offeror's demonstrated ability to conduct the project in a businesslike manner and willingness to cooperate with government personnel and other contractors.

Note:Firms lacking relevant past performance experience shall receive neutral evaluations for past performance.

2. Criterion 2 - ECMs and Related Technical Capability

Each offeror will be evaluated on his/her demonstrated technical capabilities in each of the ECMs cited in the Statement of Work. This evaluation will include the offeror's demonstrated ability to acquire subcontractors to increase capability for successful delivery of offered ECMs; the offeror's demonstrated understanding of DOE/FEMP M&V guidelines for Federal Energy Projects for each technology category covered in the guidelines; the offeror's demonstrated capability to successfully implement baseline and M&V methods that are consistent with M&V protocols and that are acceptable methods to determine equipment and energy savings performance; the extent to which the offeror's demonstrated regional project O&M approach provides assurance of effective project performance and provides local responsive maintenance support; the offeror's demonstrated responsibility for operations, maintenance and repair of offered ECMs appropriate for ECM complexity and flexibility to meet Government site specific project O&M needs; the extent to which the offeror's training approach demonstrates understanding of Government training needs; and the demonstrated range of ECMs that an offeror may provide, either independently or using a team/joint venture approach.

3. Criterion 3 - Regional Projects Management Approach

Each offeror will be evaluated on his/her demonstrated capability to manage regional projects and to provide a suitable organizational structure to support contract performance. Elements to be evaluated include: the extent to which the organization covers all key elements of successful performance based project management and provides clear assignment of responsibility for all project phases; overall management system is demonstrated to be adequate to successfully perform under the contract, including scheduling and how cost and technical performance status is determined, assessed, and projected through contract completion; the offeror's method of price management is proven to be comprehensive, showing price tracking, reporting, and control on the management level; the suitability of controls used in adhering to contract milestones, reporting requirements, and budgeting; verification of the adequacy of management planning and cost performance planning for contract performance; demonstrated adequacy of organizational structure for the performance of this contract (including subcontracts) and of the overall corporate structure to meet contract requirements; demonstrated capability of project management authority to commit resources and make decisions; verified qualifications of primary personnel (prime and subcontractor) with demonstrated experience and success in design, engineering, construction, operation and maintenance of similar previous projects; suitability of contingency plan provided to ensure performance in absence of primary personnel; verification that subcontracting plan indicates effective management approach to select subcontractors and provide quality control and oversight of subcontractor work; verification that subcontractors are selected on competitive basis to the maximum practicable extent, with an emphasis on small/disadvantaged businesses.

4. Criterion 4 - ECM Descriptions and Projected Energy Savings

Each offeror will be evaluated on his/her demonstrated capability to provide each of the ECMs cited in the Statement of Work and to demonstrate the ability to accurately project energy savings. Elements to be evaluated include the proven technical feasibility, reasonableness, and acceptability of the proposed ECMs; the level and reasonableness of the proposed energy savings; verification that the energy analysis is based on sound assumptions and engineering principles; verification that impacts on Government facilities and operations are acceptable and reasonable; the suitability and service life of selected equipment for each proposed ECM; verification that potential environmental impacts are adequately addressed; verification that proposed project implementation schedules are realistic and reasonable.

5. Criterion 5 - Energy Baseline and ECM Performance Measurement

Offerors will be evaluated on the following measurement elements and capabilities: the baseline and M&V plan demonstrates a clear understanding of compliance with M&V protocols; verification that the sampling and data collection plans are acceptable and reasonable and that they are based on proposed ECMs; methods to establish pre and post-installation conditions and determine energy savings are adequate and reasonable; periodic measurement approaches for ECMs and facility performance are adequate and reasonable to provide assurance of continued effective monitoring of ECM performance.

6. Criterion 6 - Site Management Approach

Each offeror will be evaluated on the following elements of site management capabilities: the proposed organization to manage and accomplish the proposed ECMs is well suited and addresses all key elements to ensure successful project implementation and maintenance of ECM performance; offeror's organization structure is adequate to provide required operation and maintenance of installed ECMs, whether operation and maintenance is done by the contractor or by the Government (and/or Government M&O contractor).

B. RELATIVE RANKING OF TECHNICAL CRITERIA.

PART I - General Regional Contract Capabilities

Factor 1 - Past Performance
Factor 2 - ECMs and Related Technical Capability
Factor 3 - Regional Projects Management Approach

PART II - Technical Approach for Site Specific Projects

Factor 4 - ECM Descriptions & Projected Energy Savings
Factor 5 - Energy Baseline & ECM Performance Measurement
Factor 6 - Site Management Approach

Factor 2 is most important. Factors 1, 3 and 4 are equal and next in importance. Factor 5 is next in importance. Factor 6 is least in importance.

C. PRICE CRITERIA. The price is considered to be the sum of proposed prices in Schedule H-1, column (c) for all site specific proposals. The prices proposed will be evaluated to establish:

Price Proposal Evaluation Factors

1.The margins and finance charges (Schedules B-1 and B-2) will be evaluated for consistency of application within the proposed price. Margins and finance charges will not be utilized independently as price factors in award decision.

2.Price proposals will be evaluated to assess:

a.The completeness and realism of the proposed price (i.e. sum of annual contractor payments -- Schedule H-1) with regard to the offeror's understanding of the work.

b.The reasonableness of the proposed price.

c.The verification that proposed guaranteed cost savings exceed the proposed price (for each site specific proposal and sum of all site specific proposals).

3.The price proposal will not be point scored.

Note: An unrealistic price proposal may be evidence of the offeror's lack of, or poor understanding of the RFP requirements.

M.3 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA (APR 1984)

The technical proposal is of greater importance than the price proposal. However, if, after evaluation of the Technical and Price Proposals, two or more competing overall proposals are within the competitive range, evaluated total price to the Government may be the deciding factor for selection, depending on whether the most acceptable overall proposal (excluding price consideration) is determined to be worth the price differential, if any.

M.4 ELIGIBILITY FOR AWARD AND AWARD OF INITIAL DELIVERY ORDERS

ATTACHMENT D

U S DEPARTMENT OF ENERGY
REPORTING REQUIREMENTS CHECKLIST

1. PROGRAM/PROJECT TITLE

2. IDENTIFICATION NUMBER

DE-AC01-96EE73542

3. PARTICIPANT NAME AND ADDRESS

***

4. PLANNING AND RERORTlNG REQUIREMENTS

A. General Management — Frequency

___ Management Plan
X Status Report — M
___ Summary Report

B. Schedule/labor/cost

___ Milestone Schedule/Plan
___ Labor Plan
___ Facilities Capital Cost of Money Factors Computation
___ Contract Facilities Capital Cost of Money
___ Cost Plan
___ Milestone Schedule/Status Report
X Labor Management Report — M
X Cost Management Report — M

C. Exception Reports

X Task Management Plans — A
X Conference Record — A
___ Hot Line Reports
X Subcontracting Reports — Q

D. Performance Measurement

___ Management Control Systems

E. Financial Incentives — Frequency

___ Statement of Income and Expense
___ Balance Sheet
___ Cash Flow Statement
___ Statement of Changes in Financial Position
___ Loan Drowdown Report
___ Operating Budget
___ Supplementary Report

F. Technical

___ Notice of R&D Project (Required with any of the Following)
___ Technical Progress Report
___ Draft for Review
___ Final for Approval
___ Topical Report
___ Final Techncial Report
___ Draft for Review
___ Final for Approval
___ Software
X Other (Specify)

Description — 1. Deliverables as Specified by Task Order.

___ WBS Dictionary
  ___ Index
  ___ Element Definition
___ Cost Performance Reports
  ___ Format 1 - WBS
  ___ Format 2 - Function
  ___ Format 3 - Baseline

2. See Enclosure 1 to Attachment D

5. Frequency Codes

A - As Required	M - Monthly	S - Semi-Annually
C - Change to Contractual Agreement	O - Once After Award	F - Final (end of effort)
X - With Proposal/Bid/Application or Significant Changes	Q - Quarterly	y - Yearly or upon renewal

6. Special Instructions (Attachments)

_X_ Report Distribution List/Addresses	___ Analysis Thresholds
___ Reporting Elements	___ Work Breakdown Structure
___ Due Dates	___ Other

Enclosure 1 to Attachment D - Reporting Requirements Checklist

SCHEDULE OF DELIVERABLES FOR DELIVERY ORDERS					
Item	**Description**	**Frequency**	**Due**	**Copies**	**Delivered to:**
001	Certificate of Insurance	One time	15 days after award of delivery order	1	Contracting Officer for delivery order
	Performance Bond	One time	15 days after award of delivery order	1	Contracting Officer for delivery order
	Payment Bond	One time	15 days after award of delivery order	1	Contracting Officer for delivery order
002	Work Schedule	Monthly	10 days before work start	2	•Contracting Officer for delivery order (1 copy) •Contracting Officer's authorized representative for delivery order (1 copy)
003	Work - Outside Normal Hours	Per occurrence	5 days before work start	3	•Contracting Officer for delivery order (1 copy) •Contracting Officer's authorized representative for delivery order (2 copies)
004	ECM Installation Plan	One time	Per delivery order and, again if additional ECMs are added through modification to the delivery order	5	•Contracting Officer for delivery order (3 copies) •Contracting Officer's authorized representative for delivery order (2 copies)
005	ECM Installation Quality control Inspection Program	One time	With Item 005 above	5	•Contracting Officer for delivery order (3 copies) •Contracting Officer's authorized representative for delivery order (2 copies)
006	Notification of Utility Interruption	Per occurrence	20 working days prior to outage	3	•Contracting Officer for delivery order (1 copy) •Contracting Officer's authorized representative for delivery order (2 copies)
007	O&M Manuals	One time	With training class	6	•Contracting Officer for delivery order (1 copy) •Contracting Officer's authorized representative for delivery order (1 master for reproduction and 4 copies)
008	ECM Performance Verification	Per ECM	Upon ECM installation	5	•Contracting Officer for delivery order (3 copies) •Contracting Officer's authorized representative for delivery order (2 copies)
009	As-built Drawings	Per ECM	90 days after Government's acceptance	3	•Contracting Officer for delivery order (1 copy) •Contracting Officer's authorized representative for delivery order (2 copies)
010	Annual Energy Audit for ECM Performance	Annually	15 days after audit	5	•Contracting Officer for delivery order (3 copies) •Contracting Officer's authorized representative for delivery order (2 copies)

Enclosure 1 to Attachment D

Report Distribution List

	FREQUENCY	NO. OF COPIES	ADDRESS
MANAGEMENT PLAN MILESTONE SCHEDULE AND STATUS REPORT (535) COST AND LABOR REPORT MANPOWER PLAN (534P)	M	2	A
MANAGEMENT PLAN MILESTONE SCHEDULE AND STATUS REPORT (535) COST AND DELIVERABLES BY TASK ORDER MANPOWER PLAN (534P)	A	2	A
PROJECT STATUS REPORT COST MANAGEMENT REPORT (533M) MANPOWER MANAGEMENT REPORT (534M) CONTRACT MANAGEMENT SUMMARY REPORT (536)			
HOT LINE REPORT CONFERENCE RECORD			
NOTICE OE ENERGY RD&D PROJECT (538) TECHNICAL PROGRESS REPORT* DRAFT FOR REVIEW FINAL APPROVAL REPORT* TOPICAL REPORT FINAL TECHNICAL REPORT* DRAFT FOR REVIEW FINAL APPROVAL REPORT*			

*COPIES FOR TIC SHALL BE REPRODUCIBLES

ADDRESSEES:

A. U S Department of Energy
Technical-Project Officer
Attn:

1000 Independence Ave., S.W.
Washington, D.C. 20585

B. U S. Department of Energy
Technical Information- Center (TIC)
Special Assistant for Reproduction
and Processing
Post Office Box 62
Oak Ridge, TN 37830

D. U.S Department of Energy
Office of the Controller
Accounting Systems Branch, CR-44
Washington, DC 20545

E. U S. Department of Energy
Office of Procurement Operations (HR-561.22)
Attn: Contracting/Grants Officer
Washington, DC 20585

F. DCASMA

C. U S Department of Energy
Head, Financial Performance Branch, HR-562
Office of Procurement Operation
Washington, DC 20585

ATTACHMENT E

AUTHORIZED ORDERING AGENCIES

1. U.S. DEPARTMENT OF ENERGY

(Others to be added)

ATTACHMENT F

SCHEDULE B-1 -- INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT

TECHNOLOGY CATEGORY	MARGIN %
Boiler Improvements	
Chiller Improvements	
Building Automation Systems/Energy Management and Control Systems	
Heating, Ventilating, and Air Conditioning (not including boilers, chillers, and EMCS)	
Lighting Improvements	
Building Envelope Modifications	
Hot Water and Steam Distribution Systems	
Electric Motors	
Refrigeration	
Cogeneration Systems	
Renewable Energy Systems	
Electrical Distribution Systems	

SCHEDULE B-2 -- INDEFINITE QUANTITY CONTRACT						
Financing Period	Treasury Note Index	< $500K	$500K - $1M	$1M - $3M	$3M - $7M	$7M +
0-3 Years	3 year					
4-6 Years	5 year					
7-10 Years	10 year					
11-15 Years	(Specify Index)					

SCHEDULE B-3 -- INSTALLATION PRICE
PRICE ELEMENTS

Installation Price includes the direct costs of all tasks required to install ECMs up to and including Government acceptance, such as feasibility studies, pre-installation measuring and monitoring of existing system or equipment energy use, design and engineering, purchase of equipment, labor to install ECMs, commissioning, testing, startup, post-installation measurement of energy use to determine energy savings performance. Price elements submitted on this schedule shall not include any indirect costs such as overhead, financing costs, or profit.

SCHEDULE
MARGIN

Margin includes all indirect cost elements such as overhead and general & administrative expenses, profit and other non direct cost elements or markups. The margins submitted in Schedule B-1 will be applied to the installation price and energy savings performance period price submitted for each delivery order.

SCHE ENERGY SAVINGS PER
PRICE

Energy Savings Performance Period Price includes the direct costs of all tasks required to maintain energy savings performance after Government acceptance of installed ECMs. Price elements on this schedule include such items as direct costs for labor or subcontractor to operate, maintain, and repair installed ECMs, measure and monitor ECM equipment or system for periodic performance verification, project management costs to provide service support. Price elements submitted on this schedule shall not include any direct costs for ECM installation through government acceptance or elements in the margin.

ATTACHMENT G: PERFORMANCE INFORMATION FORM

Client Authorization Letter (optional)

Dear "Client":

We are currently responding to the Department of Energy RFP number DE-RP01-96EE73542 for the procurement of energy savings services. They are placing increased emphasis in their procurements on past performance as a source selection factor. They are requiring that clients of entities responding to their solicitations be identified and their participation in the evaluation process be requested. In the event you are contacted for information on work we have performed, you are hereby authorized to respond to those inquiries.

We have identified Mr./Ms. _____________ of your organization as the point of contact based on their knowledge concerning our work. Your cooperation is appreciated. Any questions may be directed to: ______________.

Sincerely,

(THIS QUESTIONNAIRE IS PROVIDED FOR INFORMATION PURPOSES ONLY)

PAST PERFORMANCE QUESTIONNAIRE - ATTACHMENT G

I. CONTRACT IDENTIFICATION

1. Contractor (Company/Division):

a.Indicate whether your company was the prime contractor or a subcontractor: Prime ____ Subcontractor

2. Contract Number:

3.Brief Description of Requirement (Energy conservation project/facility energy management services):

4. Contract Type:

5. Period of Performance (Basic and any options):

6. Unusual Contract Features or Conditions:

7. Award Information:

a. Competitive Award __ Yes __ No

b.Basis for Selection (i.e. 1) Tech Acceptable/lowest reasonable cost/price, 2) Best value - specify relative order of importance of evaluation criteria, 3) technical, 4) cost or price, 5) other):

8. Contract Revisions:

Were there any requirement descopes, partial terminations, major waivers/deviations, or other important changes to the contract terms and conditions? Why did they occur? Were any due to poor contractor performance? What were the adverse impacts to program goals?

9. Contract Value:

	Initial Amount	Current Amount*
Estimated Savings	$_____	$
Contractor Payments	$_____	$
Guaranteed Savings	$_____	$
Value	$_____	$

* Should reflect any contract value increases/decreases since initial contract award

II. <u>PAST PERFORMANCE EVALUATION</u>

Please rate the contractor as "Outstanding" (O), "Good" (G), "Adequate" (A), "Poor" (P), "Unacceptable" (U), or "Not Applicable" (N/A) in the following areas. Please give a short narrative as to why you chose the adjective you did, especially for those areas which are other than "adequate".

A. QUALITY OF PRODUCT OR SERVICES

1.Overall performance in design, implementation and maintaining energy conservation projects.

Rating ___ Comment:

2. Quality control, workmanship, and conformance to specifications.

Rating ___ Comment:

3.Content and accuracy of technical, business, cost and/or other reports.

Rating ___ Comment:

4.Compliance with contract terms and conditions.

Rating ___ Comment:

5.Change proposals submitted were reasonably priced and contained all appropriate supporting documentation.

Rating ___ Comment:

6.Total amount of contract value increases:

a. Changes made by your organization $

b. Changes due to contractor $

c. Increases in contract scope $

d. Other causes (please explain)

D. BUSINESS PRACTICES

1.Please comment on the strong and weak points of the contractor's performance and management of the energy conservation project.

2.Contractor's skills in efficiently and effectively allocating and directing personnel and resources.

Rating ___ Comment:

3.Contractor's ability in developing and managing subcontracts and consulting agreements.

Rating ___ Comment:

4.Contractor's effective use of small/small disadvantaged business subcontracting.

Rating ___ Comment:

5.Contractor's reasonable and cooperative behavior, flexibility, as well as their responsiveness to inquiries from your organization's technical and contract representatives.

Rating ___ Comment:

6.Contractor conducts project in businesslike manner and willingness to cooperate with government personnel and other contractors.

Rating ___ Comment:

7.Ability to finance energy conservation projects.

Rating ___ Comment:

E. CUSTOMER SATISFACTION

1.Please comment on the overall satisfaction of your organization's technical monitors with contractor performance.

III. RESPONDENT INFORMATION

A. Name of evaluator(s):

B. Position title:

C. Organization name and mailing address:

D. Telephone number:

E. Facsimile number:

F. Your role in the program/contract:

G. Length of involvement in this program/contract:

H. Date questionnaire completed:

PERFORMANCE INFORMATION FORM

Contractor Name _______________

SCHEDULE H-1 -- DELIVERY ORDER
PROPOSED GUARANTEED PERFORMANCE AND CONTRACTOR PAYMENTS

The Contractor shall complete the following statement:
If selected, the Contractor shall complete the installation of all proposed ECMs not later than ______ months after delivery order award.

Project Site:	**Delivery Order No.**		
Year	**(a) Estimated Annual Cost Savings $**	**(b) Proposed Guaranteed Annual Cost Savings $**	**(c) Annual Contractor Payments $**
ONE			
TWO			
THREE			
FOUR			
FIVE			
SIX			
SEVEN			
EIGHT			
NINE			
TEN			
ELEVEN			
TWELVE			
THIRTEEN			
FOURTEEN			
FIFTEEN			
TOTALS			

(a)The technical proposal supports this estimate of annual cost savings as "REASONABLE"

(b)The "PROPOSED GUARANTEED ANNUAL COST SAVINGS" is based on achieving contractor guaranteed performance per site-specific M&V Plan agreed to in delivery order.

(c)This represents the delivery order price and should be supported by information submitted in Schedule H-ZZ.

(d) Agency may choose to seek offers to determine what cost savings would be to the Government

Contractor Name _____________

SCHEDULE H-2 -- DELIVERY ORDER
ECMs-TOTAL INVESTMENT

Project Site: Delivery Order No.________________________

Total Investment

ECM No.	Equipment Description - Title	Installation Price	Margin	Total Investment
TOTAL				

The installation price for each ECM shall include design, project management, labor, material, shipping, testing, and startup involved to complete the installation of the ECM. This figure shall not include any expenses incurred during the Energy Savings Performance Period (e.g. O&M of ECMs) of the delivery order. The Energy Savings Performance Period of the delivery order begins upon acceptance by the Government, which indicates the ECMs are operational and comply with delivery order requirements. Total Investment for all ECMs will be used to establish Payment and Performance Bond Requirements. See H.19 for details.

SCHEDULE H-3 -- DELIVERY ORDER
CONTRACTOR CASH FLOW

Project Site:	**Delivery Order No.** ______					
	19__	**19__**	**19__**	**19__**	**20__**	**...**
Initial Capitalization (Installation Phase)						
Total Investment (H-2 Total)						
Financing Procurement Cost						
Total Capital Required						
Annual Cash Flow (Service Phase)						
Debt Service:						
Interest						
Principal Repayment						
Total Debt Service						
Expenses:						
Management/Administration						
Operation						
Maintenance						
Repair and Replacement						
Measurement and Verification						
Permits and Licenses						
Insurance						
Property Taxes						
Other:						
Subtotal Service Phase Expenses						
Margin (applied to service phase expenses)						
Total Service Phase Expenses (subtotal x margin)						
Total Annual Contractor Payments (Total Debt Service + Total Service Expenses)						

Submit the following as applicable to above debt service:

Total Finance Charge: ________ %

T-Bill/T-Note Reference: Term ____ years; Issue Date _______; Interest Rate _______%;

Source: ______________________________ (e.g., Wall Street Journal, Web site)

Contractor Name ____________

SCHEDULE H-4 GUARANTEED -- DELIVERY ORDER

GUARANTEED PERFORMANCE AND CONTRACTOR PAYMENTS

The Contractor shall complete the following statement:

If selected, the Contractor shall complete the installation of all proposed ECMs not later than ______ months after delivery order award.

Project Site:	Delivery Order No.	
Year	(a) Guaranteed Annual Cost Savings $	(b) Annual Contractor Payments $
ONE		
TWO		
THREE		
FOUR		
FIVE		
SIX		
SEVEN		
EIGHT		
NINE		
TEN		
ELEVEN		
TWELVE		
THIRTEEN		
FOURTEEN		
FIFTEEN		
TOTALS		

(a)The "GUARANTEED ANNUAL COST SAVINGS" is based on achieving contractor guaranteed performance per site-specific M&V Plan agreed to in delivery order.

(b)This represents the delivery order price and should be supported by information submitted in Schedule B-5.

Offeror Name _____________

SCHEDULE H-5

CANCELLATION CEILINGS	
Time Period	Cancellation Ceiling ($)
After Installation of ECMs	
After ECM Acceptance - End of Year One	
After ECM Acceptance - End of Year Two	
After ECM Acceptance - End of Year Three	
After ECM Acceptance - End of Year Four	
After ECM Acceptance - End of Year Five	
After ECM Acceptance - End of Year Six	
After ECM Acceptance - End of Year Seven	
After ECM Acceptance - End of Year Eight	
After ECM Acceptance - End of Year Nine	
After ECM Acceptance - End of Year Ten	
After ECM Acceptance - End of Year Eleven	
After ECM Acceptance - End of Year Twelve	
After ECM Acceptance - End of Year Thirteen	
After ECM Acceptance - End of Year Fourteen	
After ECM Acceptance - End of Year Fifteen	
Cancellation Ceilings for each time period specified above establish the maximum termination liability in the event of contract cancellation or termination for convenience. FAR 52.217-2 or 52.249-2 will apply.	

ATTACHMENT 1 -- Site Tour Information and Request Forms

U.S. Department of Energy, Federal Energy Management Program
IDIQ Request For Proposal DE-RP01-96EE73542

Tour Introduction

The U.S. Department of Energy welcomes your participation in the Western Regional IDIQ Request for Proposal process. As explained in Section L.20 of the RFP, the purpose of the site tours is to familiarize prospective offerors with the proposal sites. Section L.20 also states that these tours are not required in order to prepare the site specific offers since the proposal is to be based only on the information contained in the site specific technical information packages. If you have not already obtained the complete technical data package please refer to Section L.22 of your RFP for ordering information.

Due to the nature of this competitive procurement it will not be possible to answer any site specific questions or solicitation questions during the site tour. Any questions must be submitted in writing to the RFP contracting officer identified in Section L.4. Questions will be answered as soon as possible. Please note that all site specific proposals must be based solely on the information in the technical data package. Any site specific assumptions necessary for completion of your proposal must be clearly identified.

Western Region Super IDIQ ESPC Proposal Tour Instructions

Since each tour group must be limited in size, a number of tours are scheduled in advance. You must complete the tour reservation form following this page in order to reserve a tour space. Each company will be limited to three tour participants in order to provide tour spaces for the anticipated number of offerors. The tour reservation form should be completed and returned to the tour coordinator as soon as possible. Tour requests made after September 3rd may not be confirmed prior to tour date and may not be honored if no tour slots are available. Also, you must indicate your first, second and third tour time preference as instructed on the tour reservation form. Tour times will be confirmed on a first come basis. The tours at the Seattle bid sites will be held on September 5th and 6th while the Kodiak, AK site will be available on September 10th and 11th. Tour site dates, directions and addresses are shown below.

Tour Site #1, NOAA, Seattle, WA, September 5th, 1996

U. S. Department of Commerce
National Oceanographic & Atmospheric Administration
Western Administrative Support Center
7600 Sand Point Way N.E.
Seattle, WA 98115

Directions:

From SeaTac Airport:

Take exit following signs to Interstate 5 North. Go north through downtown Seattle.
Take exit #168--Highway 520 East to Bellevue (approx 14 miles from Sea-Tac).
Take first exit (Montlake Blvd), stay in left lane, turn left at light Follow Montlake, staying in the right hand lane as it curves to the right (twice).
Montlake merges into 45th Avenue N., continue on 45th, following signs to Children's Hospital.
45th Ave. N. merges into Sand Point Way N.E., follow Sand Point Way N.E.
Entrance to Western Administrative Support Center is on right (past Naval facility).
Go past guard post, and park in main parking lot (In front of Building 1). Tour group will assemble at main entrance to Building 3.

Tour Site #2, FAA, Auburn, WA, September 6th, 1996

U. S. Department of Transportation
Federal Aviation Administration
Air Route Traffic Control Center (ARTCC)
3101 Auburn Way So.

Auburn, WA 98092

Directions:
From SeaTac Airport:

Take Interstate 5 South to Highway 18 East (Auburn/North Bend exit).
Continue east toward Auburn (2 miles).
Exit on Auburn Way (Hwy 164, Auburn/Enumclaw exit), turn left.
Continue on Auburn Way So. through Auburn, approx 2 miles (Past bingo hall).
Turn right at entrance to ARTCC, stop at Guard post for check-in and meeting instructions, allow 15 min for check-in; Note - no cameras allowed in Control Room

Tour Site #3, US Coast Guard Support Center, Kodiak, AK, September 10th - 11th, 1996

USCG ISC Kodiak
Building N38
Cape Sarichef Street
Kodiak, AK 99615

Directions

Proceed to the highway as you leave Kodiak Airport.
Take a left onto Rezonof highway following the signs to "US Coast Guard".
Approximately one mile down the highway, take a left onto the base.
Proceed through the guard gate (no guard on duty).
Park in the lot behind the Admin Building, N38.
Enter the Administration Building, N38, for sign-in (Note: Persons on the base are subject to search at any time)

Western Regional IDIQ Tour Request Form

Instructions:

1. Select tour team for each of the tours identified below.
2. Fill in name for each tour member for each tour.
3. Fill in company name and contact name and phone number.
4. Indicate first, second and third choices for tour time for each site.
5. Fax complete request form to: Mollie Dwyer, US DOE Seattle Regional Support Office, fax 206-553-2200, phone 206-553-7837

Tour Site #1, NOAA, Auburn, WA, September 5th, 1996

Company Information

Company Name ______________________________

Contact Name ______________________________

Contact Phone Number _______________________

Contact Fax Number _________________________

Tour Group

Name ______________________

Name ______________________

Name ______________________

Tour Times
(Indicate 1st, 2nd, and 3rd Choice)

8am _____, 9:30am _____, 11am _____, 1pm _____, 2:30pm ______, 4pm ______

Tour Site #2, Seattle, WA, September 6th, 1996

Tour Group

Name ______________________

Name ______________________

Name ______________________

Tour Times
(Indicate 1st, 2nd, and 3rd Choice)

8am _____, 9:30am _____, 11am _____, 1pm _____, 2:30pm ______, 4pm ______

Tour Site #3, Kodiak, AK, September 10th - 11th, 1996

Tour Group

Name ______________________

Name ______________________

Name ______________________

Tour Times
(Indicate 1st, 2nd, and 3rd Choice)

September 10th
8am _____, 11am _____, 2pm _____

September 11th
8am _____, 11am _____, 2pm _____

ATTACHMENT 4 -- MAILING LABELS

Use This Label for Mailing	**DEPARTMENT OF ENERGY HEADQUARTERS PROCUREMENT OPERATIONS ROOM 240 1615 M STREET N.W. WASHINGTON, DC 20036** **ATTN: DOCUMENT CONTROL SPECIALIST, HR-562** **Offer in Response to RFP No. Closing Date: Closing Time:**
Use This Label if Hand Delivered	**DEPARTMENT OF ENERGY HEADQUARTERS PROCUREMENT OPERATIONS ROOM 240 1615 M STREET N.W. WASHINGTON, DC 20036** **ATTN: DOCUMENT CONTROL SPECIALIST, HR-562** **NOTE TO COURIER: It may not be possible to deliver this package to Room 240 outside the hours 8:30 AM to 5:00 PM workdays. Delivery to any other room/location may result in the late receipt in Room 240 and is strongly discouraged.** **Offer in Response to RFP No. Closing Date: Closing Time:**

ATTACHMENT 2 -- INTENTION TO PROPOSE

SOLICITATION NUMBER: [ ]

WE _______ DO INTEND TO SUBMIT A PROPOSAL OR BID.

WE _______ DO NOT INTEND TO SUBMIT A PROPOSAL OR BID FOR THE FOLLOWING REASONS:

____

____

____

PLEASE RETAIN ______ DELETE ______ FROM SOURCE LIST

AUTHORIZED SIGNATURE: ______________________________

TYPED OR PRINTED NAME AND TITLE: ______________________

DATE: ____________

NAME AND ADDRESS OF FIRM OR ORGANIZATION (Including Zip Code)

____

____

____

NOTE: Unless otherwise stated in the solicitation, no other solicitation material should be returned if you do not intend to submit a bid/proposal.

MAIL TO: Document Control Specialist, HR-562
U.S. Department of Energy
Headquarters Procurement Operations
1615 M Street, N.W.
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Attachment 4

<u>ECM Descriptions and Projected Energy Savings (including ECM Summary Table for Site Specific Project)</u>

(1)ECM No.

(2)Title

(3)Brief Description

(4)Energy System Affected (e.g., Chilled Water, Steam Distribution)

(5)Time to Implement ECM (from date of contract award)

(6)Annual Energy Savings in all applicable energy/demand units

(7)Demand Reduction

ATTACHMENT 5

[redacted]

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for Federal Agencies - August 1996)

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ATTACHMENT 6

Draft Solicitation Comments and Responses
Solicitation No. DE-RP01-96EE73542

1. Comment:

Schedule B-1 Margin Requirements, Located in various places throughout the document

We do not recommend the use of margins as a factor for determination of award or disclosure to the government for the following reasons:

a) **The enabling legislation for ESPC in the federal government provides for the nondisclosure of pricing information. The margin numbers are part of the price associated with each ECM and need not be disclosed.**

Response:

The ESPC regulation at Title 10, Code of Federal Regulations, Part 436, subparagraph 436.33(c)(2) does waive the requirement for certified cost or pricing data. However, the regulation also states that waiving this requirement does not exempt offerors from submitting information (including pricing information). The margin numbers are cost and pricing information and do not constitute certified cost and pricing data.

b) **The margin percentages are not a reflection of the actual cost associated with each ECM. Margins calculations vary based upon the accounting system used by each contractor and cannot be used as a valid price determination for award. As such, they have no value to the government.**

c) **It is not clear that the margin numbers are used in the overall evaluation in section M part C which states, "The price is considered to be the sum of proposed prices in Schedule H-1, column (c) for all site specific proposals." Although it is mentioned in C-1, it appears that it will only be used for consistency. What does that mean?**

Response:

The margins will not be used as an independent price factor for award. As stated in M.2.C.1, "the margins will be evaluated for consistency of application within the proposed price." This means that the margins will be reviewed to verify that the margins proposed in Schedule B-1 are consistent with the margins contained within the proposed price. As stated in M.2.C, "the price is considered to be the sum of proposed prices in Schedule H-1, column (c) for all site specific proposals." The proposed price will be utilized in the award decision. Language has been added to M.2.C to clarify the role of the margins in the price criteria.

dc) The government is interested in dealing with companies that add value to the ESPC process. Our company, for example, has people on staff that will provide the services required by this contract and therefore add significant value to the process. Because we must support this staff with equipment and office space, our margins would be higher than a company that will subcontract all of the work. The overall price we offer may be lower, however, because each subcontractor will add their own overhead and profit to the direct cost and the other prime contractors will add an additional margin.

The contractor is providing the funding and taking all of the risk. Why does his margin provide any value to the government? The real value is in the guarantee of the savings and the ability to produce those savings.

Response:

Margins on Schedule B-1 and the margin price elements identified in Schedule B-4 will be binding for all delivery orders awarded under the IDIQ. Margins and associated installation price and energy savings performance period price elements submitted by offerors will allow more effective delivery order contract negotiations after award of the basic contract by different agencies with offerors.

2. Comment:

Schedule B-3 Elements of Direct Cost, Located in various places throughout the document.

The purpose of this schedule and the data required to complete this schedule is unclear. What information is required? Is actual pricing information required? How will it be used in the initial evaluation and on each delivery order? Why is it required?

Response:

Refer to definition in H.44. The information required in Schedule B-3 is the cost elements as defined by the offeror that comprise the Installation Price of installed and accepted ECMs. Pricing information is not required. It is required that the offeror list the categories of costs that the offeror charges as direct costs. Schedule B-3 will be evaluated to gain an understanding of how the offeror will categorize direct costs to determine the installation price for each delivery order. Schedule B-3 shows how Offerors will determine ECM Construction/Installation price for each delivery order issued under the IDIQ. This schedule provides for consistent determination of Construction/Installation prices for ECMs regardless of agency, or geographic location. We want to understand what the components of ECM Installation price will be -- such as direct labor, travel expenses, equipment and material, etc. -- to install operational ECMs.

3. Comment:

Schedule B-4 Elements of Margin, Located in various places throughout the document.

The purpose of this schedule and the data required to complete this schedule is unclear. What information is required? Is actual pricing information required? How will it be used in the initial evaluation and on each delivery order? Why is it required?

Response:

Refer to definition in H.44. Like Schedule B-3 described above, this schedule is completed by the Offeror to identify the types of costs that the offeror categorizes as indirect costs. The Offeror is to include indirect costs elements and profit that apply to the Offeror submitted price elements in Schedules B-3 and B-5. For example if subcontractor profit on subcontractor work to install ECMs is included in Schedule B-3, it is not included on Schedule B-4. Pricing information is not required. The margin elements will be evaluated to gain an understanding of how indirect costs and profit on work and services performed will be established for each delivery order. Margin elements will also be evaluated for consistency with direct costs submitted in Schedules B-3 and B-5 and how they are used in price proposals for site specific projects. For each delivery order, margin will be applied Installation Price in Schedule H-2 to establish contractor ECM investment and to Energy Savings Performance Period expenses as submitted delivery order cash flows Schedule H-3.

4. Comment:

Schedule B-5 Elements of ESPC price, Located in various places throughout the document.

The purpose of this schedule and the data required to complete this schedule is unclear. What information is required? Is actual pricing information required? How will it be used in the initial evaluation and on each delivery order? Why is it required?

Response:

Refer to Energy Savings Performance Period price definition in H.44. The information required in Schedule B-5 is the price elements as defined by the Offeror that comprise the direct costs of performing work such as project management, ECM maintenance, periodic energy savings performance measuring and verification (e.g. annual energy audit required for ESPCs). Pricing information is not required. Schedule B-5 will be evaluated to gain an understanding of how the offeror will categorize direct costs to determine the energy savings performance period price for each delivery order.

5. Comment:

H.18 e. Preaward Requirements.

It is our understanding that the government does not initially require a detailed energy survey of all ECM's for each delivery order proposal. A preliminary Energy Survey will be performed. A detailed energy survey will be required after a notice from the government of an intent to award. The 90% accuracy requirement of H.18(e) is in conflict with this goal and potentially detrimental to the government. Through its past experience with thousands of energy projects, we believe that a 90% accuracy rate of the preliminary survey will require a detailed survey and that it is not reasonable or desirable to require all contractors to perform a detailed survey prior to notification of intent to award. Because of this tight requirement, legitimate companies will be very conservative in their estimates and not innovative in their search for more ECM's and additional savings. This will either lead to less energy savings for the government or more time to evaluate companies that cannot meet their original estimates. We recommend that an 80% number be used in this section.

Response:

The proposed approach of conducting a preliminary survey for technical and proposals submission was generated by the ESCO industry and accepted by DOE in the ESPC final rule. Written industry comments in response to the proposal rulemaking suggested that an offeror selected from preliminary proposals should conduct a detailed survey to confirm savings within 10% of preliminary estimates. The Government considers that holding selected firms to a 90% proposed guarantee is appropriate for this type of procurement. Clause H18(1.e) allows an agency to specify other than 90% in an individual delivery order when appropriate.

6. Comment:

Section L.29(b) Proposal Length Requirements

This requirement is vague. We have found it useful to present information on 11x17 inch pages because it allows for all of the information to be presented on one page and is therefore easier for the reviewer to evaluate. We have received many favorable comments from Contracting Officers on this issue. We recommend that the 8 1/2x 11 requirements of the first sentence be removed and that the 14x 11 requirements of sentence four be changed to 11x17. Sentence five should be eliminated because of the above statements.

Response:

DOE agrees to substitute "11" wide by 17" long" for "14" wide by 11" long" in fourth sentence of L.29(b). The fifth sentence shall not be deleted.

7. Comment:

Section L.29.1 Part 1, Criterion 3(a)

This section discusses the evaluation of the initial proposal and the capability of the contractor to manage throughout the region. The last sentence discussed subcontracting opportunities. This sentence should be removed because the contractor will not know, in general, what is being subcontracted until the individual projects are assigned. These same words are requested in Criterion 6 for individual site management. It should remain there.

Response:

The offeror is required to identify which functions are typically subcontracted and which element of the offeror's organization will manage the subcontracts. The offeror will be evaluated on its management approach to selection of subcontractors and its quality control and oversight of subcontractor work as described in M.2. The Government needs to understand which capabilities are typically subcontracted.

8. Comment:

Reference: B.7, b)

Clarification-. The more precise method to structure the Table would be to have a matrix which has the Finance Term/Treasury Bill Term on one axis and the dollar amount of the financing on the other axis (see example below). This will allow the Government to benefit from the lower interest rates associated with the shorter term financing as well as the lower spreads offered for the larger dollar size transactions. Financial institutions offer different spreads over the comparable length Treasury Bill based upon finance term and the dollar amount of the funding. A 60 month finance term would be priced from the 5-Year Treasury Bill plus a margin or spread whereas a 120 month finance term would be priced from the 10-Year Treasury Bill plus a margin or spread. Historically, the Treasury Bill yield curve has indicated a higher yield or rate as the term is increased. Also, the financial markets typically require a lower spread or margin over the comparable length Treasury Bill for the larger dollar size transaction.

Response:

DOE accepts recommendations to clarify Schedule B-2 and has modified Schedule B-2 in RFP.

9. Comment:

Reference- Schedule H-3

Clarification: This Schedule is confusing and we do not understand what exact information the Government is requesting. We feel it would be helpful to provide an example of this Schedule filled in by the Government with hypothetical information. We do not feel the format is presented in a clear and understandable method.

Response:

Schedule H-3 has been modified to clarify elements and their relationship.

10. Comment:

Section C.2.1, ECMs 1-12, change the words "...such as..." for each type of ECM, to "...such as, but not limited to..."

Response:

DOE agrees. The solicitation has been modified as suggested.

11. Comment:

Section C.2.1, page 11, ECM #11: "Renewable Energy Systems...", change "passive solar heating" to "passive solar preheating and ventilation". Add the following bullet: "* Ground source Heat pump Installation".

Response:

Section C.2.1, ECM #11 will remain as written.

12. Comment:

Section C, paragraph C.4.1. What baseline approaches, if any, will be recommended, solicited for WATER savings projects. At the moment there does not appear to be any recommended approaches for developing WATER baselines. The current ESPC guidelines only includes non-water energy baseline development approaches.

Response:

The solicitation does not include water only savings. The Government will not be developing or soliciting baseline approaches for water savings projects.

13. Comment:

Section C.10. What about training for contractors that maintain Government Facilities. In other words, what about training for an Agency's M&O contractor?

Response:

Agree with recommendation, solicitation modified as suggested. Add "or Government Maintenance and Operation (M & O) contractor to C. 10.2.1) and 2) and 2a).

14. Comment:

Reference Section B.4 (b) (2)

Will the contract have a provision whereby the Maximum order can exceed $20,000,000? It is possible that some large projects at large facilities may require a maximum order above this amount.

Response:

An individual delivery order can exceed $20,000,000. B.5(b)(2) states that the contractor is not obligated to accept any order in excess of $20,000,000.

15. Comment:

Reference C.2.1 and C.2.2

The contract language should indicate that other ECMS not identified in C.2.1 can be included by mutual agreement, provided that they are not excluded in C.2.2. This would allow for new technologies to be included when they are commercially viable.

Response:

The statement of work defines the scope of the contract. Any ECM would need to be determined to fall under one of the 12 technology categories. It is considered that the 12 categories would cover any ECM required under the contract.

16. Comment:

Reference C.4 Measurement and Verification of ECM Performance

This section would require that the procedure used for M&V comply with DOE/FEMP Guidelines. I do not believe the guidelines address every potential ECM or method of establishing performance. It would be a more workable contract if the guidelines were suggestive and if the contract still allowed for other methods that were mutually agreeable and generally followed industry practice.

Response:

The FEMP M and V Guidelines does not address every potential ECM of method of establishing performance. The guidelines are flexible. The Offeror is allowed to propose alternative approaches for ECMs specified in the Guideline. The guideline does require any proposed approach to include as applicable the required information to establish a "site specific M and V plan" for the project on each ECM as applicable.

17. <u>Comment</u>:

Reference G.4 Payment to Government for Annual Cost Savings Shortfall.

This procedure is generally adequate. If the contractor remedies the problem, then the payment adjustment should be retroactive, provided of course that the savings delivered are sufficient to meet the payment obligations. In other words, the contractor should be allowed to recoup the lost savings if the future savings are sufficient.

<u>Response:</u>

The Government has reviewed its payment procedure and the solicitation remains unchanged. The Government does not intend to allow the offeror to recoup lost savings.

18. <u>Comment</u>:

Reference H.3 52-217-2 Cancellation of Items.

Under a performance contract, the contractor takes some degree of risk that the savings will be generated and sufficient to pay for the improvements. In a sense, this is a cost which is included in the price charged to the government for the improvements. Ordinarily it is also reflected in the amounts the Contractor would include in Schedule H-5. Does the language in Section H.3 (d) allow for this risk cost to be recovered? If not, the Government would have a financial gain by terminating a project once the reliability and persistence of savings had been demonstrated. By setting the termination ceiling on Schedule H-5 as the applicable maximum amount and allowing for the recovery of the performance risk assumed, all parties are treated equitably.

<u>Response:</u>

FAR Clause 52.217-2, <u>Cancellation of Items (Apr. 1984)</u> allows for a reasonable profit on the costs.

19. <u>Comment</u>:

Reference H.35.1

It is customary for the ESPC Contractor to carry liability insurance for Professional Engineering Services. Will this insurance be a contract requirement?

<u>Response:</u>

The contractual requirement for liability insurance is as specified in Clause H.35. Additionally, in accordance with FAR 36.609-2, <u>Redesign Responsibility for Design Errors or Deficiencies</u>, the contracting officer will insert the clause at 52.236-23, <u>Responsibility of the Architect-Engineer Contractor</u> in delivery orders requiring design work.

20. <u>Comment</u>:

Reference H.36.1

Language which allows the Government to take title of the equipment at completion of installation, if mutually agreeable, would be worth incorporating. There may be some ECMs where ownership by the Government would be beneficial. The contract language should not rule out this possibility.

Response:

The Government will modify the solicitation to add the phrase "unless otherwise specified and mutually agreed to in a delivery order" to H36.1.

21. Comment:

Reference L.29 b, sentence three.

The fifteen page limit on Part II of Volume II may be insufficient to present all the requested information if the site has many ECMs. Past RFPs have limited this Section to 25 pages plus 5 pages per ECM and allowed additional information such as product cut sheet, brochures, diagrams, etc. to be included in an appendix volume.

Response:

DOE agrees to change the third sentence to delete the Part II fifteen page limit per ECM and replace with a limit of 25 pages total per site with a maximum of 5 pages per ECM.

22. Comment:

The Draft RFP is a great improvement over DE-RP06-95RL13184 "Energy Savings Performance Contract, Hanford 200 & 300 Areas". I see some of the same problems in your draft as appeared in the Hanford project, particularly the apparent requirement that construction is the only allowable solution to meet the performance requirements of the government.

If the object of the contract(s) is to reduce the government's capital expenditures without sacrificing capacity or safety (etcetera), then the absolute last option one might choose to meet the cost performance goals of the program is construction. To wit, in the Hanford project, I found I could, without performing any construction, meet the performance requirements of the solicitation, meeting the minimum net savings ($1,000,000 /yr.) expected quite handily, while saving DOE, by DOE's "own conservative estimate" $200,000,000 in construction and maintenance cost reimbursement over the period of performance of the contract (25 years).

Response:

Construction as used in the Solicitation refers to the design engineering and installation of energy efficiency improvements to Federal facilities. Additionally, the FAR defines "construction" as facility or real property improvements, in excess of $2,500, which can be expected and is anticipated at any federal facility or group of buildings. This does not preclude offerors from proposing "energy conservation measures (ECMs)" that achieve energy cost savings through improved operations and maintenance of existing energy consuming systems.

23. Comment:

In Section B.1. the total value of the contracts awarded over the period of performance of the contract is specified as not to exceed $250,000,000. This figure is far too low to be practical. As noted above, I would nearly meet (based on the present value of the savings) the maximum allowed contract value just avoiding construction for the steam system, just in the 200 and 300 Areas, just at the Hanford Reservation. In point of fact, based upon data supplied by the Richland Operations Office for that project, I found I could save DOE an additional $750,000,000 (present value) over the period of performance of the project (estimated $30,000,000 (PV [Present Value]) per year cost reduction, again just for the steam system). With currency devaluation consistent with the pattern of the past forty years, the net dollar value of those changes I estimate as between $3.75 and $4.0 billion dollars.

Response:

The contract value represents the maximum contractor payments, not the maximum savings to the Government. The Government has reviewed the maximum and determined that it is appropriate.

24. Comment:

In Section B.5. are set the order limits. As for Section B.1. these are set too low to be practical based solely on the dollar value of the cost savings which might be incurred (as a function of competent management, not as a function of construction). However I would point out that process changes may be made altering operations parameters, system performance patterns, and or maintenance patterns to meet the performance goals of the contracts.

Process changes in this respect tend to be largely intangible - that is to say they are a product of competent management of the assets (use of intellectual property). As such, once the changes are in place they produce an immediate income stream to the service provider not from a future allocation of funds but from funds which have already been allocated for a site. As the contract is a performance contract, the value of the cost savings will vary from month to month and year to year. Therefore, a fixed price contract is not feasible. If paid as a percentage function of the cost savings incurred that payment will fluctuate substantially over time. If set as a fixed price contract, then you set a condition which effectively becomes a flat fee for service performance. If you fix instead the percentage paid that is acceptable (for application of management techniques and other services related intellectual property). Hanford set as a maximum 85% of the cost savings with the best cost benefit return to the government as the primary selection criteria.

Response:

The Government has reviewed its requirement and has determined that it is appropriate.

25. Comment:

In Section B.7.1. are set the completing schedules. There are a few problems with this section in my opinion. First the schedules are predicated upon construction. Application of asset management skills, while not an overnight venture, are several times easier to put in service, generally avoid the cost of construction (reducing the cost to the government (by increasing the net cost savings of the contract) and to the service provider), and are more quickly applied to a system of interest. They also have the added benefit that system performance flexibility tends to increase whereas with new construction performance flexibility tends to decrease.

Response:

The schedules in Section B are used to identify and understand how offerors will recover indirect costs and profit (margins); financing charges on ECM investments; and the method an offeror chooses to define or categorize direct costs for ECM installation and maintenance during the energy savings performance period. DOE does expect that ESPC services will involve "construction" (i.e., installation of energy efficient equipment) as defined in response to #22, however, services offered for any project site are not limited to equipment installations.

26. Comment:

Second (of Section B.7.1), the completing schedules are set by the COR [Contractor] (apparently). This is bad practice. Again, it (the schedule) is prejudicial to construction to meet the performance requirements of the government, is set by someone who is unlikely to be familiar with plant utilities systems and performance parameters, and effectively says to the service provider the government is set on minimizing my potential profit and lessening my ability to excel in performance beyond the acceptable minimum set.

Response:

DOE assumes that Comment 26 is about B.7.1(b), concerning Schedule B-2. The solicitation requires that the schedules be completed by the offeror. The "fixed annual percentage rate refers to establishing the cost of financing for amortization of contractor costs incurred prior to ECM acceptance. It does not refer to the allowable revenue stream to the contractor for services during the contract multiyear term.

27. Comment:

Third (of Section B.7.1), the completing schedule appears to create a situation, in the case of asset management or application of proprietary knowledge, that once in place and generating revenue for the service provider, the provider may be compelled by the COR to perform unneeded construction of arbitrarily set scope or face the likelihood of contract termination by the government for convenience (as you reserved that right "unilaterally" in the draft (Sections B.3.a. and I.22).

Response:

DOE assumes that Comment 27 is about B.7.1(c), concerning Schedule B-3. See responses to Comment #22 and #25.

28. Comment:

In Section C.4.1 are set the M&V General Approach. There is only one fundamental problem with the way this is structured. Again, where cost savings are the goal, the only need, for comparative analysis or for projecting energy savings, are your old utility bills and or service bills. Metering specific processes or equipment will generate false positive cost savings for that apparatus and will not yield cost savings for the site as a general rule. It can happen, but it is extremely unlikely. See below.

Response:

DOE disagrees that the only way to determine energy cost savings is a comparison to old utility and service bills. The FEMP M&V Guidelines provides flexible options to determination of energy cost savings of contractor- installed ECMs including utility bill analysis if applicable.

29. Comment:

In Section C.4.4., paragraph 3 employs the example of a lighting project. Simple analysis shows the example to be effectively meaningless and misleading. For example, demand surges can vary not just as a function of the new lamps' physical system, but also as a function of the frequency and time at which the lights are turned on. Further, demand surges can be created arbitrarily by maintenance and operations personnel who miss-operate the equipment and or create multiple simultaneous starts, thus compounding the demand peaks experienced at the site. Worse, in the context of the site itself, you are not billed for, in this example, electric power for just this one area or process, but for the entire site. As such, any cost savings one might incur as a function of power reduction may be shifted within the site or eliminated by the terms of your utility contract.

Response:

Regarding Measurement and Verification of Energy Cost Savings, the offeror is allowed discretion as to how energy cost savings performance will be determined and verified.

30. Through 32. NUMBERS NOT USED

33. Comment:

In Section H.14., part A)

"As ECM projects are identified by Federal agencies, the DOE Contracting Officer or an authorized Federal agency's Contracting Officer will request a contractor or contractors to submit a delivery order proposal."

ECM projects should NOT be identified by agencies NOR by contracting officers or other federal personnel. The only aspects of the Energy Savings Performance Contracts which should be specified by an agency or contract officer are the energy savings performance GOALS for the site or for a series of sites. When you tell me how to do my job, you interfere with my ability to provide the best solution to the problem, you hinder my earnings potential, you increase the cost of project execution for both the government and for my organization, and you hinder my ability to exceed the minimum acceptable standards of performance of the contracts which detracts from my existing reputation of excellence in performance. These things should be avoided at all costs. A competent service provider should be able, by examining your utilities and related contracts and "eyeballing" the site, what projects, if any ("projects" i.e. construction) are realistic and appropriate to resolve poor performance characteristics or poor cost performance of a site's energy systems and related utility systems.

Response:

DOE intends that agencies would identify energy using systems which perform poorly and need to be retrofitted. Using agency conducted preliminary audits or other tools to identify energy savings opportunities, the agency can assess whether ESPC is a viable implementation strategy for potential energy projects (i.e., economically feasible) DOE agrees with the commentor that the agency should not specify "how" the Offeror proposes to achieve energy cost savings (i.e., the Offeror is expected to propose the technical approach for each ECM offered). DOE expects that delivery order may specify the energy systems for which the agency seeks proposals and include performance goals and standards specific to the project site.

34. Comment:

Still in the same section,

"Proposals shall be submitted initially on the most favorable terms from a price and technical standpoint to the Government."

Again we are back to the price consideration and its application to management versus construction. If I do construction, then I am absorbing that cost, initially, not from cost reimbursement supplied by DOE, but out of pocket. My concept of appropriate construction will differ from DOE's ideas or suggestions. Again, the best solution is to set a minimum acceptable cost reduction. DOE could, for example, follow the Hanford definition of a nominal 15% reduction in the steam system cost pool (the result was a net operating savings of $1,000,000 per year). The service provider might then receive either a fraction of the nominal percent reduction, or might not in exchange for keeping any cost savings beyond the 15% threshold thus guaranteeing DOE a nominal minimum 15% cost reduction without DOE incurring any new costs. In other words, DOE might specify a minimum net savings over last year's operating budget of $1 MM. Any amount over that threshold the contractor might keep for the period of performance of the contract. Bear in mind that the cost savings data for the Hanford steam systems modifications are not typical. A net savings of $1 MM/yr. is really quite rare for all but the largest industrial sites.

Response:

The Government has reviewed the language referred to and has determined that it is appropriate.

35. Comment:

In Section H.37.1., performance bonds (SF 25) and payment bonds (SF 25A) are specified. Again, these bonds should be an issue ONLY when construction is undertaken as the primary means of satisfying performance requirements set by DOE (or other federal agency). Where I may do construction, again that capital cost occurs or is met only from a newly generated income stream from existing process improvements (management versus construction). Hence, even where construction errors (very unlikely errors in my case) might cause the systems to fail to meet the performance goals I might set beyond DOE's minimum acceptable, the WORST case scenario would be for me to break even on a construction project (while still meeting DOE's minimum acceptable cost reduction - the net savings of $1 MM/yr. above or nominal 15% cost pool reduction used as examples). Regardless of the outcome of construction DOE cannot lose money under the specified circumstances (by setting minimum cost reduction thresholds).

Response:

Performance and payment bonds are only required during the construction (ECM installation) period. Bonds are not intended to guarantee equipment/system performance.

36. Comment:

In Section H.44.,

"8) Energy Cost Savings. An energy cost savings means a reduction in the cost of energy and related operation and maintenance expenses, from a base cost established through a methodology set forth in an energy savings performance delivery order, utilized in an existing Federally owned

building or other Federal-owned facilities as a result of -- (1) the lease or purchase of operating equipment, improvements, altered operations and maintenance, or technical services; or (2) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a Federally owned building or buildings or other Federally owned facilities."

Again, this aspect of the RFP seems to require construction as the only allowable means of meeting the broadly defined "Energy Cost Savings" even to the extent of "altered operations and maintenance, or technical services". Note that nowhere in the draft is specified manpower reductions or eliminating unnecessarily redundant systems which were built 40 years ago in the height of the nuclear cold war era, to prevent a single nuclear strike from rendering a site inoperative (such as Hanford). One of the options I identified was to shut down a substantial portion of the steam producing system for the RFP specified areas based upon data supplied by Richland Operations Office that indicated that all the steam requirements could be met from the 300 Areas boiler systems (minor construction of a tie line financed by system change in the 200 Areas). Those alterations would have resulted in substantial reduction in site manpower requirements and thus substantial cost savings. In the context of the entire site (inclusion of data from the 100 and 400 Areas) even larger manpower reductions might have been developed.

Response:

ECMs to achieve energy cost savings are not limited to equipment installation or "construction" as the commenter defines it. Altered operations and maintenance procedures are allowed per the definition of Energy Cost Savings cited in the comment.

37. Comment:

I would appreciate your specifying who has the authority to make those manpower reductions in meeting the performance requirements of the contract(s). To wit, that which I may do and that which I am allowed to do might be made to vary arbitrarily by an agency or COR which would again hinder my ability to produce the best results consistent with the expectations of excellence in performance.

Response:

The Government has reviewed its requirement and considers that the information provided in the solicitation is sufficient for offerors to prepare proposals.

38. Comment:

In Section I.22., the provisions for "Termination for Convenience" of the government bother me. As one who engages primarily in the execution of management skills and knowledge, once my skills have been applied to a system or site (preferably a site) it is always in the best interest to "terminate for convenience" a contract. That is to say, any changes I might make which produce the desired result will generally propagate over time without my physical presence or continual fine adjustment. That characteristic does not make my services less valuable, that is what makes my services more valuable.

In other words, I can influence performance at a number of sites simultaneously without the necessity of physical presence. I would require specific provision in any agreement between myself and the government that the termination clause not affect any performance improvements except NEW construction that is to be cost reimbursed by the government. If I pay for a construction

project out of an existing performance income stream for a site then it is generally in my economic interest to complete the construction project without interference from an agency or COR and to subsequently recover cost of construction and or income from the construction based site cost performance improvement over a period of years defined by the terms of the contract. Again though, as I discussed earlier, construction is generally something I avoid as do my clients as construction GENERALLY reduces the cost savings at a site. Occasionally, as in Hanford's project a (relatively) minor construction alternative might be feasible.

Response:

The Government has reviewed the provisions in Section I.22, for "Termination for Convenience", and has determined them to be appropriate.

39. **Comment:**

In Section K.22., The SIC for this acquisition is 8711 (energy conservation engineering & construction). I happen to fall into the categories 8742 (energy management) with the subcategories 874201, 874202, & 874204 (Industrial and Labor, Industrial, and Maintenance consulting). 874804 (Energy Services) is also appropriate. Again the essential character of an energy savings performance contract, out in the real world, is to avoid construction where possible.

Response:

The Government has reviewed its requirement and has determined that SIC 8711 is appropriate for this acquisition.

40. **Comment:**

In Section L.26., "Alternate Proposals will not be considered". Does this mean non-construction proposals or proposals which minimize construction activity to meet the cost savings requirements of DOE for a specific site? Or does it mean the specification of Section H.16 "Contractor Identified ECMs" are not allowable? And that the definition (#8) of Section H.44. "Energy Cost Savings" is invalid? Or that only projects which can be readily terminated for convenience (I.22.) by the government are allowable? (See statements for Section I.22. above and for Section H.14. above (government should specify only goals not the specific embodiment of the system modifications which might be made). Some clarification is needed with respect to this clause.

Response:

This statement means that offerors must submit proposals in accordance with Section L, the "Instructions to Offerors", and the requirements established in the solicitation.. In order to be awarded a contract as a result of the solicitation, proposals for site specific projects other than those specified herein will be pursued in accordance with procedures specified in H.13, H.14, H.15, H.16,and H.17. The technical and price proposal requirements for site specific projects included are restricted to selected energy systems.

41. **Comment:**

Some of the ECM identification procedures seem contradictory as well - that is you seem to say the agency or COR will identify the ECM then require the contractor to identify the ECM and all the base assumptions. Other aspects (energy baseline development) are not really relevant to cost savings performance contracts and can be very misleading when applied on a gadget specific or area

specific or process specific scale particularly as several utilities tend to overlap functions in the industrial environment (cost shifting).

Response:

The Government has reviewed its requirement and considers it to be appropriate.

42. NUMBER NOT USED

43. **Comment:**

Schedule B3 - Installation Price: Is this schedule for each technology (i.e., lighting, motors, etc.) or is it for the complete proposal?

Response:

Schedule B-3 is for the complete proposal.

44. **Comment:**

Schedule B4 & B5: I am not sure what a contractor is expected to write on this schedule. Is it what the contractor is going to include under margins?

Response:

See responses to Comments #3 and #4.

45. **Comment:**

Use of Commerciality Provisions in FAR

We are a strictly commercial business entity and consequently conduct our entire business consistent with generally accepted commercial industry practices. We do not have the costly infrastructure in place to comply with FAR Part 31, DFARS Part 231 or any of the other oversight requirements normally associated with DoD procurements.

The products and/or services we offer fully comply with the definition of "commercial item" as stated in FAR 2.101(a), and their respective prices are based on established catalogue or market prices. In fact, this is likely the case with all potential bidders to this solicitation.

Therefore, we suggest that this procurement be issued in accordance with the policies and procedures of FAR Part 12.

Response:

The Government has reviewed its requirement and determined that it does not comply with the definition of Commercial Items established in FAR 2.1. However, offerors are requested to provide documentation providing evidence of catalog prices or published price lists to support the reasonableness of proposed prices, or a portion of a proposed price, where possible. Section L.30(a) has been modified to reflect this request.

46. Comment:

Disclosure of Margins

The solicitation requires the disclosure of margins on the proposed energy conservation measures. We have two concerns related to this requirement:

1. It does not ensure best value to the Government. The Energy Policy Act of 1992 and the Federal Acquisition Streamlining Act of 1994 both eliminated the need for such information specifically because of the recognition that such practices force too much focus on price and not enough focus on value. This is particularly true in energy performance contracts in which it is the energy savings level which should trigger contract award.

2. It is ripe for abuse. Given the provisions in this draft solicitation, the Government is not assured that the margin levels will be maintained in each delivery order executed under the contract. While we agree that requiring stipulated margin levels for a 25 year period is not advisable, it is not clear how the Government can use this information to determine best value. We suggest that this requirement be eliminated and that the price evaluation be linked to the energy savings level instead.

Response:

See response to Comment #1.

47. Comment:

Evaluation Criteria

We understand that there is interest in ensuring that contractors meet certain criteria which does not presently appear in the evaluation criteria. In particular we understand that the DOE intends to review:

- how potential contract awardees might work with other contractors,
- the business presence of potential contract awardees in the designated region,
- the federal contract awards of a similar nature already awarded to the potential contract awardee.

We suggest that these evaluation criteria and any others, if they are to be a part of the criteria used to evaluate potential contract awardees, be stipulated in the evaluation criteria section.

Response:

With the exception of part 2 of Comment #47, the business presence of potential contract awardees in the designated region, the Government considers that the stated evaluation criteria are already in the solicitation. The Government does not intend to evaluate the business presence of potential contract awardees in the region.

48. Comment:

Process After Initial Award

We believe it would be beneficial--to contractors and government facilities alike--to provide additional information in the solicitation on the delivery order negotiation process for use after the award of the initial contract. Such information may help potential bidders to determine the feasibility of their response to the requirements of the second phase of the contract and could help

ensure that the Department of Energy receives proposals from contractors who can perform adequately in the second phase.

Response:

DOE plans to provide an overview with the Solicitation which describes how the IDIQ and subsequent delivery orders will be executed by DOE and agencies.

49. **Comment:**

Applicability to Department of Defense Installations
The draft solicitation does not specify if these IDIQ contracts will apply to Department of Defense installations in the region. Given that the Department of Defense has similar but different procurement practices for energy conservation contracts, this question needs answering for all contractors.

Response:

The IDIQ will apply and may be used by all Federal agencies including DOD. DOD may add unique requirements to delivery orders.

50. **Comment:**

Relationship of IDIQ Contract to Other Contracts
The draft solicitation does not specify how the existence of an IDIQ contract in a region will impact other contracting methods for energy conservation measures. In particular clarification is needed on two existing contracting methods:
- **how unsolicited proposals will be handled by Government customers when an IDIQ contract is in place, and**
- **how utility area-wide contracts will be handled by Government customers when an IDIQ contract is in place.**

Response:

The IDIQ provides simply another procurement vehicle which agencies may use to acquire ESPC services. Any agency may pursue acquisition of energy services through unsolicited proposals, utility area-wide contracts, or their own ESPC Solicitation.

51. **Comment:**

B.3

We assume that this section indicates that a selected contractor can negotiate delivery orders, with contract lengths up to 25 years, during each of the option periods. If the section intends, instead, to limit contract length to 36 months, we would suggest changes that would allow longer contract length so as to allow maximum energy savings and payback.

Response:

The solicitation has been revised to delete the base and option periods. The maximum contract term is 25 years. Delivery order terms may extend no more than 25 years from date of the IDIQ contract award. For example, a delivery order awarded one year after IDIQ contract would have a maximum possible term of 24 years. Delivery orders may be issued for up to ten years after contract award.

52. Comment:

Schedule B-1 IDIQ Contract

We suggest that this schedule be modified so as to allow other energy conservation measures. Given the changing nature of technology and the energy market, we would suggest that there be additional lines added for "other technologies." These sections should also require the contractor to specify the "other technologies."

Response:

The Government has determined that any other technologies could be classified under one or more of the listed technology categories. Schedule B-1 will remain as written.

53. Comment:

Schedule B-2, Treasury Bill Rate

We do not increase finance charges for projects above the actual cost of financing. This method of quoting a flat, constant number of percentage points above the Treasury Bill rate would allow a contractor to inflate actual financing costs. We suggest changing this provision to allow the Government the benefit of the lowest cost of financing at the time the delivery order is executed.

Response:

The Government intends that the percentage above the Treasury Bill rate indicated as the financing cost for finance charges will be the maximum for this calculation in individual delivery orders. As it is likely that contractors will be competing for delivery orders, in the event that a contractor is experiencing a lower financing rate it may be advantageous for him to propose the lower rate in accordance with H.14 and H.15.

54. Comment:

Schedule B-3 - Installation Price

Similar to our comments on the use of margin as an evaluation method, we object to the methods of evaluating price established by this schedule. The Energy Policy Act of 1992 and the Federal Acquisition Streamlining Act of 1994 both eliminated the need for such information specifically because of the recognition that such practices force too much focus on price and not enough focus on value. This is particularly true in energy performance contracts in which it is the energy savings level which should trigger contract award.

Response:

See Comments #1 and #2 above.

55. Comment:

Schedule B-4 - Margin

As per our comments in the general comment section above, we object to the use of margin as a method of evaluation. In addition, since the margin rates disclosed in this schedule are not required throughout the length of any delivery order under the contract (and shouldn't be) it is unclear how the Government is ensuring best value (or best price) by reviewing margin rates since they may be unrealistic quotes designed to ensure only contract award.

Response:

Addressed in responses to Comments #1, #3 and #4a above. Margin rates are expected to be used for each delivery order and as such are part of negotiated contractor payments established for the delivery order term.

56. **Comment:**

C.2.1 Types of Energy Conservation Measures (ECMs)

Given the changing nature of technologies and the energy markets, we suggest the addition of a category of energy conservation measures such as "other technologies." This will allow additions such as real time pricing, compressed air system improvements, supply-side measures, etc. as well as emerging technologies.

Response:

See response to Comment #52 above.

57. **Comment:**

C.5.1 ECM Installation Plans

We recommend that the installation plans be required to be certified by a registered engineer. The second sentence indicates that the plans may or may not be required to have such a certification.

Response:

C.5.1.a), the sentence "Installation plans . . . agency design standards." has been revised to change "may" to "shall". The requirement for certification in C.5.1c)2, third bullet, last sentence change "may" to "shall".

58. **Comment:**

C.5.2 Design and Construction Standards

We suggest the addition of the phrase "in effect at time of award of the initial contract or be subject to a dispute/changed condition clause." to each requirement of compliance with standards or codes.

Response:

C.5.2.1 requires that the "most recent issue" of standards will apply to ECM installation work. Clause remains unchanged.

59. Comment:

C.11 Government Projects

We suggest the addition of the phrase "and adjustments shall be made in accordance with C.4.4" to the last sentence in this provision.

Response:

Section C.4.4 sets forth the requirement that the Federal agency will generally adjust the energy baseline for factors beyond the contractor's control. A baseline adjustment may not be required as a result of a government project, which impacts ECM operation, if the Federal agency has stipulated values for factors affecting energy use and savings. The Government intends to modify the solicitation to add the following as the last sentence of C.11: "If the Government project affects determination of annual energy savings, then a baseline adjustment will be negotiated and incorporated into the delivery order by modification."

60. Comment:

E.4 Suggested Addition

We suggest an additional clause to this provision: "Failure to conduct inspection within a certain period of time (we suggest 30 days) from date of notification serves as acceptance by the Government."

Response:

The Government has reviewed the suggestion and determined that it does not satisfy the Government's requirement.

61. Comment:

E.5.b

We will provide an inspection system which is consistent with commercial industry standards and practices. We do not have the infrastructure in place to accommodate Government audits and oversight of its major business systems, including its inspection system.

Response:

The Government has reviewed its requirement and determined that it is appropriate.

62. <u>Comment</u>:

G.3.2 3.f.

When payment is assigned to a 3rd party this provision cannot be allowed since the energy savings shortfall must be reimbursed by us, not the 3rd party. This provision should be revised to read: "Monthly payment amount equal to 1/12 of annual contractor payment."

Clause G.4 provides the prescription for reimbursing the Government for an energy savings shortfall.

<u>Response</u>:

The Government has reviewed the language under G.3.2 and determined it to be appropriate. Under FAR 52.232-23, a contractor may assign its rights to be paid amounts due as a result of performance of the contract to a third party. However, the amount due to the contractor may be adjusted downward in the event of a shortfall in the guaranteed savings. Payments issued to a third party are limited to the amount due to the contractor.

63. <u>Comment</u>:

H.12(a)(3)(m)

If liquidated damages are specified then incentives should also be specified, e.g. early delivery/project completion incentives, etc.

<u>Response</u>:

The Government has reviewed its requirements and has determined that early delivery/project completion incentives are not appropriate.

64. <u>Comment</u>:

H.15, 1st paragraph, last sentence

This language must be deleted since it essentially extinguishes a fundamental right to protest.

<u>Response</u>:

The right to protest applies to the award of the basic contract, but it does not apply to the issuance of delivery orders under the contract. FASA 1054 specifically states that protests are not authorized for Task/Delivery Order type contracts. An ombudsman has been designated at the contracting activity awarding this contract to ensure that all contractors are afforded a fair opportunity to be considered for delivery orders pursuant to FAR 16.5. If a Contractor considers that they have not been provided a fair opportunity to be considered, they may contact the DOE Contracting Activity ombudsman.

65. <u>Comment</u>:

H.17, 1st paragraph, 3rd sentence

ibid.

Response:

See answer to Comment #64.

66. Comment:

H.353.4

This is acceptable as long as nothing in this clause contradicts or supersedes anything contained in FAR clauses 52.246-23 and 52.246-25. In addition, we request the addition of FAR 52.246-24, Limitation of Liability--High Value Items.

Response:

The Government assumes that the question regards H.35.4. The requested addition of FAR 52.246-24 is not appropriate as the contract is *not* subject to the requirements of FAR 46.805 as indicated in FAR 46.801. FAR 46.8 applies to contracts *other than* those for construction, architect-engineer services and maintenance and rehabilitation of real property. This contract will encompass all of these elements.

67. Comment:

H.36.3

We assume that in the event of such a termination, it must be understood that the Government will take possession of and thereby title to entire ECMs, not partial ECMs.

Response:

Terminations will be in accordance with FAR 52.249-2 and title issues will be decided at the time of termination.

68. Comment:

B-3) Margin

As per our comments in the general comment section above, we object to the use of margin as a method of evaluation. In addition, since the margin rates disclosed in this schedule are not required throughout the length of any delivery order under the contract (and shouldn't be) it is unclear how the Government is ensuring best value (or best price) by reviewing margin rates since they may be unrealistic quotes designed to ensure only contract award.

Response:

See responses to Comment #1b) and c).

69. Comment:

52.202-1, Definitions (APR 1984) (ALT I)

The reference to ALT I should be deleted since, in fact, the products and services are commercial as defined in FAR Part 2.101(a). In addition, the date of the clause should be OCT 1995.

Response:

See response to Comment #45.

70. Comment:

52.215-1, Examination of Records by Comptroller General (APR 1984)

This clause is reserved, FAC 90-31, 60 FR 42648, 8/16/95, effective 10/1/95.

Response:

Section I, Clauses Incorporated by Reference, reference to FAR 52.215-1 has been deleted from the Solicitation.

71. Comment:

52.215-2, Audit and Records--Negotiation (OCT 1995)

The inclusion of this clause is troubling. FAR 15.106 states that this clause will not be included when the Government is purchasing products exempted under 15.804-1. The prices for our products and services are based on established catalog and market prices, are sold or offered for sale to the general public and therefore meet the definition of "commercial item" as defined in FAR 2.101. Therefore, we request deletion of this clause and suggests the inclusion of FAR 52.215-43, Audit___Commercial Items (Oct 1995).

Response:

See response to Comment #45.

72. Comment:

52.219-8, 52.219-9 and 52.219-13

How does the Adarand decision affect the applicability of these clauses?

Response:

Clauses 52.219-8 and 52.219-9 remain in effect in their latest versions, which have been incorporated into the solicitation; and 52.219-13 has been deleted from the solicitation.

73. Comment:

52.227-1, Authorization and Consent

We request the inclusion of Alternate I.

Response:

FAR 52.227-1, Authorization and Consent, Alternate I, has been added to Section I.

74. **Comment:**

52.233-1, Disputes (APR 1984)

Given the nature of the commerciality of the products and services being procured, the language relative to disputes is contained in FAR 52.212-4 (OCT 1995). Additionally, the date of the disputes clause should be OCT 1995.

Response:

See answer to Comment #45.
The date of the Disputes Clause 52.233-1 has been changed to October 1995.

75. **Comment:**

Suggested Addition

We suggest including FAR clause 52.236-1, Performance of Work by the Contractor.

Response:

It has been determined that this is not a construction contract. If the clause is necessary it will be included in specific delivery orders.

76. **Comment:**

52.244-1, Subcontracts (Fixed Price Contracts) (APR 1991)

This clause is not appropriate for Firm Fixed Price contracting. Providing advance notification to and waiting for prior consent from the Government before issuing a subcontract less than $100K is prohibitive from a time standpoint.

Response:

Paragraph a) of the referenced clause states that the clause does not apply to firm fixed price contracts; however it does apply to subcontracts resulting from unpriced modifications to such contracts. As required in FAR 44.204 (a)(1)(i), the clause must be used when a fixed price contract is contemplated and the contract amount is expected to exceed $500,000. The clause shall remain in the solicitation as its Alternate I version.

77. **Comment:**

52.243-4, Changes (AUG 1987)

Given the commercial nature of the products and services being procured, we would prefer the language relative to Changes as contained in FAR 52.212-4 (OCT 1995).

Response:

See response to Comment #45.

78. Comment:

52.246-21, Warranty of Construction (APR 1984)

Given the commercial nature of the products and services being procured, we would prefer the language relative to Warranty as contained in FAR 52.212-4 (OCT 1995).

Response:

See response to Comment #45.

79. Comment:

52.243-1, Changes - Fixed Price (AUG 1987) Alternate I (APR 1984)

Given the commercial nature of the products and services being procured, we would prefer the language relative to Changes as contained in FAR 52.212-4 (OCT 1995).

Response:

See response to Comment #45.

80. Comment:

I.1 DEAR 927.300(A) Patent Rights - Long Form Alternate I (APR 1984)

This provision requires certain actions by the contractor related to their patents which do not seem consistent with procurement of commercial products and services. First, this provision requires the assignment of any inventions to the Government. This may be applicable to a research and development contract but not to a contract for commercial procurement. We suggest that this clause be changed so as to allow the Government to secure a license to use the product but not to own the intellectual property rights of the product. Second, this provision requires the contractor to issue a license to any background patent for all products. This may require, under the concept of these contracts, a contractor to give license to patents to competitors. We suggest that this provision be changed to better reflect the intellectual property rights projections that are consistent with a commercial procurement. Third, this section contains a provision which allows the Government to "hold back" up to 5% of the contract cost if the intellectual property projections in the section are not followed. If the contractor owns the intellectual property rights of the products under the contract, as we think is appropriate under this type of contract, this provision is not applicable.

Response:

DEAR 927.300(A) has been deleted from I.1 of the Solicitation. As the current version of a patent rights clause, I.1 will cite instead DEAR 952.227-13 - Patent Rights. Under the provisions of 9-9.109-6 at 10 CFR 784 (March 2, 1995), the contractor may petition for a waiver of title at time of contracting (advance waiver) or when a particular invention is made (identified waiver).

81. Comment:

I.2 952.209-72, Organizational Conflicts of Interest (DEC 1994)

Will there be a signed certification required from offerors? We suggest that there be one.

Response:

Organizational Conflict of Interest (OCI) provisions have changed as a result of DEAR Acquisition Letter 96-06. Only the apparent successful offeror(s) are required to provide a certification statement. I.2 shall be revised to include the June 1996 version of 952.209-72, and the Section K OCI Clause has been revised to include 952.209-8, OCI Disclosure -- Advisory and Assistance Contracts (June 1996).

82. Comment:

I.10 52.244-1 Subcontracts, Alternative I

This clause is not appropriate to Firm Fixed Price contracting. Providing advance notification to and waiting for prior consent from the Government before issuing a subcontract less than $100K is prohibitive from a time standpoint. Even though Alternative I is specified it assumes that the subcontracts were evaluated during the proposal stage.

Response:

Paragraph a) of the referenced clause states that the clause does not apply to firm fixed price contracts; however it does apply to subcontracts resulting from unpriced modifications to such contracts. As required in FAR 44.204 (a)(1)(i), the clause must be used when a fixed price contract is contemplated and the contract amount is expected to exceed $500,000. The clause shall remain in the solicitation as its Alternate I version.

83. Comment:

I.11 52.246-19, Warranty of Systems and Equipment, Alternative III (9 APR 1984)

Given the commercial nature of the products and services being procured, we would prefer the language relative to Warranty as contained in FAR 52.212-4 (OCT 1995).

Response:

See response to Comment #45.

84. Comment:

I.22 52.249-2, Termination for Convenience of the Government (Fixed Price) (APR 1984)

Given the commercial nature of the products and services being procured, we would prefer the language relative to Termination for Convenience as contained in FAR 52.212-4 (OCT 1995).

Response:

See response to Comment #45.

85. Comment:

Suggested Addition

We suggest that a Termination Liability schedule be requested along with each ECM proposal.

Response:

The Government assumes the commenter to mean "site specific delivery order" rather than "ECM proposal". Cancellation ceiling schedules (Schedule H-5) will be required from selected contractors for initial IDIQ site specific proposals and successive delivery orders. The solicitation has been modified to better explain this requirement.

86. Comment:

Suggested Addition. Rights in Technical Data and Computer Software
Since the products to be furnished under any resulting contract will be commercial in nature, it makes sense that rights in technical data and computer software will be provided to the Government only if same is customarily provided to the public.

Response:

See response to Comment #45.
As the Government has determined that this is not a commercial items procurement, and considers it possible that new computer software will be developed under the resulting contract(s), the Government has deemed Clause I.5 Rights in Technical Data -- Long Form (Apr 1984) to be the appropriate data rights clause for use in this solicitation.

87. Comment:

Evaluation Factors for Award

As per our comments in the general comment section, we suggest that other evaluation factors, if they will influence contract award, be included in this section.

Response:

Any recommendations for changes to evaluation criteria accepted by the Government will be incorporated into the final solicitation.

88. Comment:

Schedule H-2 Delivery Order ECMs Total Investment

As per our comments in the general comment section above, we object to the use of margin as a method of evaluation. In addition, since the margin rates disclosed in this schedule are not required throughout the length of any delivery order under the contract (and shouldn't be) it is unclear how

the Government is ensuring best value (or best price) by reviewing margin rates since they may be unrealistic quotes designed to ensure only contract award.

Response:

See response to comments #1, #3, and #49.

89. Comment:

It's implicit in the energy-saving performance contract process that savings on utility bills are the underlying financing mechanism for the projects. This impacts the serving utility not only with respect to revenues, but also with respect to integrated-resource planning, achievement of energy-efficiency goals, relations with the utility's regulatory commission or board, contracts with the host federal facility, and so on. While performance contracting is an effective approach to securing savings, and utility bills are a natural source of savings to finance the projects, the issuance of ESPCs should be informed by some form of structured discussion with the facility's serving utility.

Response:

Discussions with the utilities serving facility is site specific and can be addressed by the agency implementing the delivery order.

90. Comment:

With regard to "Section H, Special Contract Requirements," at page 43, H.14A): reference is made to requirements that proposals for delivery orders include " . . . the most favorable terms from a price and technical standpoint . . ." Especially since the right to reject without further discussion is reserved by the Government, it should be noted that costs for measures may well vary significantly from Government installation to installation and within installations, based upon specific operating conditions.

As an example, the cost of installing lighting in an office space at a military installation may vary consequentially from installing lighting in its hospital, or a high-bay aircraft-repair facility which requires special staging. A simple cost comparison without reference to such operating conditions might lead the Government to reject what is actually a very well priced proposal given those conditions. Rejecting a proposal, without inquiry regarding a perceived price variance from another proposal for identical measures, would not necessarily well serve the Government or the Contractors seeking to provide it service.

Response:

Both a technical and price proposal are submitted by the contractor. The price proposal should reflect the requirements of specific work identified in the technical proposal. Based on a review of the proposals, the Government may determine that discussions are warranted. The Government may select a contractor for award of a dellivery order on the basis of initial proposals. Therefore, offerors are advised to submit proposals initially on the most favorable terms.

91. Comment:

At page 49, H. 15 2.a.(5): It's also possible that a contractor's finance charges may vary considerably from delivery order to delivery order. For example, suppose a delivery order comprises measure and a time period in which a utility rebate or pay-for-performance payment is available. That will not only affect the net measure cost to the Government, but may also significantly affect the financing rate available to the contractors for the delivery order.

We have seen RFP documents which request quotes for financing rates expressed as a margin over some reference rate such as prime, or some other published index. While this helps address this issue of variance in the cost of money, if you will, it still bears emphasis that a pronounced variation in financing rates with respect to that referenced at the beginning of delivery under an IDIQ should not, on its face, be reason for rejection of a proposal.

Response:

The Government expects that finance charges will vary for delivery orders. That is why finance charges proposed for an IDIQ contract are indexed to Treasury Bills (see Schedule B-2).

92. Comment:

At page 3, B.5(d): If a Contractor returns an order exceeding the maximum limitation, what should the Contractors reasonably expect as a consequence, especially with regard to the evaluation criterion regarding past performance (page 154)?

Response:

The contractor is not obligated to accept an order exceeding the limitations stated in B.5. Execution of this right is not considered a performance issue.

93. Comment:

At Attachment D, second page: In the download from the Department of Energy Internet site, this page may have been altered. Should the phrase "Management Plan" appear under "A. General Management," and without an "x" beside it, and should the phrase "Statement of Income" appear under "E. Financial Incentives" and just above the phrase "and Expense" without an "x" beside it?

Response:

The phrase "Management Plan" should appear under "A. General Management" without an "x"; the phrase "Statement of Income" should appear under "E. Financial Incentives" just above the phrase "and Expense", without an "x".

94. Comment:

A summary with a table of contents of perhaps 5 to 10 pages would be helpful to any reader.

Response:

A summary of how the IDIQ ESPC contract and related delivery order procedures and process is provided with final Solicitation.

95. Comment:

There seems to be no consistency about water conservation measures or their importance.

Response:

The focus of the ESPC IDIQ is on energy cost savings which may be achieved through water conservation measures.

96. Comment:

Has a determination been made that all labor costs for operations and maintenance will be included in baseline calculations?

Response:

Including labor costs for O&M will be addressed by agencies for site specific projects executed through delivery orders.

97. Comment:

It's unclear whether further competitive bidding will be required after the award of an ESPC contract within the region.

Response:

It is intended that agencies may compete individual delivery orders among the awardees under the IDIQ contract after award of the contract.

98. Comment:

Additional weight should be given in the award of contracts for unquantified additional benefits that may be provided by a bidder.

Response:

To streamline and simplify Government evaluation of offeror proposals for the IDIQ Solicitation, the evaluation criteria focuses on quantifiable benefits to Government agencies. In site specific delivery orders agencies may establish evaluation criteria that emphasizes a wider range of benefits from ESPC services.

99. Comment:

In order to simplify the process of awarding contracts, perhaps DOE should consider the size, capability and financial strength of qualified contractors. After doing so, then DOE could predetermine the needs within the region and through some type of "lottery" system, select the contractors to be awarded the contracts.

Response:

The planned Solicitation will focus on capability. Size and financial strength are also considered. The Government hopes to award IDIQ ESPC to several Offerors which become the "qualified" Offerors allowed to provide services to agencies in the region.

100. Comment:

The overall structure of the solicitation is somewhat difficult to follow. Section H contains material which, intuitively, might fit better in Section C (for example, H.12 through H.18). As a minimum, use of tables of contents for Sections C and H would be useful.

Response:

A table of contents will be provided in the final solicitation.

101. Comment:

I recommend, throughout the solicitation, using the concept of an "energy conservation project" (ECP), to reflect the integrated summation of the ECMs implemented in a project. The solicitation discusses ECMs in very discrete form, whereas for most purposes (submittals, as-builts, and performance) the project as a whole is more relevant.

Response:

We appreciate the comment, however, the Government will not change the solicitation at this time.

102. Comment:

The procedures for going about the process of project identification and development, request for proposals for the individual project, and issue of delivery orders, are fragmented throughout the solicitation; it is somewhat difficult to piece together the process. I recommend a clean, consolidated discussion of the process, probably in Section C. I would also recommend trying to keep the process as close to that used in utility company DSM projects (and the private sector ESPC industry) as possible, with a progression from audit to feasibility study to engineering/design to implementation. The competition requirements of the ESPC admittedly tend to make this awkward.

Response:

A cover letter will be included with the solicitation characterizing the process for preparing proposals for the solicitation and the process for development and execution of delivery orders after IDIQ contract awards.

103. Comment:

Identification of ECMs and project development seem to follow one of 2 methods: the agency specifies the ECMs, or an unsolicited proposal methodology. The most useful approach, however, would be for the agency to identify a facility, specify some minimal concerns or ideas, and then to request proposals for creative solutions. A proposal should then be selected on a best-value basis.

Response:

We concur that agency development of requirements is an effective approach. This approach may be used for selected delivery orders. However, we wish to retain the opportunity for offeror development of proposals.

104. Comment:

Overall, this contract would be most useful if it would allow selection of a single contractor on the basis of competing initial proposals, but then allowing the agency to develop the full project with this contractor rather than having to award a fixed price contract for defined ECMs on the basis of the proposal. This, again, refers to the need for the natural progression from audit to feasibility study to engineering to installation. This is necessary for solid, integrated solution; however, it is not feasible to go through this process with multiple contractors. Price must be renegotiated after each phase to reflect the development of the project.

Response:

We anticipate that the Government and agencies may develop competitive procedures to minimize Offeror proposal preparation and Government proposal evaluation to select an Offeror for further development of detailed work and associated proposal. In addition, it is anticipated that agencies will select an offeror for a delivery order on the basis of proposals prior to conducting an investment grade audit. H.13 provides some provisions allowing selection of a specific Offeror in selected situations.

105. Comment:

B. 5

Recommend explicit indication that orders less than $150,000 may be placed upon mutual agreement between the ordering agency and the contractors from whom proposals are being requested.

Response:

Orders for less than $150,000 may be placed under the contract if the Government and the contractor mutually agree to such condition. Clause B.5, FAR 52.216-19, provides that the contractor is not obligated to accept an order for less than $150,000.

106. Comment:

B. 6

Para (a) is difficult to understand. What "schedule" will list individuals or activities? It would be better to indicate something to the effect of: "Orders may be placed by any agency of the U.S. Government upon completion of an interagency agreement, which will describe or list authorized ordering officials within that agency. A copy of each such agreements will be provided to the Contractor."

Response:

The schedule is provided in H.19, Officials Authorized to Issue Delivery Orders.

107. Comment:

B. 7

"Margin" is being handled in a rather cloudy manner, with the elements of "margin" versus bare construction costs being to some extent left to the proposer. This could result in difficulties in evaluating proposals, and in ambiguities after award of the contract. I recommend simply stating what is to be included in margin, and what will be considered part of the bare cost of each construction project, to keep proposals on the same level.

Response:

The Government is allowing each offeror to establish the accounting system it plans to use for all subsequent deliver orders. See responses to comments #1 and 3. As discussed in those responses the definition in H.44 for "margin" specifies that the Government is expecting to see indirect costs and profit included in margins. The Government will not dictate what elements must be in margin, installation price, or energy savings performance period price.

108. Comment:

The draft solicitation allows different margin rates by technology. I am not sure this is the most important factor in differentiating margin rates. It may also be advisable to allow different margin rates to be proposed for different locations. Phoenix has a very different cost structure than San Francisco, for example, which may affect overhead costs as well as bare costs. Also, proximity to major cities is significant; for example, work in a remote location in Arizona has a different cost structure than work in Phoenix. Thirdly, the size of the project has a significant impact on margin factors.

Response:

The Government has reviewed its requirement and plans to proceed with the Solicitation as drafted with margins differentiated by technology category at this time.

109. Comment:

To the extent that margin rates will be differentiated by technology, I recommend consolidation of HVAC line items (Boiler Improvements, Chiller Improvements, HVAC, Distribution Systems, Refrigeration), as these are related and presumably are within a similar risk framework. on the other hand, it may be advisable to break out "Building Envelope Modifications", as this is widely disparate - roof coatings versus glazing, for example, are handled by different firms in different trades. Some definitions may be necessary to define the boundaries of the technology categories (perhaps this can be entered using footnotes) - for example, would lighting controls be considered under the BAS/EMCS or the "Lighting Improvements" category?

Response:

The Government anticipates that risk and related margins could be different for Boilers, Chillers, HVAC, thermal distribution and refrigeration. Section C of the Solicitation will remain as written.

110. Comment:

Another approach to assigning different margins to different technologies would be to simply have margin rates for low complexity, medium complexity, and high complexity projects. Some general definitional verbiage could be used, and the final assignment of complexity level left to negotiation between the agency and the contractor per delivery order. Bear in mind that any of these technologies can be implemented in a safe, conservative way, or using an aggressive design which involves more work and risk for the contractor.
In summary, regarding the "margin" issue, I recommend:
(1) clearly defining what is included in margin versus bare construction cost.
(2) basing margin differentiation on location of work, size of project and aggressiveness/complexity of design, rather than on category of technology.

Response:

The Government has reviewed its approach to margin structure and has determined that the current structure is appropriate to meet the Government requirement.

111. Comment:

Regarding financing rate (para B.7.1(b)), I recommend clearly defining a reference for the base T-bill rate: e.g., Wall Street Journal published on the day immediately prior to the day the delivery order is issued. These are long term contracts, so minor variations in financing rates can be significant.

Response:

The Government will require contractor to specify the source and date upon which the finance rates will be based in the contractor's proposal for a delivery order. Solicitation will be modified in Schedule H-3 to reflect the above recommendations.

112. Comment:

Finally, there seems to be no pricing structure for O&M services. Given that Section C makes contractor-provided O&M the default, establishing a pricing framework in the IDIQ would be advisable.

Response:

The cash flow breakdown in Schedule H-3 has been revised to more clearly identify the contractor's expenses for O&M as a component of the various expenses incurred during the energy savings performance period. Additionally, each offeror is expected to identify the price elements to be used in constructing the energy savings performance period portion of contractor payments. We would anticipate that direct cost items such as O & M would be specified by each offeror.

113. Comment:

C.2.2

Recommend deleting or modifying restriction "... increase water consumption..." Taken rigidly, this would prohibit all evaporative cooling strategies, when all you want to do is avoid certain environmentally destructive approaches such as single-pass systems.

Response:

Solicitation at C.2.2.2 has been modified.

114. Comment:

C.4

The discussion of M&V and baseline issues does not seem to address the basic assignment of risk factors, most importantly the risk of changes in future utility rates. This is essential for proposers to do their price proposals; it cannot be left to delivery orders.

Response:

The delivery orders are the only medium where the agency discretion of how utility rates and energy savings M&V should be addressed. The site specific projects included in the Solicitation specify that the utility rates will be fixed during the delivery order term.

115. Comment:

The discussion of baselines (C.4.2) is very general and open ended. I would recommend some statement of responsibility for determining the baseline, or how to resolve disagreements over the baseline. Again, because risk factors are involved, I believe this needs to be in the IDIQ contract and cannot be left to the delivery orders.

Response:

The delivery order needs to address whether the agency wants to specify the M&V option and method if known or allow the contractor to recommend the M&V option and method for ECMs. C.4.6 clearly indicates that the responsibility for proposing a site specific M&V plan and for defining the baseline rests with the contractor and is subject to Government review and approval.

116. Comment:

C.5.2

I would recommend incorporation by reference of AIA Masterspec as the fundamental construction work standard.

Response:

American Institute of Architects Masterspec will be included in the IDIQ Solicitation at C.5.2.1 as recommended.

117. Comment:

E. 1

Ref. "...DOE Contracting Officer's Representative..."; this seems to assume that DOE will retain contracting authority for individual delivery orders. The use of interagency agreements to assign agency ordering officials, who can then appoint COR/COTRs internally, will probably be a more workable approach.

Response:

In cases where contracting authority is delegated to other agency contracting officers, the responsibility for COR designation will belong to the other agency contracting officers. Agency contracting officers and CORs will be cited in individual delivery orders.

118. Comment:

F. 1

Indicate explicitly that termination or expiration of the basic IDIQ contract does not result in termination or expiration of the individual delivery orders; the latter will remain in force pursuant to the terms and conditions of the original IDIQ contract, up to the original maximum 25 years.

Response:

See response to Comment #51.

119. Comment:

F. 2.

Same comment as F.l.: indicate that a decision not to exercise the next option does not impact the delivery orders already in place.

Response:

See response to Comment #51.

120. Comment:

SECTION G

Section G throughout is written for internal DOE contracts. Most references will presumably be to ordering agency CORS, ordering officials, finance and billing procedures, etc. I recommend a more generic Section G, which indicates that most of the addresses, invoicing procedures, etc., will be specified on individual delivery orders, or on individual interagency agreements.

Response:

The Government has determined that Section G is appropriate as written for internal DOE contracts. Agency-specific information will be specified in each delivery order, such as agency points of contact and agency CORs.

121. Comment:

H. 12

I recommend allowing agencies to use their own, internal, delivery order forms.

Response:

Clause H.12 shall be modified to specify that agencies will have the choice to use agency-specific delivery order forms.

122. Comment:

H. 13

I recommend additional criteria for restricting competition among schedule contractors.
(1) allow agencies to issue an RFP to contractors making proposing voluntary. Some contractors may not be very interested in projects in areas where their presence is weak, or their engineering expertise is limited; very likely agencies would not prefer these contractors in these situations anyway.

(2) allow agencies to limit competition to as few as 2 proposers at the agencies, discretion due to feasibility factors, such as:

(i) access limitations of the facilities.
(ii) the complexity of the proposed project makes it too expensive or cumbersome for more than a couple of contractors to develop proposals.
(iii) the size of the proposed project is too small for economical proposal preparation, and agency evaluation, of numerous proposals.
(iv) the agency requires full-time local vendor support, and only a subset of contractors can provide this.

Response:

Contractors are not required to submit proposals for individual delivery orders; response is voluntary. The Government may limit competition, or choose not to compete, a delivery order for one of the reasons stated n H.13. The Government appreciates the comment, but it considers that the reasons cited in the comment would not provide offerors a fair opportunity to compete.

123. Comment:

In selecting a subset of contractors from whom to request proposals, agencies should be able to refer to the original proposals submitted for award under the IDIQ contract. Agencies should be able to make a rational determination of the contractors most likely to provide high quality proposals from this material, and then issue a RFP to the contractor subset.

Response:

The Government does not consider that information contained in original proposals will necessarily be applicable to subsequent delivery orders. The procedures in H.13/14/15/16/17 will be used to issue subsequent delivery orders. Past performance information will be submitted as required by law and collected in a database, and will be available to ordering agencies.

124. Comment:

H. 15

I recommend establishing this set of evaluation factors as a default (i.e., these will be the factors if an agency RFP does not indicate otherwise), but allow agencies to use alternative factors in their RFPs if they so desire.

Response:

The Government agrees. The Solicitation will be modified at H.15 to allow agencies to modify evaluation criteria as appropriate.

125. Comment:

H. 17

No determination is made as to whether unsolicited proposals require competition. H.17 references "Procedures for Awarding Delivery Orders", but the latter paragraph does not establish any policy. Does an agency have complete discretion in deciding whether to sole-source, or compete? or is this dependent on unique technology?

Response:

The Government interprets H.17 that the Government (agency) has the discretion whether to compete or sole source the delivery order in response to a contractor identified and proposed project.

126. Comment:

H. 18

Para (b) gives a fairly comprehensive requirement for the energy survey. I recommend making this a default, and allowing agencies to specify simplified energy survey requirements. This comprehensive survey may not make sense in some cases (e.g., if only a lighting retrofit is requested).

Response:

The Government considers H.18 to be necessary to set the guaranteed savings and baseline information. The contractor should address the conditions of facilities which are relevant to that particular project. The report would be simpler for a less complex project. Clause H.18(b) has been modified to state that the selected contractor will prepare a report documenting existing conditions for *applicable* Government facilities.

127. Comment:

Will there be a bidders' list for the solicitation? And may we obtain such a list?

Response:

No bidders' list exists for this solicitation. A copy of the current DOE Qualified List of Energy Service Companies is attached to this solicitation. As detailed in M.4 of the solicitation, firms must be on the DOE Qualified List at the time of award to be eligible for award.