of 1979 (50 U.S.C. app. 2401 *et seq.*), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 *et seq.*);

(4) Trading with the Enemy Act (50 U.S.C. App. 5(b), as amended by the Foreign Assistance Act of 1961);

(5) Assistance to Foreign Atomic Energy Activities (10 CFR part 810);

(6) Export and Import of Nuclear Equipment and Material (10 CFR part 110);

(7) International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130);

(8) Export Administration Regulations (EAR) (15 CFR Parts 730 through 774); and

(9) The regulations administered by the Office of Foreign Assets Control of the Department of the Treasury (31 CFR parts 500 through 598).

(d) In addition to the Federal laws and regulations cited above, National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information, establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled activities.

NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research from statutes that apply to export controls such as the Atomic Energy Act, as amended; the Arms Export Control Act; the Export Administration Act of 1979, as amended; or the U.S. International Emergency Economic Powers Act, or regulations that implement parts of those statutes (*e.g.,* the ITAR, the EAR, 10 CFR part 110 and 10 CFR part 810). Thus, if items (*e.g.,* commodities, software or technologies) that are controlled by U.S. export control laws or regulations are used to conduct research or are generated as part of the research efforts, export control laws and regulations apply to the controlled items.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all solicitations and subcontracts.

(End of clause)

I.88 952.226-71 UTILIZATION OF ENERGY POLICY ACT TARGET ENTITIES (JUN 1996)

(a) Definition. Energy Policy Act target groups, as used in this provision means-

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent-

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Obligation. In addition to its obligations under the clause of this contract entitled Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.

(End of clause)

I.89 952.226-72 ENERGY POLICY ACT SUBCONTRACTING GOALS AND REPORTING REQUIREMENTS (JUN 1996)

(a) Definition. Energy Policy Act target groups, as used in this provision means-

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent-

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Goals. The Contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities-

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: [] percent;

(2) Historically Black colleges and universities: [] percent; and

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: [] percent. \* \* \* These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.

(c) Reporting requirements. (1) The Contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219-9, Small Business Subcontracting Plan, the Contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

#### I.90 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (JUN 2020)

      (a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

      (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Contractor’s possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

      (c) The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) [2.101](https://www.acquisition.gov/far/part-2#FAR_2_101) on the date of subcontract award.

(End of clause)

I.91 52.227-3 PATENT INDEMNITY (APR 1984)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as *construction work*) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor, (2) an infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

### I.92 952.227-11 PATENT RIGHTS – RETENTION BY THE CONTRACTOR (SHORT FORM) (MAR 1995)

(a) Definitions -

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) Made when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) Small business firm means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) Agency licensing regulations and agency regulations concerning the licensing of Government-owned inventions mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor.

(1)  The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the l-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(l), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention -

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file.

(1)  The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest.

(1)  The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, “This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention.”

(g) Subcontracts.

(1)  The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that -

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph

(i)  of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that -

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

(1)  The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) A copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) A report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) A report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

(End of clause)

### I.93 952.227-13 PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT (SEP 1997)

(a) Definitions.

Invention, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention, as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award of this contract. See 10 CFR part 784.

Agency licensing regulations and applicable agency licensing regulations, as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) Allocations of principal rights -

(1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations.

(i)  The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government.

(1)  With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that -

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

(1)  The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)

(i)  through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

(A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d) (1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports.

(1)  The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that is was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statment that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent right clause or containing a statement that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1)  The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether -

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e) (1) and (4) of this clause;

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (This paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to -

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1)  The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor -

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) Atomic energy.

(1)  No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) Background patents.

(1) Background patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) Publication. It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) Forfeiture of rights in unreported subject inventions.

(1)  The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

I.94 52.227-10 FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER (DEC 2007)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified *Secret* or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified *Confidential,* the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

(End of clause)

### I.95 970.5227-1 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 Strategic Partnership Projects 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.

(End of clause)

Alternate I (DEC 2000). As prescribed in 48 CFR 970.2704-3(a), where access to Category C-24 restricted data is contemplated in the performance of a contract the contracting officer shall insert the phrase “and except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology” after “laser isotope separation” and before the comma in paragraph (b)(2)(ii) of the clause at 48 CFR 970.5227-1, Rights in Data - Facilities, as appropriate.

(End of clause)

I.96 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.

(End of clause)

### I.97 952.227-84 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (FEB 1998)

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227-11 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

(End of clause)

#### I.98 52.228-5 INSURANCE-WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

      (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.

(End of clause)

### I.99 952.231-71 INSURANCE-LITIGATION AND CLAIMS (JUL 2013)

(a) The contractor must comply with 10 CFR part 719, contractor Legal Management Requirements, if applicable.

(b)

(1)  Except as provided in paragraph (b)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.

(2) The contractor may, with the approval of the Contracting Officer, maintain a self-insurance program in accordance with FAR 28.308; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.

(c) 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 bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.

(d) Except as provided in paragraph (f) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed -

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance without regard to the limitation of cost or limitation of funds clause of this contract.

(e) The Government's liability under paragraph (d) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(f)

(1)  Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities to third parties, including contractor employees, and directly associated costs which may include but are not limited to litigation costs, counsel fees, judgment and settlements -

(i) Which are otherwise unallowable by law or the provisions of this contract, including the cost reimbursement limitations contained in 48 CFR part 970.31, as supplemented by 48 CFR part 931;

(ii) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the Contracting Officer; or

(iii) Which were caused by contractor managerial personnel's -

(A) Willful misconduct;

(B) Lack of good faith; or

(C) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.

(2) The term “contractor's managerial personnel” is defined in the Property clause in this contract.

(g)

(1)  All litigation costs, including counsel fees, judgments and settlements shall be segregated and accounted for by the contractor separately. If the Contracting Officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.

(2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.

(3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (f) of this clause is not allowable.

(h) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or non-reimbursable costs incurred in connection with contract performance.

(End of clause)

I.100 52.228-7 INSURANCE - LIABILITY TO THIRD PERSONS (MAR 1996)

(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.

(End of clause)

#### I.101 52.230-2 COST ACCOUNTING STANDARDS (JUN 2020)

      (a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall-

           (1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor’s cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

           (2) Follow consistently the Contractor’s cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

           (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor’s signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

           (4)

(i) (Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor’s established cost accounting practices.

                (ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

                (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

           (5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C.6621(a)(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

      (b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), Contract Disputes.

      (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

      (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor’s award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection [30.201-4](https://www.acquisition.gov/far/part-30#FAR_30_201_4) of the Federal Acquisition Regulation (FAR) shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of the lower CAS threshold specified in FAR 30.201-4(b) on the date of subcontract award, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

#### I.102 52.230-3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (JUN 2020)

      (a) The Contractor, in connection with this contract, shall-

           (1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard-Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

           (2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

           (3)

(i) Follow consistently the Contractor’s cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

                (ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(c), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

           (4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of1986 ([26 U.S.C.6621(a)(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)), from the time the payment by the United States was made to the time the adjustment is effected.

      (b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), Contract Disputes.

      (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

      (d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that-

           (1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in section [30.201-4](https://www.acquisition.gov/far/part-30#FAR_30_201_4) of the Federal Acquisition Regulation (FAR) shall be inserted.

           (2) The requirement in this paragraph (d) shall apply only to negotiated subcontracts in excess of the lower CAS threshold specified in FAR [30.201-4](https://www.acquisition.gov/far/part-30#FAR_30_201_4)(b) on the date of subcontract award.

           (3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

#### I.103 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

      (a) Definitions. As used in this clause-

      Affected CAS-covered contract or subcontract means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor-

           (1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

           (2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

      Cognizant Federal agency official (CFAO) means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

      Desirable change means a compliant change to a Contractor’s established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

      Fixed-price contracts and subcontracts means-

           (1) Fixed-price contracts and subcontracts described at FAR [16.202](https://www.acquisition.gov/far/part-16#FAR_16_202), [16.203](https://www.acquisition.gov/far/part-16#FAR_16_203), (except when price adjustments are based on actual costs of labor or material, described at [16.203-1](https://www.acquisition.gov/far/part-16#FAR_16_203_1)(a)(2)), and [16.207](https://www.acquisition.gov/far/part-16#FAR_16_207);

           (2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR [subpart  16.4](https://www.acquisition.gov/far/part-16#FAR_Subpart_16_4));

           (3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR [subpart  16.5](https://www.acquisition.gov/far/part-16#FAR_Subpart_16_5)); and

           (4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR [subpart  16.6](https://www.acquisition.gov/far/part-16#FAR_Subpart_16_6)).

      Flexibly-priced contracts and subcontracts means-

           (1) Fixed-price contracts and subcontracts described at FAR [16.203-1](https://www.acquisition.gov/far/part-16#FAR_16_203_1)(a)(2), [16.204](https://www.acquisition.gov/far/part-16#FAR_16_204), [16.205](https://www.acquisition.gov/far/part-16#FAR_16_205), and [16.206](https://www.acquisition.gov/far/part-16#FAR_16_206);

           (2) Cost-reimbursement contracts and subcontracts (FAR [subpart  16.3](https://www.acquisition.gov/far/part-16#FAR_Subpart_16_3));

           (3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR [subpart  16.4](https://www.acquisition.gov/far/part-16#FAR_Subpart_16_4));

           (4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR [subpart  16.5](https://www.acquisition.gov/far/part-16#FAR_Subpart_16_5)); and

           (5) The materials portion of time-and-materials contracts and subcontracts (FAR [subpart  16.6](https://www.acquisition.gov/far/part-16#FAR_Subpart_16_6)).

      Noncompliance means a failure in estimating, accumulating, or reporting costs to-

           (1) Comply with applicable CAS; or

           (2) Consistently follow disclosed or established cost accounting practices.

      Required change means-

           (1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

           (2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

      Unilateral change means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

      (b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR [52.230-2](https://www.acquisition.gov/far/part-52#FAR_52_230_2), Cost Accounting Standards; paragraph (a)(4) of the clause at FAR [52.230-3](https://www.acquisition.gov/far/part-52#FAR_52_230_3), Disclosure and Consistency of Cost Accounting Practices; paragraph (a)(4) of the clause at FAR [52.230-4](https://www.acquisition.gov/far/part-52#FAR_52_230_4), Disclosure and Consistency of Cost Accounting Practices–Foreign Concerns; or paragraph (a)(2) of the clause at FAR [52.230-5](https://www.acquisition.gov/far/part-52#FAR_52_230_5), Cost Accounting Standards–Educational Institution.

           (1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

           (2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR [52.230-2](https://www.acquisition.gov/far/part-52#FAR_52_230_2); or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR [52.230-5](https://www.acquisition.gov/far/part-52#FAR_52_230_5); submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

           (3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR [52.230-2](https://www.acquisition.gov/far/part-52#FAR_52_230_2) and FAR [52.230-5](https://www.acquisition.gov/far/part-52#FAR_52_230_5); or with paragraph (a)(3) of the clauses at FAR [52.230-3](https://www.acquisition.gov/far/part-52#FAR_52_230_3) and FAR [52.230-4](https://www.acquisition.gov/far/part-52#FAR_52_230_4), submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

           (4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR [52.230-2](https://www.acquisition.gov/far/part-52#FAR_52_230_2) and FAR [52.230-5](https://www.acquisition.gov/far/part-52#FAR_52_230_5); or by paragraph (a)(4) of the clauses at FAR [52.230-3](https://www.acquisition.gov/far/part-52#FAR_52_230_3) and FAR [52.230-4](https://www.acquisition.gov/far/part-52#FAR_52_230_4))-

                (i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

                (ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

      (c) When requested by the CFAO, submit on or before a date specified by the CFAO-

           (1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

           (2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

           (3) For any request for a desirable change that is based on the criteria in FAR [30.603-2](https://www.acquisition.gov/far/part-30#FAR_30_603_2)(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

           (4) For any request for a desirable change that is based on criteria other than that in FAR [30.603-2](https://www.acquisition.gov/far/part-30#FAR_30_603_2)(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

      (d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall-

           (1) ) Calculate the cost impact in accordance with paragraph (f) of this clause;

           (2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

                (i) A representative sample of affected CAS-covered contracts and subcontracts.

                (ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

                     (A) Fixed-price contracts and subcontracts.

                     (B) Flexibly-priced contracts and subcontracts.

                (iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

           (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

                (i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

                     (A) Fixed-price contracts and subcontracts.

                     (B) Flexibly-priced contracts and subcontracts.

                (ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

                     (A) Fixed-price contracts and subcontracts.

                     (B) Flexibly-priced contracts and subcontracts; and

           (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

      (e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall-

           (1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

           (2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include-

                (i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

                (ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

           (3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

           (4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

      (f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

           (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect rates have been established).

           (2) For unilateral changes-

                (i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

                     (A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

                     (B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

                (ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

                     (A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

                     (B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

                (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

                (iv) Calculate the increased cost to the Government in the aggregate.

           (3) For equitable adjustments for required or desirable changes-

                (i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

                (ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

      (g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

           (1) Calculate the cost impact in accordance with paragraph (i) of this clause.

           (2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

                (i) A representative sample of affected CAS-covered contracts and subcontracts.

                (ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

                (iii) Any other method that provides a reasonable approximation of the total increase or decrease.

           (3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

                (i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

                     (A) Fixed-price contracts and subcontracts.

                     (B) Flexibly-priced contracts and subcontracts.

                (ii) The increased or decreased cost to the Government for each of the following groups:

                     (A) Fixed-price contracts and subcontracts.

                     (B) Flexibly-priced contracts and subcontracts.

                (iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

           (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

      (h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

           (1) Calculate the cost impact in accordance with paragraph (i) of this clause.

           (2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to-

                (i) Include only those affected CAS-covered contracts and subcontracts having-

                     (A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

                     (B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

                (ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

           (3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

           (4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

      (i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

           (1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs are incurred (i.e., whether or not the final indirect rates have been established).

           (2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

                (i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

                (ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

           (3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

                (i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

                (ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

           (4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

           (5) Calculate the increased cost to the Government in the aggregate.

      (j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

           (1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor’s affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

           (2) Issue a final decision in accordance with FAR [33.211](https://www.acquisition.gov/far/part-33#FAR_33_211) and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

      (k) Agree to-

           (1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR [52.230-2](https://www.acquisition.gov/far/part-52#FAR_52_230_2) and [52.230-5](https://www.acquisition.gov/far/part-52#FAR_52_230_5); or with paragraph (a)(3)(i) or (a)(4) of the clauses at FAR [52.230-3](https://www.acquisition.gov/far/part-52#FAR_52_230_3) and FAR [52.230-4](https://www.acquisition.gov/far/part-52#FAR_52_230_4); and

           (2) Repay the Government for any aggregate increased cost paid to the Contractor.

      (l) For all subcontracts subject to the clauses at FAR [52.230-2](https://www.acquisition.gov/far/part-52#FAR_52_230_2), [52.230-3](https://www.acquisition.gov/far/part-52#FAR_52_230_3), [52.230-4](https://www.acquisition.gov/far/part-52#FAR_52_230_4), or [52.230-5](https://www.acquisition.gov/far/part-52#FAR_52_230_5)-

           (1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

           (2) Include the substance of this clause in all negotiated subcontracts; and

           (3) Within 30 days after award of the subcontract, submit the following information to the Contractor’s CFAO:

                (i) Subcontractor’s name and subcontract number.

                (ii) Dollar amount and date of award.

                (iii) Name of Contractor making the award.

      (m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall-

           (1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

           (2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

      (n) For subcontracts containing the clause or substance of the clause at FAR [52.230-2](https://www.acquisition.gov/far/part-52#FAR_52_230_2), FAR [52.230-3](https://www.acquisition.gov/far/part-52#FAR_52_230_3), FAR [52.230-4](https://www.acquisition.gov/far/part-52#FAR_52_230_4), or FAR [52.230-5](https://www.acquisition.gov/far/part-52#FAR_52_230_5), require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

#### I.104 52.232-1 PAYMENTS (APR 1984)

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.

(End of clause)

I.105 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.

(End of clause)

I.106 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.

(End of clause)

I.107 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.

(End of clause)

I.108 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)

Funds are not presently available for performance under this contract beyond [TBD]. 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 [TBD], 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.

(End of clause)

I.109 52.232-20 LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, 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 Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that -

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) 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 (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; 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 the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, 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.

(End of clause)

I.110 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 equalling the percentage of completion of the work contemplated by this contract.

(End of clause)

I.111 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.

(End of clause)

I.112 52.232-25 PROMPT PAYMENT (JAN 2017) - ALTERNATE I (FEB 2002)

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.

(End of clause)

I.113 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 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 SAM is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into 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 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 SAM.

(End of clause)

I.114 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.

(End of clause)

I.115 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.

(End of clause)

I.116 52.233-1 DISPUTES (MAY 2014) - ALTERNATE I (DEC 1991)

(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 or relating to the contract, and comply with any decision of the Contracting Officer.

(End of clause)

I.117 52.233-3 PROTEST AFTER AWARD (AUG 1996) - ALTERNATE I (JUN 1985)

(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.

(End of clause)

I.118 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.

(End of clause)

I.119 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.

(End of clause)

I.120 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(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 does respond 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.

(End of clause)

I.121 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.

(End of clause)

I.122 52.242-4 CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

(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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(End of clause)

#### I.123 52.242-5 PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (JAN 2017)

      (a) Definitions. As used in this clause-

      Reduced payment means a payment that is for less than the amount agreed upon in a subcontract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

      Untimely payment means a payment that is more than 90 days past due under the terms and conditions of a subcontract, for supplies and services for which the Government has paid the prime contractor.

      (b) Notice. The Contractor shall notify the Contracting Officer, in writing, not later than 14 days after-

           (1) A small business subcontractor was entitled to payment under the terms and conditions of the subcontract; and

           (2) The Contractor-

                (i) Made a reduced or untimely payment to the small business subcontractor; or

                (ii) Failed to make a payment, which is now untimely.

      (c) Content of notice. The Contractor shall include the reason(s) for making the reduced or untimely payment in any notice required under paragraph (b) of this clause.

(End of clause)

I.124 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.

(End of clause)

I.125 52.243-2 CHANGES - COST-REIMBURSEMENT (AUG 1987) - ALTERNATE I (APR 1984)

(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.

(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.

(End of clause)

I.126 52.244-2 SUBCONTRACTS (JUN 2020) - ALTERNATE I (JUN 2020)

(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, as defined in FAR 2.101 on the date of subcontract award, 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, as defined in FAR 2.101 on the date of subcontract award, 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: [ ]

(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, as defined in FAR 2.101 on the date of subcontract award, or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (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: [ ]

(End of clause)

I.127 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.

(End of clause)

I.128 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (NOV 2020)

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

*Commercial item* and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation (FAR)2.101.

*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 (JUN 2020) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award, 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) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (AUG 2020) (Section 889(a)(1)(A) of Pub. L. 115-232).

(vii) 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 the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(viii) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(ix) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).

(x) 52.222-35, Equal Opportunity for Veterans (JUN 2020)(38 U.S.C. 4212(a)).

(xi) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).

(xii) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).

(xiii) 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.

(xiv)(A) 52.222-50, Combating Trafficking in Persons (OCT 2020) (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).

(xv) 52.222-55, Minimum Wages under Executive Order 13658 (NOV 2020), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xvi) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause 52.222-62.

(xvii)(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).

(xviii) 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).

(xix) 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.

(xx) 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.

(End of clause)

I.129 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.

(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.

(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.

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (*e.g.,* computers, computer components, peripheral equipment, and related equipment);

(E) Precious metals in raw or bulk form;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(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 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.

(End of clause)

I.130 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.

(End of clause)

I.131 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

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

*International air transportation* means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

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

*U.S.-flag air carrier* means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): (*State reasons)*:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of clause)

### I.133 952.247-70 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.

(End of clause)

I.134 52.249-6 TERMINATION (MAY 2004)

(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.

(End of clause)

I.135 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.

(End of clause)

I.136 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.

(End of clause)

### I.137 952.251-70 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. The 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

(End of clause)

### I.138 52.25-6 AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2020)

      (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 *\_\_\_\_\_ [insert regulation name]* (48 CFR *\_\_\_\_\_*) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

I.139 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.

(End of clause)

I.140 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

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

*United States or its outlying areas* means—

1. The fifty States;

1. The District of Columbia;

(3)            The commonwealths of Puerto Rico and the Northern Mariana Islands;

(4)            The territories of American Samoa, Guam, and the United States Virgin Islands; and

(5)            The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c)   *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at [https:/www.saferfederalworkforce.gov/contractors/](https://www.saferfederalworkforce.gov/contractors/#_blank)

(d) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)

Section J - List of Documents, Exhibits and Other Attachments

| Attachment Number | Title |
| --- | --- |
| A-1 | Introduction to NETL |
| A-2 | Performance Work Statement |
| B | Reporting Requirements Checklist |
| B-1 | Cost Management/Invoice Detail/Summary Staffing/OC Report Forms |
| B-2 | Contract Organization Chart |
| B-3 | Subcontract Status Report |
| B-4 | EEO Inclusion Report |
| B-5 | Contractor Business Travel Report |
| C | Performance Evaluation Management Plan |
| D | Position Qualifications |

## J.1 ATTACHMENT A-1 – NETL INTRODUCTION

**INTRODUCTION TO THE**

**NATIONAL ENERGY TECHNOLOGY LABORATORY**

The National Energy Technology Laboratory (NETL) is a U.S. Department of Energy national laboratory that drives innovation and delivers technological solutions for an environmentally sustainable and prosperous energy future. Through its world-class scientists, engineers and research facilities, NETL is ensuring affordable, abundant and reliable energy that drives a robust economy and national security, while developing technologies to manage carbon across the full life cycle, enabling environmental sustainability for all Americans, advancing environmental justice and revitalizing the economies of disadvantaged communities. Leveraging the power of workforce inclusivity and diversity, highly skilled innovators at NETL’s research laboratories in Albany, Oregon; Morgantown, West Virginia; and Pittsburgh, Pennsylvania conduct a broad range of research activities that support DOE’s mission to ensure America’s security and prosperity by addressing its energy and environmental challenges through transformative science and technology solutions.

NETL is the only government-owned, government-operated laboratory in the DOE complex and possesses the competency, capability and authority to grasp strategic imperatives and lead initiatives that advance America’s energy, economic and manufacturing priorities.

NETL’s research and professional staff includes a broad spectrum of technical professionals, including scientists, engineers, economists, accountants, and attorneys; post-graduate, graduate, and undergraduate research associates; research support staff; and technical project managers at three NETL research sites and two field offices in Anchorage, Alaska and Houston, Texas.

NETL is in a unique position to accelerate the development of technology solutions through mission-driven research and development (R&D) projects for DOE/FECM in addition to its support, through program management services, to DOE’s Office of Energy Efficiency and Renewable Energy; Office of Cybersecurity, Energy Security and Emergency Response; and Office of Electricity (OE).

More than 1700 full-time equivalent employees support the NETL mission. The laboratory’s research portfolio includes more than 1,000 projects — totaling an award value of nearly $5 billion and a cost share of more than $1.3 billion — with more than 600 partners from small and large American businesses, national research organizations, colleges and universities, and other government laboratories, including nine of NETL’s sister DOE national laboratories.

NETL is organized to provide flexible, dynamic expertise and capabilities to its public and private sector customers throughout the nation. The Laboratory is focused on:

* Developing and maturing innovative energy technologies through strong and diverse extramural partnerships and collaborations.
* Maximizing technical achievement while minimizing cost and risk through technical program planning and long-term strategies.
* Emphasizing partnerships with industry, institutes of higher education, nonprofit organizations, small businesses, other federal agencies and national laboratories on global, state and local levels.
* Cultivating a world-class science and technology workforce.
* Building and maintaining a unique, world-class laboratory infrastructure that supports enduring mission elements.
* Integrating its extramural and intramural research to promote collaboration and coordination.
* Increasing transparency in business planning and technical operations.
* Prioritizing science, global climate change mitigation, social equity, environmental justice and economic revitalization.

The Lab’s research portfolio supports critical domestic energy initiatives that touch the lives of virtually all Americans. Our innovations support decarbonization and responsible stewardship of our environment; create valuable products from domestic resources; and inform energy strategies that work toward achieving net-zero CO2 emissions by mid-century while supporting a clean energy economy that creates good-paying jobs, spurs economic revitalization, advances environmental justice, remediates environmental degradation and supports energy workers in communities across the country.

Our nation realizes an effective return on research investment when energy solutions transfer to the commercial marketplace and support economic activity and workforce development. Licensing agreements with large and small American companies bring viable solutions to market, while internships and other educational programs allow renowned researchers to interact and inspire students who will become tomorrow’s scientists. Further, NETL-sponsored papers, presentations, publications, websites and conferences ensure that Laboratory breakthroughs are shared openly with decision-makers, stakeholders and other researchers around the globe.

**NETL Organization**

NETL is led by the **Office of the Director**, which maintains full control and authority, including delegated authority, over the complete NETL complex for delivery and execution of NETL’s mission.

In continuous pursuit of the mission and to sustain NETL as a world-class research and development enterprise, the Office of the Director promotes organizational direction toward sustainability, consistency, effectiveness and efficiency in research efforts and business practices. The Office of the Director:

* Leads development of the NETL Strategic Plan, including identification of future competencies.
* Promotes NETL efficiency and effectiveness by establishing and maintaining organizational standards and metrics for quality, productivity, employee development and workforce utilization.
* Oversees the preparation, justification and execution of NETL’s institutional budget under guidance provided by the Assistant Secretary for Fossil Energy and Carbon Management and the Department of Energy’s Chief Financial Officer.
* Exemplifies and promotes the highest levels of safety, scientific integrity, public accountability and social responsibility in the conduct of research and development programs.
* The Communications and Public Affairs Team manages all NETL-wide public affairs and communications functions in support of the Director, the Department, and the Office of Fossil Energy and Carbon Management. The team is responsible for developing and implementing NETL communications and public affairs strategy that elevates the NETL brand by developing NETL high-level messages and managing development of NETL communication products and internal communications efforts.

NETL is organized into four Centers and one unit under the Office of the Director: the Research and Innovation Center, the Science & Technology Strategic Plans & Programs unit, the Technology Development Center, the Laboratory Operations Center, and the Finance & Acquisitions Center. The Office of the Director also oversees the Office of the Chief Counsel and the Communications and Public Affairs team.

**The Research and Innovation Center** nurtures and exercises core technical competencies that enable NETL to be an international resource for fossil energy technology discovery, development and deployment. The technical core competencies, which combine world-class expertise with mission-relevant laboratory facilities, include: Computational Engineering, Energy Conversion Engineering, Geological and Environmental Systems, Materials and Manufacturing Engineering, and Systems Analysis & Engineering

Core competencies are exercised in collaboration with industry, academia and other government laboratories, to deliver knowledge and technologies that enable affordable, environmentally sustainable utilization of the nation’s abundant, domestic energy resources.

**The Science and Technology Strategic Plans and Programs** unit will develop the strategic direction for NETL programs and activities that will identify future competency requirements; leverage existing capabilities to optimize output, including through repositioning and redeployment as necessary; and identify investments to sustain and grow the Laboratory. Strategic planning efforts are centered on NETL’s enduring missions: effective resource development, efficient energy conversion and environmental sustainability. In pursuit of those objectives, the Science and Technology Strategic Plans and Programs unit will:

* Lead development of annual enterprise portfolio planning, connecting objectives of the strategic plan to specific actions, and including quantifiable deliverables and measurable outcomes.
* Develop technology roadmaps including the DOE Annual Laboratory Plan, the FECM Roadmap and integrated program development plans.
* Define technical capabilities that require investment for the long-term strength of NETL including budgetary requirements for achieving those capabilities.
* Develop a collective strategy and engagement plan for external stakeholders.
* Pursue partnerships with other national laboratories, industries and academia.
* Develop and implement a strategic plan for international efforts to advance the overall strategy of NETL research focus areas.

The Science and Technology Strategic Plans are executed by the Research and Innovation Center and the Technology Development and Integration Center.

**The Technology Development Center** implements national programs in fossil energy and carbon management and broader DOE programs in collaboration with partners through integrated technical and business teams that define, solicit, negotiate, award, manage and deliver federally sponsored research and development. The Center will:

* Define project technical and budget requirements to achieve research objectives
* Lead program/project teams to prepare and issue competitive solicitations
* Negotiate and manage projects with industry, universities, and national laboratories
* Coordinate and communicate project results and accomplishments
* Maintain a qualified and experienced workforce through training and job assignments
* Support DOE and NETL program planning, development, analysis, execution, outreach and communication efforts
* Maintain and utilize project management best practices to reduce project risk, enhance project outcomes, and support DOE program success.
* Leverage multiple perspectives and lessons learned through collaboration with RIC system analysts and researchers and FAC procurement specialists to develop and execute funding opportunities and projects that efficiently and effectively advance technology development objectives.
* Utilize an integrated systems perspective to appropriately develop and manage projects, especially with respect to project de-risking (FAC) and technology maturation (RIC).

The Technology Development and Integration Center’s work will be performed through four organization element areas: Natural Gas & Oil, Advanced Coal & Carbon Management, Energy Efficiency, and Energy Delivery and Security.

**The Laboratory Operations Center** manages a comprehensive, fully integrated program of operations and services necessary to support the NETL mission and in accordance with applicable law, federal policy, and best practices. The center maintains and develops facilities, while implementing, integrating, monitoring and continuously improving the products and services required to support NETL research, business and laboratory operations. The center’s responsibilities encompass security, facility operations, information technology and strategic support to:

* Maintain physical and cyber security.
* Perform internal compliance reviews.
* Provide strategic analysis, best practices and improved functions for efficiency.
* Manage facility engineering and property accountability.
* Manage environmental safety and health.
* Provide information technology and records management.
* Coordinate human resources and career management.
* Communicate equal employment opportunity.
* Maintain effective communications.

**The Finance and Acquisition Center** plans, directs, and coordinates NETL’s chief financial officer (CFO), procurement, and financial assistance (financial award and grant) functions to ensure effective oversight and stewardship of the Laboratory’s financial resources through the following major roles:

* Develop and implement the Laboratory’s financial policies.
* Serves as the principal advisor to the NETL Director and other senior NETL officials on matters related to the Laboratory’s financial resources, procurements, and financial assistance activities.
* Serves as liaison with DOE CFO and Procurement offices.
* Serves as the financial liaison with Fossil Energy leadership for budget and financial assistance matters.
* Ensures the financial integrity of the Laboratory’s books and records.
* Manages and monitors the funds control process.
* Provides contractual and financial expertise for sound procurement and business management.
* Implements and coordinates Federal acquisition and assistance policies and procedures.

**Chart, pie chart

Description automatically generated**

## J.2 ATTACHMENT A-2 – PERFORMANCE WORK STATEMENT

1. **PURPOSE**

The National Energy Technology Laboratory (NETL) is one of the 17 laboratories in the Department of Energy’s national laboratory complex supporting the department’s mission to ensure America’s security and prosperity by addressing its energy, environmental and nuclear challenges through foundational science and transformative technology solutions. NETL is a Government-Owned and Government-Operated national laboratory managed by employees of the federal government. In the current environment of rapid energy transition, NETL serves as the preeminent energy technology laboratory focused on providing impactful science-based knowledge and innovative technology solutions.

The purpose of this contract is to obtain support services to fulfill NETL’s mission of driving innovation and delivering solutions for an environmentally sustainable and prosperous energy future. These services are to provide high-quality, flexible, and timely technical and associated administrative support for strategic systems analysis and engineering, laboratory-wide strategic planning, program planning and partnerships. Resulting benefits of this support will ensure NETL’s position as the nation’s premier energy technology laboratory, delivering integrated solutions to enable transformation to a sustainable energy future.

1. **BACKGROUND**

The discovery, design, and operation of energy systems benefit from systematic decision-making techniques to examine the often-competing goals of maximizing profits, minimizing costs, and meeting environmental and technical constraints. The capabilities sought allow for the comprehensive evaluation of the most complex energy systems from the sub-process to the global scale and their related technical, economic, resource, policy, environmental and market risks along their entire value chain and throughout their life cycle to guide research and development (R&D) investment choices.

Development and application of NETL’s multi-criteria and multi-scale decision tools and approaches include process systems engineering research, process and cost engineering, resource and subsurface analysis, market and infrastructure analysis, benefits analysis, and environmental life cycle analysis. Strategic planning, program support and sponsor and partner development are integrated to further enhance the decision-making and reach of the laboratory. Exercising these NETL competencies provides insights into the potential for new technology ideas; identifies the most promising new energy concepts; and purposefully drives the direction of the R&D and programs at NETL.

1. **OBJECTIVE**

The objective of this contract is to support NETL’s execution of strategic analysis and support which includes efforts that (i) identify, assess, and optimize advanced energy technologies and systems, (ii) guide and evaluate internal and external R&D programs and projects, and (iii) inform and conduct institutional and DOE strategic planning, and (iv) develop sponsors and transfer technology. The management and execution of these dynamic and far reaching services will require an interdisciplinary personnel mix. Actively performing and providing support for NETL may include cooperative work with industry, universities, other national labs, other NETL site support contractors, and other external entities in addition to interdisciplinary, cooperative R&D and analysis with NETL federal technical staff.

1. **CONTRACT STRUCTURE**

The Contractor shall perform work on a contract line item number (CLIN) basis. The contract will contain two (2) CLINs.

CLIN 1: Strategic Analysis & Partnership Development

CLIN 2: Contract Transition

1. **CLIN 1: STRATEGIC ANALYSIS & PARTNERSHIP DEVELOPMENT**

NETL is a matrix organization that leverages flexible, dynamic expertise across multiple capability areas to conduct, guide, and enable RD&D for numerous program/technology areas and sponsors. The functions/activities presented in section V.1 describe the strategic analysis and support requirements for this PWS, while section V.2 provides the historical expertise needed to perform these functions/activities, spanning multiple competency areas. Section V.3 provides the anticipated technology areas upon which the functions/activities are anticipated to focus.

1. **FUNCTIONS/ACTIVITIES TO BE PERFORMED**

CLIN 1 support shall focus on four major types of activities: (1) planning for the strategic direction of NETL and the programs implemented at NETL; (2) conducting comprehensive energy analysis across a range of scales from energy markets, resource availability and distribution, to technoeconomic and life cycle analysis of specific programs, technologies and systems; (3) the development and application of modeling and analysis tools and capabilities that address emerging challenges that cannot be adequately addressed with existing approaches; and (4) identification and cultivation of partners and sponsors/customers for NETL R&D and analysis, enabling technology transfer and maturation, ultimately expanding and enhancing the national impact of NETL capabilities.

Requested analyses and services may include, but are not limited to the following:

* ***Strategic Planning*** support provides an analytical and systematic approach to implementation of organizational, program, and resource planning. Support activities include providing analysis for, drafting, updating, and/or providing strategic input to strategic plans such as:
  + NETL organizational plans
  + Competency plans to optimize, prioritize, and grow NETL capabilities
  + Technology and program roadmapping
  + Planning for flagship or key laboratory initiatives

In addition, analyses may be requested to guide the direction of the laboratory and DOE including identification of new technology and program areas based on aligning the laboratory’s capabilities to future energy market and environmental needs.

* ***Energy & Economic Trend and Scenario Analysis*** including:
  + Evaluation of energy market forces and macroeconomic trends, in the context of potential or actual energy-related regulations, legislation, and policies
  + Supply chain analysis associated with energy systems to guide R&D and other investment opportunities
  + Consideration of the following:
    - electric power systems (generation, transmission, distribution, and customer assets)
    - all sectors of energy delivery systems
    - various fuel, feedstock, and product markets.
* ***Programs/Portfolios Guidance and Assessment*** including the following:
  + Translation of higher-level strategic plans and roadmaps into program plans
  + Program guidance through market analysis and consideration of policy, cost, resource availability, and environmental drivers under various scenarios
  + Technology maturation program planning or systematic identification and evaluation of portfolio and technology gaps to meet goals and prioritization of resulting technology approaches
  + Assessments of market drivers and competing technologies to guide program direction
  + Evaluation of program-level risks to meeting objectives
  + Determination of the deployment potential given program goals and objectives including analysis of economic and environmental benefits associated with meeting program-level goals and metrics

The Contractor shall also translate project-level accomplishments into program-level accomplishments, provide technical content on program-level communication products, and provide general technical support to technology and/or program managers.

* ***Design, Optimization, and Analysis of Integrated Energy Systems***including both hybridized, tightly coupled systems (e.g. multiple technologies within a plant) and coordinated energy systems (e.g. full value chain for carbon management: separation, transport, storage). Specifically:
  + Analyses are based predominantly on mathematical, equation-oriented optimization of multi-scale, steady-state and dynamic model to systematically assess advanced integrated energy systems in lieu of reliance on *a priori* assumptions and traditional sensitivity cases
  + Considers performance, cost, life cycle environmental impact, technology and system readiness, and dynamic market competitiveness metrics, and uncertainty quantification associated with each of these metrics
  + Includes detailed supply chain analysis and modeling, focusing on the entire ecosystem of producing and delivering a product or service
  + Includes analysis and comparison to the corresponding baseline, state-of-the-art alternative
* ***Novel Energy Technology Assessment*** when integrated into energy systems (e.g. unit operations, plant, reservoir, regional, national, or global market) including the following:
  + Evaluation of performance, cost, life cycle environmental impact, technology readiness, and market competitiveness metrics, and uncertainty quantification associated with each of these metrics; ranges from preliminary screening studies to detailed assessments
  + Analysis of and comparison to the corresponding baseline, state-of-the-art alternative
  + Identification of gaps to meet metric targets/goals and proposal of alternative R&D approaches to fill such gaps
  + Identification of which component parameters and associated R&D needs are most critical to meet desired metrics
  + Application of advanced modeling systems to identify, design, and optimize novel energy technologies, including consideration of dynamic operations and the effect on equipment life due to stress and fatigue
  + Support test plans ranging from technical review to implementing statistical design of experiments to guide experimentation to reduce technical risk and accelerate the scale-up of new technologies
  + Evaluation of potential for technology use/deployment in various markets and associated impacts (environmental, economic, etc.) given research targets being met
  + Develop and maintain guidelines for others to evaluate novel energy technologies on a consistent basis
  + Other technical reviews of novel technologies and R&D projects as required for program support
* ***Energy Model Development and Enhancement*** ranges from development of novel, advanced customized models to enhancement and maintenance of commercial models and tools
  + Development of novel tools and models for the conceptual design, scale-up, and optimization of complex, dynamic, integrated energy systems at scales ranging from materials to process to system, to supply chains and enterprise systems, typically using custom advanced computational tools whose capabilities go beyond what is available commercially. For example, NETL has led the development of the Institute for the Design of Advanced Energy Systems Integrated Platform (IDAES), a Pyomo-based equation-oriented, modeling and optimization system that supports the complete process modeling lifecycle, from conceptual design to dynamic optimization and control at scales ranging from material to process to enterprise, incorporating advanced capabilities for artificial intelligence (AI)/machine learning (ML), uncertainty quantification, and robust optimization. Includes constructing of customized models of unit processes, sub-systems, plants, reservoirs, infrastructure, and energy regions and markets.
  + Enhancement of existing models and tools to reflect improved representation relative to technology areas of interest to NETL as well as maintenance of existing models, tools, and databases. Such models include process models and associated cost estimating tools and datasets; integration of geologic interpretation and geospatial software with custom economic evaluations tools; life cycle inventory data, unit processes, and models; and macroeconomic and input-output models, market-based capacity expansion models, power system flow models, and economic dispatch models, and energy infrastructure models.
* ***Sponsor/Partnerships Development and Technology Transfer*** includes support to identify, explore, and secure opportunities for sponsors and partners to fund, collaborate on, and/or license technology under R&D that leverages and builds NETL core capabilities and competencies. The Contractor shall, as requested:
  + Support development and maintenance of a strategic partnership plan
  + Perform background research and prepare staff for engagement with potential sponsors/partners
  + Assess and identify areas of alignment or synergy between the sponsors/partner’s anticipated needs or capabilities and that of NETL
  + Evaluate potential value and/or prioritize potential sponsors/partners consistent with NETL strategic plans and objectives
  + Facilitate discussions between NETL and potential sponsors/partners including preparing talking points, presentations, and other engagement or briefing materials
  + Perform technology market assessments of NETL inventions to support commercialization of inventions
  + Conduct technology scouting activities to identify and develop an engagement plan for potential licensees for available technologies
  + Develop and/or review draft proposals for sponsored activities
  + Assess and recommend workforce development activities
  + Make recommendations to mature the nascent and existing partnerships
  + Document progress, results, and accomplishments associated with the above.

* ***Enabling NETL Success*** through enhancing NETL’s world-class technical competencies and delivery of quality, impactful sponsor products. This includes delivering upon, tracking, and reporting accomplishments towards the following Research & Innovation Center (RIC) success criteria:
  + Sponsor Impact – Identifying and delivering on value-added scope and products (as identified in the above functions) from the perspective of research sponsors
  + Knowledge Generation – documenting results from above activities through high quality peer-reviewed journal articles, reports, and presentations
  + Technology Innovation – intellectual property development and transfer, including release and use metrics for open source software
  + R&D Growth – diversifying the NETL research portfolio by identifying and fostering new sponsors and developing quality and impactful proposals
  + National Recognition – increased recognition of NETL staff, facilities, and research and analysis products
* ***Ad Hoc Technical Support***  including technical content development for outreach/communications; technical content for external proposals; technical support for project management of internal research projects; technical documentation of impactful program and research accomplishments; development support for strategic leadership and technical education programs to enhance the capabilities of NETL management and technical staff; support for process improvement and business system requirements development associated with activities under this contract; and technical input and analysis for urgent, high-priority requests.

1. **COMPETENCIES & EXPERTISE REQUIRED**

This support requires expertise in a multitude of scientific, engineering, mathematical, business, and economic disciplines with deep experience applying these disciplines to the U.S. energy and industry systems considering both existing energy technologies and systems as well as emerging and innovative technologies and system designs. Expertise is needed to address issues across diverse areas of national interest, incorporating broader energy-related initiatives involving both the government and the private sector. Cooperative teaming with industry, universities and other external entities and short-term technical expertise and capabilities available through reach back are vital for enhancement of the quality, breadth, and depth of research and analysis conducted is required.

* ***Strategic Planning and Program Support expertise including:***
  + Experience in strategic planning to set research priorities, focus resources, and strengthen operations;
  + Expert knowledge across diverse NETL programs and strategic analysis competencies
  + Expertise in supporting energy R&D program management
* ***Process Systems Engineering expertise including:***
  + Expertise in conceptual/superstructure design, data reconciliation, parameter estimation, steady-state and dynamic equation-oriented modeling and mathematical optimization;
  + Expert knowledge of advanced process control, surrogate modeling and machine learning, multi-scale modeling, uncertainty quantification, stochastic and robust optimization, sequential design of experiments and development of thermodynamic physical property and kinetic sub-models;
  + Extensive experience with state-of-the-art commercial process systems engineering software;
  + Extensive experience developing and releasing high quality open-source computational tools and models employing software engineering best practices.
* ***Energy Process and Cost Assessment expertise including:***
  + Expert knowledge of process engineering fundamentals sufficient to support preliminary design and evaluation of novel energy systems;
  + Access to resources with real-world design/build experience and up-to-date process equipment performance information for energy technologies;
  + Access to detailed equipment and full plant cost information and expertise in extrapolating such information to estimate costs for novel technologies;
  + Extensive experience with process simulation and thermal engineering software.
* ***Life Cycle Analysis expertise including:***
  + Expert knowledge of environmental life cycle analysis/assessment (according to ISO 14040/14044), NETL LCA Guidelines, and other applicable industry standards environmental assessment techniques;
  + Expertise in developing and using open source and commercially available environmental life cycle assessment models capable of managing and analyzing life cycle inventory data (e.g., dynamic unit process models, optimization models, impact characterization factors, data uncertainty properties) and interpretation of study results;
  + Knowledge and access to life cycle inventory data.
* ***Energy and Financial Markets expertise including:***
  + Expertise in energy economic, security, market and regulatory and policy analysis;
  + Specific experience exercising macroeconomic and input-output models and tools to quantify economic impacts and program benefits of technology deployment;
  + Specific expertise in project finance, tax equity finance, and energy-industry corporate finance;
  + Knowledge of the U.S. electric power system; pipeline transportation infrastructure; bulk commodity transportation systems; and associated and interdependent systems;
  + Knowledge of domestic and international energy markets and commodity flows;
  + Experience exercising commercially available market-based capacity expansion models, power system flow models, and economic dispatch models, along with the ability to access critical energy/electric infrastructure information (CEII) data.
* ***Subsurface Technologies and Resource Availability expertise including:***
  + Expertise in assessing technologies, data, operations, and regulations related to subsurface energy systems;
  + Experience in exercising integrated production models and subsurface reservoir models to analyze subsurface energy systems;
  + Experience in developing integrated subsurface-surface network models by combining existing open-source NETL CO2 storage and transportation models with fit-to-purpose optimization models tools;
  + Specific knowledge of geologic and geospatial software, economic evaluation tools, machine learning, and data analytics approaches to appraise subsurface resource availability and costs.
* ***Business Capture and Technology Transfer expertise including:***
  + Expertise in identifying, evaluating, and fostering business development opportunities associated with R&D;

# Mastery in marketing highly technical information, aligning a wide variety of customer needs to diverse technical R&D capabilities, and effective and succinct related communications;

# Experience in technology scouting;

# Access to a network of relevant industry contacts for commercialization of novel energy technology.

1. **TECHNOLOGY SPACE**

NETL’s research, analysis, and program support are aligned with the following NETL mission elements:

* Ensuring affordable, abundant, and reliable energy that drives a robust economy and national security, while
* Developing technologies to manage carbon across the full life cycle, and
* Enabling environmental sustainability for all Americans

In execution of this mission, the current and projected technology focus for NETL and thus technology areas of experience required in performance of this PWS are as follows:

* Carbon management and high-efficiency technology solutions including:
  + Separation of carbon dioxide (CO2), conversion of CO2 and other carbon materials to high-value products, permanent storage of CO2, and/or other beneficial uses of CO2
  + Mitigation of methane emissions and/or upgrading of methane emissions to high value products from natural gas or oil operations and associated infrastructure
  + Integrated energy systems that tightly couple or hybridize multiple energy technologies and/or processes to make one or more products
  + Energy conversion and advanced power cycle technologies including gasification, turbines (including natural gas, hydrogen and supercritical CO2), solid oxide fuel cells/solid oxide electrolyzer cells, and advanced combustion
  + Fossil fuels and/or alternative feedstocks such as biomass or waste plastics integrated into negative emissions technology solutions
  + Application of the above to direct air capture, power generation, hydrogen production and/or production of other high-value products, industrial processes, and elements of fuels from transportation applications
  + Knowledge and analysis of competing/contributing technologies with the above
* Technology for environmentally sustainable energy security including:
  + The U.S. is dependent on offshore sources for numerous critical materials (CM) and rare earth elements (REE) that are essential to our Nation’s economy and national security. Transitioning the production of these materials and associated supply chains back to the U.S. is a strategic priority. Research, development, and demonstration efforts to create new domestic sources of CMs and REEs have been accelerated with the goal of making the domestic supply chains more resilient.
  + Exploration and production of unconventional oil and natural gas resources with a focus on environmental sustainability and R&D that is outside of that being conducted by the private sector; includes novel resources such as methane hydrates and depleting oil and gas formations, CO2 enhanced oil recovery, residual oil zones, saline-bearing reservoirs, and potential geothermal zones
* Cross-cutting technologies in support of the above including water use, sensors and controls, simulation-based engineering, and high-performance materials
* Desalination and other water treatment technologies that enable the production of clean water from widely-distributed but hard-to-treat non-traditional water sources such as produced water from oil and gas, wastewater from power generation, agricultural runoff, municipal wastewater and inland brackish ground water as well as more traditional water sources
* Technologies associated with advanced electricity grid architectures, fuel delivery, fuel and energy storage
* Global, national, and regional energy landscapes, markets, and infrastructure including integrating the above technology areas into coordinated integrated energy systems
* Application of NETL core capabilities to energy technology space not listed above (e.g. manufacturing processes) and related applications of energy technologies (e.g. applying labs metallurgical competency to assist in the development of a coronary stent).

Technologies of interest span the full spectrum of technology readiness levels (TRLs), from emerging concepts to conventional commercial technologies.

1. **CLIN 2: CONTRACT TRANSITION**

Work under CLIN 2 (Contract Transition) covers activities required to transfer work from the Strategic Analysis portion of the Mission Execution and Strategic Analysis (MESA) site support contract to new Strategic Analysis & Partnership Development sub-CLIN activities issued under the new contract vehicle.

The Contractor shall perform all transition activities to begin performance of these new, or transitioned, Strategic Analysis activities, consistent with this contract. Transition activities are defined as any effort that is necessary to transition work from incumbent Contractors 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, hiring, relocating, orienting, and training Key Personnel and other staff, and inventorying and assuming responsibility of Government Furnished Property (GFP), etc.

The Contractor shall provide NETL all supervision, personnel, tools, equipment, and services (excluding those items identified under the Government-furnished section of the contract) to satisfactorily perform transition work in the areas identified in this CLIN. It is expected that Transition shall include staffing at NETL Morgantown and Pittsburgh, and other sites, as required. Travel (between sites) is anticipated. NETL-specific training related to site access and computer access is also anticipated. (NOTE: The Contractor shall discuss the rationale for their proposed travel and training regardless of whether NETL anticipates travel).

The Contractor shall provide a transition plan that describes transition management, execution, and schedule.

The Contractor will provide clearly defined interfaces between its team and NETL [Contracting Officer (CO), Contracting Officer’s Representative (COR), CLIN CORs and possibly others)]. The Contractor shall provide clear and continuous lines of communication.

The Contractor is expected to complete the orderly, efficient, and effective transition of work within 90 days of the effective date of contract award.

|  |  |
| --- | --- |
| NETL F 541.1-5#  (11/2017) OPI=PS10  (Previous Editions Obsolete) | J.3 ATTACHMENT B – REPORTING REQUIREMENTS CHECKLIST |

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **1. AWARDEE:** | **TBD** | | | | | **2. IDENTIFICATION NUMBER:** | **TBD** | | | |
| **3. REPORT SUBMISSION:** | | | | | | | | | | |
| Reports shall be submitted to the National Energy Technology Laboratory (NETL) in electronic format to the identified network location. Report templates are examples. The Contractor may submit the requested information using their own templates provided the same information is incorporated. If the submission involves a DOE or NETL Form, the Contractor may submit the requested information in a format of its own choosing as long as the same information is provided.  The reports in this checklist apply to the contract in general. The Performance Work Statement (PWS) may require other specific reports and/or deliverables. | | | | | | | | | | |
| **4. PLANNING AND REPORTING REQUIREMENTS:** | | | | | | | | | | |
|  | | **FORM NO.** | | **FREQ:** |  | | | **FORM NO.** | | **FREQ:** |
| A. GENERAL MANAGEMENT | |  | |  | D. PROPERTY | | |  | |  |
|  | |  | |  |  | | |  | |  |
| Management Plan | | None | | O, C | Property Management System | | | None | | P |
| Status Report | | None | | M | Property in the Custody of Contractors | | | F580.1-8 | | SP |
| PEP Documentation Report | | None | | E | Report of Physical Inventory | | | None | | I\*\*\* |
| Quality Assurance Management Plan | | None | | O, A\* | Report of Termination or Completion | | | SF-1428 | | FC |
| Annual Work Operating Plan | | None | | PY | Inventory | | | & SF-120 | |  |
|  | |  | |  |  | | |  | |  |
| B. SCHEDULE/LABOR/COST | |  | |  | E. OTHER | | |  | |  |
|  | |  | |  |  | | |  | |  |
| Cost Management Report | | See Text | | M | Individual Subcontract Report | | | ISR | | SS |
| Invoice Detail Report | | See Text | | M | Summary Subcontract Report | | | SSR | | YS |
| Staffing Report Summary | | See Text | | M | Service Contract Inventory | | | SAM | | Y |
| Open Commitment Detail Report | | See Text | | M | Biobased Reporting | | | SAM | | Y |
| Contract Organization Chart | | See Text | | O, A | EEO and Inclusion Report | | | None | | Y |
| Subcontract Status Report | | See Text | | S | Key Personnel Staffing Report | | | None | | M |
| Annual Indirect Rate Submission | | See Text | | A\*\* | Business Travel | | | None | | Y |
|  | |  | |  |  | | |  | |  |
| C. ENVIRONMENTAL ES&H | |  | |  |  | | |  | |  |
|  | |  | |  |  | | |  | |  |
| Hazardous Substance Plan | | None | | O |  | | |  | |  |
| Hazardous Waste Report | | None | | FC |  | | |  | |  |
| ES&H Hot Line Report | | None | | A |  | | |  | |  |
| ES&H Reports (DOE O 231.1, | | See Orders & | | A |  | | |  | |  |
| M 231.1-1, O 232.1) | | Manuals | |  |  | | |  | |  |
| Integrated Safety Management Plan | | See DOE | | O, A\* |  | | |  | |  |
| (DOE P 450.4) | | Orders | |  |  | | |  | |  |
|  | |  | |  |  | | |  | |  |
| **5. FREQUENCY CODES AND DUE DATES:** | | | | | | | | | | |
| **Definition** | | | **Calendar days due after event** | | **Definition** | | | | **Calendar days due after event** | |
| A – As Required (See attached text for applicability) | | | 0 | | O – Once After Award | | | | 30 | |
| C – Contract Change | | | 15 | | PY – Yearly Plan for following Federal Fiscal Year | | | | -15 | |
| E – End of Evaluation Period | | | 5 | | S – Semiannual (Ending 3/31 and 9/30) | | | | 30 | |
| FC – Final End of Effort | | | 0 | | Y – Yearly (End of fiscal year 9/30) | | | | 30 | |
| M – Monthly | | | 15 | |  | | | |  | |
| Property Reports  P – Property Management System – Within 6 months of award date  I – Physical Inventory  SP – Semiannual due 3/15 and 9/15 for period ending 2/28 and 8/30 respectively | | | | | Other Web-based reports  SS – Individual Subcontract Report - Semiannual due 4/30 and 10/30 for period ending 3/31 and 9/30 respectively, submit on-line at <http://www.esrs.gov>  YS – Summary Subcontract Report - Annually, due 10/30 for period ending 9/30, submit on-line at <http://www.esrs.gov>  SAM – System for Award Management at <http://www.sam.gov> | | | | | |
| \* Plan is to be updated as significant changes are identified.  \*\* No later than six months after the close of Contractor’s fiscal year. If NETL is the Cognizant Federal Agency, then the proposal should be submitted to the identified electronic file location for report submissions. Otherwise, it should be sent to the Cognizant Federal Agency.  \*\*\* Property inventory conducted on the following basis: Capitalized, Sensitive, or High Risk Personal Property – Annual; Accountable Property – 3 years; Nonaccountable Property – contract completion. | | | | | | | | | | |
| **6. SPECIAL INSTRUCTIONS:** | | | | | | | | | | |
| Contractor’s Fiscal Year: **TBD**  The forms identified, with a forms number, in the checklist are available at <http://www.netl.doe.gov/business/forms.html>. | | | | | | | | | | |

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# GENERAL INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF REPORTS

The Contractor shall prepare and submit the plans and reports indicated on the “Reporting Requirements Checklist” to the electronic addresses provided in the NETL-identified electronic file location. The electronic file location will be provided at the post award debriefing with the Contractor. Distribution of the plans and reports will be accessed from the electronic file location by individuals authorized by the Contracting Officer.

The level of detail the Contractor provides in the plans and reports shall be commensurate with the scope and complexity of the effort and shall be as delineated in the guidelines and instructions contained herein. The prime Contractor shall be responsible for acquiring data from any subcontractors to ensure that data submitted are compatible with the data elements which prime Contractors are required to submit to DOE.

# MANAGEMENT PLAN

The Management Plan describes the Contractor’s approach to performing the effort and producing the products identified in the contractual agreement, and the technical, schedule, cost, and financial management control systems to be used to manage performance.

The sample outline for the Management Plan and a description of the contents follows:

**Executive Summary**

The executive summary gives DOE/NETL's management a brief, comprehensive overview of the most important aspects of the management plan.

**Background**

This is a discussion of the background of the project, including the scientific, sociological, legislative, and historical factors, that demonstrates the Contractor’s understanding of the problems, both technical and management, associated with the project.

**Scope of the Project**

This section gives a brief overview of the project. It should include:

* general description of project objectives;
* work element titles and short descriptions and;
* participants.

**Work Breakdown Structure (WBS)**

The scope and complexity of the contractual agreement influence the number of levels required. Each descending level represents an increasingly detailed definition of the work elements. Level 1 is the goal or objective of the contractual agreement in its entirety. Level 2 consists of the major work products necessary for achieving the goals of the contractual agreement. Level 3 outlines the major element segments (subsystems) necessary for completing Level 2 elements. Work breakdown structure elements are identified by name and number from a progressive, alphanumeric system. For example:

WBS Level 1: Contract Level Reporting

WBS Level 2: CLIN / Task Order Level Reporting

WBS Level 3: Work/Task Assignment Level Reporting

WBS Level 4: Activity Level Reporting

The outline for the WBS and a description of the contents follows:

WBS ELEMENT X.X: (TITLE)

OBJECTIVE: State the objective of the work element in a concise manner.

BACKGROUND**:** State the background in a concise manner. Include descriptions of any outstanding issues which must be resolved in order to make progress.

TECHNICAL APPROACH: Describe in detail the manner in which the various issues will be resolved. You should consider how the various work elements relate to one another and to other relevant ongoing work. Work outputs which feed into other work elements (and vice-versa) should be clearly delineated.

DELIVERABLES: Describe specifically the results of the effort.

**Support Systems and Controls**

In this section, the management, technical, and administrative systems that will be used to control and execute the project will be described. Examples of the systems include, but is not limited to: systems and engineering analysis; quality assurance; environmental, safety and health; legal support; automated data processing support; and accounting support. The accounting, property management, and procurement systems should be identified as to whether they are Government approved systems.

# STATUS REPORT

The Status Report presents the Contractor’s narrative technical assessment of the work actually performed and the overall status of the various CLINs/SubCLINs or Task Orders/Activities. Open items requiring action by either the Contractor or DOE are noted in this report. The report also provides a summary assessment of the current situation, including forecast for the near future and the expected impact on SubCLIN or Activity accomplishment. The report is to include a listing of the major products for each CLIN/SubCLIN or Task Order/Activity in bullet form and, if applicable, a list of pertinent presentations and publications.

# QUALITY ASSURANCE MANAGEMENT PLAN

The Quality Assurance Management Implementation Plan shall be developed and submitted by the Contractor. The plan shall describe how the Contractor will implement a quality assurance (QA) philosophy, as outlined in the most current version of the DOE O 414.1, Quality Assurance; DOE G 414.1-2, Quality Assurance Program Guide for Use with 10 CFR Part 830, Subpart A, Quality Assurance Requirements. The plan shall provide (1) a process and graded approach to the integration of the requirements listed into its everyday work activities; and (2) a discussion on how the execution of the Contractor’s plan will successfully and cost-effectively integrate with NETL's own QA program for on-site work to be conducted. This plan shall be reviewed annually, revised as needed, and be approved by the NETL Quality Manager. The DOE quality assurance directives and guidelines can be found at <http://www.directives.doe.gov/>. NETL quality directives are available on the NETL Intranet.

# ANNUAL WORK OPERATING PLAN

The Research and Innovation Center uses the Annual Work Operating Plan to plan and implement on-site research programs. The plan shall comply with the requirements of the clause identified in Part I, Section G – "Annual Work Operating Plan".

# COST MANAGEMENT REPORT

***PURPOSE***

The Cost Management Report provides a monthly status of actual and estimated costs, obligated funds, and plan values, as well as a projection of funds expiration, for each reportable element within a designated contract. This report serves as an accounting, budgeting, and project management tool. Federal personnel will use this report to monitor the funding and cost status of the contract, verify the reasonableness of the Contractor’s invoices, formulate budgets and calculate award fee pools.

***FORM***

An Excel file (89243321RFE000050-CMR-Invoice-Staffing-OC.xlsx) has been included as a sample template in Part III, Section J. The following is the suggested format for submission of this report.

***INSTRUCTIONS***

|  |  |
| --- | --- |
| **Item** | **Description** |
| 1 | Enter the official contract title. |
| 2 | Enter the inclusive start and completion dates for the reporting period. |
| 3 | Enter the official contract number and, if a modification(s) has occurred, append the latest modification number. |
| 4 | Enter the name of the Contractor. |
| 5 | Enter the date of the contract’s current cost plan, which serves as a baseline for this report. |
| 6 | Enter the official start date of the original contract. |
| 7 | Enter the official completion date as of the latest modification to the contract. |
| 8 | Enter the Title, Contract Line Item Number (CLIN), Sub-CLIN, Task, or Activity Numbers, in numerical order, consistent with the contract’s Work Breakdown Structure as per the current Management Plan. |
| 9 | Enter the current approved plan revision for each Element as applicable. Revisions will be tracked by an alpha character added to the end of the Element with “A” designating the first revision. If no revision is included, leave this blank. |
| 10 | Enter the five-digit “Fund Code” identified in Field 1 of the Accounting Flex Field (AFF) provided on the funding source document. |
| 11 | Enter the “Appropriation Year” from which the funding is provided. This will be the same as Field 2 of the AFF. |
| 12 | Enter the six-digit “Reporting Entity” identified in Field 4 of the AFF. |
| 13 | Enter the five-digit “Object Class Code” identified in Field 6 of the AFF. |
| 14 | Enter the seven-digit “Program Number” that is used to fund the Element. This number will correspond to Field 7 of the AFF. If more than one Program number is being used, place the pertinent funding information on separate lines. |
| 15 | If applicable, enter the seven-digit “Project Number” identified in Field 8 of the AFF. |
| 16 | If applicable, enter the seven-digit “Work for Others (WFO)” number identified in Field 9 of the AFF. A WFO number is a unique designation for NETL customer work. |
| 17 | If applicable, enter the seven-digit “Local Use” number. This number will correspond to Field 10 of the AFF. |
| 18 | Enter the “Current FY Obligations” that have been obligated against the Element in the current fiscal year. |
| 19 | Enter the cumulative “Total Obligations” awarded to the contract as of the close of the reporting period. The obligations will be broken out over the unique AFF’s. |
| 20 | Enter the “Approved FY Cost Plan” value as shown on the most recent authorized cost plan. This will be an estimate of the cost of work planned in the current fiscal year distributed by funding source. Only plan values authorized by the CO shall be recorded in this column. |
| 21 | Enter the authorized “Total Plan Value” for the entire performance period of the Element, which may span multiple fiscal years. |
| 22 | Enter the total “Reporting Period Actual Cost” invoiced for the reporting period. Cost distribution for each AFF will be provided as financial technical direction from the Contracting Officer’s Representative (COR) or the CLIN COR. |
| 23 | Enter the total “Reporting Period Planned Cost” for the reporting period as shown in the most recent authorized cost plan. |
| 24 | Enter the total “FY To Date Actual Cost” invoiced as of the close of the reporting period for the current fiscal year. |
| 25 | Enter the “FY to Date FY Balance of Plan” remaining of the planned cost for the current fiscal year as shown in the latest approved fiscal year cost plan (Item 20). |
| 26 | Enter the total “Cumulative to Date Actual Cost” invoiced for the Element from the inception of the contract to the end of the reporting period. |
| 27 | Enter the total authorized “Cumulative to Date Plann Cost” for the Element from the inception of the contract to the date of the report. |
| 28 | Enter the “Open Commitments”, defined as any costs incurred by the end of the current reporting period but not yet invoiced to NETL.  This would include subcontractor costs incurred but not yet billed to NETL and any award fee earned but not yet invoiced to NETL. Upon completion of the first award fee period estimates for fee shall be based on the average percentage of historic fee earned, not 100% of available award fee pool. Special consideration should be made to accurately estimate subcontract costs when the prime has not received invoices but is aware that the work has occurred.  Open commitments should be distributed to the funding line with remaining available funding greater than $0 that has the oldest appropriation year and the smallest total obligated funding at the end of the current reporting period. Open commitments should not exceed the total remaining available funding in an AFF line unless additional funding lines are not available.  \*\*\*Note\*\*\*  The Award Fee included in OC’s will be a cumulative amount and will only be reduced when the CO authorizes a payment. The Award Fee authorized payment amount will then be included in the FY to Date Actuals (#24) and Cumulative to Date Actuals (#26) on the next monthly CMR. |
| 29 | Enter the total “Next Month Plan Cost” for the next reporting period as shown in the most recent authorized cost plan. |
| 30 | Enter the “FY Total Cost” which is defined as the costs that the Contractor expects to incur during the current fiscal year.  A contract project manager’s estimate should be used to project the balance of the year and should include those costs that have been incurred but not invoiced to NETL (open commitments as defined in Item 28). The calculation of Total FY Actual Cost + FY Balance of Plan + Open Commitments can be used as a starting point for this estimate, but project manager's input must be obtained to incorporated any deviations to plan that may be anticipated technically. |
| 31 | Enter the projected “Funds Fully Costed Date” for the date on which the funds available to the Contractor for a specific Element are projected to be fully costed. The date only needs to be on the Element Total line. |
| 32 | Enter the total of all costs for each column that can be summed. If multiple pages are used, enter the total only on the final page.  \*\*\*NOTE\*\*\*  Current FY Obligations (Item 18) and Total Obligations (Item 19) must equal the obligation amounts listed on the contract modifications. |
| 33 | Enter the unit measure for dollar amounts shown (e.g., exact dollars and cents). NETL cost entries are done to the penny. Carry the unit of measure out to decimals (e.g., cents), rounding to two decimal places. Format the cell to round to the dollar so space will be saved. NETL Finance will reformat the appropriate column to two decimals for making cost entries. |
| 34 | Enter the signature of the responsible Contractor Project Manager and the date signed, verifying the validity of the furnished information based upon the Project Manager’s knowledge of the contract’s current progress and status. |
| 35 | Enter the signature of the Contractor’s financial representative and the date signed, verifying the validity of the furnished information based upon the financial representative’s knowledge of the contract’s current progress and status. |
| 36 | Enter notes that relate to a reporting elements’ financial status. Include modifications received after the closing date of the reporting period but before the actual due date of the CMR. and Task Plan revisions submitted to NETL through SSCM but not yet awarded by the CO |

***Special Instructions***:

Any reference to a fiscal year refers to the Federal Government fiscal year, October 1 through September 30 of the following year.

For the purpose of this report, the term “Element” refers to any reportable CLIN, Sub-CLIN, Task, or Activity.

A new line entry must be inserted anytime one of the following components changes:

1. Title/CLIN/Sub-CLIN/Task Number/Activity Number

2. Fund Code

3. Appropriation Year

4. Reporting Entity

5. Object Class Code

6. Program Number

7. Project Number

8. Work for Others Number

9. Local Use Number

Each Element will be subtotaled. If a Sub-element is associated with an Element, the Sub-element will be totaled and reported at both the Sub- and Element level. For example, an Element with two or more subs would show all of the above information for each sub-Element and rolled up to the Element level.

Any and all breakouts of Sub-CLINs/activities must be received as technical direction, in writing, from the Contracting Officer’s Representative (COR) or the CLIN COR.

# INVOICE DETAIL REPORT

***PURPOSE***

The Invoice Detail Report provides a monthly status of actual and planned FTE hours worked for each CLIN or Task and a headcount within a designated contract. This report will be used by Federal personnel as an information source and as a project management tool. This report will also serve as the base for the staffing report and will also serve as supporting documentation for the “Public Voucher for Purchases and Services Other Than Personal" (SF-1034). CLIN/Task managers will review the data as part of the invoice approval process.

***FORM***

An Excel file (89243321RFE000050-CMR-Invoice-Staffing-OC.xlsx) has been included as a sample template in Part III, Section J. The following is the suggested format for submission of this report.

***INSTRUCTIONS***

|  |  |
| --- | --- |
| **Item** | **Description** |
| **1** | Enter Contractor’s name and address. |
| **2** | Enter the contract identification (CID) number. |
| **3** | Enter the CLIN/Sub-CLIN/Task/Activity number and title. |
| **4** | Enter a sequential invoice number as designated by the Contractor. |
| **5** | Enter a sequential invoice number as designated by the Contractor. |
| **6** | Enter the date the invoice was issued. |
| **7** | Enter the inclusive start and completion dates for the invoice period. |
| **8** | Enter the employee’s name. |
| **9** | Enter the labor category title and Exempt € or Nonexempt (NE). |
| **10** | Enter the employee status [full time (FT), part time (PT)]. |
| **11** | Enter the employer name (prime Contractor, subcontractor). |
| **12** | Enter the employee’s current loaded labor rate. |
| **13** | Enter the actual hours worked in the reporting period by the employee. The available hours may vary by month depending on weekends, holidays, number of days in month, etc. |
| **14** | Enter the total labor cost per employee for the period. |
| **15** | Enter full time equivalent (FTE) actual time worked. |
| **16** | Enter the FTE labor by site. |
|  | Off-site – any location that is not on one of NETL’s sites as defined in “on-site” below. |
|  | On-site – Federally-owned or leased property within the defined boundaries of the sites including Pittsburgh, PA; Morgantown, WV; Sugar Land, TX; Anchorage, AK; Albany, OR; and any future sites. |
| **17** | Enter the cumulative hours worked to date per employee. |
| **18** | Enter the previous months costs (can be done by copying the values from “Cumulative Current Cost,” column R on the spreadsheet from the prior month). This column will be used to calculate the cumulative current cost column. The cumulative current cost is the total cost from previous periods plus the cost for the current period. |
| **19** | Enter the total items of 12 through 18 described above. |

|  |  |
| --- | --- |
| **20** | If applicable, enter the labor G&A rate and dollar amount. |
| **21** | Enter the Total Direct Labor cost to include Labor G&A (if applicable) |

|  |  |
| --- | --- |
| **22** | Enter the planned/actual labor hours for theaaa current period. |
| **23** | Enter the planned/actual labor hours for the cumulative total. |
| **24** | Other direct costs (ODCs) include those cost other than labor, which are directly related and charged to the CLIN/Sub-CLIN/Task/Activity. |
| **25** | Enter a very brief description of the other direct costs. |
| **26** | Enter the second-tier subcontractor/consultants cost for the period and cumulative to date. |
| **27** | Enter materials and or supply costs for the period and cumulative to date. |
| **28** | Enter the travel costs for the period and cumulative to date. |
| **29** | Enter the training cost for the period and cumulative to date. |
| **30** | Enter the total of all ODCs |
| **31** | Enter the General & Administrative (G&A) rate and amount. |
| **32** | If applicable, enter any award fee being invoiced for the reporting period and cumulative to date amount. |
| **33** | Enter the total cost being invoiced. This will include Direct Labor, ODCs, G&A and fees. |

# STAFFING REPORT SUMMARY

***PURPOSE***

The Staffing Report Summary is to provide NETL management with data relative to the number of Contractor FTEs (full time equivalents) charged to each funding source within a contract. NETL uses this information in budgeting and planning exercises. In addition, many information requests are received from Headquarters dealing with the location of Contractor employees.

***FORM***

An Excel file (89243321RFE000050-CMR-Invoice-Staffing-OC.xlsx) has been included as a sample template in Part III, Section J. The following is the suggested format for submission of this report.

***INSTRUCTIONS***

|  |  |
| --- | --- |
| **Item** | **Description** |
| **1** | Enter contractor name and address. |
| **2** | Enter contract number. |
| **3** | Enter inclusive dates of current reporting period. |
|  | \*\*\*NOTE\*\*\*  The Items below must track the exact Accounting FlexField (AFF) used in the contract funding modification. If more than one AFF was used to fund a Task/Activity then a separate row for each unique AFF must be entered on this report.  Enter the FTEs by AFF at each site location. |
| **4** | Enter the Task/Activity number, in numerical order, for the FTEs being reported. |
| **5** | Enter the seven-digit “Program Number” used to fund the Task/Activity. This number will correspond to Field 5 of the AFF string provided in the contract funding modification. If there are multiple program numbers enter each one on a separate line. |
| **6** | Enter the seven-digit “Project Number” (if applicable). This number will correspond to Field 6 of the AFF string provided in the contract funding modification. If a number is not provided, enter zeros. |
| **7** | Enter the seven-digit “Work for Others (WFO)” number (if applicable). This number will correspond to Field 7 of the AFF string provided in the contract funding modification. If a number is not provided, enter zeros. |
| **8** | Enter the seven-digit “Local Use” number (if applicable). This number will correspond to Field 8 of the AFF string provided in the contract funding modification. If a number is not provided, enter zeros. |
| **9** | Enter the six-digit “Reporting Entity” identified in Field 3 of the AFF string provided in the contract funding modification. |
| **10** | Enter the total FTE cost charged to each AFF string for the current reporting period. |
| **11** | Enter the number of FTEs by NETL site location for each AFF string being reported. |

|  |  |
| --- | --- |
|  | Off-site – any location that is not on one of NETL’s sites as defined in “on-site” below. |
|  | On-site – Federally-owned or leased property within the defined boundaries of the sites at Pittsburgh, PA (PGH); Morgantown, WV (MGN); Sugar Land, TX (HOU); Albany, OR (ALB); and Anchorage, AK (AK); including, in the case of Morgantown, NETL-leased space in the Research Ridge complex immediately adjacent to the boundary. |

|  |  |
| --- | --- |
| **12** | Enter the headcount of employees (full time and part time) at both on and off-site locations as of the end of the reporting period. |

# OPEN COMMITMENT DETAIL REPORT

***BACKGROUND***

The purpose of the open commitment (OC) detail report is to provide NETL Contracting Officer’s Representatives (COR) with data on the specific elements that comprise the open commitment total and the values associated with each element. NETL uses this information for two primary purposes: 1) to track the flow of costs from open commitments to invoices and 2) to identify the open commitments associated with labor, materials, supplies or travel to support the calculation of performance period costs as defined in the Performance Evaluation Management Plan (PEMP).

***FORM***

An Excel workbook (89243321RFE000050-CMR-Invoice-Staffing-OC.xlsx) has been included as a sample template in Part III, Section J. The following is the suggested format for submission of this report.

***INSTRUCTIONS***

The OC detail report is to be submitted in a spreadsheet format that supports applying column filters to the data. Dollar values are to be formatted consistently to have a “$” and two decimal places. The report is to be submitted monthly, concurrent with the submission of the CMR and Invoice Detail reports.

**Item Description**

CLIN/Task/Activity Full item number, inclusive of contract number

Totals Total of all open commitments

Deferrals Total of deferred invoices

Period X fee Performance period fee carried in open commitments – if more than one period of fee is being carried, add additional columns

Rate Adjustment Reserve Rate adjustment reserve, if required

Subcontracts in OCs Subcontract costs held in open commitments; Separate columns for each subcontractor must be provided and must identify the subcontractor. Subcontract cost held in open commitments should be inclusive of any indirect rates applied (including those applied by prime Contractor)

Other Separate columns identifying any other costs carried in open commitments

# CONTRACT ORGANIZATION CHART (NOV 2017)

***Purpose***

The purpose of the Contract Organization Chart is to provide NETL management with data relative to the number of Contractor Full-Time Equivalent (FTE’s) employees assigned to each NETL organization they are supporting within a contract. This report will be used by Federal officials as an information source and project management tool on the distribution of contractor resources allocated to NETL organizations.

***ANNUAL CONTRACT REPORTING REQUIREMENT***

As per contract reporting requirements, all NETL site support contractors are to submit their contract's FTE Organization Chart deliverable on an annual basis no later than the November 30 using the Contractor FTE Organization Chart excel template. FTE allocation should be derived from the contractor’s CMR reporting ending October 31, and based on a current snapshot of FTE assignments supporting various NETL organizations.

Your report should include all FTEs assigned to the Prime Contractor, Prime Participants/First-Tier Subcontractors, and all lower tier Subcontractors. Indirect FTEs should be included in your submission using Org Code 000. If an employee's work is split between multiple NETL divisions, separate FTE entries will be required for that employee. Be sure that each employee’s total FTE allocation is no more than 1.0 FTE per person. Your completed report should be returned via e-mail to your Contract COR.

***FORM***

An Excel workbook (89243321RFE000050-ContractOrgChart.xlsx) has been included as a sample template in Part III, Section J. The following is the suggested format for submission of this report.

***INSTRUCTIONS***

Detailed guidance for completing the contractor’s annual FTE Organization Chart excel template are provided below and will be included in the workbook mailing.

|  |  |
| --- | --- |
| **Item** | **Description** |
| **1** | **Submittal Date:** Enter the submission date of the report. |
| **2** | **Source Document:** Enter source document used for obtaining the data (this should reflect information from October CMR/invoice submission). |
| **3** | **Submitted by:** Enter the name and phone number of the individual authorized to submit the report. |
| **4** | **Contract:** **Select from drop-down menu** to enter the official contract number *(i.e., DE-FE0004003).* Note: Full name of contract will be displayed in cell adjacent to contract number. |
| **5** | **NETL Org ID:** **Select from drop-down menu** to enter the current NETL organizational code that the employee supports *(i.e., 120, 300, 311, etc.).* If the employee supports more than one NETL organization, then multiple entries for a single employee will be required. All Indirect FTEs should be coded as “000”. This column is formatted as a TEXT column. |
| **6** | **NETL Organization Name *(Not for contractor data input):*** When contractor selects ‘Org ID’ a formula will automatically display the corresponding ‘NETL Organization Name’. Check for accuracy. |
| **7** | **Labor Category:** Enter the appropriate labor category of the Employee *(i.e., Scientist 4, Secretary 1, etc.).* |
| **8** | **Last Name Employee:** Enter the full last name of the Employee (letters only). Last names should NOT be in all capital letters. Vacancies should be entered as ‘VACANCY’ *(Note: Do not use any other term for a vacancy, such as ‘TBD’, etc.).*  Any employees that also work for more than one NETL organization shall be listed with FTE allocations on separate rows. |
| **9** | **First Initial Employee:** Enter the first initial of the employee (no period). For employees with identical last names and first initial, include the second letter of the first name. For employees with identical last names and first two initials, include the third letter of the first name. If an employee works for more than one contractor, include the employee’s entire first name. Do NOT use all capitals.  Examples: Smith, J - or - Smith, Jo - or - Or Smith, Joh |
| **10** | **Employee PTS# *(optional - new field replacing ARRA):*** If available, please enter the employee PTS# (NETL Personnel Tracking System) which is no more than 5 digits). For contractors that do not have access to the system or are not aware of their employee's PTS#, this field can be left blank. |
| **11** | **Company No:** **Select assigned company number from drop-down menu which is linked to the ‘Company Key’ tab listing**. If other companies need to be added to drop-down menu, contractors may update the ‘Company Key tab’ list as needed. The Company Code # will consist of: contract acronym (alpha characters), hyphen, and numerals in ascending sequence; Contract Abbreviation; and Company name. See additional instructions on Company Key worksheet. |
| **12** | **FTE Allocation:** Enter the FTE percentage allocated to the specific NETL Organization. Employee should only be listed once for each NETL organization. Use two (2) decimal places only. An employee may have multiple entries, but total FTE value should not exceed 1.00 FTE. |
| **13** | **Location:**  **Select from drop-down menu** to enter the employee’s duty station from the following NETL or Offsite work locations only:  A = Albany, OR  AK = Alaska  P = Pittsburgh, PA  M = Morgantown, WV  R = Research Ridge  H = Houston, TX  O = Offsite (Example: Denver, CO, Oak Ridge, TN, Washington, DC, etc.) |
| **14** | **Status: Select ‘New’ or ‘Incumbent’ from drop-down menu as described below:**  **New:** Has not previously worked on an NETL site support contract prior to commencement of current contract employer.  **Incumbent:** Worked for another NETL contractor any time prior to commencement of current contract. |
| **15** | **Comments:** Enter additional comments as needed. |
| **16** | **FTE by Location** ***(Not for contractor input):*** A formula has been provided to automatically populate the specific columns for each employee entry, based on the corresponding location code selected in the ‘Location’ column and FTE value provided. Check for accuracy. |
| **17** | **Contract** ***(Not for contractor input):*** A formula has been provided to automatically populate the specific contract abbreviation for each employee entry, based on the ‘Company Code’ selected. Check for accuracy. |
| **18** | **Company Name *(Not for contractor input):*** A formula has been provided to automatically populate the company name for each employee entry, based on the ‘Company Code’ selected. Check for accuracy. |

***Supplemental Instructions***

* Information provided on employee status should be based on a snapshot in time as of the date of the most recent CMR/invoice submission.
* Verify data:

Is information valid?

Eliminate positions that are duplicates.

Employee has not been separated or on extended leave.

Check spelling.

* Contractors should not overwrite columns with drop-down menus or formulas. The template includes formulas for hundreds of rows. However contractor should ensure that formula is accurate if it was necessary to insert additional rows.
* Prime contractors, prime participants, First-tier subcontractors, and all lower-tier Subcontractors should be included in submittal.
* Enter number of FTE’s charged against a specific NETL organization code. Any essential Indirect FTEs that provide support to the contract in its entirety (not a specific organization) should be coded as “000”. If the FTE is split between NETL organizations, separate entries will be required for each designation. Be sure the employee’s FTE value totals to the correct FTE allocation.
* **DO** list vacancies.
* **DO** submit data for an employee on extended leave.

***Avoid***

* Avoid duplicate entries.
* An employee should only be listed once per NETL Code #.
* Total FTE allocation(s) per employee cannot exceed 1 FTE.

# SUBCONTRACT STATUS REPORT

***PURPOSE***

The Subcontract Status Report provides detailed data relative to the number of Subcontractors within a designated contract. This report will be used by Federal personnel as an information source document and serves as a basis for fulfilling requests received from Headquarters, DOE and other external federal entities.

***FORM***

An Excel workbook (89243321RFE000050-SubcontractStatusReport.xlsx) has been included as a sample template in Part III, Section J. The following is the suggested format for submission of this report.

***INSTRUCTIONS***

|  |  |
| --- | --- |
| **Item** | **Description** |
| 1 | Enter inclusive dates of current reporting period. |
| 2 | Enter the official contract title. |
| 3 | Enter the official contract number. |
| 4 | Enter the name and address of each subcontractor. Subcontractors are to be grouped by state. |
| 5 | Enter ZIP code plus the 4-digit ZIP code extension. |
| 6 | Enter the subcontractor’s business type (i.e. Academia, Industry, National Lab, Non-Profit Organization, State, or Other). A list of business types can be found on the “Business Types” worksheet in the NETL Subcontract Status Report Excel workbook. |
| 7 | Enter the subcontractor’s business classification (i.e. Small Business, Woman-Owned Small Business, etc). A list of business classifications can be found on the “Business Classifications” worksheet in the NETL Subcontract Status Report Excel workbook. |
| 8 | Enter the North American Industry Classification System (NAICS) code for the subcontractor listed under Item 4. |
| 9 | Enter the contract number in combination with CLIN, Sub-CLIN, Task, or Activity numbers (i.e. 0004009.205.01.03), consistent with the contract’s Work Breakdown Structure as per the current Management Plan. |
| 10 | Enter the official title of the CLIN, Sub-CLIN, Task, or Activity entered in Item 9 above. |
| 11 | Enter the amount of actual costs incurred in the previous fiscal year. |
| 12 | Enter the amount of actual costs incurred plus the balance of the planned costs for the current fiscal year. |
| 13 | Enter the amount of planned costs for the following fiscal year, if any. |
| 14 | Enter the total cost (actual and balance of plan) for the project identified in Item 9 above. |
| 15 | Enter the date the subcontractor began work on the project. |
| 16 | Enter the date the subcontractor completed or the anticipated date the work is to be completed by the subcontractor. |
| 17 | Enter the name (first and last) of the federal program manager. |
| 18 | Enter the program number used to fund the CLIN/ Sub-CLIN /Task/Activity identified in Item 9. |
| 19 | Enter a brief description of the project. |
| 20 | Enter the type of subcontract awarded (i.e. Cost Plus Fixed Fee, Firm Fixed Price, Time-and-Material, etc.). A list of common contract types can be found on the “Common Contract Types” worksheet in the NETL Subcontract Status Report Excel workbook. |
| 21 | Enter “Competitive” or “Non-Competitive” depending on the method used in awarding the subcontract. |
| 22 | For a “Non-Competitive” entry in Item 21, enter the justification for awarding a non-competitive subcontract. |
| 23 | Did current team have the required expertise to perform the task prior to the subcontract being awarded? Enter either “YES” or “NO”. |
| 24 | Enter a subtotal for each state. |
| 25 | Enter a grand total for all states included on the report. |

***Special Instructions:***

For reporting purposes, each State will be listed and subtotaled separately.

For the purpose of this report, the following definitions apply:

Subcontractor = means any organization or person, other than the prime Contractor (to include major or critical subcontractor(s) or partners) who entered into a contractual agreement under the prime contract.

CLIN = Contract Line Item Number

DOE = Department of Energy

NAICS = North American Industry Classification System

NETL = National Energy Technology Laboratory

# ANNUAL INDIRECT RATE SUBMISSION

In accordance with the Federal Acquisition Regulation (FAR) Subpart 42.7 – Indirect Cost Rates, the Contractor must submit an annual indirect cost proposal, reconciled to its financial statements, within six (6) months after the close of the Contractor’s fiscal year. The format and content of the indirect cost proposal should follow the Defense Contract Audit Agency’s (DCAA) Incurred Cost Electronically (ICE) Model in order to be considered an adequate proposal. DCAA’s ICE Model can be found on the DCAA website at: <https://www.dcaa.mil/Checklists-Tools/ICE-Model/>. The Contractor must submit its annual indirect cost proposal directly to the cognizant federal agency for negotiating and approving its indirect costs. If NETL is the cognizant agency, the Contractor must submit their annual indirect cost proposal directly to the NETL identified electronic file location for report submission. The Annual Indirect Rate Submission shall comply with the requirements of the "Annual Indirect Rate Submission" clause identified in Part I, Section H.

# HAZARDOUS SUBSTANCE PLAN

The Contractor shall submit a Hazardous Substance Plan that shall specifically identify each hazardous substance (as defined under 40 CFR 261, Subpart D, entitled “Lists of Hazardous Wastes”) anticipated to be purchased, utilized or generated in the performance of this contract. For each such hazardous substance identified, the Plan shall specifically provide the following information:

Description of Substance/Chemical

EPA Hazardous Waste Number

EPA Hazard Code

Anticipated Quantity to be purchased, utilized or generated

Anticipated Hazardous Waste Transporter

Anticipated Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)

Anticipated Treatment Method

# HAZARDOUS WASTE REPORT

The Contractor shall submit a Hazardous Waste Report that shall specifically identify each hazardous waste (as defined under 40 CFR 261, Subpart D, entitled “Lists of Hazardous Wastes”) actually utilized, or generated in the performance of this contract. For each such hazardous waste identified, the report shall specifically provide the following information:

Description of Substance/Chemical

EPA Hazardous Waste Number

EPA Hazard Code

Actual Quantity Disposed

Actual Hazardous Waste Transporter

Actual Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)

Actual Disposal Date

Actual Treatment Method

The Hazardous Waste Report is intended as a final reconciliation of anticipated versus actual hazardous substances purchased, utilized, or generated in the performance of this contract.

# ES&H HOT LINE REPORT

A. The ES&H Hot Line Report may be used to report a major breakthrough in research, development, or design; an event causing a significant schedule slippage or cost overrun; an environmental, safety and health violation; achievement of or failure to achieve an important technical objective; or any requirement for quickly documented direction or redirection. . The report must be submitted by the most rapid means available, usually electronic, and is to confirm telephone conversations with the DOE Representatives. Identification as an “ES&H Hot Line Report” serves notice at each link in the delivery chain that “speed in handling” is required. The report must include:

1. Contractor’s name and address

2. Contract title and number

3. Date

4. Brief statement of problem or event

5. Anticipated impacts

6. Corrective action taken or recommended

B. ES&H Hot Line Reports are to be used to document incidents such as those listed below:

1. Any non-compliance with the provisions of the Part I, Section H, clause entitled “Environmental, Safety, and Health On-Site Service Contracts” is to be reported within three (3) calendar days unless specified otherwise below.
2. Any single fatality or injuries requiring hospitalization of five (5) or more individuals is to be immediately reported.
3. Any significant environmental permit violation is to be reported as soon as possible, but no later than 24 hours following the discovery of the incident.
4. Other incidents that have the potential for visibility in the media are to be reported as quickly as possible, but no later than 24 hours following the discovery of the incident.
5. Any failure resulting in damage to Government-owned equipment in excess of $50,000 is to be reported as quickly as possible, but no later than 24 hours following the discovery of the failure.
6. Any verbal or written Notice of Violation of any ES&H statutes arising from the performance of this contract is to be immediately reported.
7. Any accidental spill or release that is in violation of any ES&H statutes arising from the performance of this contract is to be immediately reported.
8. Any incident that causes a significant process- or hazard-control-system failure, or is indicative of one that may lead to any of the above-defined incidents, is to be reported as soon as possible, and must be reported within five (5) calendar days of discovery.
9. Any unplanned event which is anticipated to cause a sched­ule slippage or cost increase significant to the project is to be reported within 24 hours.

C. The requirement to submit ES&H Hot Line Reports for the incidents identified above is for the sole purpose of enabling DOE officials to respond to questions relating to such events from the media and other public. When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first, if possible, by NETL’s Office of Public Affairs and coordinated with the Contracting Officer’s Representative (COR), and the Contracting Officer.

D. When an incident is reported, the Contractor shall conduct an investigation of its cause and make an assessment of the adequacy of resultant action. A written report is required no later than ten (10) calendar days following the incident and shall include an analysis of the pertinent facts regarding the cause, and a schedule of the remedial events and time periods necessary to correct the action.

# ES&H REPORTS (DOE O 231.1, M 231.1-1, O 232.1)

A. The Contractor shall provide information and reports to NETL in support of DOE’s reporting requirements contained in DOE O 231.1, Environmental, Safety, and Health Reporting, DOE M 231.1-1, Environmental, Safety, and Health Reporting Manual, and DOE O 232.1, Occurrence Reporting and Processing of Operations Information. Content, form, schedule, and applications are provided in the DOE Orders and Manuals.

B. Data, information, or reports include, but are not limited to, the following areas (if applicable):

1. Work-related fatalities, injuries, and illnesses among Contractor employees arising out of work performed primarily at DOE-owned or –leased facilities

2. Work-hours and vehicle usage

3. Estimated property valuation

4. Interim exposure data reporting

5. Annual exposure data reporting

6. Radiological exposure to individuals

7. Annual summary of fire damage

8. Epidemiologic analyses-excess injuries and illnesses

9. Occupational, safety, and health information in support of epidemiological studies conducted by external organizations

10. Quarterly DOE and NETL ES&H performance indicator data

1. Annual site environmental reports
2. Annual tabulation of ES&H and quality-related assessments conducted.

C. As needed, information reports associated with the notification, recording and reporting requirements for accidents and/or incidents shall be prepared in accordance with 29 CFR 1904 and 1910. The Contracting Officer or his/her representative shall be provided with copies of all OSHA required documentation within ten (10) calendar days of the associated accident and/or incident.

D. On a quarterly basis, the Contractor shall report on the following NETL environment, safety, and health indicators (if applicable):

1. Recordable Injury/Illness Rate (total number of OSHA-defined recordable injuries and illnesses/total hours worked).

2. Lost Workday Case Rate (total number of OSHA defined lost workday cases/total hours worked)

3. OSHA Cost Index (estimated cost of workplace-related injuries and illnesses)

4. Hazardous Waste Generated (total cubic feet of hazardous waste shipped)

5. Metrics and reporting information cited in the Contractor Integrated Safety Management (ISM) Plan

# INTEGRATED SAFETY MANAGEMENT PLAN

An Integrated Safety Management (ISM) Implementation Plan shall be developed and submitted by the Contractor. The plan shall describe how the Contractor will implement ISM philosophy, as outlined in DOE P 450.4, Integrated Safety Management Policy, and in DOE G 450.4-1, Integrated Safety Management System Guide, into the planning, budgeting, executive, and assessment of work activities. The plan shall provide (1) a process approach to the integration of ISM’s five steps (i.e., defining the scope of work, analyzing the hazards, developing and implementing controls, performing work safely, and ensuring performance) into its everyday work activities; (2) a specific management approach to demonstrate ISM’s seven guiding principles (i.e., workforce responsibility and accountability; clear roles, responsibilities and authorities; competence commensurate with responsibilities; balance priorities; identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization); and (3) a discussion on how the execution of the Contractor’s plan will successfully and cost-effectively integrate with NETL’s own ISM and ES&H programs for on-site work to be conducted.

# PROPERTY MANAGEMENT SYSTEM

This report shall consist of the Contractor’s comprehensive written property management system. It shall address the Contractor’s written system for controlling, protecting, preserving and maintaining all Government property. The report format shall be consistent with Contractor’s system and shall as a minimum enable a comprehensive evaluation by the Government.

# PROPERTY IN THE CUSTODY OF CONTRACTORS (NETL F 580.1-8)

This report includes **ALL** Government-owned Contractor-acquired and Government-furnished property and materials for which the Contractor is accountable to the Government. This report shall also include Government Property at subcontractor’s plants and alternate locations.

# REPORT OF PHYSICAL INVENTORY

The Contractor is responsible for the management of Government Furnished Property (GFP) or Contractor Acquired Property under this contract in a manner consistent with the Federal Acquistion Regulation and the Department of Energy (DOE) personal property management program. This requires physical inventories to be conducted of the property provided under the contract at specified time frames. The inventories shall be conducted and comply with the requirements of the clause identified in Part I, Section H – "Government Property".

# REPORT OF TERMINATION OR COMPLETION INVENTORY (SF-1428 AND SF-120)

This report submitted on the SF-1428 and/or the SF-120 is due immediately upon completion or termination of the contract. The Contractor is required to perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property whether government furnished or contractor acquired applicable to the contract.

# INDIVIDUAL SUBCONTRACT REPORT

With the exception of a small business, the Individual Subcontract Report is required to be submitted electronically by the prime contractor for each contract containing a subcontracting plan. These electronic forms collect subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $750,000 of the Government share amount (over $1,500,000 for construction of a public facility); and (b) are required to report subcontracts awarded to small business (SB), veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business (HUBZone), small disadvantaged business (SDB), and women-owned small business (WOSB) concerns under a subcontracting plan. Subcontract award data reported by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors.

The Individual Subcontract Report must be submitted electronically using the government wide Electronic Subcontract Reporting System (eSRS). Access to the eSRS is available at <http://www.esrs.gov>. All contractors must register in the eSRS system and use it to submit the required report. When registering, the contractor must provide a valid DUNS number. When registration is approved, the contractor may use the system simply by logging in with his or her user name and password and electronically transmit the Individual Subcontracting Report (formerly SF-294) data to the NETL Contracting Office. A comprehensive manual for the system may be found at <http://www.esrs.gov>.

# SUMMARY SUBCONTRACT REPORT

With the exception of a small business, the Summary Subcontract Report is required to be submitted electronically by the prime contractor for each contract containing a subcontracting plan. These electronic forms collect subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $750,000 of the Government share amount (over $1,500,000 for construction of a public facility); and (b) are required to report subcontracts awarded to small business (SB), veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business (HUBZone), small disadvantaged business (SDB), and women-owned small business (WOSB) concerns under a subcontracting plan. Subcontract award data reported by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors.

The Summary Subcontract Report must be submitted electronically using the government wide Electronic Subcontract Reporting System (eSRS). Access to the eSRS is available at <http://www.esrs.gov>. All contractors must register in the eSRS system and use it to submit the required reports. When registering, the contractor must provide a valid DUNS number. When registration is approved, the contractor may use the system simply by logging in with his or her user name and password and electronically transmit the Summary Subcontract Report (formerly SF-295) data to the NETL Contracting Office. A comprehensive manual for the system may be found at <http://www.esrs.gov>.

# SERVICE CONTRACT INVENTORY

Section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117), requires agencies to report annually to the Office of Management and Budget (OMB) on activities performed by service contractors at both the prime and first-tier subcontractor levels. The total dollar amount invoiced and the number of direct labor hours expended on the services performed during the previous Government fiscal year are to be reported through the System for Award Management (SAM) by the Contractor. The information reported in the inventory will be made publicly accessible.

# BIOBASED REPORTING

The Contractor shall report the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30. The biobased report must be submitted electronically using the System for Award Management (SAM) at [http://www.sam.gov](http://www.sam.gov/). A copy of the report must also be submitted to the electronic file location identified for report submission.

# EQUAL EMPLOYMENT OPPORTUNITY AND INCLUSION REPORT

***Purpose***

The data provided in this report serves two major purposes:

1. To demonstrate the NETL contractor’s compliance with the rules, regulations and policies of the EEO laws, DOE EEO directives (DOE 311.1B) NETL EEO directions (orders, operating plans, and procedures) and other requirements pursuant to the Energy Policy Act of 2005, Public Law 109-58, enacted August 8, 2008.
2. To provide contractor workforce data in support of the Human Resources section of the NETL Annual Laboratory Plan as provided to DOE Headquarters.

***FORM***

An Excel workbook (89243321RFE000050-EEOInclusionReport.xlsx) has been included as a sample template in Part III, Section J.

***Scope of Contractor Workforce Data Set***

The NETL contractor shall provide summary-level Headcount and FTE data on contractor personnel for the NETL-defined labor categories and ethnic groups (e.g., Blacks, Hispanics, Women, etc.) as detailed in the annual NETL EEO Data Collection template. Scope of this data collection will take into account the following contractor employee groups:

1. On-site and off-site contractor employees who work 50% or more of their time in support of the NETL contract (regardless of their geographic work station);
2. Prime contractor employees onboard as of the end of the Federal fiscal year;
3. Subcontractors who are prime participants and whose labor is directly invoiced to the government.

***Submittal Information***

1. Total Permanent Workforce as of the end of the Federal fiscal year;
2. Paid Student Employees on board during the Federal fiscal year;
3. Temporary Personnel on board during the Federal fiscal year; and,
4. Copy of the company’s most recent official EEO policies (i.e., can include web-site posting).

# CONTRACTOR BUSINESS TRAVEL

The Contractor shall provide summary information of the air and ground transportation used in performance of this contract by the prime contractor and all subcontractors. This information will include the method of travel (plane, automobile, etc.).

***FORM***

An Excel workbook (89243321RFE000050-ContractorBusinessTravel.xlsx) has been included as a sample template in Part III, Section J. The following is the suggested format for submission of this report.

***INSTRUCTIONS***

**General:**

1. Enter the contract title.
2. Enter the contract number.
3. Enter the applicable fiscal year.
4. Enter the name of the prime contractor.
5. Enter company point of contact and phone number for this data request
6. Provide a brief description of how the company collects and records this travel information on an annual basis.

NOTE: This report applies only to business travel during current fiscal year. Any business-related travel (not including commuting to/from work) should be reported.

**Air Travel Instructions:**

1. Enter the total number of round-trips taken within each categories identified.
2. Enter the total air miles traveled for each category identified.

**Ground Travel Instructions:**

1. Complete Sections A. Rental-Direct Fuel Purchase or B. Rental-Trip Mileage reporting process (not both), depending on information that is readily available to you. Also, if applicable complete Section C. POV Trip Mileage.
2. Identify data for each vehicle type (passenger car/SUV) and fuel type (gasoline/diesel) under each category
3. Don't provide duplicative information; for example, if you provide Direct Fuel Purchase, don't provide Rental Trip Mileage.

## J.4 ATTACHMENT B-1 – COST MANAGEMENT/INVOICE/DETAIL/SUMMARY/STAFFING/OC REPORT FORMS

The Cost Management/Invoice Detail/Summary Staffing Report templates are provided as a separate attachment entitled **“89243321RFE000050-CMR-Invoice-Staffing-OC.xlsx”.**

## J.5 ATTACHMENT B-2 – CONTRACT ORGANIZATION CHART

The Contract Organization Chart template is provided as a separate attachment entitled **“89243321RFE000050-ContractOrgChart.xlsx”.**

## J.6 ATTACHMENT B-3 – SUBCONTRACT STATUS REPORT

The Subcontract Status Report is provided as a separate attachment entitled **“89243321RFE000050-SubcontractStatusReport.xlsx”.**

## J.7 ATTACHMENT B-4 – EEO INCLUSION REPORT

The EEO Inclusion Report is provided as a separate attachment entitled “**89243321RFE000050-EEOInclusionReport.xlsx”**

## J.8 ATTACHMENT B-5 – CONTRACTOR BUSINESS TRAVEL REPORT

The Contractor Business Travel Report is provided as a separate attachment entitled “**89243321RFE000050-ContracorBusinessTravel.xlsx”**

## J.9 ATTACHMENT C – PERFORMANCE EVALUATION MANAGEMENT PLAN

# Part I. INTRODUCTION

1. This PEMP covers the administration of the award fee provisions of this contract for the National Energy Technology Laboratory (NETL) 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.
2. The following matters, among others, are covered in the contract:
   1. The contractor is required to provide services issued under the annual operating plans for types of services as identified in the Performance Work Statement (PWS) located in Section J, Attachment A-2, of the contract.
   2. Cost-Plus-Award CLIN-based annual operating plans will be issued to provide an incentive and to encourage and reward the contractor for increasing efficiency in the performance of the contract.
   3. The term of the contract shall not exceed 60 months from its effective date including all option years.
   4. The estimated cost of performing this contract, including all option years, is described in Section B of the contract.
   5. The available award fee pool and fee evaluation periods will be in accordance with the Section B clause entitled Distribution of Performance Award Fee.
   6. The available award fee pool is subject to equitable adjustments in accordance with the special contract requirements in Section H of the contract.
   7. 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.

* 1. 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.
  2. Fee evaluation periods will be in accordance with contract clause, Distribution of Performance Award Fee, in Section B.

# Part II. ORGANIZATIONAL STRUCTURE FOR AWARD FEE ADMINISTRATION

1. 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)
      1. The FDO is the Director of the National Energy Technology Laboratory (NETL) who is the Head of Contracting Activity (HCA). The HCA may delegate the FDO assignment/responsibilities to a senior NETL official. The Government may change assignment of the FDO without advance notice to the contractor.
      2. 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)
      1. PEB Chair and Membership: The FDO will designate the PEB Chair. The PEB membership will consist of the contracting officer (CO), 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.
      2. Performance Raters (PRs): The PRs will be the CLIN CORs. 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 the management effectiveness of the contractor, and recommending performance and management effectiveness scores to the PEB. They will coordinate with the necessary personnel to develop the performance and management effectiveness scores 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

1. Rating Plan
   1. The contractor's performance shall be evaluated and rated according to this PEMP. Supporting documents are attached:
      1. Exhibit E-l, Performance Areas, Evaluation Criteria, and Scoring
      2. Exhibit E-2, Performance Measures and Levels of Performance for Performance Area 1, CLIN Performance
      3. Exhibit E-3, Award Fee Conversion Chart
   2. Exhibit E-3 is a basis for translating the CLIN performance scores to an award fee percentage for arriving at a recommendation for the FDO's consideration regarding the amount of award fee earned. In no way does this impute mathematical precision or a requirement that the FDO accept this recommendation as a determination of the amount of award fee earned for the contractor's performance during a rating period.
   3. 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 scope requirements, regardless of whether or not those requirements are specifically identified in the PEMP.
2. Award Determination Process
   1. Presented below are process steps that will be followed to evaluate and determine the award fee due the contractor, based on performance:
      1. No later than 35 calendar days after the end of the evaluation period, the PEB Chair and Contract COR will present the draft evaluation findings to the contractor. The 35-day period will allow the contractor to submit, and the CLIN CORs time to review, the invoice for the final month of the performance evaluation period.
      2. The contractor will be given an opportunity to submit comments to the PEB on the draft evaluation findings within 5 business days of receipt.
      3. The PEB Chair provides the fee determination recommendation along with any significant contractor comments to the FDO.
      4. The FDO provides written notification of the final fee determination to the PEB Chair, Contracting Officer, and COR.
      5. The CO provides the final fee determination to the contractor.
      6. 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.

2. Provisional Payment of Fee for Incentive

a. An interim progress review and assessment shall be conducted during the sixth month of the annual performance plan, based on the performance criteria noted in awarded tasks. The PEB Chair will oversee the process, which will be implemented by the Principal COR with the Performance Raters/Task CORs supplying interim adjectival assessments. The interim assessment process shall be based on sole government assessment of contractor performance.

b. The outcome of the interim adjectival rating will be summarized and provided to the Contracting Officer (CO) and inform the assigned Fee Determining Official (FDO). The CO, at their sole discretion, determines if the contractor has met the provisional payment determination requirements. If requirements have been met, the CO will advise the contractor in writing of the assessment results and payment will be authorized based upon an authorization letter from the CO and without the need of a contract modification.

c. The CO shall make a decision on the amount of the provisional payment of fee that will be made available as an incentive to the contractor following the interim 6-month assessment. The CO’s calculation of the amount of each provisional fee payment will not be a set percentage, a fixed amount, or any other constant value, but will be directly and expressly linked to continued performance, that is, to continued progress towards eventually earning the available fee.

d. The CO’s determination that the contractor has met the requirements for the provisional payment of fee for incentive has no implications for the eventual determination that the contractor has or has not earned the associated available fee at the end of the 12-month contract period. Provisional payment of fee is a separate and distinct concept from earned fee. Therefore, if the contractor has earned fee associated with an incentive in an amount greater than the provisional fee the Government paid to the contractor for the incentive, the contractor will be entitled to retain the provisional fee and the Government will pay it the difference between the earned fee and the provisional fee.

e. The CO shall retain the authority to suspend or adjust payment of provisional fee for incentive based on poor contractor performance. If the CO determines that the contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional fee will be discontinued or reduced in such amounts, as the CO deems appropriate, the contractor shall be appropriately notified of this decision.

f. The amount of provisional payment of incentive fee that can be considered is limited to the parameters set forth in the contract PEMP, Part III, Section J, Attachment C. Award fee, which is not earned in an evaluation period, cannot be reallocated to future evaluation periods.

g. Pending authorization and notification from the CO, the contractor shall submit a separate invoice (i.e., apart from regular monthly invoice) to the Government for payment. The Government will promptly make payment of any provisional payment of available fee for incentive upon submission by the contractor to the CO, of a public voucher or invoice for the approved amount.

h. Should this contract be terminated, payments will be discontinued, and an adjustment will be addressed in the termination proposal, or as directed by any contract provision.

# EXHIBIT E-1. PERFORMANCE AREAS, EVALUATION CRITERIA, AND SCORING

|  |  |  |
| --- | --- | --- |
| **Performance Area** | **General Evaluation Criteria** | **Performance Area Weight** |
| 1 | CLIN Performance | 70% |
| 2 | Management Effectiveness | 30% |
|  | **TOTAL** | **100%** |

1. **PERFORMANCE AREA 1: CLIN PERFORMANCE (70%) Objective**

The objective of Performance Area 1, CLIN Performance, is to validate the contractor’s performance of the work outlined in the annual operating plan and PWS. Each CLIN of the contract will be assessed individually based on the following performance measures: (1) quality of work, (2) schedule control, and (3) cost control. A description of these measures can be found in Exhibit E-2.

# Performance Measures and Expectations

Each CLIN will have specific performance expectations that fall under one of the three performance measures listed in the paragraph above. These expectations, along with specific levels of performance, will be documented in the CLIN annual operating plan and PWS. CLINs may have multiple performance expectations under one or more of the measures, or no expectations under one or more of the measures. The only requirement is that all CLINs will have a cost control expectation weighted at no less than 10%. Each performance expectation will be assigned a weight to communicate its level of importance. The weights for each CLIN will sum to 100%. **An example** of the distribution of weights is shown in the following table.

|  |  |
| --- | --- |
| **CLIN 1 Performance Expectations** | **Weight** |
| Quality of Work Expectation | 40% |
| Schedule Expectation | 30% |
| Cost Control Expectation | 30% |
| **TOTAL** | **100%** |

The contractor will be evaluated on objective evidence demonstrating performance for each of the CLIN performance expectations. During each evaluation period, the performance expectations will be scored based on the evidence received. The allowable scores, with a general description of the associated level of performance, are contained in Exhibit E.2. Specific levels of performance for each performance expectation are located in the CLIN annual work operating plan.

# Generation of CLIN Performance Score

Scores will be assigned to each performance expectation based on the level of performance prescribed in the CLIN annual operating plan and PWS. A single score for Performance Area 1 will be generated for each CLIN using the following calculations:

* 1. Performance expectation weight \* score = weighted score
  2. Add all weighted scores = total weighted score of the performance expectation

**An example** is shown in the following table.

|  |  |  |  |
| --- | --- | --- | --- |
| **CLIN 1 Performance Expectations** | **Weight** | **\* Score** | **= Weighted Score** |
| Quality of Work Expectation | 40% | 4.0 | 1.60 |
| Schedule Control Expectation | 30% | 2.5 | 0.75 |
| Cost Control Expectation | 30% | 3.0 | 0.90 |
| **TOTAL** | **100%** |  | **3.25** |

The total weighted score for each CLIN will be used to calculate a total CLIN score as discussed in the Determining Award Earned section.

# PERFORMANCE AREA 2: MANAGEMENT EFFECTIVENESS (30%) Objective

The objective of Performance Area 2, Management Effectiveness, is to validate the contractor’s performance of the specific management functions identified in the following evaluation factors. These functions are essential to effectively and efficiently manage the contract as a whole. As such, all CLINs under this contract as well as other contract management functions (e.g. reporting, communication, management, administration, etc.) can be taken into consideration in developing the Management Effectiveness rating.

# Performance Evaluation Factors

The Management Effectiveness performance area will be evaluated by the PEB Chair or appointee. Input will be provided to the PEB Chair or appointee by the Contract COR and CO who receive input from the CLIN CORs. The evaluation will be based on the contractor’s demonstrated results in managing the following evaluation factors:

1. **COORDINATION/COMMUNICATION.** Effectively coordinates on-site and off-site support of the contract work, including principal subcontractors and vendors. Effectively communicates with other site support contractors, and DOE employees and management to promote successful completion of work. This factor includes coordination and cooperation with third party NETL support contractors who do not have a contractual relationship with the contractor. Effectively manages multiple concurrent projects. Reports the impacts of a project change on all other active and planned projects. There are no changes or deviations to approved project plans without COR approval.
2. **INNOVATION AND VALUE ENGINEERING**. Uses innovation to recommend actions or plans for DOE approval which substantially increase the value of support services through cost reduction/efficiencies and/or improvement of results. Value engineering techniques and principles are used to ensure the best economical engineering solutions are achieved.
3. **FINANCIAL AND MANAGEMENT REPORTING**. Provides accurate and timely cost data, contractual reports, invoices, plans, and proposals per the contract’s terms and conditions.
4. **CONTRACT ADMINISTRATION.** Complies with the contract’s terms and conditions affecting the contract (e.g., cost, EEO, issuance of limitation-of-cost letters on a CLIN basis). Submits accurate and timely required reports (e.g., cost management report, staffing report, proposal submissions, subcontract consent documentation, property reports). Responsive to requests for change proposals and project plans. Submits timely, complete proposals and is cooperative in negotiating changes. Executes subcontracts and all related contractual and funding documents in a timely fashion so as not to impede the execution of work.
5. **MANPOWER MANAGEMENT**. Plans, organizes, and manages resources to bring about the successful completion of government-approved project goals and objectives. Manages direct and indirect labor and other costs as identified in the authorized plans to successfully complete work. Manages the contractor labor pool such that the proper skill mix is available to identify and address requirements; the labor pool is fully occupied and engaged; and labor and other direct costs are managed as identified in the authorized work plans. Develops partnerships and adds subcontracts as needed to provide a skilled and knowledgeable workforce that can support the depth and breadth of NETL’s planning, analytical and research support needs for both short- and long-term assignments.

# ES&H.

* 1. Complies with contractually-identified Federal, State, and local ES&H requirements and NETL’s ES&H directives.
  2. Develops, implements, and maintains an Integrated Safety Management (ISM) plan.
  3. Applies ISM’s seven principles and five functions in the planning, budgeting, execution, and improvement of its management and work activities.
  4. Supports NETL’s ES&H objective and targets.
  5. Supports NETL’s ISO 14001 and OHSAS 18001 certifications.

1. **RISK MANAGEMENT AND PROBLEM RESOLUTION.** Ensures risk is managed such

that services provided, managed, and supported are reliable, their availability is maximized, and their performance is optimized. Proactively identifies potential risks and/or problems and promptly identifies risk mitigation strategies and/or corrects or eliminates undesirable conditions. When reacting to an identified problem, the issue is addressed quickly and responses are well thought out. Resolutions are shared with the appropriate individuals in a timely manner. This factor includes the evaluation of alternative methods, processes, or procedures to accomplish overall requirements within the planned schedule and budget.

# Generation of Management Effectiveness Performance Score

A performance score will be assigned based on the breadth and depth of the objective evidence obtained. This score will represent performance at the contract level, related to all evaluation factors described above. The following table addresses the performance expectation and the level of performance needed to achieve each score.

|  |  |  |
| --- | --- | --- |
| **Performance Expectation** | **Level of Performance and Score** | |
| Outstanding demonstration, through objective evidence, of the management effectiveness performance evaluation factors | Excellent demonstration | 4.0 |
| Very Good demonstration | 3.5 |
| Good demonstration | 3.0 |
| Satisfactory demonstration | 2.5 |
| Unsatisfactory demonstration | 0 |

A performance score will be determined on the overall management of the contract as a whole (as detailed above) and that score will then be assigned to each and every CLIN in the award period being evaluated. **Example** scores are used in the table to provide clarity and assume a Management Effectiveness Performance score of 3.0.

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Area** | **Assigned Score** | **Performance Area Weight** | **Weighted CLIN Score** |
| CLIN 1 | 3.0 | 30% | 0.90 |

The performance score will be used to calculate a total CLIN score as discussed in the Determining Award Earned section.

# Part IV. DETERMINING AWARD EARNED

Each CLIN will have an individually-assigned score for Performance Area 1. The contract-level score assigned for Performance Area 2 will be applied to each CLIN for a total of two scores for each CLIN.

These two scores will be weighted according to the weight distributions identified in this document, that is, Performance Area 1: 70%; and Performance Area 2: 30%. The two weighted scores added together results in a total CLIN performance score. Each CLIN’s total performance score will be rounded down to the nearest tenth. The calculation steps are as follows:

1. Performance area score \* performance area weight = weighted CLIN score
2. Add all weighted CLIN scores = total CLIN performance score

**Example scores** are used in the table to provide clarity and to demonstrate that CLIN performance scores are unique to the rating of each CLIN while management effectiveness scores are applied contract-wide.

# 3.17

|  |  |  |  |
| --- | --- | --- | --- |
| **CLIN 1** |  |  |  |
| **Performance Area** | **Assigned Performance Score Area Weight** |  | **Weighted CLIN Score** |
| Performance Area 1, CLIN Performance | 3.25 70% |  | 2.27 |
| Performance Area 2, Management Effectiveness | 3.00 30% |  | 0.90 |
| **CLIN 1 TOTAL PERFORMANCE SCORE** | | |  |
| **CLIN 1 TOTAL PERFORMANCE SCORE (rounded down to the nearest tenth)** | | |  |

**3.10**

The rounded-down score will be applied to the Award Fee Conversion Chart in Exhibit E-3 to determine the amount of available award fee earned by the contractor for each CLIN. This amount will be used in the PEB’s recommendation to the FDO for consideration in determining the final award fee earned.

# EXHIBIT E-2. PERFORMANCE MEASURES AND LEVELS OF PERFORMANCE FOR PERFORMANCE AREA 1, CLIN PERFORMANCE

Specific performance expectations and levels of performance are contained in the CLIN annual operation plans and PWS. All of the expectations will fall under one of the four general performance measures listed below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Measure** | **Performance Measure Definition** | **Level of Performance** | **Score** |
| **Quality of Work** | DOE will assess the degree to which work are 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. For research and analytical work, DOE will assess the degree to which the work meets professional standards commensurate with the state of knowledge in that particular field. DOE will evaluate the degree to which the contractor executes work in adherence to prescribed procedures. | Work is (1) always accurate, complete, relevant, and professional and always executed according to prescribed procedures, and is (2) always accepted without revision. | 4  Excellent |
| Work is (1) consistently accurate, complete, relevant, and professional and consistently executed according to prescribed procedures, and is (2) consistently accepted without revision. | 3.5  Very Good |
| Work is (1) mostly accurate, complete, relevant, and professional, and mostly executed according to prescribed procedures, and is (2) mostly accepted without revision. | 3  Good |
| Work is (1) usually accurate, complete, relevant, and professional and usually executed according to prescribed procedures, and is (2) usually accepted without significant revision being required. | 2.5  Satisfactory |
| Work is (1) seldom accurate, complete, relevant, and professional and seldom executed according to prescribed procedures, and is (2) seldom accepted without significant revision being required. | 0  Unsatisfactory |
| **Schedule Control** | DOE will assess the timeliness of deliverables, completion of milestones, and responsiveness to DOE requests, and/or range of schedule variance. . For research and analytical projects, DOE will also assess the degree to which schedules are kept up to date, accurately tracked, and the degree to which variances are justifiable. | Milestones, deliverables, and DOE requests are always completed ahead of schedule. | 4  Excellent |
| Milestones, deliverables, and DOE requests are always completed according to schedule. | 3.5  Very Good |
| Milestones, deliverables, and DOE requests are mostly completed on schedule, or schedule variance is mostly zero or mostly a positive number. | 3  Good |
| Milestones, deliverables, and DOE requests are usually completed on schedule, or schedule variance is usually zero or usually a positive number. | 2.5  Satisfactory |
| Milestones, deliverables, and DOE requests are seldom completed on schedule, or schedule variance is seldom zero or seldom a positive number. | 0  Unsatisfactory |
| **Cost Control**  Cost efficiencies and circumstances beyond  the control of the contractor will be taken into consideration and scores will be adjusted accordingly.  A definition of the formulas to capture performance period costs and evaluate cost control variance is provided below this Exhibit. | DOE will assess the degree to which actual costs, as defined in Section 4, have minimal to no variance from approved annual plan (calculated variance will be rounded down to the nearest tenth).  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 score accordingly. | Actual costs are within 5% of the approved cost plan AND the contractor submits no updated cost plans unless there is a change in scope AND the quality ratings (products and processes) in the PEMP achieved a very good score (3.5) or higher. The evaluator may also take into consideration demonstrated cost efficiencies in determining the score. | 4  Excellent |
| Actual costs are within 10% of the approved cost plan AND the contractor submits no updated cost plans unless there is a change in scope AND the quality ratings (products and processes) in the PEMP achieved a very good score (3.5) or higher. The evaluator may also take into consideration demonstrated cost efficiencies when determining the score. | 3.5  Very Good |
| Actual costs are within 15% of the approved cost plan AND the contractor submits no more than one updated cost plan that is not related to a change in scope AND the quality ratings (products and processes) in the PEMP achieved a good score (3.0) or higher. The evaluator may also take into consideration demonstrated cost efficiencies when determining the score. | 3  Good |
| Actual costs are within 15% of the approved cost plan AND the contractor submits no more than two updated cost plans that are not related to a change in scope. The evaluator may also take into consideration demonstrated cost efficiencies when determining the score. | 2.5  Satisfactory |
| Actual costs are not within 15% of the approved cost plan AND the contractor fails to adhere to the contract requirement for adjusting their cost plan when expected to be more than + or - 10% OR the contractor submitted more than 2 revisions to the cost plans that are not related to a change in scope. | 0  Unsatisfactory |

Under Performance Area 1, Cost Control is measured by the variance between actual costs and planned costs during the Performance Period. Actual costs and planned costs are defined here.

Actual Costs for Performance Period = Actual costs reported on the Contract Management Report (CMR)

during the Performance Period for the associated award fee evaluation period. Actual costs do not include fee invoiced from prior fee evaluation periods. Actual Costs for Performance Period also include open commitments for costs incurred, but not yet invoiced, for work performed in the evaluation period. Open commitments for costs not impacting the current award fee evaluation period will not be considered including, but not limited to, indirect rate adjustments, costs from the prior performance period, unbilled fee, etc. Lastly, if costs from open commitments are utilized in the calculation of actual costs for the respective award fee evaluation period, then those costs will be not be taken into consideration as actual costs in the evaluation period when those costs are invoiced.

Planned Costs for Performance Period = Planned costs approved in the Annual Operating Plan (AOP)

for the respective award fee evaluation period. Planned costs do not include fee.

An example of the formulation of Performance Period actual costs is shown here to provide clarity.

Performance Period Cost Data

* Actual costs invoiced for the performance period = $45,500
* Open Commitments, for this performance period:

Work performed during this period, but not invoiced = $12,500 Materials/supplies purchased this period, but not invoiced = $500 Anticipated fee = $4,000

* Work performed during the prior performance period,

but invoiced during current the performance period = $10,500 Actual costs for performance period = $45,500+$12,500+$500-$10,500 = $48,000

An example of how to determine the cost variance is provided below.

If:

Actual costs for performance period = $48,000

and

Planned costs for performance period = $50,000

Then: The cost control variance is -$2,000 and calculated as $48,000-$50,000; | -2000/50,000 |

◊ -4%

In this example, the cost control variance is within +/- 5% of the planned costs approved AOP and would be taken into consideration with any cost plan adjustment(s) as well as the quality rating as defined in Exhibit E-2 to establish the cost control measure.

# EXHIBIT E-3. AWARD FEE CONVERSION CHART

The following chart is for use in converting weighted performance scores into percentages of available award fee earned. Scores will be rounded down to the nearest tenth before identifying the percent of available award fee earned.

|  |  |  |  |
| --- | --- | --- | --- |
| **CLIN PERFORMANCE SCORE** | **PERCENT OF AVAILABLE AWARD FEE EARNED** | **AWARD FEE ADJECTIVAL RATING** | **DESCRIPTION** |
| 4.0 | 100 | Excellent (between 91%  and 100% award fee) | 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. |
| 3.9 | 98 |
| 3.8 | 95 |
| 3.7 | 93 |
| 3.6 | 91 |
| 3.5 | 90 | Very Good (between 76%  and 90% award fee) | 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. |
| 3.4 | 88 |
| 3.3 | 86 |
| 3.2 | 84 |
| 3.1 | 81 |
| 3.0 | 77 |
| 2.9 | 70 | Good (between 51%  and 75% award fee) | 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. |
| 2.8 | 63 |
| 2.7 | 55 |
| 2.6 | 40 | Satisfactory (no greater than 50% award fee) | 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. |
| 2.5 | 30 |
| 0-2.4 | 0 | Unsatisfactory (0% award fee) | 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.10 ATTACHMENT D – POSITION QUALIFICATIONS

|  |  |  |  |
| --- | --- | --- | --- |
| **Labor Category** | **Historical FTE Allocation** | **Preferred Qualification(s)** | **Minimum Qualification(s)** |
| **Business Manager** | 1 | Master’s degree in business and a minimum of 5 years of management oversight for a staff of at least 20 personnel with responsibility for providing administrative support and services to a technical or research organization (i.e., professionals, engineers, scientists, etc.) with at least 75 employees. | Bachelor’s degree in business or related discipline. |
| **Business/Management Analyst** | 15 | Level 1: Entry level position. Zero years of experience.  Level 2: A minimum of 2 years of related work experience. \*  Level 3: A minimum of 5 years of related work experience. \*  Level 4: A minimum of 6 years of related work experience. \*  Level 5: A minimum of 10 years of related work experience. \*  \*Related work experience includes but is not limited to areas such as: strategic and business planning, systems alignment, performance measures and indicators, process and productivity improvement or proven equivalent ability. | Bachelor’s degree in business or related discipline. |
| **Economist/Financial Analyst** | 2 | Level 1: A minimum of 2 years of related work experience in economics, finance, or business.  Level 2: A minimum of 5 years of related work experience in economics, finance, or business.  Level 3: A minimum of 15 years of related work experience, or a master’s degree and 10 years of related work experience, or a Ph.D. and 5 years of job-related experience.  Level 4: A minimum of 25 years of job-related experience, a master’s degree and 20 years of related work experience, or a Ph.D. and 15 years of related work experience. | Bachelor’s degree in economics, finance, mathematics, or related discipline. |
| **Engineer/Scientist** | Engineer/Scientist 1: 8  Engineer/Scientist 2: 2  Engineer/Scientist 3: 6  Engineer/Scientist 4: 11  Engineer/Scientist 5: 15  Engineer/Scientist 6: 18  Engineer/Scientist 7: 4  Engineer/Scientist 8: 19 | Level 1: Entry level position. Zero years of experience  Level 2: A minimum of 3 years of related work experience specifically associated with scientific/technical programs. \*  Level 3: A minimum of 3 years of related work experience specifically associated with scientific/technical programs\*, or a master’s degree.  Level 4: A minimum of 8 years of related work experience specifically associated with scientific/technical programs\*, or a master’s degree and 3 years of job-related experience, or a Ph.D.  Level 5: A minimum of 11 years of related work experience specifically associated with scientific/technical programs\*, or a master’s degree and 6 years of job-related experience, or a Ph.D. and 3 years of job-related experience.  Level 6: A minimum of 15 years of related work experience specifically associated with scientific/technical programs\*, or a master’s degree and 10 years of job-related experience, or a Ph.D. and 7 years of job-related experience.  Level 7: A minimum of 20 years of related work experience specifically associated with scientific/technical programs\*, or a master’s degree and 15 years of job-related experience, or a Ph.D. and 12 years of job-related experience.  Level 8: A minimum of 25 years of related work experience specifically associated with scientific/technical programs\*, or a master’s degree and 20 years of job-related experience, or a Ph.D. and 17 years of job-related experience.  \* A Professional Engineer’s license may substitute for 2 years of experience at all levels. | Bachelor’s degree in engineering (e.g., chemical, civil, electrical, environmental, industrial, mechanical, petroleum, etc.) or science (e.g., physics, chemistry, geology, etc.), or related discipline or field. |
| **Program Manager** | 1 | Master’s degree in business-, engineering-, or science-related discipline and a minimum of 15 years of related work experience in the management, operation, or administration of multi- million-dollar research, development, demonstration, or commercial programs, projects, and facilities.  A minimum of 5 years of consecutive work experience in supervising diverse and integrated work forces (e.g. professionals, engineers, scientists, etc.) in a geographically dispersed work environment. | Bachelor’s degree in business, engineering, or science-related discipline. |
| **Project Manager** | 2 | A minimum of 5 years related work experience in project management.  Project Management Professional (PMP) certification. | Bachelor’s degree in business administration, engineering, or other science-related field. |
| **Technical Communications Specialist** | 2 | Level 1: A minimum of 5 years related work experience or proven equivalent ability.  Level 2: A minimum of 10 years related work experience, or a master’s degree and 8 years of related work experience.  Level 3: A minimum of 10 years related work experience, or a master’s degree and 10 years of related work experience | Bachelor’s degree. |

Section K - Representations, Certifications, and Other Statements of Bidders

K.1 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS. (MAR 2020)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 541330.

(2) The small business size standard is $41.5M.

(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 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) 52.204-26, Covered Telecommunications Equipment or Services-Representation. This provision applies to all solicitations.

(vii) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations-Representation.

(viii) 52.209-5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(ix) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(x) 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.

(xi) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xii) 52.219-1, Small Business Program Representations (Basic, Alternates I, and II). 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.

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

(xiii) 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.

(xiv) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xv) 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.

(xvi) 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.

(xvii) 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.

(xviii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA-designated items.

(xix) 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.)

(xx) 52.225-2, Buy American Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xxi) 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 $83,099, the provision with its Alternate II applies.

(D) If the acquisition value is $83,099 or more but is less than $100,000, the provision with its Alternate III applies.

(xxii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xxiii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan-Certification. This provision applies to all solicitations.

(xxiv) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxv) 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:

[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).

[X] (vii) 52.227-6, Royalty Information.

[X] (A) Basic.

[ ] (B) Alternate I.

[X] (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.

(End of provision)

K.2 52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. (OCT 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services-Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

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

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition*. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to-

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to-

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures*. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (*https://www.sam.gov*) for entities excluded from receiving federal awards for "covered telecommunications equipment or services."

(d) *Representations*. The Offeror represents that-

(1) It [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that-

It [ ] does, [ ] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) *Disclosures*. (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment-

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services-

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment-

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services-

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

K.3 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 proceedings 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 (FAPIIS) 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 FAPIIS 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).

(End of provision)

K.4 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST-DISCLOSURE. (JUN 1997)

(a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.

(c) The statement must contain the following:

(1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

(End of provision)

K.5 952.226-73 ENERGY POLICY ACT TARGET GROUP REPRESENTATION. (SEP 1997)

(a) The Offeror is:

(1) \_\_\_\_An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent-

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof; or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) \_\_\_\_An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) \_\_\_\_A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) By submission of an offer, the Offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the Contracting Officer that the Offeror is an entity from the Energy Policy Act target group identified.

(End of provision)

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 FEDCONNECT

The Department of Energy’s (DOE), National Energy Technology Laboratory (NETL) is using the FedConnect web portal (found at <https://www.fedconnect.net>) to disseminate the solicitation, receive questions, and accept proposals for this Request for Proposal (RFP). **ONLY PROPOSALS SUBMITTED THROUGH FEDCONNECT WILL BE CONSIDERED FOR AWARD**.

To get started, download a copy of the quick start guide, “[FedConnect, *Ready, Set, Go Guide*](https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf)” which will provide assistance/instructions on registering, finding an opportunity, sending and receiving messages, and submitting a response.

To register, please visit the [FedConnect](https://www.fedconnect.net/) web portal at <https://www.fedconnect.net>, and click on the link: “Register for Free Account.” Please note that before you can register in FedConnect, you will need a DUNS (<http://fedgov.dnb.com/webform>) and be registered in the “System for Award Management” (SAM) database (<http://www.sam.gov/>).

You are encouraged to register as soon as possible and should allow at least 14 days to complete these registrations.

**YOU ARE ENCOURAGED TO SUBMIT YOUR PROPOSAL EARLY AS EXTENSIONS WILL NOT BE GRANTED.**

To find this RFP, click on “Search Public Opportunities” and search by the RFP Number, 89243321RFE000050. Please bookmark this page and check it frequently for updates to this RFP. It is highly recommended that once you access the opportunity that you request to be alerted for amendments, messages, and any e-mail alerts associated with this RFP. To do so, you will need to click on the “Register to Receive Notifications” button under “What do I do now?” If someone from your company has already registered interest for this opportunity, the “Register to Receive Notifications” button will not display. Instead, you will have the option to join the response team by clicking the Join the Team button within the Response Team section.

All questions regarding the content of this solicitation must be submitted electronically via FedConnect. You must register with FedConnect to respond as an interested party to submit questions, and to view responses to questions. Questions and answers will also be posted to the electronic reading room available at the following Web address <https://www.netl.doe.gov/business/site-support>. Questions will not be answered over the phone. The Contracting Officer must receive questions regarding the RFP via FedConnect no later than ten (10) business days prior to the established due date. The Government reserves the right to not respond to any questions received after this timeframe.

Please note - FedConnect is owned and operated by Compusearch Software Systems Inc., not by the Department of Energy (DOE) and DOE does not provide help desk assistance for FedConnect. For assistance with FedConnect, please contact FedConnect directly:

By e-mail: fcsupport@unisonglobal.com

By phone: 1-800-899-6665 (8:00 a.m. to 8:00 p.m., Eastern Daylight Time, except Federal holidays).

## L.3 ELECTRONIC SUBMISSION OF PROPOSALS

Offerors must submit their proposal in accordance with the Proposal Preparation Instruction contained herein. Proposals and amendments of proposals shall only be accepted through FedConnect and must be received no later than 4:00 PM Eastern Standard time on November 1, 2021.

Electronic files of a large size may take a considerable amount of time to upload. It is your responsibility to allow an adequate amount of time for your proposal submission.

You are strongly encouraged to submit your proposal at least 24 hours before the specified deadline in order to have time to resolve any transmission problems.

**PROPOSALS, OR PROPOSAL FILES, THAT HAVE A FEDCONNECT DATE/TIME STAMP LATER THAN THE IDENTIFIED DEADLINE WILL BE CONSIDERED “LATE” AND WILL NOT BE REVIEWED OR CONSIDERED FOR AWARD.** The Offeror shall be notified that their proposal was determined as being submitted late and was not further evaluated.

It is the responsibility of the Offeror, prior to the offer due date and time, to verify successful transmission.

## L.4 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 artwork, 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 (Version 10 or earlier). Using this compression software will diminish the file size, thus reducing the time needed to upload and download a proposal.

## L.5 Proposal Preparation Instructions – General

(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) Major or Critical Subcontractor. The term “major or critical subcontractor” as used in this Section L, refers to any subcontractor proposed to perform a significant portion of a CLIN (proposed to perform work in excess of $3 million per year).

(c) To aid in evaluation, the proposal must be clearly and concisely written as well as being neat, indexed (cross-indexed as appropriate) and logically assembled. All pages of each part must be appropriately numbered and identified with the solicitation number and the name of the Offeror.

(d) Availability of the solicitation, amendments, and other documents.

(1) In order to further the Government policy of maximizing electronic commerce and making the acquisition process optimally cost effective, electronic media will be used 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 are responsible to maintain continual surveillance of the 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.

(2) The solicitation, amendments, reference documents, and other communications are also available through a website and a reading room. The website address is <https://www.netl.doe.gov/business/site-support>. However, as stated above, the official distribution of such information is through the FedConnect website.

(e) 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 <http://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 [TBD]. 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.

(f) 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.

(g) 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 – See table below for page limit(s).

(iii) Volume III, Cost or Price 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, 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. **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).**

(3) Except as may be provided elsewhere in the solicitation , 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 or Price Proposal, unless otherwise specified.

(h) 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 Performance Work Statement, 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. All pages shall be single spaced, using 12-point font, 1" margins, and when printed, will fit on size 8 1/2" by 11" paper. A thorough and concise technical proposal can be prepared within the requested page limit. The 12-point font is mandatory to ensure readability of the proposal and is intended for the proposal body text. It is not the Government’s intent to require 12-point font size in headers/footers and/or to require Offerors to redo their graphics or tables to conform to this font size. However, readability is at the risk of the Offeror and graphics/tables with less than 12-point font may not be considered in evaluation of the proposal if they are not legible and clear to the evaluator.

(4) Legend. The top or bottom margins shall 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 margins. No more than two columns of text per page shall be used and use of boldface type for paragraph headings are acceptable.

(5) Page numbering. All pages shall be sequentially numbered by volume.

(6) 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 (i.e. Adobe Acrobat version 9.5.1 or earlier (.pdf); Word version Office 365 or earlier (.docx); or Excel version Office 365 or earlier (.xlsx))

(7) 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.

(i) Questions.

(1) Questions regarding this solicitation must be submitted via FedConnect no later than [TBD time], [TBD date]. 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) Do not assume that because you have had similar contracts with the Federal Government, including the Department of Energy, that reviewers know of your performance under such contracts and will make assumptions regarding your proposal based on that knowledge. Any proposals received in response to this solicitation will be reviewed strictly as submitted and in accordance with the evaluation criteria specified in Section M.

## L.6 PROPOSAL PREPARATION INSTRUCTIONS ‑ OFFER AND OTHER DOCUMENTS - VOLUME 1

1. General

Volume I, Offer and Other Documents contains the offer to enter into a contract and other documents. The signed original(s) of all documents requiring signature by offerors shall be contained in Volume I (electronic signature(s)). Offerors shall include the information listed in the following paragraphs in Volume I, assembled in the order listed. In cases where the Offeror is required to fill-in information in the contract clauses, those have been included in the Fill In of Contract Clauses Exhibit included in this solicitation.

1. Format and Content

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>File 1 Offer Cover Sheet.– |
| File 2 | SF33 Form – Solicitation, Offer and Award | <company name>File 2 SF33.– |
| File 3 | Fill-In of Contract Clauses | <company name>File 3Fill In.– |
| File 4 | Financial Responsibility | <company name>File 4 Financial.– |
| File 5 | Systems | <company name>File 5 Systems.– |
| File 6 | Administrative Discussion | <company name>File 6 Administrative.– |

1. FILE 1, OFFER COVER SHEET

The Offer Cover Sheet shall not be considered in the evaluation.

The filename shall be in this format <company name>File 1 Offer Cover Sheet. The Offer Cover Sheet shall contain the following information:

* Solicitation number and title: 89243321RFE000050, Strategic Analysis (SA)
* Offeror name, address, and DUNS
* Indicate the business size (e.g. small business, Veteran Owned Small Business, etc.)
* U.S. Congressional District
* County of Organization
* 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 proposing major or critical subcontractors, indicate the name(s), address(s), business size, and DUNS of each major or critical subcontractor.

1. FILE 2, SF33 FORM - SOLICITATION, OFFER AND AWARD

The filename shall be in this format <company name>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 shall 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.
4. FILE 3, FILL IN OF CONTRACT CLAUSES

The filename shall be in this format: <company name>File 3 Fill In.-.

Certain solicitation clauses have been uploaded with the solicitation, as a separate Word document (Clauses.docx), which are to be completed by the Offeror, saved and submitted as File 3. 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 may be incorporated into (and/or replace) the list in Part III, Section J, attachment entitled “Position Qualifications.” It is required 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.

1. FILE 4, FINANCIAL RESPONSIBILITY

The filename shall be in this format: <company name>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.

1. 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.
2. the estimated percentage this proposed contract will represent of the Offeror’s total business for the first year of the contract.
3. a copy of the most recent 10K report filed with the Securities and Exchange Commission, if any; and
4. 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 Section L Exhibits. 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.

1. FILE 5, SYSTEMS

The filename shall be in this format: <company name>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. An accounting system review must be performed by a qualified auditor prior to award of a cost reimbursement type contract (unless the contractor has an approved accounting system and the approval was based on a recent audit by a qualified auditor). 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.
3. Property System - The Offeror shall identify the name and type of property management 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 property management system for use under this contract. In the event that the Offeror does not have an approved property management system, the Offeror shall indicate such and provide documentation sufficient to demonstrate to the Government the ability to inventory, track, and control Government furnished property.
4. FILE 6, ADMINISTRATIVE DISCUSSION

The filename shall be in this format: <company name>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 form entity (including Limited Liability Corporations (LLC)) formed for the purpose of performing this contract, or members of similar entities.

Facility Clearance Verification. The Offeror shall submit the Department of Defense Commercial and Government Entity (CAGE) code, or DOE or Nuclear Regulatory Commission facility clearance number for the Offeror, subcontractors, and team members who will perform work under a contract resulting from this solicitation. If the Offeror, or any of its subcontractors or team members, does not possess such a CAGE code or DOE/NRC facility clearance number, the Offeror, subcontractor, and/or team member shall submit the information required by the provision at DEAR 952.204-73, Facility Clearance found elsewhere in this solicitation, Sections I and L. Further information is available at <https://foci.anl.gov>.

Performance Guarantee. The Offeror shall provide the Performance Guarantee in accordance with the clause DOE-H-2016, Performance Guarantee Agreement. See Exhibit A, Performance Guarantee for the form and text of the required agreement. A Performance Guarantee is required for each team member of a "contractor team arrangement" as defined in FAR 9.601.

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 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.7 Proposal Preparation Instructions - Technical and management Proposal Volume II

1. **GENERAL**
   1. Volume II – The Technical and Management Proposal consists of written information to allow Offerors to demonstrate their approach and capabilities to perform the prospective contract. The instructions contained in this and other provisions of the solicitation are provided to assist Offerors in preparing their proposals and are not evaluation factors, however failure to comply with these instructions may result in a deficient proposal. The Technical and Management Proposal will be evaluated in accordance with the evaluation factors stated in Section M, Evaluation Factors for Award. 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. **No contractual cost information is to be included in the Technical and Management Proposal.** Where an Offeror determines that estimated labor hours and skill mixes are necessary to describe their Technical and Management Proposal, they shall not include cost information. Labor hours shall be expressed as direct productive labor hours (DPLH) and for consistency with the Cost Proposal a Full-Time Equivalent (FTE) shall be the same as defined in the Offeror’s cost discussion (e.g. 1860 DPLH).

# FORMAT AND CONTENT.

The Technical and Management Proposal shall comply with the requirements contained in the provision, Proposal Preparation Instructions – General and other applicable provisions of the solicitation, including the required format and page limitations expressed. Offerors shall be specific and complete in addressing the information required to be included in the Technical and Management Proposal. Offerors shall not simply offer to perform work in accordance with the PWS; rather, Offerors shall provide their specific approach and capabilities to perform the required work. Moreover, Offerors shall not merely restate the PWS elements and/or other solicitation requirements in its Technical and Management Proposal. Failure to provide complete information may result in a lower evaluation rating.

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.

FILE STRUCTURE

Volume II, Technical and Management Proposal, must include the following documents (in the order listed):

|  |  |  |  |
| --- | --- | --- | --- |
| **FILE** |  | **FILE NAME** | **PAGE LIMIT** |
| File 1 | Technical and Management Discussion | <company name>File 1 Technical.– | 60 pages |
| File 2 | Resumes | <company name>File 2Resumes.– | No page limit |
| File 3 | Commitment Letters | <company name>File 3 Letters.– | 1-2 page per person for Key Personnel and one per company for Major/Critical Subcontractor |
| File 4 | Subcontracting and Teaming | <company name>File 4 Subcontracting.– | No page limit |
| File 5 | Subcontracting Plan | <company name>File 5 Subcontracting Plan.– | No page limit |
| File 6 | Relevant Experience | <company name>File 6 Experience– | 2 pages per contract/project, per entity |
| File 7 | Relevant Past Performance | <company name>File 7 PastPerformance.– | 2 pages per referenced contract.  Past Performance Questionnaires are excluded from page limitation but are limited to the forms provided. |

The page limits identified in the table above do not apply to cover pages, table of contents, glossary(ies), and list of acronyms. **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).**

# CRITERION 1 – MANAGEMENT, ORGANIZATION, AND STAFFING APPROACH

TECHNICAL AND MANAGEMENT DISCUSSION (File 1)

The Offeror’s proposal shall provide a clear vision for the delivery of strategic analysis support to NETL 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, accounting, safety, quality, 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 proposal that presents a clear understanding of the compatibility and complementarity of the proposed approach with NETL’s mission, vision, goals, objectives, initiatives, and operations. The Offeror shall provide a concise technical 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. While serving as a guide on the technical organization within the NETL, the NETL does not view the internal organizational structure or 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 annual operating plans and cost-effective management control and oversight. The Offeror shall describe the control procedures for proper management, systems utilized, and procedures to address the following: cost, manpower, schedule planning and control, resource allocation, work monitoring, reporting, and quality control. Specific focus should be on existing and value-added practices that have proven effective, thus providing significant avoided cost for the Government. The Offeror shall include information on how the management approach will ensure the complex and diverse technical requirements are met. The Offeror shall describe the lines of communication as part of the management approach, both within the Contractor’s organization and with DOE/NETL.

**Organization Approach** – The Offeror shall propose a corporate organizational plan that describes any available corporate resources from parent organization(s) (e.g. including LLC team members that will be used), how the corporate resources will be used, the lines of communication, authorities, 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 accessed, if needed. The Offeror shall specifically address how reach-back services (off-site and short-term expertise) will be engaged to support flexible engagement of unique technical resources and the benefit to the Government of the access to these resources.

**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. The Offeror shall provide a staffing plan that demonstrates 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 technical approach to performing the PWS requirements; labor category position titles; NETL site location where each person will be located; 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 and sponsor initiatives. The discussion should address the proposed labor mix, including subcontractors, of the contract workforce, on-site and off-site (~90% on-site), 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, retain and release) in order to meet the management and strategic analysis support requirements of the work described in the PWS as they are applied to a dynamic R&D portfolio. 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.

**Transition Approach** - The Offeror shall include a description of the approach for planning and staffing the transition and transfer of duties from the incumbent Contractor(s), with minimal disruption to ongoing work and activities at NETL. 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 before full contract assumption.

**Quality Assurance Approach** - The proposal shall provide a detailed discussion of the Offeror’s approach to developing, implementing, and managing a Quality Assurance (QA) program. Included shall be a discussion detailing the Offeror’s approach to quality assurance and how it will interface and complement NETL’s quality program. The approach and supporting discussion must be compliant with DOE Orders.

**Key Personnel and Essential Personnel** - The Offeror shall identify their key personnel and essential personnel (managerial and technical) (see below) and explain why they are considered necessary to performance on this contract. The Offeror shall discuss the qualifications and experience of key and essential 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 10 years from the issuance date of the RFP, and how this experience will be used to support NETL. If the Offeror proposes any Key or Essential Personnel who will be provided by a proposed subcontractor (or teaming), the Offeror shall discuss, in the same level of detail as indicated above, the information identified above for those proposed Key or Essential Personnel the subcontractor(s) is providing. Resumes of these Key and Essential Personnel shall be included in File 2. Letters of commitment for Key Personnel shall be included in File 3. Resumes 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.

Key Personnel: Key personnel are those personnel that 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. Examples of key personnel would be the Program/Contract Manager and the Business Manager but may include other senior managers and personnel critical to the overall success of the contract. 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 effective date of contract. The Offeror shall provide Commitment Letters (File 3) for those persons designated to fill key positions and identify the proposed duty station of each personnel (Albany, Morgantown, Pittsburgh, Off site). 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 Key Personnel position or multiple individuals to fill one Key Personnel position, then the Offeror must clearly explain the benefits and rationale for this approach.

• Program/Contract Manager

• Business Manager

In addition to the above stated minimum Key Personnel positions, the Offeror may propose other positions that are critical to the overall performance of the contract and that meet the requirements of Key Personnel.

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.

Essential Personnel: Essential personnel are those individuals that have specialized skills, knowledge and experience that are required to execute specific work functions and are considered to add significant value to the success of the contract (e.g. senior or mid-level technical managers). As it is likely that some essential personnel will not be full-time to this contract and some may be specialized consultants, these instances should be identified and the rationale for why they are essential should be clearly stated. The Offeror should describe its approach to replacement of essential personnel, as necessary, with individuals of comparable quality and experience.

# Key Personnel Resumes (File 2)

RESUMES

The Offeror shall provide resumes for all Key Personnel and Essential Personnel proposed for the contract – do not provide resumes of non- key and non-essential personnel. Each resume shall describe the education, capabilities, and relevant experience of Key and Essential Personnel for services similar to the work identified in the PWS and should be commensurate with the proposed position. These are to be demonstrative type resumes and may not simply list previous positions and work locations of the individual(s). Resumes shall describe how work experience relates to contract scope and the individual's capability to function effectively in the proposed position. The resume should demonstrate how an individual’s education and experience qualifies him/her for the proposed position under this contract. Resumes shall clearly demonstrate that minimum qualification requirements have been met or exceeded.

Resumes shall be in the following format:

* NAME: Individual’s full name
* PROPOSED POSITION: Title and Description
* ORGANIZATION AFFILIATION: Specify company where employed
* EXPERIENCE AND CAPABILITIES: Provide a summary of the overall experience and capabilities applicable to the work identified in the PWS. List specific examples of relevant work performed, accomplishments, responsibilities and authorities gained.
* EDUCATION: Identify the academic institution, degree or certificate earned, and dates. Only degrees from accredited institutions may be cited; degrees from institutions that are not accredited will not be considered.
* PROFESSIONAL AND 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.
* LIST OF RELEVANT PUBLICATIONS, HONORS, AWARDS, AND OTHER ACHIEVEMENTS: Provide a brief statement detailing the most recent and relevant accomplishments, publications, awards, honors, etc.

# Commitment Letters (File 3)

COMMITMENT LETTERS

The Offeror shall submit commitment letters as part of the technical proposal as follows.

* Key Personnel - Commitment Letters 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 after effective date of contract. The commitment letters 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 commitment letter shall demonstrate their availability, willingness to accept the position proposed and remain committed to the contract for a minimum of twenty-four months after effective date of contract. All commitment letters shall be signed and be submitted in .pdf format. Failure to submit the required commitment letter for any Key Personnel or failure of the letter to fully identify the commitment may result in the Offeror receiving a lower rating for this criterion.
* Major or Critical Subcontractor(s) –Commitment Letters from all major or critical subcontractors shall demonstrate their commitment to performing under this contract and describe the priority of this effort organizationally. The commitment letter related to major or critical subcontractors shall certify that the business entity intends to perform as a major or critical subcontractor to (insert Offeror’s name) for the five year period of performance (base period plus option period) of the contract. All commitment letters shall be signed by individuals authorized to bind their individual organization and be submitted in .pdf format. Failure to submit the required commitment letter for any major or critical subcontractor or failure of the letter to fully identify the commitment may result in the Offeror receiving a lower rating for this criterion.

# CRITERION 2– SUBCONTRACTING AND TEAMING ARRANGEMENTS

SUBCONTRACTING AND TEAMING ARRANGEMENTS (File 4)

The Offeror shall include a description of their vision and plan to engage subcontractors and team members (if any) in the technical and management aspects of the functions of the PWS. The Offeror’s description shall address the rationale for any proposed subcontract arrangement including the expertise or capability that the proposed subcontractors provide that does not exist within the Offeror’s organization. The description shall also address how quality will be controlled, how short-term support needs will be managed, how workforce levels will be managed to be responsive to the PWS requirements under changing organizational priorities and budget levels, and how cost effectiveness, cost control and timely cost reporting will be accomplished. The Offeror shall specifically describe how they will ensure that all subcontractors and team members adhere to the approaches proposed by the Offeror for implementation of technical and safety assignments deriving from the PWS and DOE orders on safety, security, foreign national participation, intellectual property, travel (especially conference travel), and release of information. If the subcontractors’ approaches are to differ from that of the Offeror, explain how the separate approaches will interact and ensure compliance. The Offeror shall describe how additional subcontractors could be efficiently engaged should expertise needs arise that do not exist in the Offeror’s organization or the proposed subcontract team. The Offeror shall describe the proposed approach for making subcontracting opportunities available to small business concerns and small business sub-categories in meeting the goals established in the Offeror’s subcontracting plan (See below, File 5). The Offeror shall consider the historical subcontracting identified in Section J, Attachment D which states: “In addition to the historical FTE by labor category noted above, the PWS indicates that NETL may require cooperative teaming work with industry, universities and other external entities and short term technical expertise and capabilities required for enhancement of the quality, breadth, and depth of research and analysis conducted.

Letters of commitment from all major or critical subcontractors shall demonstrate their firm commitment to performing under this contract and describe the priority of this effort within its organization and shall be submitted as part of File 3. The letter of commitment related to major or critical subcontractor(s) shall clarify that the business entity intends to perform as a major or critical subcontractor to (insert Offeror’s name) for the five-year period of performance of the contract. All letters of commitment shall be signed by individuals authorized to bind their individual organization and be submitted in .pdf format. Failure to submit the required letter of commitment for any major or critical subcontractor may result in the Offeror receiving a lower rating for Criterion 2.

SUBCONTRACTING PLAN (File 5) (Evaluated as Part of Criterion 2)

In accordance with Section I clause, “FAR 52.219-9, Small Business Subcontracting Plan,” an acceptable Small Business Subcontracting Plan is required prior to contract execution. This Subcontracting Plan is not required for small business entities or entities that do not plan to have any subcontracting opportunities. The Subcontracting Plan is not included in the Technical Proposal page limitation and also is exempt from limitations listed in L.5 paragraph h(3).

The Offeror’s subcontracting Plan shall address the eleven (11) elements identified in FAR 52.219-9(d). The Offeror shall establish goals that afford small business concerns with the maximum practicable opportunity to participate in contract performance consistent with efficient performance.

For informational purposes, DOE has established the following Small Business Subcontracting Plan goals for FY20:

|  |  |  |
| --- | --- | --- |
| FY 2021 Goals | | |
|  | Prime Goals | Sub Goals |
| Small Business (SB) | 41.0% | 52.0% |
| Women Owned Small Business (WOSB) | 2.5% | 5.0% |
| Small Disadvantaged Business (SDB) | 22.0% | 5.0% |
| Service Disabled Veteran Owned Small Business (SDVOSB) | 5.0% | 3.0% |
| HUBZone | 3.0% | 3.0% |

Each Offeror is strongly encouraged to consider this information in establishing goals under its proposed Small Business Subcontracting Plan. DEAR 970.1907-4 Subcontracting Plan Requirements is applicable to the performance of the contract. The Subcontracting Plan shall also contain the terms in DEAR 970.1907-4, including the annual negotiation of the goals when revised funding levels are determined.

# CRITERION 3 – RELEVANT EXPERIENCE

**RELEVANT EXPERIENCE (File 6)**

The Offeror shall provide no more than three contracts for similar services that have been active (excluding closeout activities) during the past five years, prior to closing date of this solicitation, to be evaluated as relevant experience (note: these contracts must be the same as those submitted for relevant past performance). The contracts evaluated for relevant experience will include the same contracts the Offeror provided under the past performance criteria that were determined to be relevant in size, scope, and complexity (as defined in Section L). Accordingly, the contracts submitted must meet the criteria to be considered. The Offeror shall provide a description and discussion of the organization experience being offered to perform and manage the work identified in the PWS. The Offeror shall describe prior experience in performing similar work in terms of size (size is defined as the dollar value (approximate average annual value of $15M per year (for major or critical subcontractor average annual value of $3-10M per year)) and contract period of performance (three-five year period); similar scope (scope is defined as work as identified in the PWS for the work the entity is proposed to perform); and complexity (complexity is defined as challenges such as those associated with managing multiple geographically dispersed subcontractors, providing services at dispersed geographic locations, coordinating multi-year planning of technology development programs, and performing reviews of energy research proposals). The discussion shall include the organization’s technical experience related to the PWS and energy R&D and analysis, with particular focus on the current technology focus areas described in the PWS, as well as the management/administrative experience required to provide effective oversight and management of the contract as-a-whole. The Offeror shall include a delineation of experience with databases and specialized tools or systems to perform the work elements contained in the PWS.

The Offeror shall submit information regarding experience as well as relevant organizational experience for proposed major and/or critical subcontractors, other named subcontractors (specialty subcontractors), partners or team members. This information shall specifically identify (by name) the entity that performed the work when describing prior experience and shall be provided in sufficient detail to clearly align the experience of each entity to the portions and scope of work proposed to be performed by each entity.

The Offerors Past Performance information shall be included in File 7.

# CRITERION 4 – RELEVANT PAST PERFORMANCE

**Relevant Past Performance (File 7)**

The Offeror and all major or critical subcontractors shall provide no more than three contracts (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) that are active or have been completed within the past five-years to the date of issuance of this solicitation that are for similar work in terms of size (size is defined as the dollar value (approximate average annual value of $15M per year (for major or critical subcontractor average annual value of $3-10M per year)) and contract period of performance (three-five year period); similar scope (scope is defined as work as identified in the PWS for the work the entity is proposed to perform); and complexity (complexity is defined as challenges such as those associated with managing multiple geographically dispersed subcontractors, providing services at dispersed geographic locations, coordinating multi-year planning of technology development programs, and performing reviews of energy research proposals). The Offeror and all major or critical subcontractors shall describe their past performance in performing relevant work. The Offeror and all major or critical subcontractors bear the burden of demonstrating the relevancy of past performance; therefore, the Offeror and all major or critical subcontractors shall provide the following:

* Past Performance Information Questionnaire Cover Letter (Exhibit C)
* Past Performance Questionnaires (Exhibit D)
* Performance Reference Information Form (Exhibit E**)** is limited to the form and one additional sheet. The additional sheet shall include the past performance discussion described in the above paragraph.

The Government’s receipt of Past Performance Questionnaire Forms that are completed by the reference point-of- contact(s) are not subject to the Section L provision entitled “FAR 52.215-1 Instruction to Offerors – Competitive Acquisition” related to late proposals. The Offeror shall encourage and follow-up with all reference point-of-contact(s) to ensure return the Past Performance Questionnaire via electronic means by the due date of proposals. The Government may not evaluate Past Performance Questionnaires that are received after the due date for proposals if consideration will unduly delay the evaluations. However, all other performance information (e.g., performance reference information form, relevant past performance discussion, that are completed by the Offeror and/or major or critical subcontractors) not received by the deadline will not be considered.

|  |  |  |  |
| --- | --- | --- | --- |
| **Exhibit** | **Item** | **Purpose** | **Completed By:** |
| 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.  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 cited. | The identified reference specific to the contract cited for the reference is to complete and return directly to the Government as instructed in the cover letter. |
| E | Past Performance Reference Information Form | Identifies information on the contract for which relevant past performance information is being collected. | The Offeror and all major or critical subcontractors. |

The Offeror and all major or critical subcontractors shall provide Exhibits C and D for each contract cited, to the appropriate reference point-of-contact for that contract. The reference point-of-contact for each contract should complete and submit the Past Performance Questionnaire (Exhibit D) (completed by the reference point-of-contact) directly to the Contracting Officer at the address identified in the Past Performance Information Questionnaire cover letter, prior to the closing date of the RFP. Past Performance Questionnaire Forms (completed by the reference point-of-contact) not submitted in this manner shall not be considered. The contract information provided to the reference 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.

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:

* 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;
* 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.

Offerors and all major or critical subcontractors shall not provide general performance information on the identified contracts as this information will be obtained from the references. 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 with the information received. The Government may obtain information from federal databases regarding contractor past performance and use that information in its evaluation.

## L.8 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME III COST PROPOSAL

1. General: The Offeror shall prepare its cost proposal in accordance with the instructions contained in this provision. The Offeror’s proposal contains the Offeror’s price to perform the work set forth in the PWS; therefore, it must be current, accurate, complete, and well documented. The cost proposal will be evaluated to determine if the Offeror’s proposed costs are reasonable, realistic, and reflect a clear understanding of the solicitation requirements. Cost information shall not be included in other proposal volumes. The following instructions are provided to assist in the preparation of a comprehensive fully-supported cost proposal. The cost proposal is not subject to page limitations. Information on the evaluation of the cost proposal is found in Section M. Inadequate proposals may be rejected by the Contracting Officer and, therefore, not considered for award.

**For each major or critical subcontractor (****as defined in L.5 Proposal Preparation Instructions-General) cost information shall be required and furnished in the same format and level of detail as prescribed herein for the Offeror (Note – certain items are to be proposed only by the prime Offeror (e.g. award fee, materials/supplies, travel and training) it is the responsibility of the prime Offeror to ensure that the major or critical subcontractor(s) do not include these items in its cost exhibits).** It is recommended that the Offeror provide these instructions for the cost proposal preparation to all major or critical subcontractors. If a major or critical subcontractor desires not to disclose proprietary information (e.g. indirect rates, limitations on indirect rates, etc.) to the Offeror then the major or critical subcontractor may provide the Offeror with non-proprietary (roll up or loaded) costs and submit the required detailed cost information separately in FedConnect (directly to the Government). Information for major or critical subcontractors that is not received or by the time required will not be evaluated and will cause the Offeror’s proposal to be considered non-responsive to the request for proposal (RFP). Information for major or critical subcontractors that is not received in the prescribed format may cause the Offeror’s proposal to be considered non-responsive to the RFP or may result in adjustments to the Offeror’s cost proposal.

1. 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 Exhibit and Cost Tabs: Cost Exhibit and Cost Tabs 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.
   2. Cost Discussion: The narrative support for the other than certified cost and pricing data that provides the assumptions/contingencies/rationale used in developing the proposed costs/price and the basis for the cost/price estimate for each element, that is, how the labor rates were developed, how indirect rates were developed and calculated, etc.
   3. Direct Productive Labor Hours (DPLH): The estimated number of productive labor hours (to perform the work) that are charged directly. Labor hours shall be expressed as direct productive labor hours (DPLH) and for consistency with the Cost Proposal a Full-Time Equivalent (FTE) shall be the same as defined in the Offeror’s cost discussion (e.g. 1860 DPLH).
   4. Exempt: An employee who is exempt from the provisions of the Fair Labor Standards Act.
   5. 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.
   6. 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).
   7. 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.”
   8. 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.
   9. Major or critical subcontractor: Any subcontractor proposed to perform a significant portion of the effort as further defined in L.5 Proposal Preparation Instructions – General.
   10. Most Probable Cost: Expected cost to the Government after consideration of any upward or downward adjustments to the proposed cost (excluding fee) to realistic levels based on the results of a cost realism analysis.
   11. Non-exempt: An employee who is covered by the provisions of the Fair Labor Standards Act.
   12. Non-Productive Labor Hours: The estimated number of non-productive labor hours (e.g. vacations, holidays, sick leave, etc.) that are charged indirectly.
   13. Off-Site: Includes any location not on one of the NETL sites as defined in on-site below.
   14. Off-Site Overhead Rate: The indirect rate used for work performed at off-site location(s).
   15. On-Site: Federally-owned NETL sites at Albany, Oregon; Morgantown, West Virginia; and/or Pittsburgh, Pennsylvania and/or Government-leased property in Anchorage, Alaska; Houston, Texas.
   16. On-Site (NETL Specific) Indirect Rate: The indirect rate used for work performed at on-site NETL location(s) which includes the entire expected costs of the Project Management Office (PMO).
   17. Period of Performance: The starting and ending date for the prescribed services as defined in Section F.
   18. Performance Work Statement (PWS): The performance-based work statement used to identify the work requirements.
   19. Project Management Office (PMO): Key Personnel and administrative support personnel (including those located on-site) required in performance of this contract. For the purposes of this contract, administrative support includes business office administrative support responsible for drafting invoices, subcontracts, and contract reports (e.g. Cost Management Report, Invoice Detail, EEO compliance, etc.), and office managers/secretarial staff. PMO expenses are captured indirectly in the on-site (NETL Specific) indirect rate.
   20. Total Evaluated Price: The total evaluated price (cost reimbursable effort only) is the sum of the most probable cost plus the proposed maximum award fee for the base and option periods.
2. Certified Cost and Pricing Data: The Contracting Officer has determined that certified cost and pricing data is not required for this RFP. However, in accordance with FAR 15.403-3 and 15.403-5, information other than certified cost and pricing data is required to accurately evaluate the proposals received. Therefore, information other than certified cost and pricing data (including supporting documentation/attachments) shall be submitted in accordance with the cost proposal preparation instructions/format provided herein.
3. Content: The cost proposal (inclusive of other than certified cost and pricing data) shall consist of the following:

* Contract Pricing Proposal Cover Sheet
* Cost Exhibit 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 and option period
  + Escalation Rate(s)
  + Indirect rates (e.g. fringe benefits, on-site (NETL 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)
  + Key Personnel labor and relocation costs
* 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 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 Proposal but the technical proposal shall not contain any associated cost/price information).

1. Modification(s) to the Cost Proposal: Modifications to cost proposals will not be accepted after the due date for proposals, unless expressly requested by the Contracting Officer based on formal discussions. If applicable, any modification to the cost proposal shall clearly indicate the cost impact of the modification in the same level of detail shown in the original proposal. Any modification to the cost proposal shall be clearly identified.
2. 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.
3. 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, and well documented. 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. For example, if the proposed labor rates are not realistic for the proposed approach (e.g. labor rates are not consistent with publicly available information for similar locations, without sound rationale provided for in the respective Cost Discussion), they will be adjusted accordingly 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 (NETL specific) overhead and G&A rates, based on the cost realism evaluation, will not result in rates that exceed the proposed ceiling rates.

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).

1. Format

The Cost proposal shall comply with the requirements contained in the provision L. 5 Proposal Preparation Instructions – General and other applicable provisions of the solicitation, including the required format expressed. Offerors shall be specific and complete in addressing the cost information required to be included in the Cost Proposal. Offerors shall ensure that all positions proposed in the Technical and Management Proposal have been properly identified and costed in the Cost Proposal.

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.

FILE STRUCTURE

Volume III, Cost Proposal, must include the following documents (in the order listed):

|  |  |  |  |
| --- | --- | --- | --- |
| **FILE** |  | **FILE NAME** | **PAGE LIMIT** |
| File 1 | Contract Pricing Proposal Cover Sheet | <company name>File 1 Cover Sheet.– | No Page Limit |
| File 2 | Cost Exhibits | <company name>File 2 Cost Exhibits.– | No Page Limit |
| File 3 | Cost Discussion | <company name>File 3Cost Discussion.– | No Page Limit |
| File 4 | Indirect Rate Agreement | <company name>File 4 Rate Agreement.– | No Page Limit |

The Indirect Rate Agreement file is required if the Offeror and/or major or critical subcontractors have an approved Indirect Rate Agreement or Forward Pricing Agreement.

\*For major or critical subcontractor submissions being submitted separately, both the Offeror and the major or critical subcontractor company names should precede the specified file name, example <company name>< major or critical subcontractor name>File 1 Cover Sheet.–

# File 1 – CONTRACT PRICING PROPOSAL COVER SHEET (<company name>File 1 Cover Sheet.–)

Submit one 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 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: <https://netl.doe.gov/business/business-forms/acquisition-proposal>.

# File 2 –COST EXHIBITS – TABS A through D (<company name>File 2 Cost Exhibits.–-)

Submit Cost Exhibits as File 2 of the cost proposal. To help facilitate the review process and to ensure that sufficient information is received to address all the review criteria, Cost Exhibits shall be generated using the format provided in Section L, Exhibit B except as specifically noted below and adhere to the information provided herein. Insert additional rows as needed. Do **NOT** adjust or remove the header that has been included in the Cost Exhibits.

Cost Exhibits shall be working Excel versions including formulas and computations. **Do not provide spreadsheets where formulas cannot be viewed, such as macros.**

For the purposes of this RFP, assume 100% of the DPLH will be performed as charged to the on-site NETL specific overhead rate.

Refer to Section H, clauses “Use of Government Owned Equipment/Facilities” and “Government Provided Services” for identification of items being furnished by the Government (e.g. office spaces, office/work area furniture, local area network services, parking facilities, etc.).

Final monetary extensions shall be expressed in whole dollars only. In the event that cents are reflected on the Cost Exhibits, the Government will round up to the nearest dollar for evaluation purposes.

Offeror Only - If major or critical subcontractors are proposed, the Offeror shall indicate the total cost (Tab A) and that total cost as broken down by month (Tabs B1, B2, and B3), on a separate line (following the Cost Exhibit format) in the Offeror’s Cost Exhibits for each major or critical subcontractor proposed. NOTE: While the summary total cost for the major or critical subcontracts placeholder in the Cost Tab has been included in the Direct Labor section (after application of on-site overhead), the cost is intended to reflect the total amount (inclusive of subcontracts/consultants and indirect expenses) of the major or critical subcontractor (i.e. not just the direct labor). Offerors should move the major or critical subcontractor summary total cost to the appropriate area in their Cost Tabs (e.g. A, B1, B2, and B3) to be consistent with their accounting system/practices. For example, if on-site (NETL specific) overhead is applied to major or critical subcontract costs, the major or critical subcontract line would precede the on-site (NETL specific) overhead or if major or critical subcontracts would be captured in the Offeror’s accounting system as an Other Direct Cost (ODC), the major or critical subcontractor summary total cost line would be moved to the Subcontracts/Consultant section, ensuring that each major or critical subcontract cost is listed on a separate line as well as segregated from other subcontract costs/prices. In addition, if major or critical subcontractors submit the required detailed cost information directly to the Government, the Offeror is responsible for reviewing the non-proprietary (roll up or loaded) proposed costs for completeness and reasonableness and for ensuring that the information submitted separately by their major or critical subcontractors is consistent with the amounts shown in the Offeror’s cost proposal. Any differences/deviations between the major or critical subcontractor’s information and that included in the Offeror’s proposal shall be clearly described in detail in the Offeror’s Cost Discussion. In the event that differences/deviations are not explained or identified, treatment during evaluation will be subject to the process described above in the adjustment section.

Tab A – Summary Costs/Prices

Tab A shall be utilized to provide a summary schedule (by individual cost element) of the total proposed cost/price. If Facilities Capital Cost of Money (FCCOM) is proposed, insert an additional row in the Cost Tabs to reflect FCCOM on a separate line. Ensure the values reflected in the summary schedule (Tab A) match the proposed costs/prices identified in Tabs B1 through B2.

Tab B1 – Detailed Costs/Prices

Tab B1 shall be utilized (except as noted herein) to propose costs/prices (by individual cost element) consistent with the proposed technical and management proposal and the specified period of performance. If Facilities Capital Cost of Money (FCCOM) is proposed, insert an additional row in the Cost Exhibits to reflect FCCOM on a separate line. NOTE: Tab B1 is in a similar format to that which would be expected to be utilized in responding to the Cost Plan requirement of the Ordering Procedures identified in Section H.

The costs/prices shall consist of the following cost/price elements:

Direct Labor: Propose the estimated cost/price for all anticipated direct labor.

For each position proposed to be charged directly, identify the labor category, work location, labor rate (unloaded), DPLH (per month), and number of FTEs and the respective FTE percentage by location (e.g. if proposing a full FTE (100%) and a half FTE (50%) in the same location the FTE allocation should be reflected as 150%). NOTE: There may be instances where one labor category may be required at more than one location and, in those instances, it is expected that separate line items will be utilized (e.g. an Engineer 5 may be identified on one line for Morgantown and another line for Pittsburgh).

ODCs, as applicable:

* Subcontracts/Consultants – Propose the estimated cost/price for all anticipated (non-major or non- critical) subcontracts and/or consultants. This cost/price element shall not include the labor cost for DPLH of major or critical subcontractors. It is expected that any subcontract/consultant cost included in this section is for fixed price or time and material fixed rate subcontracts and/or consultants (subcontracts that do not meet the requirement of being considered major or critical subcontractors) and not subject to any fee sharing. NOTE: Subcontractors whose cost/price is included in this subcontract section are not to be included in the list of pre-approved subcontracts located in Sections H and I of this RFP and resulting contract.
* Travel (not fee/profit bearing) – Travel costs are provided and shall be utilized as given in the Cost Tabs (B1 and B2). For the purposes of this RFP, travel costs are to be included on the Offeror’s Cost Exhibits (only) and not in those submitted by any major or critical subcontractor.
* Training (not fee/profit bearing) – For the purposes of this RFP, estimated training costs are to be included on the Offeror’s Cost Exhibits (only) and not in those submitted by any major or critical subcontractor. NOTE: Travel associated with any training proposed shall be included in the travel cost.
* Supplies/Material – Supplies/material costs are provided and shall be utilized as given in the Cost Tab (B1), excluding transition costs. DOE estimates are based on historical information and future projections; however, they do not represent a guarantee for funding future work at these dollar thresholds under the terms of this RFP. Supplies/Material costs, as provided, are to be included on the Offeror’s Cost Exhibits (only) and not in those submitted by any major or critical subcontractor. NOTE: If major or critical subcontractors are proposed, the Offeror is responsible for ensuring that supplies/material costs are not double expensed (e.g. supplies/materials costs are not included in major or critical subcontractor Cost Exhibits). Any proposal that does not utilize the supplies/material costs as provided will be subject to the process described above in the adjustment section. Exceptions or deviations to the provided supplies/material costs provided in the Cost Exhibit Template must be addressed in the Administrative Discussion (File 5) required under Volume I, Offer and Other Documents.

Fee estimated by month:

All fee is “at risk” and shall be proposed by the Offeror only, regardless of whether major or critical subcontractors are proposed (i.e. major or critical subcontractors are subject to fee sharing and shall not include a separate fee in their Cost Exhibits). **No base fee shall be authorized**. The Offeror may propose whatever fee amount it determines appropriate provided that fee 1) is estimated by month, 2) is not being calculated upon an estimated cost that includes the proposed cost for travel or training, and 3) does not exceed the maximum award fee proposed in the Offeror’s Volume I, “Fill In of Contract Clauses.” Also, identify the maximum award fee consistent with the amount proposed in Volume I, “Fill In of Contract Clauses.”

Indirect Expenses: Ensure indirect rates are proposed consistent with the indirect rates in Tabs C1 through C4 and are clearly identified. NOTE: If fringe benefits are included in the on-site (NETL specific) overhead rate, then it shall be clearly indicated as such and applied appropriately.

Tab B2 – Detailed Cost for Transition (no fee)

Tab B2 shall be utilized to propose a **no fee** Cost (by individual cost element) for the Transition in accordance with Section B.1 and the PWS consistent with the proposed technical and management approach and the specified period of performance. If FCCOM is proposed, insert an additional row in the Cost Tabs to reflect FCCOM on a separate line.

All of the proposed transition costs must be clearly documented in sufficient detail to demonstrate reasonableness, allowability, and realism of the costs. The support document pricing breakdown shall include the proposed relocation costs for any employee(s) (including Key Personnel) necessary for the initial assumption of work for whom relocation costs are anticipated (regardless of whether the incurrence of relocation cost occurs during or after the transition period). NOTE: Reference FAR 31.205-35, Relocation Costs (relocation costs shall be subject to determination of allowability).

Examples of transition cost elements could include: transition team costs, ODCs, and indirect expenses. Transition team costs might include the labor (hours and rate per hour) of the employees needed to execute the transition plan (e.g. recruiting, training new personnel, etc.). ODCs might include travel, training, supplies, equipment rental, temporary office space, etc. Indirect expenses might include the fringe benefits, on-site (NETL specific) overhead, and G&A. NOTE: Ensure costs associated with individuals (e.g. Key Personnel and administrative support staff) included in the on-site (NETL specific) overhead rate are not double expensed. Specifically, if Key Personnel or any other labor costs of administrative support personnel included in the PMO cost in the on-site (NETL specific) overhead rate are billed directly in the Transition Costs, ensure that 1) the FTE for those positions do not exceed 100% for the respective fiscal year and 2) sufficient rationale is included in the Cost Discussion that explains how double expensing of those costs is not occurring. For example, if 100% of the Program Manager costs ($100,000) are included in the on-site (NETL specific) overhead rate for the respective fiscal year, none of the labor cost of this position should be billed directly in the Transition Costs. Treatment during evaluation for issues related to duplicate expense (e.g. double billing, unreasonable indirect rates, unreasonable labor costs, etc.) would be subject to the process described above in the adjustment section.

Tab B3 – Labor Categories

Tab B3 shall be utilized to provide information on the labor categories to be utilized under the contract. For each position identified (by the Government) in Tab B3, indicate if the position is exempt or non-exempt and reconcile the labor categories (names) to those generally utilized within your company. **Do not alter the labor categories provided by the Government.** If a particular labor category will not be utilized under the contract, do not delete the position or leave the requested information blank, simply indicate “not applicable”.

The list of labor categories identified (by the Government) in Tab B3 does not limit the selection of labor categories to be utilized under this contract. If additional positions that are not identified on the list are expected to be utilized during performance of this contract, identify those position(s) on separate lines in alphabetical order at the bottom of Tab B3 and provide the position information in the same level of detail as required above. NOTE: The Offeror is responsible for ensuring that position qualifications for any additional labor categories proposed in Tab B3 by the Offeror and any major or critical subcontractor is reflected in Volume I, “Fill In of Contract Clauses.”

Tabs C1 through C4 – Indirect Rate

Tabs C1 through C4 shall be utilized to provide for the proposed indirect rates. While the Cost Tabs for fringe benefit, on-site (NETL specific) overhead, off-site overhead, and G&A rates are required tabs, the format of these tabs 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 tabs in the same level of detail required for the other indirect rates. As additional tabs are created, the numbering format should continue in sequence (e.g. C5, C6, etc.).

The contractor is responsible for proper allocation of all telework and remote employees in the appropriate indirect rate structure.  For example, telework or remote employees should not have an off-site rate applied that includes facilities costs and would be expected to be included in an on-site (client site) rate or a separately created rate for hybrid on-site-telework or remote (client site) rate for application of indirect rates.  In such a scenario, the contractor may have multiple indirect rate structures for the various types of employees: 1) typical on-site (client site) rate for staff working full-time on-site at a NETL location; 2) typical off-site (contractor site) rate for staff working full-time at a contractor site location; 3) a rate established for fully remote or fully telework staff; and/or 4) a hybrid rate for telework staff who may also utilize NETL provided space for hoteling when on-site at a NETL location.

For each indirect rate required below and for any other indirect rate proposed, use the appropriate Cost Tab to provide 1) the indirect costs (by individual cost element) that comprise the cost pool for the rate for the most recently completed fiscal year, current (projected) fiscal year, and subsequent five years itemized by the individual expense items by cost element and dollar amount, 2) rate calculation, 3) allocation base consistent with the Offeror’s accounting system, 4) calculated percentage for the indirect rate and 5) 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.

Tab C1 – Fringe Benefits

Tab C1 shall be utilized to propose fringe benefits.

In the event that fringe benefits are proposed in the on-site (NETL specific) overhead rate, a note to this effect shall be indicated on this exhibit.

Tab C2 – On-Site (NETL specific) Overhead Schedule

Tab C2 shall be utilized to propose an on-site (NETL specific) overhead rate. Also, identify the on-site (NETL specific) overhead ceilings consistent with the ceilings proposed in Volume I, “Fill In of Contract Clauses”.

The on-site (NETL specific) rate shall include the entire expected costs of the PMO required for performance on this contract. Since it is expected that each entity provide an on-site (NETL specific) overhead rate for on-site work, there should not be any conflicts with disclosure statements on charging 100% of PMO expenses to the indirect pool. Exceptions or deviations to the on-site (NETL specific) overhead rate or to the inclusion of the entire PMO costs must be addressed in the Administrative Discussion (File 5) required under Volume I, Offer and Other Documents.

The requirement for an on-site (NETL specific) indirect rate shall flow down to all major or critical subcontractors performing cost reimbursement work on-site, with the exception of higher educational institutions.

Tab C3 – Off-Site Overhead

Tab 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 the assumption for all work to be performed on-site, there is an expectation that some work will be required to be performed off-site. NETL is requiring off-site overhead rates and ceilings be established in the event off-site work becomes necessary. It is expected that these rates will not be applied to work performed on-site.

Tab C4 – G&A

Tab 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.”

Tab D – Summary Cost Detail for Key Personnel

Tab D shall be utilized to provide summary cost information for all Key Personnel. The labor costs should already be included in on-site (NETL specific) overhead rate (Tab C2) and the relocation costs should already be included in the support documentation provided for the Transition Costs (Tab B2). For any Key Personnel proposed, provide the individual (employee) name, company where employed, and proposed unburdened labor rate/salary and relocations costs consistent with the costs included in Tabs B2 and C2.

# File 3 – COST DISCUSSION (<company name>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 file with one 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:

1. **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.

# General

* 1. Discuss any differences in the treatment of exempt and non-exempt employees.
  2. Discuss any differences in the 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 5) required under Volume I, Offer and Other Documents.

# Labor Cost

* 1. 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., 1820, 1860, 1920, etc.) were derived and how that annual amount was estimated by month.
  2. Identify the source of the proposed labor rate (e.g. bidding rates, average labor rates, etc.). 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.

1. **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.
2. **ODCs** – Provide a discussion of the following elements.
   1. **Subcontracts** – If proposed, provide 1) a summary listing of anticipated 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.).
   2. **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.
   3. **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.
   4. **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.
3. **FCCOM** – If proposed, provide 1) the calculations and 2) the rate applied, and 3) the Treasury rate used (as published in the Federal Register).
4. **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.).
5. **Transition -** If PMO costs are proposed directly in Tab B2 (and in the on-site (NETL specific) overhead), discuss the methodology used to ensure that double expensing of these costs was not proposed.

# Indirect Rates

* 1. 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).
  2. Identify your fiscal year (e.g. January 1 through December 31or October 1 through September 30).
  3. Indicate how the proposed fiscal year indirect rates are used to compute the proposed indirect costs by contract year in Tab B1.

# 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).
    - Detail how the allocation base was derived.
    - Describe approach to crediting employee’s 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).

# On-Site (NETL Specific) Overhead

* + - For each cost element included in the on-site (NETL specific) overhead cost exhibit, provide the breakdown (and basis, if applicable) of the cost. For example, if the proposed on-site (NETL 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.

# 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.

# 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.

# 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.

# Indirect Rate Ceilings

* 1. Indirect Rate Ceilings – For the on-site (NETL 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.

# Company Compensation Policies - Describe company compensation policies in the following areas (existing company publications may be furnished):

* 1. Salary increases:
     + Merit
     + Cost-of-Living
     + General
     + Other
  2. 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
  3. Travel/Per Diem
  4. Relocation
  5. Bonuses/Other Employee Incentives
  6. Severance
  7. Shift Premium
  8. Overtime
  9. Uncompensated Overtime. Any uncompensated overtime proposed for any personnel for this contract must be identified by the Offeror in its discussion of company compensation policies. Uncompensated overtime is the hours worked in excess of the standard 40-hour workweek, without additional compensation, by employees who are exempt from the Fair Labor Standards Act (FLSA). The Offeror must specifically identify and separately list each labor category, key person, or named individual for whom uncompensated overtime is proposed. If uncompensated overtime is not proposed, the Offeror shall clearly make a statement to that effect.

# File 4 Indirect Rate Agreement(s) (<company name>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.9 CLASSIFIED MATERIAL

Performance under the proposed contract may involve access to classified material.

## L.10 NUMBER OF AWARDS

It is anticipated that there will be one award(s) 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.

In the event the Government determines it is in the best interest to issue multiple awards the following language shall be added to Part I, Section H, clause “Ordering Procedure:”

“[FAR 16.505(b) (1)](http://www.acqnet.gov/far/current/html/Subpart%2016_5.html#wp1093227) provides that each Contractor shall be given fair opportunity to be considered for each order exceeding $3,500 and issued under multiple award contracts. The FAR states that the method to obtain fair opportunity is at the discretion of the Contracting Officer and that the Contracting Officer must document the rationale for placement and price of each order. In the issuance of task orders under this award Fair Opportunity shall be obtained by submitting a Task Order Request to each of the Contract Holders for consideration.

NOTE: Fair Opportunity to all Contract Holders is required. There is no requirement to obtain quotes from all Contract Holders as long as all Contract Holders were provided opportunity to provide a quote.

**Best Value:** The Government may determine to compete a Task Order on the basis of technical merit, past performance (as evident by performance on this contract), or by cost/price. In the event that the Contracting Officer determines to compete on technical merit each Offeror shall be provided with the basis for evaluation. Agency policy and other factors related to the exercise of sound business judgment shall be considered in making a best value determination.”

## L.11 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.12 CONTENT OF RESULTING CONTRACT

Any contract awarded as a result of this Request for Proposal (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.

Offerors should carefully review the information contained therein, and, as appropriate, state any proposed exceptions/deviations per FAR 52.215-1.

## L.13 INFORMATION OF AWARD (NOV 1997)

Written notice to unsuccessful Offerors and contract award information will be promptly released in accordance with DOE regulations applicable to negotiated acquisitions.

## L.14 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.

## L.15 EXPENSES RELATED TO OFFEROR SUBMISSIONS

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or in making necessary studies or designs for the preparation thereof or to acquire or contract for any services.

## L.16 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.17 52.204-16 COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING. (AUG 2020)

(a) Definition. As used in this provision-

*Commercial and Government Entity (CAGE) code* means-

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) The Offeror shall provide its CAGE code with its offer with its name and location address or otherwise include it prominently in its proposal. The CAGE code must be for that name and location address. Insert the word "CAGE" before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via-

(1) Registration in the System for Award Management (SAM) at www.sam.gov. If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Commercial and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) The DLA Commercial and Government Entity (CAGE) Branch. If registration in SAM is not required for the subject procurement, and the Offeror does not otherwise register in SAM, an offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at *https://cage.dla.mil*.

(3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA at *https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx* if the foreign entity's country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus, as well as additional information on obtaining NCAGE codes, are available at *http://www.nato.int/structur/AC/135/main/links/contacts.htm*.

(d) Additional guidance for establishing and maintaining CAGE codes is available at *https://cage.dla.mil*.

(e) When a CAGE code is required for the immediate owner and/or the highest-level owner by Federal Acquisition Regulation (FAR) 52.204-17 or 52.212-3(p), the Offeror shall obtain the respective CAGE code from that entity to supply the CAGE code to the Government.

(f) Do not delay submission of the offer pending receipt of a CAGE code.

(g) If the solicitation includes FAR clause 52.204-2, Security Requirements, a subcontractor requiring access to classified information under a contract shall be identified with a CAGE code on the DD Form 254. The Contractor shall require a subcontractor requiring access to classified information to provide its CAGE code with its name and location address or otherwise include it prominently in the proposal. Each location of subcontractor performance listed on the DD Form 254 is required to reflect a corresponding unique CAGE code for each listed location unless the work is being performed at a Government facility, in which case the agency location code shall be used. The CAGE code must be for that name and location address. Insert the word "CAGE" before the number. The CAGE code is required prior to award.

(End of provision)

L.18 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.

(End of provision)

L.19 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.

(End of provision)

L.20 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.

(End of provision)

L.21 52.215-20 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN COST OR PRICING DATA. (OCT 2010)

(a) *Exceptions from certified cost or pricing data*. (1) In lieu of submitting certified cost or pricing data, offerors 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) *Commercial item exception*. For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include -

(A) 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;

(B) 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;

(C) 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 offeror 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 provision, 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 offeror's determination of the prices to be offered in the catalog or marketplace.

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

(1) The offeror shall prepare and 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 contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of provision)

L.22 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).

(End of provision)

L.23 52.216-1 TYPE OF CONTRACT. (APR 1984)

The Government contemplates award of a Cost-Plus-Award-Fee contract resulting from this solicitation.

(End of provision)

L.24 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.

(End of provision)

L.25 52.222-46 EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES. (FEB 1993)

(a) Recompetition 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.

(End of provision)

L.26 52.233-2 SERVICE OF PROTEST. (SEP 2006)

(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 acknowledgment of receipt from Contracting Officer, Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Mail Stop I07, Morgantown, WV 26507-0880. .

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

## L.27 952.233-2   SERVICE OF PROTEST

(c) Another copy of a protest filed with the Government Accountability Office shall 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, SW., Washington, DC 20585, Fax: (202) 586-4546.

(End of provision)

L.28 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 x 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.

(End of provision)

L.29 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): Federal Acquisition Regulations (Clauses starting with 52): http:://[www.acquisition.gov.](http://www.acquisition.gov/) Department of Energy Regulations (Clauses starting with 952): [http://energy.gov/DEAR.htm.](http://energy.gov/DEAR.htm)

(End of provision)

L.30 FACILITY CLEARANCE (AUG 2016) (DEVIATION)

Notices to Offerors and the Contract Requirements of the Successful Offeror (Contractor)

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 information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

An offeror who has either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership, control and influence 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 that issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328. (1) The contract work to be performed by the successful offeror 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 (that is, the successful offeror’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 must submit the FOCI Package in the format directed by DOE. After the FOCI Package is 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 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 successful offeror/Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI information it submitted that could affect its 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 information it submitted that could affect its answers to the questions in Standard Form 328. Notice of changes in FOCI information that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be reported concurrently to the cognizant security office.

(b) Definitions. (1) Foreign Interest means any of the following—

1. A foreign government, foreign government agency, or representative of a foreign government;
2. 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-bycase basis, and who possess or are in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(d) Facility Clearance and Employees Requiring Access Authorizations Prior to DOE’s Granting Facility Clearance.

(1) A Facility Clearance is required for this contract, although not necessarily prior to contract award. A favorable FOCI determination for this contract is required prior to contract award. It must be rendered by the responsible cognizant security office. The Contracting Officer may require the offeror to submit additional information as deemed pertinent to this determination.

(i) The DOE must determine that awarding this 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.

(ii) Before contract award, after obtaining a favorable FOCI determination the successful offeror/Contractor may be eligible to obtain a Facility Clearance.

(iii) If the successful offeror/Contractor does not obtain a Facility Clearance before contract award, after contract award the Contractor shall submit the necessary information to obtain a Facility Clearance and to obtain personnel Interim Access Authorizations in accordance with Departmental policies and procedures.

(2) The DOE may grant certain of the Contractor’s Key Management Personnel and the Contractor’s Facility Security Officer Interim Access Authorization. If granted Interim Access Authorization, the Contractor’s Key Management Personnel and the Contractor’s Facility Security Officer will have access to classified information or special nuclear material.

(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 that 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, any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors (or vendors for purchase orders) 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 offeror;

(2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders; 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 bylaws, 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.

(End of provision)

L. 31 952.226-70 SUBCONTRACTING GOALS UNDER SECTION 3021(A) OF THE ENERGY POLICY ACT OF 1992. (JUN 1996)

(a) Definition. Energy Policy Act target groups, as used in this provision means-

(1) An institution of higher education that meets the criteria of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent-

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined by the Secretary of Education to be Historically Black Colleges and Universities pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Section 3021 of the Energy Policy Act (Pub. L. 102-486) establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract Energy Policy Act awards to Energy Policy Act target groups.

(c) The Offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the three Energy Policy Act target groups. Individual goals shall be expressed in terms of a percentage of the Offeror's proposed contract dollar value. In addition, the offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and, if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business Subcontracting Plan.

(End of provision)

L.32 952.227-84 NOTICE OF RIGHT TO REQUEST PATENT WAIVER. (FEB 1998)

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227-11 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

(End of Provision)

L.33 952.233-4 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.)

(End of provision)

L.34 952.233-5 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. (End of provision)

Section M - Evaluation Factors for Award

## M.1 DOE-M-2001 Proposal Evaluation - General (FEB 2019)

(a) Conduct of acquisition.

(1) This acquisition will be conducted pursuant to the Federal Acquisition Regulation (FAR), Part 15, Contracting by Negotiation; Department of Energy Acquisition Regulation (DEAR), Part 915, Contracting by Negotiation; and the provisions of this solicitation.

(2) DOE has established a Source Evaluation Board to evaluate the proposals submitted by offerors in response to this solicitation. Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. Proposals will be evaluated solely on the factors and subfactors specified in the solicitation by assessing the relative significant strengths, strengths, significant weaknesses, weaknesses, deficiencies, and cost and performance risks of each offeror's proposal against the evaluation factors in this Section M to determine the offeror's ability to perform the contract.

(3) The designated source selection authority will select an offeror for contract award whose proposal represents the best value to the Government. The source selection authority's decision will be based on a comparative assessment of proposals against all evaluation factors in the solicitation. The source selection authority may reject all proposals received in response to this solicitation, if doing so is in the best interest of the Government.

(b) Deficiency in proposal.

(1) A deficiency, as defined at FAR 15.001, Definitions, is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. No award will be made to an offeror whose proposal is determined to be deficient.

(2) A proposal will be eliminated from further consideration before complete evaluation if the proposal is so deficient as to be unacceptable on its face. Such deficiencies may include any exceptions or deviations from the terms of the solicitation. A proposal will be deemed unacceptable if it does not represent a reasonable initial effort to address the material requirements of the solicitation, or if it does not substantially comply with the proposal preparation instructions of this solicitation. Cursory responses or responses that merely repeat or reformulate the Performance Work Statement will not be considered responsive to the requirements of the solicitation. In the event that 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 under this solicitation.

(c) Responsibility. In accordance with FAR Subpart 9.1, Responsible Prospective Contractors, and DEAR Subpart 909.1, Responsible Prospective Contractors, the Contracting Officer is required to make an affirmative determination of whether a prospective contractor is responsible. The Contracting Officer may, if necessary, conduct a pre-award survey of the prospective contractor as part of the considerations in determining responsibility. In the absence of information clearly indicating that the otherwise successful offeror is responsible, the Contracting Officer shall make a determination of nonresponsibility and no award will be made to that offeror; unless, the apparent successful offeror is a small business and the Small Business Administration issues a Certificate of Competency in accordance with FAR Part 19.6, Certificates of Competency and Determinations of Responsibility.

(d) Award without discussions. In accordance with paragraph (f)(4) of the provision at FAR 52.215-1, Instructions to Offerors - Competitive Acquisition, the Government intends to evaluate proposals and award a contract without conducting discussions with offerors. Therefore, the offeror's initial proposal shall contain the offeror's best terms from a cost or price and technical standpoint. The Government, however, reserves the right to conduct discussions. If the Government conducts discussions, it will conduct them with all offerors in the competitive range.

(End of provision)

## M.2 COMPLIANCE WITH THE REQUEST FOR PROPOSAL

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.

Volume I Offer and Other Documents will not be point scored or adjectively rated. 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 is determined to be grossly and obviously deficient as to be totally unacceptable on its face or to contain prices that are inordinately high or unrealistically low may be eliminated from further consideration before a detailed evaluation is performed. For example, a proposal will 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. 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 deviation 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.

(End of provision)

## 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.

The Government intends to award one contract to the responsible Offeror whose proposal is determined to be the best value to the Government. Selection of the best value to the Government will be achieved through a process of evaluating each Offeror’s proposal against the evaluation factors described above. The evaluation factors for the Technical and Management Proposal will be adjectivally rated. The Cost/Price evaluation factor will not be rated, however the evaluated price will be used in determining the “best value” to the Government. The Government is more concerned with obtaining a superior Technical and Management Proposal than making an award at the lowest evaluated price. 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 Offeror’s Technical and Management Proposal over another. Thus, to the extent that Offerors’ Technical and Management Proposals are evaluated as close or similar in merit, the evaluated price is more likely to be a determining factor in selection for award.

(End of provision)

## 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 of more importance than Criterion 2. Criterion 2 is of more importance than Criterion 3. Criterion 3 is more important than Criterion 4. 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.

(End of provision)

## M.5 EVALUATION CRITERIA - TECHNICAL

The Technical and Management Proposal will be evaluated in accordance with the following criteria.

CRITERION 1: MANAGEMENT, ORGANIZATION, AND STAFFING APPROACH

The Government will evaluate the Offeror’s proposed management, organization, and staffing approach to effectively and efficiently administer and manage the contract, including, but not limited to, technical, administrative, business, accounting, safety, and quality 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 evaluation will also assess the compatibility of the approach to mission, vision, goals, objectives, initiatives, and operations of DOE/NETL. In addition, the evaluation will consider the Offeror’s in-depth knowledge and understanding of the complexity and technical requirements to execute the work elements identified in the PWS and their ability to provide comprehensive energy research and development (R&D) strategic analysis support.

The Government will evaluate the Offeror’s proposed **management approach** to successfully accomplish the PWS requirements as described herein. The Government will evaluate the management team’s demonstrated ability to identify and address critical components of managing complex and diverse work requirements; support successful strategic analysis for R&D; identify and access the appropriate knowledge, data, tools, and systems to perform the work; and maintain and report detailed, accurate, and timely financial and contract data and information. Alignment of management structure, both top- and sub-level, with NETL approach and vision for R&D and strategic analyses will also be evaluated. DOE will evaluate the effectiveness of the management approach to meet technical requirements, the effectiveness of the resource management approach, and the reasonableness of the management structure. Clarity of lines of communication within the Offeror's organization and with DOE/NETL will be evaluated, including communications across teams and functional areas within the contractor’s organization and NETL. The Government will evaluate the clarity of authority and roles and responsibilities provided by the management structure, including between the prime and major or critical subcontractors in top- and sub-level management. The Government will also evaluate the ability of the approach to provide streamlined contract execution, enabling efficiencies in administration and implementation of requirements.

The Government will evaluate the Offeror’s proposed **organization approach** to successfully accomplish the PWS requirements as described herein. DOE will evaluate the reasonableness of the corporate organization structure and how it interacts with key personnel and contract management staff. The Government will assess the reasonableness, accessibility, effectiveness, and efficiency of corporate reach-back services (off-site and short-term expertise) and the process to engage those resources on an as-needed basis as well as the benefits to the Government of access to these corporate resources. DOE will evaluate the clarity and logic of lines of communication and authority and roles and responsibility between the management of the contract and the corporate organization. The degree to which corporate management oversight is provided or engaged in performance of this contract will also be considered.

The Government will evaluate the Offeror’s proposed **staffing approach** to successfully accomplish the PWS requirements as described herein. The Government will evaluate the ability to meet the diverse technical requirements given the quality and expertise of the proposed technical workforce and the organization of the staffing plan. The Government will also evaluate how the proposed staffing approach will efficiently meet the administrative, business, accounting, safety, and quality requirements. The evaluation will consider performance efficiencies that may be realized by the proposed staffing plan. The effectiveness of approach to adjust (attract, retain, and release) a highly skilled and diversified workforce for both continuous support and expert reach-back capabilities will be included in the evaluation. The Government will evaluate the extent to which the approach provides a flexible and fluid workforce to address changing budget levels overall and variability in the needs across functional areas due to evolving program and sponsor initiatives.

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 NETL.

The Offeror’s proposed **Quality Assurance (QA) Approach** will be evaluated for compliance with DOE Orders. The Offeror’s discussion on plan development, implementation, and management will be evaluated based on the relevance to supporting NETL in maintaining its ISO 14001 status and adhering to its Integrated Safety Management (ISM) and Quality Control processes.

The Government will evaluate the Offeror’s proposed **Key Personnel and Essential Personnel** to successfully accomplish the requirements of the PWS as described herein. The Government will evaluate included evidence that proposed individuals have breadth, depth, and quality of technical knowledge and leadership experience sufficient to satisfy the requirements of the position for which they are proposed. The evaluation will consider demonstrated relevant hands-on work experience and successful performance through continued advancement of positions of comparable responsibility for projects of similar complexity. The evaluation will consider the relevant education and professional development that are needed to accomplish the range of functions as well as relevant professional certification and documentation of honors, awards, or special forms of professional recognition. Commitment (e.g., length of proposed commitments, etc.) and availability (full- or part-time) will be considered; commitments that do not meet or exceed the minimum requirements stated may result in the Offeror receiving a lower rating. Key personnel will be reviewed to determine if they meet the minimum qualifications as addressed in Section J, Attachment D. Key personnel who do not meet or exceed the minimum requirements may result in the Offeror receiving a lower rating. A higher number of proposed key personnel and/or essential personnel will not be inherently evaluated more favorably than a lesser number of proposed key and/or essential persons. Failure to submit the required commitment letter for any Key Personnel or Major/Critical Subcontractor or failure of the letter to fully identify the commitment may result in the Offeror receiving a lower rating for this criterion.

CRITERION 2: SUBCONTRACTING AND TEAMING ARRANGEMENTS

The Government will evaluate the Offeror’s proposed **subcontracting and teaming arrangements** to successfully accomplish the PWS requirements as described herein. The Government will evaluate the extent to which the arrangements provide an effective and efficient vision and plan for integrating relevant subcontracts and team arrangements in such a way to offer best value to the Government. The evaluation will consider the effectiveness of the approach to adjust (attract, retain, and release) a highly skilled and diversified workforce for both continuous support as well as support that may be needed to address changing organizational priorities and budget levels, including the plan to efficiently engage additional subcontractors should expertise needs arise that do not exist in the Offeror’s organization or proposed subcontract team. The Government will evaluate the plan for management of subcontracts and teaming arrangements to ensure and empower quality and effectiveness of technical performance; productivity and efficiency of implementation; compliance with contract terms and conditions; cost effectiveness, cost control and timely cost reporting; and adherence to the approaches proposed by the Offeror for implementation of DOE orders on safety, security, foreign national participation, intellectual property, travel (especially conference travel), and release of information. The evaluation will consider the reasonableness of each proposed subcontractor for the role in which it has been identified, specifically the rationale for use as it relates to the expertise or capability the proposed subcontractor provides that does not exist within the Offeror’s organization. The Government will evaluate the degree to which the proposal includes challenging, achievable, and realistic target goals associated with small business subcontracting categories and EPACT targets for all areas identified in Section L. The approach to achieve those target goals will also be considered in the evaluation.

CRITERION 3: RELEVANT EXPERIENCE

The Government will evaluate the Offeror’s relevant experience to determine the degree to which it demonstrates the likelihood it can successfully execute the work according to the requirements of the PWS. The Government will similarly evaluate the relevant experience of major or critical subcontractor(s) proposed by the Offeror. In the case of a joint venture, Limited Liability Company, or other teaming arrangement formed for the purpose of competing for this contract, the Government will evaluate the relevant experience of the entities that comprise the newly formed entity.

The contracts evaluated for relevant experience will include the same contracts the Offeror provided under the past performance criteria that were determined to be relevant in size, scope and complexity (as defined in Section L). More recent relevant experience may be given greater consideration. The Government will also consider the experience that can be accessed for short term projects and experience with relevant databases and experience using the proposed specialized tools or systems.

CRITERION 4: RELEVANT PAST PERFORMANCE

(a) Offeror. The Offeror, to include all members of a teaming arrangement, as defined in FAR 9.601(1), will be evaluated on the Government’s assessment of relevant and recent past performance information obtained for the Offeror performing work similar in scope, size, and complexity as defined in Section L of this solicitation.

DOE will evaluate recent past performance information for contracts that are currently being performed or have a period of performance end date within the last five (5) years from the original solicitation issuance date. More recent past performance information may be given greater consideration.

The Government will not apportion the assessment of past performance differently amongst the members of a Contractor’s Teaming Arrangement, as defined in FAR 9.601(1), on a past performance contract, as each entity is considered to be responsible for overall performance of the ongoing or prior contract. All partner companies on past performance contracts will be equally credited (positively and negatively) for past performance information. However, relevancy determinations on a past performance contract may differ depending upon what scope each entity is proposed to perform.

(b) Major or Critical Subcontractors. The Offeror’s proposed Teaming Subcontractors as defined in Section L will be evaluated on the assessment of the past performance information obtained for the Teaming Subcontractor performing work similar in scope, size, and complexity to that proposed to be performed by that Teaming Subcontractor and as defined in Section L. DOE will evaluate past performance information for contracts that are currently being performed or have been completed within the last five (5) years from the original solicitation issuance date.

(c) Newly formed entity and predecessor companies. The evaluation of past performance for the Offeror and any Major or Critical Subcontractor(s) may be based on the past performance of its parent organization(s), member organizations in a joint venture, limited liability company, or other similar or affiliated companies, provided the Offeror’s proposal demonstrates that the resources of the parent, member, or affiliated company will be provided or relied upon in contract performance such that the parent, member, or affiliate will have meaningful involvement in contract performance. Meaningful involvement means the parent, member, or affiliate will provide material supplies, equipment, personnel, or other tangible assets to contract performance; or that the common parent will utilize the expertise, best practices, lessons learned, or similar resources from the affiliate to affect the performance of the Offeror. Past performance information from predecessor companies that existed prior to any mergers or acquisitions may also be considered where the Offeror’s proposal demonstrates such performance reasonably can be predictive of the Offeror’s performance.

(d) The resulting rating will consider whether the Offeror’s team as a whole (including Major or Critical Subcontractors) have demonstrated relevancy to all PWS requirements.

(e) No record of past performance. If the Offeror or Major or Critical Subcontractor(s) do not have a record of relevant past performance or if information is not available, the Offeror or Major or Critical Subcontractor(s) will be evaluated neither favorably nor unfavorably.

(f) Performance information. The Government will only evaluate past performance information for work it considers relevant to the acquisition in terms of similarity in scope, size, and complexity, as defined in Section L and within the timeframe specified.

(g) Sources of past performance information. The Government may 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 (CPARS) and award fee determinations. The Government may contact any or all of the references provided by the Offeror and will consider such information obtained in its evaluation. Note: DOE contracts are not necessarily evaluated with more relevance than non-DOE contracts, based on the sole fact that it was work for DOE. The evaluation of relevancy is based on the factors listed above.

(End of provision)

## M.6 EVALUATION CRITERIA - COST

(1) Volume III, *Cost Proposal* will neither be point-scored, nor adjectively rated, but will be evaluated to determine reasonableness and cost realism. Price reasonableness will be determined in accordance with one or more of the analytical techniques contained in FAR 15.404, Proposal Analysis. The Cost Proposal will be considered in the overall evaluation of proposals in determining the best value to the Government.

DOE will evaluate the Offeror’s Cost Proposal for realism. The evaluation of cost realism includes an analysis of specific elements of the Offeror’s proposed cost to determine whether the proposed estimated cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the methods of performance and materials described in the Offeror’s Technical and Management Proposal. Based on its review, DOE will determine a most probable cost to the Government as prescribed by FAR 15.404-1(d).

The Total Evaluated Price will be calculated by combining: (1) the most probable cost for the base and all option periods; and (2) the total proposed maximum available award fee for the base and all option periods. The Total Evaluated Price will be used in the best value analysis for purposes of selecting an Offeror for award of a contract.

DOE will also perform a technical analysis of the Cost Proposal, and consider this analysis in the evaluation of Volume II and as part of the evaluation of Volume III, Cost Proposal. As part of the technical analysis of the Cost Proposal, DOE will evaluate consistency between proposal volumes, errors and omissions in the Volume III proposal, and other problem areas in the Volume III proposal.

An unreasonable, unrealistic, or incomplete Cost Proposal, and/or inconsistencies between the Volume III, Cost Proposal and the Volume II, Technical and Management Proposal, may indicate a poor understanding of the PWS requirements and may negatively impact an Offeror’s evaluation and appropriate criterion rating of the Offeror’s Technical and Management Proposal. Should the Government determine that inconsistencies exist or the Offeror appears to lack an understanding may result in an adjustment for evaluation purposes only to the Offeror’s proposed costs and/or may result in adverse evaluations of the Technical and Management Proposal criterion. In addition, as stated above, a proposal may be deemed unacceptable if it does not substantially and materially comply with the proposal preparation instructions.

The Offeror has the responsibility to fully document its Cost Proposal and provide clear traceability to the PWS elements. For evaluation purposes only, DOE may adjust an Offeror’s proposed cost as part of its cost realism analysis if the Offeror does not adequately provide this documentation and traceability. As part of the evaluation, DOE will also review information to assist in the determination of responsibility in accordance with FAR Part 9.

(End of Provision)

M.7 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).

(End of provision)