SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 CONSECUTIVE NUMBERING (APR 1984)

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

H.2 RESERVED

H.3 52.217-2 CANCELLATION UNDER MULTIYEAR CONTRACTS (JUL 1996) INCORPORATED BY REFERENCE

H.4 CONFIDENTIALITY OF INFORMATION (APR 1984)

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

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

(2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

(3) Information which the Contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;

(4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

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

(c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

(d) The Contractor agrees that upon request by the Contracting Officer it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by

DOE, such an agreement shall also be signed by Contractor personnel.

(e) This clause shall flow down to all subcontracts.

H.5 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (JUN 1988)

The Representations, Certifications and Other Statements of the Offeror, dated [ ], for this contract are hereby incorporated by reference.

H.6 TECHNICAL DIRECTION (JAN 1990)

(a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR) identified elsewhere in this contract. The term "technical direction" is defined to include:

(1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.

(2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.

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

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

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

(3) Causes an increase or decrease in the total price or the time required for contract performance;

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

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

(c) All technical directions shall be issued in writing by the COR.

(d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this article and within his authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the

notification from the Contractor, the Contracting Officer shall:

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

(2) Advise the Contractor in writing within 30 days after receipt of the Contractor's letter not to perform under the direction and cancel the direction; or

(3) Advise the Contractor within a reasonable time that the Government will issue a written change order.

(e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes Alternate I" of the contract.

H.7 MODIFICATION AUTHORITY (APR 1984)

Notwithstanding any of the other provisions of this contract, the Contracting Officer shall be the only individual authorized to:

(a) accept nonconforming work,

(b) waive any requirement of this contract, or

(c) modify any term or condition of this contract.

H.8 GOVERNMENT PROPERTY AND DATA (JAN 1992)

(a) Except as otherwise authorized by the Contracting Officer in writing, the Contractor is not authorized to acquire as a direct charge item under this contract any real or personal property or data.

H.9 SUBCONTRACTS (DEC 1984)

Prior to the placement of subcontracts and in accordance with the clause, "Subcontracts-Fixed-Price Contracts," the Contractor shall ensure that:

(1) they contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flowdown applicability of the clauses entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" and "Small Business and Small Disadvantaged Business Subcontracting Plan" contained in Part II, Section I of the contract;

(2) any applicable subcontractor Representations and Certifications (see Part IV, Section K and the document referenced in the Representations, Certifications and Other Statements of the Offeror clause are received); and

(3) any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

H.10 ORDERING PERIOD LIMITATION

At the Government's discretion, the ordering period may end at the end of the five year legal authority that started with the issuance of the regulation on Energy Savings Performance Contracting on April 10, 1995. The Government intends to modify the contract to extend the ordering period specified in Clause B.5, "Ordering" at a future date.

H.11 RESERVED

H.12 DELIVERY ORDER REQUEST FOR PROPOSAL AND DELIVERY ORDER FORMATS

The Contracting Officer for this contract will provide prescriptive formats for the delivery order request for proposal and the delivery order, to indefinite quantity contractors upon award, and to authorized Contracting Officers from any Federal agency upon request. These formats are for use by ordering agencies in requesting offers from the contractor(s) for specific delivery order projects, and by contractors in developing their offers. These formats will provide, in contract chronological order, only those provisions and clauses throughout the contract which need to be addressed in developing the description of a specific project, and the differing or additional agency and site-specific requirements relative to it. In addition, they will include a standard format Attachment which provides the framework for the technical description of the specific project site (i.e., the site data package).

Ordering agencies will be required to use these formats, or comparable ones that they develop providing identical information, in requesting offers for specific projects and for placing delivery orders against this contract. The purposes for requiring use of the formats are to minimize the Government's cost of contract administration for this contract and its delivery orders, and to minimize contractor costs for delivery order proposal preparation. In general each delivery order shall:

(1) incorporate the terms and conditions of this contract by reference;

- (a) set forth the ECMs to be implemented and the technology categories in which they fall;
- (b) contain the prices per energy unit to be used in calculating any savings shortfall;
- (c) contain the agreed upon/negotiated energy use baseline, to be defined by either the Federal agency or the contractor as specified in each order;
- (d) set forth the measurement and verification (M&V) procedure and define the M&V intervals;
- (e) set forth the value of factors needed to calculate energy savings (i.e. ton-hours of cooling, operating hours, etc.);
- (f) set forth the estimated and guaranteed energy savings;
- (g) set forth specific hazardous waste handling and storage requirements (e.g., PCB ballasts removed from lighting fixture retrofits);
- (h) set forth time frame for completion of repairs;

(i) set forth applicable fire prevention procedures, rules, or regulations for fire prevention;
(j) set forth compliance requirements for the applicable agency's Spill Prevention Control and Countermeasures Plan;
(k) set forth agency- and/or site-specific inspection and acceptance criteria;
(l) set forth an installation plan due date and Government review and approval dates for the plan;
(m) set forth requirements for as-built drawings;
(n) include a Liquidated Damages clause and establish appropriate liquidated damages, at the discretion of the agency; and
(o) set forth security requirements.

(2) set forth a delivery order maximum price;
(3) set forth packaging (preservation and packing) and marking requirements for deliverables;
(4) specify any Government Furnished Equipment or Government Furnished Information applicable to that order;
(5) set forth the Government's required delivery or performance date and the place of performance, indicating therein the Government facility to be utilized;
(6) set forth the applicable appropriation and accounting data; and
(7) be signed by the authorized Contracting Officer (CO).

Under no circumstances shall an order or a modification to an order be issued:

(1) prior to contract issuance;
(2) if the delivery requirements extend beyond 25 years after the award of the initial IDIQ contract; and
(3) when the order requires access to classified material and security approval has not been provided for inclusion in the order.

The estimated delivery order price may not be exceeded without prior approval of the Contracting Officer.

The following schedules, which will have been completed for the award of the IDIQ contract, shall apply to all delivery orders issued under this contract.

(1) SCHEDULE B-1 – IDIQ Maximum Implementation Margins By Technology Category : Schedule B-1 specifies the maximum margins that will be applied to implementation expenses to derive implementation prices in all delivery orders issued under the contract.

(2) SCHEDULE B-2 – IDIQ Maximum Performance Period Margin : Schedule B-2 specifies the maximum margin that will be applied to performance period expenses to derive performance period prices in all delivery orders issued under the contract.

(3) SCHEDULE B-3 – IDIQ Maximum Finance Charge By Delivery Order Performance Period Term And Amount Financed: Schedule B-3 provides the maximum, fixed, annual percentage rate that, when added to the current Treasury Bill/Note rate will be the total annual percentage interest rate (not including financing procurement price as defined in H.44) that the contractor will charge the Government for financing all delivery orders issued under the contract. The interest rate that shall apply to an individual delivery order shall be based on the reference Treasury Bill/Note rate negotiated in the delivery order.

H.13 PROCEDURES FOR AWARDING DELIVERY ORDERS

The Government may have awarded more than one IDIQ contract for the work specified in the Statement of Work of this contract. The Contracting Officer or other authorized ordering official may issue delivery orders to the Contractor and/or the companion contractors during the terms of the respective contracts. Selection of the Contractor or a companion contractor for issuance of a specific delivery order will be made pursuant to either paragraph (a) or (b) below.

The DOE Contracting Officer or the designated Federal agency's contracting officer shall have the final decision authority as to the extent to which offers will be solicited for individual delivery orders, taking into account technical, economic, and performance risk considerations, and the factors described below. Such decision shall not be subject to dispute under the contract's "Disputes" clause.

No protest under 48 CFR (FAR) Part 33 is authorized in connection with the issuance or proposed issuance of a delivery order under this contract except for a protest on grounds that the delivery order increases the scope, period, or maximum value of the contract. The Department of Energy task and delivery order Ombudsman shall be responsible for reviewing complaints from any contractor arising from the Contracting Officer decision as to the extent to which offers will be solicited for individual delivery orders, and for ensuring in general that all of the contractors receiving awards are afforded a fair opportunity to be considered. The DOE Ombudsman is **[to be inserted at award]**.

a) Sole Source Awards - The Contracting Officer may issue a delivery order to any one of the contractors if he determines unilaterally that:

Competition is precluded by the urgency of the requirement; the delivery order requires the installation, operation and maintenance of ECMs that are highly specialized and only one contractor can provide the ECMs at the level of quality required; a contractor-identified delivery order project (may also be competitive); it is necessary to place an order to satisfy a minimum guarantee; or that the delivery order is a logical follow-on to a delivery order previously issued to a contractor on a competitive basis.

b) Competitive Award - The contractor agrees that issuance of a delivery order in accordance with any of the procedures in this clause is deemed to have provided the Contractor with a "fair opportunity to be considered," as that phrase is used in Section 303J(b) of the Federal Property and Administrative Services Act of 1949, as amended.

1. The Contracting Officer may issue delivery orders based on the evaluation criteria specified in Section H.15, "Proposal Evaluation for Government-Identified Delivery Orders". The Contracting Officer may base the issuance on any other evaluation factors deemed appropriate in the exercise of sound business judgment. The factors to be used in selecting the recipient of the delivery order, and their relative importance, will be specified in the delivery order request for proposal if different from those in H.15.

2. The Contracting Officer may issue delivery orders based on evaluation of performance of previous delivery orders. This may also be used as a means of selecting a limited number of contractors (i.e., less than the total number of contractors that received an award for the Statement of Work for this contract) that may submit proposals to be further evaluated in accordance with Clause H.15, "Proposal Evaluation for Government-Identified Delivery Orders".

H.14 REQUIREMENTS FOR PROPOSAL CONTENTS FOR GOVERNMENT-IDENTIFIED DELIVERY ORDERS

The Government anticipates awarding fixed price delivery orders. Delivery order projects may be identified by either Federal agencies or by the contractor(s), and therefore provisions are provided for proposal preparation instructions and evaluation procedures for both scenarios (H.14 and H.15 for government-identified, H.16 and H.17 for contractor-identified). The H.14 instructions and procedures represent the MAXIMUM anticipated requirements for competitively proposing on a specific government-identified delivery order project. Ordering agencies may identify different instructions and procedures in the delivery order requests for proposal for their specific delivery order projects. However, the instructions and procedures provided below will apply unless other instructions are identified in the delivery order request for proposal which supersedes or revises them.

A **Government-identified delivery order project** is one identified by a Federal agency. As projects are identified by Federal agencies, the Contracting Officer for the requirement will request a contractor or contractors to submit a delivery order proposal. The contractor(s) shall submit the requested technical and price proposal in sufficient detail as will permit prompt evaluation, selection, and negotiation and/or acceptance of a proposal thereof in accordance with Sections H.15, H.12 and H.13 of this contract. Proposals shall be submitted initially on the most favorable terms from a technical and price standpoint to the Government. The Government reserves the right to accept or reject the initial proposal without further discussions.

As required by the delivery order request for proposal, the Contractor shall submit a technical and price proposal in accordance with the following requirements:

I. Format for Technical Proposal

The technical proposal shall be prepared in the following format, unless specified otherwise in the delivery order request for proposal:

1. Delivery Order ECM Descriptions, Projected Energy Savings, and Schedule

   a. The Contractor shall complete and submit Schedule H-4 (leaving columns (f), (g) and (h) blank—see H.14 below under "II. Format for Price Proposal"), which provides a summary of the estimated energy and energy cost savings by ECM, technology category, and delivery order.

   b. For each ECM proposed, the Contractor shall submit narrative information for items, as applicable, in the format specified below:

      (1) Technology Category Number of ECM

      (2) ECM Number

      (3) ECM Title and Executive Summary

         (a) Detailed Description of ECM

         (b) Location Affected

         (c) ECM Interface with Government Equipment

(d) Proposed Equipment Identification - Provide manufacturer, model number and optional equipment proposed for each ECM component, including manufacturer's literature and specifications.

(e) Physical Changes - List major physical changes to equipment or facilities required to install proposed ECM such as relocation of equipment.

(f) Energy Savings Proposed

(i) Proposed ECM annual energy savings (in all applicable energy/demand reduction units)

(ii) For each ECM proposed, provide a detailed energy analysis documenting the proposed annual energy savings performance of ECM. Documentation of the analysis shall include, at a minimum:

- Offeror's assumptions on current facility or energy system operating conditions
- Offeror's assumptions on proposed facility or energy system operating conditions
- Energy savings calculations using formulas and procedures based on accepted engineering principles, including synergistic effects of other ECMs.
- Cite references used for data, assumptions or empirical formulas.

(g) Energy Cost Savings Proposed

(i) Proposed ECM annual energy cost savings (in dollars)

(ii) For each ECM proposed, provide a detailed energy cost savings analysis documenting the estimated annual energy cost savings generated by the ECM. Documentation of the analysis shall include, at a minimum, the offeror's approach, assumptions, and calculations used to apply the energy tariffs or rate schedules provided in the site data packages to estimated energy savings (in appropriate energy/demand units), to arrive at estimated energy cost savings.

(h) Utility Interruptions - Specify extent of any utility interruptions needed for installation of proposed ECM.

(i) Agency Support Required - Specify any government agency support required during implementation of the ECM.

(j) Potential Environmental Impact - Briefly describe any potential environmental impact resulting from installed ECM.

c. Delivery Order Project Schedule - Provide a project schedule to include the duration of the following key phases:

(1) Detailed Energy Survey and Feasibility Report/Acceptance: activities to confirm Government data, satisfy remaining data needs, finalize ECMs in Government-specified technology categories, identify additional ECMs in other categories if appropriate, and verify the feasibility of, and develop design concepts for, all ECMs *(assume Government feasibility report review, and authorization to proceed with design (or direction to revisit report) within 30 days unless otherwise specified in the delivery order).*

(2) Engineering/Design/Acceptance:
activities to develop preliminary design submittals, with accompanying construction price, for review and approval; and then to develop final design submittals, with accompanying construction price and a revised feasibility study based on the design-specific data, for review and approval *(assume Government design review of 30 days for the preliminary submittal comments and 15 days for the final submittal backcheck and approval unless otherwise specified in the delivery order).*

(3) Equipment Procurement Approval/Lead Time (i.e., date Government approves equipment order, date order placed, and date of delivery on-site).

(4) Installation & Commissioning /Acceptance: separate schedule for each phase of construction that will be individually inspected and accepted by the Government, commensing contractor payments from savings for that phase *(assume Government inspection and acceptance (or rejection) of construction 15 days from inspection request unless otherwise specified in the delivery order).*

2. <u>Energy Baseline and Delivery Order Performance Measurement</u>

The Contractor shall describe how it will provide a complete measurement and verification (M&V) plan for the delivery order. The plan shall include, but not be limited to:

a. M&V Overview - Description of the M&V option(s) selected for this project referenced to the FEMP M&V Guideline.

b. Site-Specific M&V Plan - Define a site specific plan, which must include the following elements for each project:

(1) Objectives - a statement of what is to be determined (i.e., gross annual kWh savings on a project basis).

(2) Parameters to be monitored - indicate parameters to be recorded that will be used in the determination of annual energy savings, including variable load; hours of operation, installation status of measures, etc,; other parameters related to secondary objectives, such as in the case of lighting, may include reduction in lighting levels.

(3) Sampling plan (if required), including:

(a) Designation of usage groups - define usage groups for areas with similar characteristics.

(b) Calculation of population(s) and sample sizes(s) by usage group - present the calculation and assumptions used to determine sample size by each usage group area.

(4) Data collection plan, including:

(a) Specify data to be collected in terms of parameters, unit of measurement, points of measurements, length of time and intervals of measurements; raw, meter data (if available) as well as analyzed and summary data must be obtained.

(b) Identification of instrumentation and metering equipment - name and documentation on equipment specifications of monitoring devices.

(c) Calibration of equipment - describe protocols for calibrating equipment.

(d) Data gathering and quality control - describe quality control procedures for checking completeness and accuracy of the recorded data.

(e) Period of monitoring - specify periods of monitoring including duration and frequency.

(5) Analysis Method - describe in detail the method of analysis to estimate annual energy savings based on recorded data; include a discussion on relevant equations and assumptions, and document all calculations and assumptions.

c. Pre-Installation energy and facility performance baseline including (1) equipment/systems, (2) system performance factors (e.g., lighting levels, temperature set points) , (3) baseline energy use, and (4) factors that influence baseline energy use.

d. Post-installation facility conditions including (1) equipment/systems, (2) system performance factors (e.g., lighting levels, temperature set points) , (3) post-installation energy use, and (4) factors that influence post-installation energy use.

e. Determination of energy savings based on the selected approach(es) and the pre

and post-installation conditions.

f. Plan for future periodic (annual) measurements of delivery order and facility performance and calculation of current period (year) savings.

g. Plan for resolving disputes regarding issues such as baseline, baseline adjustment, energy savings calculation and the use of periodic measurements.

3. Delivery Order Management Approach

a. Organization. Show the organization for implementing and managing the delivery order project. The proposed organization shall assign the responsibilities of each element shown on the organization chart. Identify primary personnel for each project by name in each element. Show the lines of authority within the organization. If portions of the project are to be subcontracted (e.g., design), identify the subcontracted function, the subcontractor(s), the subcontractor's primary personnel for the project, and which element of the contractor's organization will manage the subcontract(s).

b. Maintenance and Operations. Show the organization structure and describe the approach for implementing the delivery order's maintenance and operation requirements.

II. Format for Price Proposal

The offeror(s) shall prepare and submit Schedules H-1 through H-4 for its Delivery Order Proposals, unless specified otherwise in the delivery order request for proposal. The selected offeror ONLY shall also be required to prepare and submit Schedules H-5 and H-6, and revised Schedules H-2 through H-4, as part of their preaward requirements. The schedules, explanations of them, and instructions for their completion are provided as follows:

Schedule H-1: Schedule H-1 is used to submit the offeror's proposed estimated cost savings, the proposed guaranteed cost savings, and the contractor payments for each year of the delivery order performance period. The values submitted on Schedule H-1 are for 12-month periods, beginning after complete installation of all ECMs by the contractor and acceptance by the Government, or beginning after complete installation of the first phase of ECM construction by the contractor and acceptance by the Government. See Section H.44 for definition of acceptance. Contractors shall submit Schedule H-1 with all delivery order proposals.

Each delivery order's solicitation document shall specify the baseline energy tariffs that will be used during the delivery order's period of performance. The estimated annual cost savings and the proposed guaranteed annual cost savings established in Columns (a) and (b) of Schedule H-1 shall be based on the specified baseline energy tariffs , as supported by Schedule H-4 .

Schedule H-1 column (c) is the delivery order price, which shall be supported by Schedules H-2 and H-3. The contractor shall truncate Schedule H-1 to reflect the actual number of years included in the contractor's proposed delivery order performance period.

SCHEDULE H-1 – Delivery Order Proposed Guaranteed Performance And Annual 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 Number	Contractor Name

Performance Period Year	(a) Estimated Annual Cost Savings $	(b) Proposed Guaranteed Annual Cost Savings $	(c) Total Annual Contractor Payments $
ONE			
TWO			
THREE			
FOUR			
FIVE			
SIX			
SEVEN			
EIGHT			
NINE			
TEN			
ELEVEN			
TWELVE			
THIRTEEN			
FOURTEEN			
FIFTEEN			
SIXTEEN			
SEVENTEEN			
EIGHTEEN			
NINTEEN			
TWENTY			
TWENTY-ONE			

TWENTY-TWO			
TWENTY-THREE			
TWENTY-FOUR			
TWENTY-FIVE			
TOTALS			

(a) The technical proposal and Schedule H-4 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) The contractor payment represents the delivery order price and should be supported by information submitted in Schedules H-2 and H-3.

Schedule H-2: Schedule H-2 presents the offeror's estimated implementation price by ECM, technology category, and entire delivery order. Total implementation price (Schedule H-2, column (e), last page total) is used to establish bonding requirements (see section H.37 for performance and payment bond requirements) for the delivery order implementation period.

Technology category numbers are defined in Schedule B-1. The contractor shall assign each ECM within a technology category, an ECM number, and then consistently utilize that number. The contractor shall complete Schedule H-2 on an ECM by ECM basis, group together all ECMs in the same technology category, provide technology category subtotals, and provide delivery order totals. Proposed survey, feasibility study, and design expenses related to specific ECMs, to be incurred after the contracting officer provides written notification of intent to award, shall be entered into Schedule H-2 column (a) for the specific ECM. Proposed construction expenses for ECMs are entered into column (b). Proposed survey expenses related to the delivery order and to be incurred after written notification of intent to award, but not traceable to specific ECMs, shall be listed as a separate ECM under technology category #16 "survey, feasibility study, and design"; the survey expenses shall be entered into Schedule H-2 column (a); and zero shall be entered into column (b). Total ECM implementation expense, which is the sum of columns (a) and (b), shall be entered into column (c). The implementation margins entered into Schedule H-2 column (d) shall not exceed the maximum implementation margins by technology category offered in Schedule B-1. Any proposal preparation, survey, feasibility study, and design expenses incurred prior to written notification of intent to award shall not be listed in Schedule H-2, and shall only be recoverable in implementation margins on delivery orders awarded in the future, if any. After receiving written notification of intent to award, contractors generally perform a detailed energy survey, verify the feasibility of each ECM, revise Schedules H-2 through H-4, and complete Schedules H-5 and H-6. On the revised Schedule H-2, previously proposed feasibility study expenses, incurred after written notification of intent to award, and while investigating ECMs for the delivery order that prove not to be feasible, shall be listed under technology category #16 separately for each non-feasible ECM investigated; the feasibility study expenses shall be entered into Schedule H-2 column (a); and zero shall be entered into column (b).

Contractors shall submit Schedule H-2 with all delivery order proposals. Schedule H-2 shall support the offered debt service (Schedule H-3, row (a)).

SCHEDULE H-2 – Delivery Order Implementation Price By ECM, Technology Category, and Delivery Order

Note: Use a separate page for ECMs in the same technology category. Provide the delivery order total on the last page.

Project Site	Delivery Order Number	Contractor Name

Tech No .	ECM No.	ECM Description - Title	(a) Survey, Feasib -ility & Design Expense $	(b) Construc -tion Expense $	(c)=(a)+(b) Total Implemen-tation Expense $	(d) Implem entation Margin (Not to exceed B-1) %	(e)=(c)x (1+d/100) Implemen-tation Price $
Technology Category Subtotal							
Delivery Order Total(last page only)							

Schedule H-3: Schedule H-3 is submitted to present the Contractor's proposed project cash flow for a specific delivery order. The schedule is divided into two sections. The top section summarizes the amount financed to implement the delivery order. The amount financed equals the total delivery order implementation price from Schedule H-2 plus the contractor financing procurement price (e.g., to arrange the financing). The amount financed is amortized over the performance period term and the offered annual debt service shall be entered in Schedule H-3 row (a). The total annual interest rate charged shall be entered in the Schedule H-3 footnote, and shall not exceed the like-term T-Bill/T-Note index, which shall also be entered in the H-3 footnote, plus the maximum finance charge of Schedule B-3.

The bottom section of Schedule H-3 details the proposed performance period expenses. If expenses are entered in the row labeled "other", the contractor shall itemize and describe the expenses on an attachment. Each year the sum of performance period expenses (row (b)) shall be increased by the

performance period margin (row(c)) to arrive at the performance period price (row (d)). The proposed total annual contractor payment (row (e)) in any year shall equal the sum of debt service (row (a)) and performance period price (row (d)) . The performance period margin shall not exceed the maximum value in Schedule B-2.

In accordance with Section G.7 the Government reserves the right to pre-pay the debt at any time during the performance period term, while retaining contractor performance period services as per the delivery order contract. The contractor shall identify the pre-payment penalty, if any, associated with retiring the debt at the end of each performance period year (e.g., the end of year one is the end of the 12th month after Government acceptance of construction). If the debt is retired, principal and interest payments cease, and the total annual contractor payments (row (e)) become the performance period prices in Schedule H-3 row (d).

The contractor shall submit Schedule H-3 with all delivery order proposals. Schedule H-3 shall support the price proposal in the initial offer (annual contractor payments, Schedule H-1, col. (c)), and the revised H-3 shall support the offered fixed annual contractor payments in the revised proposal (Schedule H-5, column (b)). The contractor shall extend H-3 to reflect the actual number of years proposed for the delivery order performance period.

SCHEDULE H-3 -- Delivery Order Contractor Cash Flow

Note: add columns to H-3 so that all years in the performance period are shown.

Project Site	Delivery Order Number	Contractor Name

	Year 1	Year 2	Year 3	Year 4
AMOUNT FINANCED				
Implementation Price(H-2,col.e,DO total)($)				
Financing Procurement Price ($)				
Total Amount Financed ($)				
ANNUAL CASH FLOW (PERFORMANCE PERIOD)				
Debt Service:				
Interest ($)				
Principal Repayment ($)				
(a) Total Debt Service ($)				
Penalty if debt retired at yearend ($)				
Performance Period Expenses:				
Management/Administration ($)				
Operation ($)				
Maintenance ($)				
Repair and Replacement ($)				
Measurement and Verification ($)				
Permits and Licenses ($)				
Insurance ($)				
Property Taxes ($)				
Other (describe & itemize on attach.)($)				
(b) Subtotal Performance Period Expenses ($)				
(c) Margin (not to exceed B-2)(%)				
(d)Performance Period Prices ((d)=(b)x(1+c/100))				
(e)Total Annual Contractor Payment ((e)=(a)+(d))				

Submit the following as applicable to above debt service:
Total Annual Interest Rate:_____% (not to exceed B-3 plus T-Bill/T-Note reference)
T-Bill/T-Note Reference: Term____years; Issue Date_____; Interest Rate____%;
Source:_____(e.g., Wall Street Journal, web site)

SCHEDULE H-4: Schedule H-4 presents the offeror's estimated energy and cost savings by ECM, technology category, and entire delivery order. The contractor shall submit Schedule H-4 with all delivery order proposals. Schedule H-4 shall support the estimated and proposed guaranteed annual cost savings in the initial offer (Schedule H-1, columns (a) and (b)), and the revised H-4 shall support the offered guaranteed annual cost savings in the revised proposal (Schedule H-5, column (a)).

The baseline energy prices (columns (a1) through (d1)) are based on the energy tariffs provided in the solicitation and the estimated ECM energy and demand reductions, and therefore may vary by ECM. If necessary the contractor shall provide an attachment that identifies the baseline energy price used for each ECM, and supports the values used with explanatory text and calculations.

The estimated ECM energy savings by fuel type shall be entered into Schedule H-4 columns (a) through (d). For ECMs with multiple energy type impacts, the contractor shall show all impacts and use parentheses (or a negative sign) to indicate increases in use. The estimated ECM energy cost savings of column (e) shall equal the sum of the products of the baseline energy prices and savings by fuel type.

Annually recurring cost savings, other than energy cost savings, which directly result from the contractor's efforts to save energy costs, are defined as recurring ancillary cost savings. Estimated recurring ancillary cost savings shall be entered into column (f). Examples of recurring ancillary cost savings include, but are not limited to, operation, maintenance, and repair directly related to the systems being modified. Ancillary savings to the Government must be real savings; i.e., the Government must either be spending the money currently or planning to spend the money in the future. If not, the money will not be available in the Government's operating budget for payments. In many cases, the contractor may need to maintain a system at a higher cost than the Government is currently expending, due to budgetary limitations. In such cases, the maintenance ancillary savings shall be based on the actual Government expenditure, not what the Government would be spending if the Government were properly maintaining the system. Operations, maintenance, and repair costs for tasks currently being performed by the Government or by a contractor hired by the Government are ancillary savings if the contractor assumes the task, reduces the task, or eliminates the task. The Government will determine whether a contractor-proposed task assumption, reduction, or elimination will be considered a recurring ancillary cost savings. The dollar value of the recurring ancillary cost savings shall be provided by the Government and shall be entered into Schedule H-4 column (f) in the row for the ECM that it is related to.

The Government may also consider one-time ancillary cost savings. For example, one-time costs that are to be incurred by the Government to make repairs or meet environmental regulations are ancillary savings if the contractor assumes the task, reduces the task, or eliminates the task and if the money is available to the Government to pay the contractor. For example, if the Government has scheduled and funded the removal and replacement of a leaking oil tank with a new tank system ("repair by replacement") and if the contractor installs a natural gas line to serve new gas-fired equipment thereby negating the need for replacing the tank, the cost of the new tank system would be both a one-time ancillary repair cost savings and an ancillary environmental cost savings if the federal agency site has this money in its budget for payment to the contractor. An example of a strictly environmental one-time ancillary savings would be the cost of a refrigerant conversion on a water chiller containing a refrigerant with an ozone depletion potential (ODP) greater than 0.05, if the federal agency site has planned for the conversion, and has money in its budget to fund the conversion. If the money is available for a project or task related to the energy systems being modified by the contractor, and that project or task will not have to be accomplished by the Government if the contractor performs the proposed delivery order, then that savings can be considered as one-time ancillary savings. One-time ancillary cost savings shall be listed in Schedule H-4 column (f) with an asterisk and as the only entry in that row ((a) through (e) and (g) and

(h) all zero), and shall not be included in column or row totals with annually recurring energy and ancillary cost savings. One-time ancillary cost savings will be paid to the contractor upon completion of construction and acceptance by the Government, and shall deduct from the amount financed and thereby lower total debt service paid by the Government (Schedule H-3 row (a)).

Estimated total recurring cost savings, which is the sum of columns (e) and (f), shall be entered into column (g). The column (g) total for the entire delivery order shall support the estimated annual cost savings (H-1 column (a) of the initial offer) and the guaranteed annual cost savings (H-1 column (b) of the initial offer, H-5 column (a) of the revised final offer).

ECM simple payback, which shall be entered into Schedule H-4 column (h), is defined as total implementation expense (Schedule H-2, column (c)) divided by estimated total energy cost savings (Schedule H-4, column (e)).

SCHEDULE H-4 – Delivery Order Energy And Cost Savings By ECM, Technology Category, and Delivery Order

Note: Use a separate page for ECMs in the same technology category. Provide the delivery order total on the last page.

Project Site	Delivery Order Number	Contractor Name

	(a1) Electricity ($/kWh)	(b1) Natural Gas ($/therm)	(c1) Other_____ ($/_____)	(d1) Other_____ ($/_____)
Baseline Energy Prices(provide supporting attachment)				

Tech No.	ECM No.	(a) Electricity Savings (kWh/yr)	(b) Natural Gas Savings (therms per yr)	(c) Other____ Savings (_____)	(d) Other____Savings (_____)	(e) Estimated Total Energy Cost Savings ($/yr) a x a1 + b x b1 + etc.	(f) *Estimated Recurring Ancillary Cost Savings ($/yr)	(g) Estimated Total Recurring Cost Savings ($/yr) e + f	(h) Simple Payback (yr) H-2, col. c ÷ e
Technology Category Subtotal									
Delivery Order Total(last page only)									

* One-time ancillary cost savings are listed in column (f) with an asterisk, and are not included in column or row totals with annually recurring energy and ancillary cost savings. All other entries in the one-time

ancillary cost row are zero.

The selected offeror shall prepare and submit Schedules H-5 and H-6; and revised Schedules H-2, H-3 and H-4; as part of preaward requirements:

Schedule H-5: Schedule H-5 is submitted to present the selected offeror's revised final guaranteed annual energy savings, revised final and fixed contractor payments, and the cancellation ceiling for each year of the performance period based on the contractor's detailed energy survey results . The selected contractor shall submit a copy of the detailed energy survey and revised feasibility study report including findings, data, and calculations used to support Schedule H-5 and revisions to Schedules H-2, H-3 and H-4 .

The contractor's guaranteed annual cost savings shall appear in Schedule H-5 column (a). This represents the cost savings level the contractor is willing to guarantee and should be supported by information submitted in revised Schedule H-4.

The contractor shall receive monthly payments equal to 1/12th of the annual fixed payment schedule, as established in Schedule H-5 column (b). This represents the delivery order price and should be supported by information submitted in revised Schedules H-2 and H-3.

The contractor shall indicate in Schedule H-5 column (c) the maximum termination liability of the Government in the event of contract cancellation or termination for convenience at the end of the year. FAR 52.217-2 or 52.249-2 shall apply.

The contractor shall truncate Schedule H-5 to reflect the actual number of years included in the contractor's proposed delivery order performance period.

SCHEDULE H-5 -- Delivery Order Guaranteed Savings, Price, and Cancellation Ceiling

The Contractor shall complete the installation of all proposed ECMs not later than _____ months after delivery order award.

Project Site	Delivery Order Number	Contractor Name

Performance Period Year	(a) Detailed Energy Survey Guaranteed Annual Cost Savings $	(b) Total Annual Contractor Payments $	(c) Cancellation Ceiling $
ONE			
TWO			
THREE			
FOUR			
FIVE			
SIX			
SEVEN			
EIGHT			
NINE			
TEN			
ELEVEN			
TWELVE			
THIRTEEN			
FOURTEEN			
FIFTEEN			
SIXTEEN			
SEVENTEEN			
EIGHTEEN			
NINTEEN			
TWENTY			
TWENTY-ONE			
TWENTY-TWO			
TWENTY-THREE			
TWENTY-FOUR			
TWENTY-FIVE			
TOTALS			

(a) The "DES Guaranteed Annual Cost Savings" is based on achieving annual cost savings per site-specific M&V Plan

agreed to in delivery order.

(b) This contractor payment represents the delivery order price and should be supported by information submitted in Schedules H-2 and H-3.

(c) State cancellation ceilings for the end of each year (e.g., "ONE" means end of one year after Government acceptance).

Schedule H-6: In accordance with Section G.7 the Government reserves the right to pre-pay, fully or partially, the debt at any time during the performance period term while retaining contractor performance period services as per the delivery order contract. In Schedule H-3, row (a) plus one, the contractor identifies the pre-payment penalty, if any, associated with fully retiring the debt at the end of each performance period year. Schedule H-6 summarizes the annual buy down/buy out schedule consistant with Schedule H-3. The Government's buyout price to fully retire the debt shall be the outstanding principal balance (Schedule H-6, column (a)) plus the pre-payment penalty, if any, adjusted to account for the month of buy-out. If the debt is fully retired, principal and interest payments cease, and the total annual contractor payments shall become the performance period prices in Schedule H-3 row (d).

In accordance with Section G.7 the Government also reserves the right to partially pre-pay the debt principal balance at any time during the delivery order performance period term while retaining contractor performance period services as per the delivery order contract. The additional principal payments will directly reduce the outstanding debt principal balance at the time of the additional payment. The Government and contractor shall agree upon revised Schedules H-3, H-5 and H-6 reflecting revised annual payments for the remaining term of the delivery order, adjusted to account for the month and amount of the buy-down. For example, the Government and contractor may agree that annual payments remain the same until the principal is fully paid, at which time principal and interest payments cease, and the total annual contractor payments become the performance period prices in Schedule H-3 row (d).

The contractor shall truncate Schedule H-6 to reflect the actual number of years included in the contractor's proposed delivery order performance period.

SCHEDULE H-6 – Delivery Order Buy Down/Buy Out Schedule

Project Site	Delivery Order Number	Contractor Name

Point in Time	(a) Outstanding Principal Balance $	(b) Annual Principal Payment $	(c) Annual Interest Payment $
After Delivery Order (DO) Acceptance			
After DO Acceptance - End of Year One			
After DO Acceptance - End of Year Two			
After DO Acceptance - End of Year Three			
After DO Acceptance - End of Year Four			
After DO Acceptance - End of Year Five			
After DO Acceptance - End of Year Six			
After DO Acceptance - End of Year Seven			
After DO Acceptance - End of Year Eight			
After DO Acceptance - End of Year Nine			
After DO Acceptance - End of Year Ten			
After DO Acceptance - End of Year Eleven			
After DO Acceptance - End of Year Twelve			
After DO Acceptance - End of Year Thirteen			
After DO Acceptance - End of Year Fourteen			
After DO Acceptance - End of Year Fifteen			
After DO Acceptance - End of Year Sixteen			
After DO Acceptance - End of Year Seventeen			
After DO Acceptance - End of Year Eighteen			
After DO Acceptance - End of Year Ninteen			
After DO Acceptance - End of Year Twenty			
After DO Acceptance - End of Year Twenty-One			
After DO Acceptance - End of Year Twenty-Two			
After DO Acceptance - End of Year Twenty-Three			
After DO Acceptance - End of Year Twenty-Four			
After DO Acceptance - End of Year Twenty-Five			

(a), (b) and (c) should be supported by Schedules H-2 and H-3.

H.15 PROPOSAL EVALUATION FOR GOVERNMENT-IDENTIFIED DELIVERY ORDERS

Proposals will be evaluated using the criteria specified herein unless otherwise specified in the delivery order request for proposals. Proposals will be evaluated using factors in two (2) categories: Technical and Price. Technical Evaluation Factors are more important than Price Evaluation Factors. The Government is more concerned about obtaining superior technical features (e.g., comprehensive technical proposals) than making an award at the lowest cost to the Government. However, the Government will not make an award at a price premium it considers disproportionate to the benefits associated with the proposed superiority of the technical proposal. The Government will select the contractor whose proposal is the best value to the Government to perform the delivery order. Award is conditioned upon the selected contractor meeting the preaward requirements as specified in the Section H "Preaward Requirements" clause. The Government's decision shall not be subject to protest by the contractors.

It is the intention of the Government to utilize streamlined procurement processes such as the Oral Presentations method for evaluation of competitive proposals for delivery order projects to the maximum extent possible. The following information relative to evaluation, as well as the information and submission indicated as required in Section H.14 above may be modified in specific delivery order solicitations to accommodate streamlined procurement processes.

1. Technical Evaluation Factors

   Factor 1 - ECM Descriptions & Projected Energy Savings
   Factor 2 - Energy Baseline & ECM Performance Measurement
   Factor 3 - Management Approach

   Unless specified otherwise in the delivery order solicitation, Factors 1 and 2 are most important and Factor 3 is least important.

   a. Factor 1 - ECM Descriptions and Projected Energy Savings

      (1) Technical feasibility, reasonableness, acceptability of proposed ECMs.

      (2) Level and reasonableness of proposed energy savings. Energy analysis is based on sound assumptions and engineering principles.

      (3) Impacts on Government facilities and operations are acceptable and reasonable; suitability and service life of selected equipment for proposed ECM; potential environmental impacts are adequately addressed; proposed project implementation schedules are realistic and reasonable.

   b. Factor 2 - Energy Baseline and ECM Performance Measurement

      (1) Baseline & M&V plan reflects clear understanding and compliance with M&V protocols

(2) If applicable, acceptable and reasonable sampling and data collection plans based on proposed ECMs.

(3) Methods to establish pre and post-installation conditions and determine energy savings are adequate and reasonable.

(4) Periodic measurement approach for delivery order performance are adequate and reasonable to provide assurance of continued effective monitoring of ECM performance.

c. Factor 3 - Management Approach

(1) Each offeror will be evaluated on the following elements of site management capabilities: the proposed management plan and 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; offeror's training plan is appropriate and suitable for the proposed level of Government O&M responsibility.

2. Price Proposal Evaluation Factors

a. Price proposals will be evaluated to assess:

(1) The completeness of the proposed price (i.e. sum of annual contractor payments) with regard to the contractor's understanding of the work.

(2) The reasonableness of the proposed price.

(3) The realism of the proposed price.

(4) Verification that guaranteed annual energy cost savings exceed price.

(5) Verification that the proposed margin(s) and finance charges are the same as or lower than those contained in the IDIQ contract.

b. The price proposal will not be point scored.

H.16 REQUIREMENTS FOR INITIAL PROPOSAL CONTENTS FOR CONTRACTOR- IDENTIFIED DELIVERY ORDERS

A **contractor-identified delivery order project** is one that is identified by a contractor rather than by a Federal agency. Any contractor may identify a delivery project within the applicable region for its contract, and any delivery order project proposed must be within the scope of the IDIQ contract. The contractor shall contact the DOE Contracting Officer, or federal agency contracting officer authorized to issue delivery orders, before proceeding with preparation of an initial proposal for a contractor-identified delivery order. This section sets forth the requirements for initial proposal contents for contractor-identified delivery

order projects. The Government intends that contractors be able to develop initial proposals at modest expense. If the Government determines that the initial proposal has merit, the contracting officer decides whether the delivery order project will be acquired on a sole source basis from the contractor identifying the project, or through a competition among two or more indefinite quantity contractors for the applicable region. See H.13 "Procedures for Awarding Delivery Orders", for the factors that will be used by the contracting officer in determining whether the delivery order award will be competitive or sole source. The selected contractor shall then develop a revised proposal in accordance with H.14.

Contractor costs associated with surveys, feasibility studies, and preparation of initial proposals for contractor-identified delivery order projects are only recoverable in implementation margins of delivery orders that are awarded to the contractor in the future, if any. The Government's only obligation to an IDIQ contractor is to award delivery order(s) that meet the minimum. After contractors are selected for a delivery order and receive written notification of intent to award a delivery order from the contracting officer; contractor costs to revise the proposal in accordance with H.14 (e.g., detailed energy survey, feasibility study revisions, design, etc.) are recoverable in the delivery order implementation price. The Government owns all contractor work products developed after the contractor receives written notification of intent to award.
An initial proposal is required to have the following contents:

I. Format For Initial Technical Proposal

1. Identification of Delivery Order Project: This section shall identify the location of the delivery order project (e.g., the Federal Agency, the facility manager's name and telephone number, the building and site address, etc.), and provide a narrative summary of the proposed delivery order project to include, as a minimum, (a) proposed system or component upgrades, deficiency corrections, repairs or replacements, and (b) proposed system operational changes and estimated energy usage before and after implementation of the proposed ECMs.

2. ECM Interface with Government Equipment: This section shall describe the interface between the proposed ECMs and remaining Government equipment or facilities, and describe ECM impacts on Government remaining equipment or facilities (i.e., increased/decreased load, reduced run time, etc.).

3. Energy Savings Proposed: This section shall include Schedule H-4 (leaving columns (f), (g) and (h) blank—see H.14 under "II. Format for Price Proposal"), which provides a summary of the estimated energy and energy cost savings by ECM, technology category, and delivery order. While a detailed energy analysis may not be feasible to submit at this time, the Contractor should submit its (a) assumptions on current facility or energy system operating conditions, (b) assumptions on proposed facility or energy system operating conditions, (c) energy savings calculations using formulas and procedures based on accepted engineering principles, including synergistic effects of other ECMs, and (d) references used for data, assumptions or empirical formulas. This section should contain sufficient information for the Government to determine whether it is a feasible project.

4. Physical Changes: This section should identify any major physical changes to equipment, facilities or surrounding vegetation required to install proposed ECMs and address any impacts on building occupants, working environment, or critical equipment (i.e., computer systems and associated environmental control).

5. Anticipated Utility Interruptions or Support Required: This section should address any utility interruptions that might be required for installation of the ECMs by type (e.g., gas, electricity,

water, etc.), the extent (e.g., rooms, entire building, etc.), and the duration. Any anticipated Government support required during installation should also be identified.

6. Environmental Protection Impacts: This section should identify any anticipated or potential environmental impacts that would have an adverse effect upon the quality of the human environment. The contractor should consider the resource use, waste production, mitigation measures, and environmental regulations in preparing this section.

II. Format For Initial Price Proposal

The contractor should submit completed Schedules H-1 through H-4 for the contractor-identified delivery order project.

H.17 EVALUATION OF INITIAL PROPOSALS FOR CONTRACTOR-IDENTIFIED DELIVERY ORDERS

The Government will review the initial proposal submitted and make a determination as to whether the contractor-identified delivery order project merits further consideration. If further consideration is warranted, the Government shall also determine whether this contractor-identified delivery order project will be awarded competitively or sole source, in accordance with Section H.13 "Procedures for Awarding Delivery Orders". The Government's determination is final and not subject to protest. The Government will attempt to complete its review and make its determination within sixty (60) days from receipt of the proposal by the appropriate contracting officer.

If the Government determines to pursue the contractor-identified project, either as a competitive delivery order or as a sole source delivery order, the required revised proposal to be submitted in response shall be in accordance with Section H.14 "Requirements for Proposal Contents for Government-Identified Delivery Orders", unless otherwise specified in the delivery order request for proposal. This revised proposal shall be evaluated in accordance with Section H.15 "Proposal Evaluation For Government-Identified Delivery Orders", unless otherwise specified in the delivery order request for proposal.

H.18 PREAWARD REQUIREMENTS

1. Detailed Energy Survey and Finalization of Feasibilities and Performance Guarantees:

   a. The selected contractor shall, within [the time specified in the delivery order] days of receipt of Government's notice of intent to award, conduct a detailed energy survey of facilities and energy systems at the project site to confirm the contractor's ability to achieve the proposed guaranteed annual cost savings [Schedule H-1, column (b)] submitted in its price proposal. The detailed energy survey and revised feasibility studies shall confirm or justify revisions to the delivery order RFP-provided, or assumed, facility and energy systems operating conditions, and proposed contractor-established energy baseline submitted in its proposal.

   b. The selected contractor shall prepare a report of the detailed energy survey and related feasibility studies that documents the relevant existing conditions of applicable Government facilities, including but not limited to:

      - Building physical conditions

- Hours of use or occupancy
- Area of conditioned space
- Inventory of energy-consuming equipment or systems
- Energy-consuming equipment operating conditions and loads
- Baseline weather (e.g., hourly, bin, cooling and heating degree days)
- Implementation price estimates
- Energy and energy cost savings estimates
- Site specific M&V Plan
- Proposed construction and M&V schedules.

The detailed energy survey/feasibility (survey/feasibility) report may indicate that existing conditions vary from Government-provided or contractor-acquired data or assumptions proposed for one or more of the individual ECMs. Any variance between survey findings and individual ECM assumptions shall require the selected contractor to revise all supporting documentation for each affected ECM in its proposal. These revisions and supporting documentation shall be included as part of the survey/feasibility report. The survey/feasibility report shall fully document the existing building conditions and proposed energy baseline.

c. The selected contractor shall submit the survey/feasibility report to the Government for review and acceptance prior to delivery order award. Government acceptance of the survey/feasibility report establishes mutual agreement on feasible ECMs and the energy and facility baseline conditions and site-specific M&V Plan for the delivery order.

d. Based on the detailed survey/feasibility results, the selected contractor shall submit a completed Schedule H-5 reflecting the contractor's guaranteed annual cost savings [Schedule 5 (Guaranteed) , column (a)]. The selected contractor shall submit a copy of the survey/feasibility report including detailed energy survey findings, data, and calculations used to support Schedule H-5 (Guaranteed). The selected contractor shall also resubmit Schedules H-2, H-3, and H-4 if they require revision in light of the survey/feasibility report. The selected contractor shall also submit a completed schedule H-6. The instructions and format for Schedules H-1 through H-6 are described in Section H.14 "Requirements for Proposal Contents for Government-Identified Delivery Orders".

e. Unless otherwise specified in the delivery order's solicitation, if the guaranteed annual cost savings on Schedule H-5 are less than 90% of the proposed guaranteed annual cost savings contained in the contractor's original proposal (Schedule H-1), then the Government may select the next ranked contractor's proposal for award, where award is subject to meeting the preaward requirements. If the Government selects the next ranked contractor's proposal, the Government shall not be responsible for any costs incurred by the previously selected contractor as a result of this delivery order requirement and procedure. The previously selected contractor's only path for recovering these costs is through margins on future delivery order awards, if any.

f. Even if the guaranteed annual cost savings are within the specified percentage of proposed guaranteed annual cost savings and negotiations are necessary, the Government may select the next ranked contractor's proposal if ageement cannot be reached. The Government shall not be responsible for any costs incurred, such as proposal preparation cost or the cost incurred in conducting the detailed survey and feasibility studies.

2. Pre-Award Requirements - Project Financing by Contractor for Delivery Orders:

   a. If the selected contractor is to provide its own financing for project execution, the selected contractor shall have up to [time specified in delivery order], from Government's acceptance of detailed energy survey/feasibility report and final Schedules H-2 through H-6 (including H-5 Guaranteed Annual Cost Savings), to provide evidence of surety's commitment for bonding of proposed delivery order's building(s) and site per paragraph H.37.1.

   b. Should the selected contractor fail, within the specified timeframe, to provide acceptable evidence of bonding capability, the Government may determine the offeror not acceptable.

3. Pre-Award Requirements - Project Financing by Third Party:

   a. If the selected contractor utilizes third party financing for project execution, the selected contractor shall have up to [time specified in delivery order], from Government's acceptance of detailed energy survey/feasibility report and final Schedules H-2 through H-6 (including H-5 Guaranteed Annual Cost Savings), to provide for the delivery order project proposed: (1) proof of financing commitment; and (2) evidence of surety's commitment for bonding per H.37.2.

   b. Proof of financing shall be provided by written statement(s) from the financier(s), signed by authorized corporate officer(s) indicating a firm commitment of funds for project financing.

   c. The Government recognizes the unique aspects of third party financing of energy savings performance contracts. The Government is willing to discuss and consider third party financier needs for any notification(s) during the delivery order term.

   d. Should the selected contractor fail, within the specified timeframe, to provide proof of financing commitment and acceptable evidence of bonding capability, the Government may determine the contractor not acceptable.

H.19 OFFICIALS AUTHORIZED TO ISSUE DELIVERY ORDERS

Delivery Orders issued under this contract shall be authorized only by a DOE Contracting Officer or approved procurement officials of the Federal Agency sites for the individual delivery orders.

H.20 AVAILABILITY OF UTILITIES

The Government will allow access to existing water and electric kVA available for operating the contractors construction equipment as may be required for the installation work to be performed under the delivery order at no cost to the contractor. The contractor at its expense and in a workmanlike manner satisfactory to the contracting officer shall install and maintain all necessary temporary connections and distribution lines for each utility. Information concerning the location of existing connection points may be obtained from the contracting officer or the contracting officer's designated representative. The contractor shall remove all the temporary connections, distribution lines, and associated equipment upon completion of the installation work.

H.21 CONTRACTOR-FURNISHED MATERIAL

The contractor shall provide all materials and supplies necessary to perform the work as specified in the delivery order. Materials and supplies provided shall be of acceptable industrial grade and quality and in compliance with any applicable industry standards (i.e., Underwriters Laboratories, etc.). All such materials and supplies must be compatible and operate safely with existing systems and equipment.

H.22 GOVERNMENT PROPERTY REGULATIONS

The contractor and its employees shall be knowledgeable of and observe all Government regulations, posted or otherwise. A copy of the applicable regulations for the project site can be obtained from the Federal Agency contract administration official or the contracting officer's designated representative.

H.23 FIRE PREVENTION

The contractor shall ensure that its employees shall know how to activate a fire alarm. The contractor shall observe all requirements for handling and storing combustible supplies, materials, waste, and trash. Contractor employees operating critical equipment shall be trained to properly respond during a fire alarm or fire in accordance with the applicable agencies fire prevention procedures, rules or regulations as identified in the delivery order. The contractor shall obtain all required welding permits prior to any welding. The contractor shall comply with NFPA requirements. A fire watch shall be utilized when hot work is being performed.

H.24 ENVIRONMENTAL PROTECTION

H.24.1 The contractor shall comply with applicable Federal, state, and local laws and with the applicable regulations and standards regarding environmental pollution. All environmental protection matters shall be coordinated with the contracting officer or the contracting officer's designated representative. Authorized Government officials may inspect any of the contractor's work areas on a no-notice basis during normal working hours. In the event that a regulatory agency assesses a monetary fine against the Government for violations caused by contractor negligence, the contractor shall reimburse the Government for the amount of the fine and other costs. The contractor shall also clean-up any oil spills, hazardous wastes, and hazardous materials resulting from the contractor's operations. The contractor shall comply with the instructions of the cognizant Federal agencies' safety and health personnel to avoid conditions that create a nuisance or which may be hazardous to the health of Government or civilian personnel.

H.24.2 The contractor shall prepare at its expense all documentation necessary to acquire permits to comply with all applicable Federal, state, and local requirements prior to implementing affected ECMs in the performance of a delivery order. The contractor shall not receive a notice to proceed with installation until all environmental protection requirements contained in the indefinite quantity contract and the delivery order have been satisfied.

H.24.3 The contractor shall comply with 40 CFR Section 311, and with the requirements of the latest edition of the applicable Federal agency's Spill Prevention Control and

Countermeasures Plan as required by the delivery order.

H.25 SALVAGE

All material and equipment removed or disconnected during the installation phase shall remain the property of the Government and shall be moved by the contractor at its expense to a Government-designated space for storage. A list of such equipment shall be included in the proposal for each ECM. The Government will identify the equipment it wants stored. Any material and equipment not to be stored and all debris resulting from work under a delivery order shall be removed from the site by the Contractor at its expense.

H.26 ASBESTOS

Should the contractor propose an ECM that involves the removal of previously identified asbestos-containing material, then it is the contractor's responsibility to remove the asbestos as part of the ECM project at its cost and expense. However, should the contractor propose an ECM and asbestos containing material is identified after award, the contractor shall immediately stop work, take measures to reduce contractor or building personnel contamination, and immediately notify the contracting officer and the building manager prior to starting work of the asbestos condition and location. The contractor shall then have the option of (a) removing and disposing of the material at its sole cost and expense or (b) of giving the Government the option of removing and disposing of the material at the Government's cost and expense. If the Government declines to exercise its option to remove and dispose of this material, the contractor shall be required to restore the site affected by that ECM to its original condition with compensation provided by the Government. However, the contractor's obligation for its contracted Guaranteed Annual Cost Savings (per Schedule H-5) shall be equitably reduced as a result of this ECM not being installed.

H.27 DISPOSAL

Debris, rubbish, and nonusable material resulting from the work shall be removed from Government property by the contractor at its expense.

H.27.1 Hazardous Material Handling and Disposal

Hazardous wastes resulting from contractor-owned material and equipment must be disposed of in accordance with Resource Conservation and Recovery Act and all applicable Federal, state, and local regulations. All shipping manifests for hazardous waste must be signed by the authorized Federal personnel for the project site, as well as by the contractor prior to transfer off-site. The Federal agency's generator number will be entered on the manifest. The delivery order will provide additional site specific requirements.

H.27.2 PCB Handling and Disposal

If PCB ballasts exist at site covered by a delivery order, then the delivery order shall contain the necessary clause addressing PCB recycling and/or disposal requirements to comply with applicable state and local regulations. The delivery order will provide additional site specific PCB handling and disposal requirements (if applicable).

H.28 SAFETY REQUIREMENTS

H.28.1 All work shall be conducted in a safe manner and shall comply with the requirements in the documents listed in Paragraph c.5.2, and the Accident Prevention clause in Section I (FAR 52.236-13). The Government will not provide safety equipment to the contractor. Additional safety requirements may be included in the delivery order based on individual Federal agencies implementing regulations.

H.28.2 Prior to commencing work, the contractor shall meet with the contracting officer or the contracting officer's designated representative to agree upon administration of the safety program.

H.28.3 The contractor's workplace may be inspected periodically for OSHA violations. Abatement of violations will be the responsibility of the contractor and/or the Government as determined by the contracting officer or the contracting officer's designated representative. The contractor will provide assistance to the Government representative and the Federal or State OSHA inspector if a complaint is filed. Any fines levied on the contractor by Federal or State OSHA offices due to safety/health violations will be paid promptly by the contractor.

H.28.4 In accordance with the Accident Prevention Clause under Section I, the contractor shall report to the contracting officer or the contracting officer's designated representative all accidents within 24 hours of their occurrence.

H.28.5 In accordance with the Accident Prevention Clause in Section I, the contractor shall submit to the contracting officer or the contracting officer's designated representative a full report of damage to Government property and equipment by contractor's employees or contractor's subcontractors, at any tier. All damage reports shall be submitted to the contracting officer or the contracting officer's designated representative within 24 hours of the occurrence.

H.28.6 The safety and health plan and hazard analysis shall be prepared prior to the start of work on a construction site.

H.29 SECURITY REQUIREMENTS

As noted in the solicitation for a specific delivery order, certain areas may require an escort, and place a limit on the days and times that the contractor can work in these areas.

H.30 PASSES AND BADGES

All contractor employees shall obtain the required employee and vehicle passes for the specific delivery order project. The contractor will, prior to the start of on-site work, submit to the contracting officer or the contracting officer's designated representative an estimate of the number of employees expected to be utilized at any one time on the delivery order. The Government will issue badges without charge. When an employee leaves the contractor's service, the employee's pass and badge shall be returned within 10 days. Passes and badges issued to contractor employees shall not negate the requirement for employee identification required in the "Identification of Contractor Employees," Section H.31.

H.31 IDENTIFICATION OF CONTRACTOR EMPLOYEES

Unless otherwise specified in the delivery order, all contractor employees shall be identified by a badge with their picture on it as detailed below:

H.31.1 Appropriate laminated picture badges complying with federal agency site rules shall be required. Personnel with these badges must be registered with Security located at the project site.

H.31.2 Subcontractor employees must register with Security located at the project site. Any subcontractor employees not issued a permanent badge will be issued a temporary Government badge and must be escorted by a contractor employee with a permanent badge at all times.

H.32 IDENTIFICATION OF CONTRACTOR VEHICLES

Each contractor vehicle shall show the contractor's name so that it is clearly visible. Contractor vehicles shall, at all times, display a valid state license plate.

H.33 ACCESS TO BUILDINGS

H.33.1 It shall be the contractor's responsibility, through the contracting officer or the contracting officer's designated representative, to obtain access to the buildings and arrange for the buildings to be opened and closed for the following:

1. For minor work of two hours or less duration, the contractor shall contact the building manager and security organization.

2. For major work, defined as work in excess of two hours duration, and/or work that will create dust or noise, the contractor shall contact the contracting officer or the contracting officer's designated representative at least one week in advance of the start of the work. The contractor must provide a description of the work, the number of workers required, and duration of the work.

H.33.2 Keys may be issued to the contractor; however, it shall be the contractor's responsibility to make adequate arrangements for security of the building at the end of each work day.

H.33.3 The contractor shall be responsible for the cost of replacing any keys that are furnished to and lost by its employees. If the contracting officer or the contracting officer's designated representative decides that a lock must be replaced because of the loss of a key by the contractor's employee(s), the contractor shall pay the cost of that replacement. Similarly, the contractor shall pay the cost of changing a combination if the contracting officer or the contracting officer's designated representative has reasonable cause to assume that the combination has been compromised.

H.33.4 Access to tenant command spaces must be scheduled with the contracting officer or the contracting officer's designated representative at least ten (10) days in advance. Notice must include names of employees to be admitted, expected arrival time, and visit duration. Buildings that require an escort will be identified in the solicitation for a specific

project. All access will be during normal working hours, Monday through Friday, as specified in the delivery order.

H.34 CONTRACTOR EMPLOYEES

H.34.1 Upon receipt of notice of award of the indefinite quantity contract and upon receipt of notice of award for each delivery order, the contractor shall provide the contracting officer or the contracting officer's designated representative with the name(s) of the responsible supervisory person(s) authorized to act for the contractor.

H.34.2 The contractor shall furnish sufficient personnel to perform all work specified within the delivery order.

H.34.3 Contractor employees shall conduct themselves in a proper, efficient, courteous, and businesslike manner.

H.34.4 The contractor shall remove from the site any individual whose continued employment is deemed by the contracting officer or the contracting officer's designated representative to be contrary to the public interest or inconsistent with the best interests of Government business or national security.

H.34.5 No employee or representative of the Contractor will be admitted to the work site unless that employee furnishes satisfactory proof that he/she is a citizen of the United States.

H.35 REQUIRED INSURANCE

H.35.1 The contractor shall procure at its expense and maintain during the entire period of performance under this indefinite delivery contract and the delivery orders awarded to the contractor under the indefinite delivery contract the following minimum insurance coverage. Specific delivery orders may require additional insurance coverage, which would be specified in the delivery order. If additional insurance coverage is specified in a delivery order, the Contractor shall maintain at its own expense for the delivery order term, the additional insurance coverage.

1. Comprehensive general liability: $500,000 per occurrence.

2. Automobile liability: $200,000 per person, $500,000 per occurrence, $20,000 per occurrence for property damage.

3. Workman's compensation: As required by Federal and state workers' compensation and occupational disease statutes.

4. Employer's liability coverage: $100,000 except in states where workers' compensation may not be written by private carriers.

5. Other insurance as required by State law.

H.35.2 Prior to commencement of work, the contractor shall furnish to the contracting officer a certificate or written statement of the required insurance coverage. The policies

evidencing required insurance coverage shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which the delivery order is to be performed and in no event less than thirty (30) days after written notice thereof to the contracting officer.

H.35.3 The contractor agrees to insert the substance of this clause, including paragraph H.35.2, in all subcontracts hereunder.

H.35.4 Nothing herein shall relieve or limit the contractor of liability for losses and damages to person or property as a result of its operation. The contractor shall indemnify and hold harmless the Government from any and all liability associated with its operation.

H.36 TITLE TO CONTRACTOR-INSTALLED EQUIPMENT

H.36.1 All equipment installed by the contractor at installation is and remains the property of the contractor during the delivery order's term unless otherwise specified and mutually agreed to in a delivery order.

H.36.2 At the expiration of the delivery order term, all rights, title, and interest in and to all improvements and equipment constructed or installed on the premises and additions, shall vest in the Government, at no additional cost, free and clear of all and any mechanics liens and encumbrances created or caused by the contractor. The contractor shall surrender possession of said premises and the improvements and equipment to the Government in good repair and condition, reasonable wear and tear accepted.

H.36.3 If the indefinite quantity contract or a specific delivery order is terminated for convenience, all rights, title, and interest in and to all improvements, additions, or equipment of all ECMs installed by the contractor to which the Government determines to take possession shall vest in the Government. For those ECMs for which the Government takes possession and thereby obtains title, the contractor shall be compensated in accordance with FAR clause Termination for Convenience (52.249-2).

H.37 NOTICE OF PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Copies of bond forms SF-25 and SF-25A may be obtained from the technical data library, please see Section L.21 for ordering instructions.

H.37.1 Project Financing by Contractor

1. The Government will notify the selected contractor of its intent to award the delivery order. Pursuant to Section H, Preaward Requirements, the selected contractor shall furnish acceptable evidence of a surety's commitment to provide performance and payment bonds to the Government.

2. Within 30 days after award of delivery order or acceptance of ECM installation plans, whichever is later, the selected contractor shall provide a performance bond (Standard Form 25) and a payment bond (Standard Form 25A) in duplicate. The performance bond shall be in a penal sum equal to 100 percent of the total implementation price for all

ECMs cited in Schedule H-2. The payment bond shall be in a penal sum as follows:

Total Estimated Installation Cost (From Schedule H-2)	Payment Bond Penal Sum
$0 - $999,999	50% of H-2
$1 - $5 million	40% of H-2
>$5 million	$2.5 million

The performance and payment bonds shall remain in effect during the total installation period for all ECMs. After acceptance the performance bond shall be reduced to a penal sum adequate to protect the government's interest in performance of post-acceptance services during the 1-year warranty period. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, and material men have been paid in full. The ECM installation period shall include all time required for installation, testing, measuring initial performance, and Government acceptance of all installed ECMs.

3. Because ECMs are installed on or affixed to Government property, mechanics liens are prohibited. Therefore, the payment bond shall secure the contractor's obligations for payment of laborers, suppliers, and subcontractors.

4. Each subcontract, under this IDIQ contract or under a specific delivery order shall include a provision that prohibits placing mechanics liens against any ECMs installed on or affixed to Government property under this IDIQ contract or under a specific delivery order.

H.37.2 Project Financing by Third Party

1. The Government will notify the selected contractor of its intent to award the delivery order. Pursuant to Section H, Preaward Requirements, the selected contractor shall provide, to the Government, proof of project financing and acceptable evidence of a surety's commitment to provide performance and payment bonds.

2. Within 30 days of award of the delivery order or acceptance of installation plans, whichever is later, the selected contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the Government. The performance bond shall be in a penal sum equal to 100 percent of the total implementation price for all ECMs cited in Schedule H-2. The selected contractor shall furnish a payment bond (Standard Form 25A) in duplicate. The payment bond shall be in a penal sum equal as follows:

Total Estimated Installation Cost (From Schedule 2)	Payment Bond Penal Sum
$0 - $999,999	50% of H-2
$1 - $5 million	40% of H-2
>$5 million	$2.5 million

The performance and payment bonds shall remain in effect during the total installation period for all ECMs. After acceptance the performance bond shall be reduced to a penal sum adequate to protect the Government's interest in performance of post-acceptance

services during the one 1-year warranty period. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, and material men have been paid in full. The ECM installation period shall include all time required for installation, testing, measuring initial performance, and Government acceptance of all installed ECMs.

3. Because ECMs are installed on or affixed to Government property, mechanics liens are prohibited. Therefore, the payment bond shall secure the contractor's obligations for payment of laborers, suppliers, and subcontractors.

4. Each subcontract, under this IDIQ contract or under a specific delivery order shall include a provision that prohibits placing mechanics liens against any ECMs installed on or affixed to Government property under this IDIQ contract or under a specific delivery order.

H.38 RESPONSIBILITY FOR LOSS OR DAMAGE TO CONTRACTOR PROPERTY

The Government shall be responsible for loss or damage to the property of the Contractor only to the extent authorized by the Federal Tort Claims Act.

H.39 PERMITS

In accordance with the "Permits and Responsibilities" clause in Section I, the contractor shall, without additional expense to the Government, obtain all appointments, licenses, and permits required to conduct the work. The contractor shall comply with all applicable Federal, state, and local laws. Evidence of such permits and licenses shall be provided to the contracting officer or the contracting officer's designated representative before work commences.

H.40 PROTECTION OF FINANCIER'S INTEREST

H.40.1 The Government recognizes that project financing associated with contractor performance on the delivery orders may be accomplished using third-party financing, and as such, will permit the financing source to perfect a security interest in the installed energy conservation measures, subject to and subordinate to the rights of the Government. To provide protection of any financier's interest, the contractor may be required to assign to its lenders, some or all of its rights under a delivery order.

H.40.2 The Government will consider:

1. Requests for assignments of monies due or to become due under a delivery order, provided the assignment complies with the Assignment of Claims Act.

2. Requests for the Government to provide lenders or financiers copies of any cure or show-cause notice issued to contractor.

3. Requests by lenders or lienholders for extension of response time to cure or show-cause notices.

4. A proposed takeover of delivery order performance in the event the contractor defaults in

performance. Requests for takeover of the delivery order on substantially the same terms and conditions will be approved, if the proposed substitute party is acceptable to the Government and such takeover is in the Government's best interests.

H.40.3 The Government review and approval of the above requests will not be unreasonably withheld.

H.41 RESPONSIBILITY FOR SYSTEMS AND EQUIPMENT THROUGHOUT THE DELIVERY ORDER TERM

The contractor shall at all times during the term of the delivery order, unless otherwise specified in the delivery order, have full ownership responsibilities of the contractor-furnished systems and equipment. The contractor may modify, replace, or change the systems and equipment during the delivery order from that originally approved. However, any proposed modification, replacement, or change shall require notification and coordination with and approval of the contracting officer. Any such modification, replacement, or change of systems or equipment shall be performed by the contractor at no cost to the Government and shall not interfere with Government operations and mission.

H.42 FINAL YEAR SHORTFALLS - REIMBURSEMENT SCHEDULE

If an energy cost savings shortfall occurs during the last year's performance, the Contractor shall reimburse the Government for the shortfall within thirty (30) days from Government review and approval of the final annual energy audit for the shortfall in guaranteed annual energy cost savings.

H.43 WORK SCHEDULE REQUIREMENTS

The contractor shall arrange its on-site work so that it will not interfere with normal Government business. The contractor shall develop a monthly work schedule for all on-site work performed from delivery order award through installation period for all ECMs. In no event shall the contractor change approved work schedules without the prior consent of the contracting officer or the contracting officer's designated representative.

If the contractor desires to work on Saturday, Sunday, holidays, or outside the project site's normal working hours, which normal working hours will be specified in the delivery order, it may submit a request for approval to the contracting Officer's designated representative at least seven (7) working days prior to the proposed start of such work.

H.44 DEFINITIONS OF TERMS APPLICABLE TO THIS CONTRACT

The following special terms are pertinent to this solicitation.

1) Acceptance of Installation Phase. The term acceptance means an authorized representative of the Government has inspected and accepted the contractor-installed energy conservation measures, and that these installed energy conservation measures are operational and comply with the delivery order's performance requirements and specifications. Government acceptance shall not relieve the Contractor from responsibility for continued compliance with delivery order requirements during the delivery order's term.

2) Annual Energy Audit. The term annual energy audit means a procedure including, but not limited to, verification of the achievement of contractor-guaranteed energy cost savings resulting from implementation of energy conservation measures and determination of whether an adjustment to the energy baseline is justified by conditions beyond the contractor's control.

3) Construction Expenses. Construction expenses (Schedule H-2 column (b)) are direct expenses (without contractor markups) incurred by the contractor to construct the delivery order project as defined by the designs, equipment schedules, and project-specific baselines and M&V plans mutually agreed to by the contractor and the Government; to commission the delivery order project; and to arrange for Government inspection and acceptance of the delivery order project. Construction expenses shall include the contractor's direct cost for purchase, shipping, handling, and storage of equipment to be installed; miscellaneous construction materials and construction direct labor (including subcontractor markups); construction management, quality assurance, control and inspection; and start-up, test, balance, commissioning, as-built drawings, O&M manuals, training, and any other delivery order requirements for acceptance by the Government. Direct labor shall include any labor directly attributable to a task. This cost shall include workman's compensation and liability, State and Federal unemployment compensation, social security, and fringe benefits. Fringe benefits shall include any health and welfare insurance, pension funds, vacation time, and training costs. Construction expenses shall not include survey, feasibility & design expenses; costs recovered in financing procurement price (such as construction financing expenses); performance period expenses; costs recovered in implementation or performance period margins; or costs recovered in the finance charge. Firms which are wholly or partly owned by the contractor or the contractor's parent company shall not be considered subcontractors as the term relates to construction expense. Construction expenses are developed on an ECM-by-ECM basis and, with the inclusion of survey, feasibility and design expenses, equal the implementation expense.

4) Construction Financing Expenses. Construction financing expenses (interest, fees, etc.) are the contractor's costs of financing the construction associated with the delivery order. For example, if a separate construction loan is taken and then retired with proceeds of the permanent project financing after Government acceptance of construction, construction financing expenses include costs to secure, service, and retire this debt. Construction financing expenses are included in the financing procurement price, which is entered into Schedule H-3. A contractor may not require construction financing for a specific delivery order. If a contractor does not require construction financing for a specific delivery order, then this cost element would be zero.

5) Detailed Energy Survey. The term detailed energy survey, sometimes referred to as investment grade audit, means a procedure which may include, but is not limited to, surveys of buildings and energy consuming systems to be modified, verification of existing conditions, interviews of site personnel, research in site technical records and plan vaults, research in site maintenance records, spot short-term monitoring, detailed analysis of historical energy consumption records, and determination of baselines and practical approaches for measurement and verification (M&V) of savings. The detailed energy survey is done by the contractor after receiving written notification of intent to award a delivery order from the contracting officer. The detailed energy survey often supports the revision of ECM feasibility studies and technical and price proposals that were based on preliminary data that may have been assembled by the Government or contractor.

6) Energy Baseline. The term energy baseline means the amount of energy that would have been consumed annually without implementation of the ECMs included in the delivery order. Baselines may be developed in a number of ways which include, but are not limited to, the use of historical utility billing records or metered data, engineering calculations, spot short-term measurements on buildings or energy consuming systems, building energy analysis models,

statistical regression analysis, or some combination of these methods.

7) Energy Conservation Measure. An energy conservation measure (ECM) is a specific action taken to lower energy consumption, modify energy consumption patterns, or otherwise lower the cost of meeting energy service needs at federal facilities. ECMs fall within the technology categories of Schedule B-1. Examples of ECMs in each category are provided in section C.2.1 .

8) Estimated Energy Savings. Estimated energy savings are the contractor-estimated energy savings in appropriate energy units for each ECM. ECMs with multiple energy type impacts may use less of one type and more of another. Estimated energy savings by energy type are entered into Schedule H-4 columns (a) through (d).

9) Estimated Energy Cost Savings. Estimated energy cost savings are the contractor-estimated energy cost savings in dollars per year for each ECM, and equals the estimated energy savings multiplied by the baseline energy prices in appropriate units. For ECMs with multiple energy type impacts, energy cost savings equals the sum of the products of the energy savings by energy type and baseline energy prices. The baseline energy prices are based on the energy tariffs or rate schedules provided in the solicitation and the estimated ECM energy and demand reductions, and therefore may vary by ECM. Since energy cost savings occur each year after ECMs are implemented, they are a recurring cost savings. Estimated energy cost savings by ECM are entered into Schedule H-4 column (e).

10) Estimated Recurring Ancillary Cost Savings. Annually recurring cost savings, other than energy cost savings, which directly result from the contractor's efforts to save energy costs, are defined as recurring ancillary cost savings. Examples of recurring ancillary cost savings include, but are not limited to, operation, maintenance, and repair directly related to the systems being modified. Ancillary savings to the Government must be real savings; i.e., the Government must either be spending the money currently or planning to spend the money in the future. If not, the money will not be available in the Government's operating budget for payments. In many cases, the contractor may need to maintain a system at a higher cost than the Government is currently expending, due to budgetary limitations. In such cases, the maintenance ancillary savings need to be based on the actual Government expenditure, not what the Government would be spending if the Government were properly maintaining the system. Operations, maintenance, and repair costs for tasks currently being performed by the Government or by a contractor hired by the Government are ancillary savings if the contractor assumes the task, reduces the task, or eliminates the task. The Government will determine whether a contractor-proposed task assumption, reduction, or elimination will be considered a recurring ancillary cost savings. The estimated dollar value of the recurring ancillary cost savings is provided by the Government and is entered into Schedule H-4 column (f).

11) Financing Procurement Price. The financing procurement price is the price offered by the contractor for the service of arranging the project financing, obtaining the payment and performance bonds, and providing construction phase financing.

12) Finance Charge. The entity providing the capital to finance the project, which may be the contractor or a third party, can recover expenses and profit in the "finance charge". In most cases contractors use project financing capital from third party funders, and the finance charge is a pass through expense from the third party funder. The total annual interest rate charged for project financing can not exceed the like-term T-Bill/T-Note index plus the maximum finance charge of Schedule B-3. The amount financed with project financing equals the delivery order implementation price from Schedule H-2 column (c) plus the contractor financing procurement price (Schedule H-3).

13) Guaranteed Annual Cost Savings. The guaranteed annual cost savings are the level of annual cost savings the contractor is willing to guarantee. The proposed value appears in Schedule H-1 column (b). After the detailed energy survey, the contractor revises the proposal and offers the final value in Schedule H-5 column (a). The guaranteed annual cost savings must exceed the annual contractor payments (Schedule H-5(b)) in every year of the delivery order performance period. For the first interval (generally 12 months) after Government acceptance of construction the contractor is paid as if the savings guarantee is being met. The regular interval audit establishes actual savings. If actual savings fall short of the guarantee, the contractor will pay back the shortfall over the next interval by accepting lower payments.

14) Implementation Period. The official implementation period is from date of delivery order award to the date all ECMs included in the delivery order are operational and accepted by the Government. If additional ECMs are added to the delivery order by modification, the implementation period for the modification shall be from date of delivery order modification incorporating the additional ECMs to the date all additional ECMs are operational and accepted by the Government. In most cases the actual implementation period starts when the contractor receives written notification of intent to award from the contracting officer. This notice is issued based on the contractor's proposal, solicited or unsolicited, which includes proposed guaranteed annual cost savings. After the notification the contractor generally performs a detailed energy survey, revisits ECM feasibilities, and revises the proposal. If the revised guaranteed annual savings do not exceed a specified minimum percentage (e.g., 90 %) of the original for equivalent scope and payments, the Government can award the delivery order to another contractor. However in most cases revised proposals exceed the minimum or the difference is traceable to previous incomplete information, award is made, and the implementation period effectively began with the notification of intent to award.

15) Implementation Price. Implementation margin (M in %), ECM implementation expense (E in $), and ECM implementation price (P in $) are related by the expression $P = E \times (1 + M/100)$. Delivery order implementation prices are entered in Schedule H-2 by ECM, and aggregated by technology category and for the entire project.

16) Implementation Margins. Implementation margins are the means by which contractors recover implementation period profit and indirect expenses, as well as at-risk expenses incurred prior to receiving the written notification of intent to award from the contracting officer. Implementation margins are entered into Schedule H-2 column (d) for each ECM. The margin for a specific ECM cannot exceed the maximum for the ECM's technology category (Schedule B-1).

17) Implementation Expenses. Implementation expenses shall be the direct costs (without contractor markups) that will be incurred by the contractor to implement the delivery order project, established at the time of delivery order award. The contractor incurs implementation expenses after receiving written notification of intent to award a delivery order from the contracting officer, and prior to Government acceptance of the construction. On an ECM-by-ECM basis, implementation expense (Schedule H-2 column (c)) equals the sum of survey, feasibility and design expense and construction expense. Implementation expenses shall not include costs recovered in financing procurement price (such as construction financing expenses); performance period expenses; costs recovered in implementation or performance period margins; or costs recovered in the finance charge.

Implementation expenses shall not include expenses which are included in the margins, finance charges for performance period project financing, the performance period expenses, indirect labor, and indirect costs.

18) One-Time Ancillary Cost Savings. In addition to recurring ancillary cost savings the

Government may also consider one-time ancillary cost savings. For example, one-time costs that are to be incurred by the Government to make repairs or meet environmental regulations are ancillary savings if the contractor assumes the task, reduces the task, or eliminates the task and if the money is available to the Government to pay the contractor. For example, if the Government has scheduled and funded the removal and replacement of a leaking oil tank with a new tank system ("repair by replacement") and if the contractor installs a natural gas line to serve new gas-fired equipment thereby negating the need for replacing the tank, the cost of the new tank system would be both a one-time ancillary repair cost savings and an ancillary environmental cost savings if the federal agency site has this money in its budget for payment to the contractor. An example of a strictly environmental one-time ancillary savings would be the cost of a refrigerant conversion on a water chiller containing a refrigerant with an ozone depletion potential (ODP) greater than 0.05, if the federal agency site has planned for the conversion, and has money in its budget to fund the conversion. If the money is available for a project or task related to the energy systems being modified by the contractor, and that project or task will not have to be accomplished by the Government if the contractor performs the proposed delivery order, then that savings can be considered as one-time ancillary savings. One-time ancillary cost savings are listed in Schedule H-4 column (f) with an asterisk, so as not to be confused with annually recurring ancillary cost savings.

19) Performance Period. The term performance period means the period (typically in years) from the date a delivery order project is operational and accepted by the Government, to the end of the delivery order's contract term.

20) Performance Period Expenses. Performance period expenses are expenses incurred by the contractor each year during the performance period to assure that the guaranteed savings occur and the anticipated size of Government payments to the contractor continue. Performance period expenses include only direct costs for project management and administration, operation, maintenance, repair and replacement, measurement and verification, permits and licenses, insurance, property taxes and other direct costs of operating the project. Performance period expenses shall not include expenses which are included in the implementation price, performance period margin, finance charges for performance period project financing, indirect labor, and indirect costs. Performance period expenses are entered into Schedule H-3.

21) Performance Period Prices. Performance period margin (M in %), performance period expenses (E), and performance period prices (P in $) are related by the expression $P = E \times (1 + M/100)$. Delivery order performance period prices are entered in Schedule H-3 for each year of the performance period.

22) Performance Period Margin. Performance period margin is the means by which contractors recover performance period profit and indirect expenses. Performance period margin is entered into Schedule H-3 row (c). The margin for a specific delivery order cannot exceed the maximum. (Schedule B-2).

23) Preliminary Energy Survey. The term preliminary energy survey means a procedure which may include, but is not limited to, an evaluation of energy cost savings and energy unit savings potential, building conditions, energy consuming equipment, and hours of use or occupancy, for the purpose of developing technical and price proposals prior to selection.

24) Survey, Feasibility & Design Expenses. Survey, feasibility and design expenses (Schedule H-2 column (a)) are direct expenses (without contractor markups) incurred by the contractor to identify, verify the feasibility of, and design ECMs and establish project-specific baselines and measurement

and verification plans; starting when the contractor receives written notification of intent to award a delivery order from the contracting officer; and ending when the Government and contractor agree that the designs, equipment schedules, baselines, M&V plans, revised Schedules H-2 through H-4, and Schedules H-5 and H-6 are final. Survey, feasibility and design expenses shall include the contractor's direct cost for engineering labor and measurement tools and materials (including subcontractor markups). Direct labor shall include any labor directly attributable to a task. This cost shall include workman's compensation and liability, State and Federal unemployment compensation, social security, and fringe benefits. Fringe benefits shall include any health and welfare insurance, pension funds, vacation time, and training costs. Survey, feasibility and design expenses shall not include construction expenses; costs recovered in financing procurement price (such as construction financing expenses); performance period expenses; costs recovered in implementation or performance period margins; or costs recovered in the finance charge. Firms which are wholly or partly owned by the contractor or the contractor's parent company shall not be considered subcontractors as the term relates to survey, feasibility and design expense. Survey, feasibility and design expenses are developed on an ECM-by-ECM basis and, with the inclusion of construction expenses, equal the implementation expense.

25) Technology Category. ECMs shall be categorized based on the type of system and equipment involved in the project. The technology categories are indicated in Schedule B-1. The miscellaneous category shall be used for applications where the ECMs are not identified by the other categories.

H.45 RESERVED

H.46 WAGE DETERMINATION

In the performance of the first two delivery orders under this contract, the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination Number FL970017 and NC970013 as applicable which can be found in the technical data package along with the Service Contract Act Determination. Department of Labor Wage Determination for the Service Contract Act and the Davis-Bacon Act will be included in each delivery order.

H.47 ADDITIONAL CLAUSES FOR SPECIFIC DELIVERY ORDERS

As previously stated, this IDIQ contract may be used by all Federal agencies and their contractors. Therefore, the solicitation for a specific delivery order may contain additional clauses that are a requirement of the Federal agencies implementing regulations to the Federal Acquisition Regulations. The Contractor shall be responsible for reviewing the solicitation for a specific delivery order to determine the applicable clauses for that delivery order.

H.48 LIQUIDATED DAMAGES

Since this IDIQ contract is for use by all authorized Federal agencies in a specific region and the specific ECM projects are not known at this time, the Government cannot make a determination as to whether Liquidated Damages would apply to any delivery order. Therefore, the Contractor shall review each delivery order solicitation and the actual delivery order for the inclusion of an appropriate Liquidated Damages clause per Federal agency requirements.

H.49 ADDITIONAL DELIVERY ORDER CLAUSES FOR WORK ON DOE FACILITIES HAVING CLASSIFIED INFORMATION

a) If the ECM project covered by a delivery order involves work to be performed at a Department of Energy facility that has classified information (section 41 of the Atomic Energy Act of 1954, as amended), DEAR 952.204-2 Security (Apr 1984) and DEAR 952.204-70 Classification (Apr 1984) may apply to that delivery order. The specific delivery order for such site shall incorporate these clauses, if applicable.

b) If the ECM project covered by a delivery order involves work to be performed at a Department of Energy facility that has classified information (section 41 of the Atomic Energy Act of 1954, as amended), the contractor may be required to submit its representation concerning foreign ownership, control, or influence over contractor, DEAR 952.204-73 (see Section L); and the clause DEAR 952.204-74 Foreign Ownership, Control, or Influence over Contractor (Apr 1984) may apply to that delivery order. The solicitation for such site would request the representation, and the specific delivery order for such site would incorporate the clause, if applicable.

H.50 USE OF NON-GOVERNMENT PERSONNEL IN EVALUATIONS

The government requires non-government personnel from Federally-Funded Research and Development Centers (FFRDCs) (Oak Ridge National Laboratory and Lawrence Berkeley National Laboratory; and John Rogers Consulting, a consultant to National Renewable Energy Laboratory) as advisors in proposal evaluation because aspects of the technical proposal evaluation require specialized training, experience and skills available from the FFRDCs that are not available in the Department of Energy.

H.51 FLOWDOWN OF SAFETY AND HEALTH CLAUSE (JAN 1993)

The clause at DEAR 952.223-71/DEAR 970.5204-2, appropriately adjusted to reflect the contactor/subcontractor relationship, shall be included in subcontracts awarded under this contract if the subcontractor will be performing work under the subcontract at a government-owned or leased facility where DOE has required the contractor to submit a management program and implementation plan (MPIP) in accordance with DEAR 970.5204-2. However, DOE reserves the right to require contractor to submit subcontractor MPIP's to the DOE Contracting Officer for review prior to approval by the contractor and prior to the start of work.

H.52 QUALITY ASSURANCE SYSTEM (DEC 1995)

In the conduct of the work performed under this contract, the contractor agrees to establish and/or maintain the quality assurance system described in the Contractor's proposal dated [ ] and any revisions made thereto as a result of negotiations. If the Contractor has responsibility to perform activities in connection with a nuclear facility, as defined by Title I0, Section 830.3, Code of Federal Regulations, the applicability of the requirements in Section 830.120 shall be determined. Any subcontracts in support of this work shall require subcontractors to comply with the Contractor's quality assurance system.

SECTION I - CONTRACT CLAUSES

I.1 FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

Federal Acquisition Regulation (48 CFR Chapter 1) Clauses

Clause No.	Clause Name
52.202-1	DEFINITIONS (OCT 1995) (ALT I)
52.203-3	GRATUITIES (APR 1984)
52.203-5	COVENANT AGAINST CONTINGENT FEES (APR 1984)
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
52.203-7	ANTI-KICKBACK PROCEDURES (JUL 1995)
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
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52.223-2 CLEAN AIR AND WATER (APR 1984)

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52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1995)

52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAY 1992)

52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT (AUG 1996)

52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

52.228-11 PLEDGES OF ASSETS (FEB 1992)

52.228-14 IRREVOCABLE LETTER OF CREDIT (JUN 1996)

52.229-3 FEDERAL, STATE AND LOCAL TAXES (JAN 1991)

52.229-5 TAXES - CONTRACTS PERFORMED IN THE U.S. POSSESSIONS OR PUERTO RICO (APR 1984)

52.232-17 INTEREST (JAN 1996)

52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986)

52.233-1 DISPUTES (OCT 1995)

52.233-3 PROTEST AFTER AWARD (AUG 1996)

52.236-13 ACCIDENT PREVENTION (NOV 1991)

52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

52.242-13 BANKRUPTCY (JUL 1995)

52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)

52.246-13 INSPECTION - DISMANTLING, DEMOLITION OR REMOVAL OF IMPROVEMENTS, (AUG 1996)

52.246-23 LIMITATION OF LIABILITY (FEB 1997)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)

52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACT) (DEC 1989)

THE FOLLOWING CLAUSES ARE APPLICABLE TO THE CONSTRUCTION PHASE(S) OF THE CONTRACT AND DELIVERY ORDERS

52.222-6 DAVIS-BACON ACT (FEB 1995)

52.222-7 WITHHOLDING OF FUNDS (FEB 1988)

52.222-8 PAYROLLS AND BASIC RECORDS (FEB 1988)

52.222-9 APPRENTICES AND TRAINEES (FEB 1988)

52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

52.222-11 SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

52.222-12 CONTRACT TERMINATION - DEBARMENT (FEB 1988)

52.222-13 COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

52.222-15 CERTIFICATION OF ELIGIBILITY (FEB 1988)

52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 1984)

52.225-5 BUY AMERICAN ACT - CONSTRUCTION MATERIALS (MAY 1992)

52.227-4 PATENT INDEMNITY - CONSTRUCTION CONTRACTS (APR 1984)

52.228-2 ADDITIONAL BOND SECURITY (JUN 1996)

52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

52.236-8 OTHER CONTRACTS (APR 1984)

52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS (APR 1984)

52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

52.236-12 CLEANING UP (APR 1984)

52.236-14 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

52.243-4 CHANGES (AUG 1987)

52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

52.249-10 DEFAULT (FIXED PRICE CONSTRUCTION) (APR 1984)

THE FOLLOWING CLAUSES ARE APPLICABLE TO THE SERVICES PHASE(S) OF THE CONTRACT AND DELIVERY ORDERS

52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

52.222-43 FAIR LABOR STANDARD ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENTS (MULTIPLE YEAR AND OPTION CONTRACT) (MAY 1989)

52.227-3 PATENT INDEMNITY (APR 1984)

52.232-1 PAYMENTS (APR 1984)

52.232-8 DISCOUNTS FOR PROMPT PAYMENT (APR 1989)

52.232-25 PROMPT PAYMENT (MAR 1994)

52.243-1 CHANGES - FIXED PRICE (AUG 1987) ALTERNATE I (APR 1984)

52.246-25 LIMITATION OF LIABILITY - SERVICES (FEB 1997)

52.249-8 DEFAULT (FIXED PRICE SUPPLY AND SERVICE) (APR 1984)

DEPARTMENT OF ENERGY ACQUISITION REGULATION (48 CFR CHAPTER 9) SOLICITATION PROVISIONS (The following may apply to any delivery order for a Department of Energy facility):

952.204-73 Foreign Ownership, Control or Influence over Contractor (Dec 1993)

I.2 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT. (MAR 1995)

(a) Definitions.

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

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

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

"Patent Counsel," as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

"DOE patent waiver regulations," as used in this clause, means the Department of Energy patent licensing regulations at 10 CFR part 781.

(b) Allocations of principal rights.

(1) "Assignment to the Government." The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) "Greater rights determinations." (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irevocable power to inspect and make copies of the patent application file.

(c) "Minimum rights acquired by the Government."

(1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, transferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant such a license itself if it determines that

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

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

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

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in their United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or asignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to

provide for the granting of licenses as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in the paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) "Minimum rights to the Contractor."

(1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the rights to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferred to the successor of that part of the Contractor's business to which the invention pertains.

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

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

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

(A) The Commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to

make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted by a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the right granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public upon a petition by an interested person justifying such hearing:

(A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the inventiion.

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel the executed instruments necessary for the conveyance specified in this paragraph.

(e) "Invention identification, disclosures, and reports."

(1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject iventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication, of such invention known to the Contractor. The disclosure to DOE shall be in the form of written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Section (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file applications on subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject inventions disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) "Examination of records relating to inventions."

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause; complied with the procedures.

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) "Withholding of payment" (This paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease of increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the

subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) "Subcontracts."

(1) The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) "Preference United States industry." Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similiar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) "Atomic energy."

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1854, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) "Background Patents."

(1) "Background Patent" means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purpose of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purpose of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If however, the Contractor believes tht exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) A competetive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) "Publication." It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) "Forfeiture of rights in unreported subject inventions."

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of

Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not foreit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supercede other rights and remedies which the Government may have with respect to subject inventions.

I.3 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

I.4 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (JAN 1993)

(a) The Contractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708.

(b) The Contractor shall insert or have inserted the substance of this clause including this paragraph (b), in subcontracts, at all tiers, with respect to work performed on-site at DOE-owned or -leased facilities, as provided for at 10 CFR Part 708.

I.5 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. (JAN 1997)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under

the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

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

Material (if none, insert "None")

_____

_____

_____

Identification No.

_____

_____

_____

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

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

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

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

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

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

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

this right are to:

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

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

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

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

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

I.6 952.227-75 RIGHTS IN TECHNICAL DATA - LONG FORM. (APR 1984)

(a) Definitions.

(1) "Technical data" means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein do not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) Are not already available to the Government without obligation concerning the confidentiality.

(3) "Contract data" means technical data first produced in the performance of the contract in technical data which are specified to be delivered under the contract; technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

(4) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) Allocation of rights.

(1) The Government shall have:

(i) Unlimited rights in contract data except as otherwise provided below with respect to proprietary data;

(ii) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if in response to a written inquiry by DOE concerning the propriety of the markings, the contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case, DOE will notify the contractor of the action taken;

(iii) No rights under this contract in any technical data which are not contract data.

(2) The contractor shall have:

(i) The right to withhold proprietary data in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract data it first produces in the performance of this contract, provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless other use is specifically authorized by prior written approval of the contracting officer.

(3) Nothing contained in this Rights of Technical Data clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) Copyrighted material.

(1) The contractor shall not, without prior written authorization of the Patent Counsel, establish a claim to statutory copyright in any contract data first produced in the performance of the contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, duplicate exhibit and perform any such data copyrighted by the contractor.

(2) The contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the contractor and not to knowingly include any material copyrighted by others, without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If such royalty-free license is unavailable and the contractor nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the contractor shall obtain the written authorization of the contracting officer to include such copyrighted material in the technical data prior to its delivery.

(d) Subcontracting. It is the responsibility of the contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the contractor shall:

(1) Promptly submit written notice to the contracting officer setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(2) Not proceed with the subcontract without the written authorization of the contracting officer.

(e) Withholding of proprietary data. Notwithstanding the inclusion of the Additional Technical Data Requirements clause in this contract or any provision of this contract specifying the delivery of technical data, the contractor may withhold proprietary data from delivery, provided that the contractor furnishes in lieu of any such proprietary data so withheld technical data disclosing the source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("Form, Fit and Function" data, e.g., specification control drawing, catalog sheets, envelope drawings, etc.), or a general description of such proprietary data where "Form, Fit and Function" data are not applicable. The Government shall acquire no rights to any proprietary data so withheld except that such data shall be subject to the "inspection rights" provisions of paragraph (f), and, if included, the "Limited rights in proprietary data" provisions of paragraph (g) and the "Contractor licensing" provisions of paragraph (h).

(f) Inspection rights. Except as may be otherwise specified in this contract for specific items of proprietary data which are not subject to this paragraph, the contracting officer's representatives, at all reasonable times up to three years after final payment under this contract, may inspect at the contractor's facility any proprietary data withheld under paragraph (e) and not furnish under paragraph (g), if this contract includes such paragraph, for the purposes of verifying that such data properly fell within the withholding provision of paragraph (e), or for evaluating work performance.

I.7 52.244-1 SUBCONTRACTS (FIXED-PRICE CONTRACTS). (FEB 1995) – ALTERNATE I (APR 1984)

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) Subcontract, as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract -

(1) Is proposed to exceed $100,000; or

(2) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed $100,000.

(c) The advance notification required by paragraph (b) above shall include -

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting -

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant considerations controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below: [ ]

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in section 15.903(d) of the Federal Acquisition Regulation (FAR).

(h) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR subpart 44.3.

(i) Paragraphs (b) and (c) of this clause do not apply to the following subcontracts, which were evaluated during negotiations: [ ] [list subcontracts]

I.8 52.246-19 WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA. (DEC 1989) – ALTERNATE III (APR 1984)

(a) Definitions. "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Defect," as used in this clause, means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

"Supplies," as used in this clause, means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also means data.

(b) Contractor's obligations. (1) The Contractor's warranties under this clause shall apply only to those defects discovered by either the Government or the Contractor [ ] [Contracting Officer shall state the warranty period; e.g., "at the time of delivery"; "within 45 days after delivery," or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable events or periods of time.]

(2) If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a defect exists in any supplies or services, the Contractor shall (i) promptly correct the defect or (ii) promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.

(3) If the Contracting Officer determines that a defect exists in any of the supplies or services accepted by the Government under this contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within [ ] [Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "30 days after delivery of the nonconforming supplies"; "90 days of the last delivery under this contract"; or "90 days after discovery of the defect."] Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within [ ] [Contracting Officer shall insert period of time] a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the contract price.

(5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports

applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within [ ] [Contracting Officer shall insert period of time] to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this contract.

(7) Any supplies or parts thereof corrected or furnished in replacement and any services reperformed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The warranty, with respect to these supplies, parts, or services, shall be equal in duration to that set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.

(8) The Contractor shall not be responsible under this clause for the correction of defects in Government-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

(9) If the Government returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in this contract. The Contractor shall also bear the responsibility for the supplies while in transit.

(10) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation under this contract.

(c) Remedies available to the Government. (1) The rights and remedies of the Government provided in this clause -

(i) Shall not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.

(2) Within [ ] [Contracting Officer shall insert period of time] after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at [ ] [Contracting Officer shall insert locations where corrections may be performed].

(3) In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.

(4) This clause shall not be construed as obligating the Government to increase the contract price.

(5)(i) The Contracting Officer shall give the Contractor a written notice, specifying any failure or refusal of the Contractor to -

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;

(B) Correct defects as directed under paragraph (b)(4) of this clause; or

(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the Contracting Officer's written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise -

(i) Obtain detailed recommendations for corrective action and either -

(A) Correct the supplies or services; or

(B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

(7) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

I.9 ADDITIONAL OR REVISED CLAUSES FOR SPECIFIC DELIVERY ORDERS FOR THE DEPARTMENT OF ENERGY

The FAR clause, 52.202-1 Definitions (Apr 1984) (Alt.I) is hereby modified by substituting the following for paragraph (a) of the clause:

"(a) 'Head of Agency' means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission."

The FAR clause, 52.202-1 Definitions (Apr 1984) (Alt.I) is hereby further modified by substituting the following for paragraph (c) of the clause:

"(c) The term 'DOE' means the Department of Energy and 'FERC' means the Federal Energy Regulatory Commission."

I.10 952.208-70 PRINTING (APR 1984)

A) The Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8-1/2 by 11 inches one side only, one color. A requirement is defined as a single publication document.

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

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

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

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

B) DOE may elect to assert its statutory authority to establish and enforce occupational safety and health standards applicable to the work conditions of contractor and subcontractor employees, and to the protection of the public health and safety for a delivery order for a DOE facility. If DOE elects to assert its statutory authority, this clause will be referenced in the applicable delivery order as applying for work to be performed at a Government-owned or -leased facility.

I.11 970.5204-2 SAFETY AND HEALTH (GOVERNMENT OWNED OR LEASED FACILITY) (APR 1984)

The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of DOE. The contracting officer shall notify the contractor, in writing, of any noncompliance with the provisions of the clause and the corrective action to be taken. After receipt of such notice the contractor shall immediately take corrective action. The Contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the date of award of this contract. In the event that the contractor fails to comply with said regulations or requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

I.12 952.223-72 RADIATION PROTECTION AND NUCLEAR CRITICALITY (APR 1984)

The contractor shall take all reasonable precautions in the performance of work under this contract to protect the safety and health of employees and of members of the public against the hazards of ionizing radiation and radioactive materials and shall comply with all applicable radiation protection and nuclear criticality safety standards and requirements (including reporting requirements) of DOE. The contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the effective date of this contract or modification. In the event that the contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work. Thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. the contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

I.13 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

I.14 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES. (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION

Employee Class	Wage Grade
Appliance Mechanic	Grade 9
Maintenance Carpenter	Grade 9
Maintenance Electrician	Grade 10
General Maintenance Worker	Grade 8
Heating, Refrigeration & Air Conditioning Mechanic	Grade 10
Machine Maintenance Mechanic	Grade 10
Maintenance Trades Helper	Grade 5
Maintenance Painter	Grade 9

Maintenance Plumber	Grade 9
Maintenance Pipefitter	Grade 10

I.15 RESERVED

I.16 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS. (OCT 1995)

(a) Definition.

Commercial item, as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

Subcontract, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.17 52.246-19 WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA. (DEC 1989)

(a) Definitions. "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Defect," as used in this clause, means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

"Supplies," as used in this clause, means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also means data.

(b) Contractor's obligations. (1) The Contractor's warranties under this clause shall apply only to those defects discovered by either the Government or the Contractor [ ] [Contracting Officer shall state the warranty period; e.g., "at the time of delivery"; "within 45 days after delivery," or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable events or periods of time.]

(2) If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a defect exists in any supplies or services, the Contractor shall (i) promptly correct the defect or (ii) promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.

(3) If the Contracting Officer determines that a defect exists in any of the supplies or services accepted by the Government under this contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within [ ] [Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "30 days after delivery of the nonconforming supplies"; "90 days of the last delivery under this contract"; or "90 days after discovery of the defect."] Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within [ ] [Contracting Officer shall insert period of time] a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the contract price.

(5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within [ ] [Contracting Officer shall insert period of time] to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this contract.

(7) Any supplies or parts thereof corrected or furnished in replacement and any services reperformed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The warranty, with respect to these supplies, parts, or services, shall be equal in duration to that set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.

(8) The Contractor shall not be responsible under this clause for the correction of defects in Government-furnished property, except for defects in installation, unless the Contractor performs, or is

obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

(9) If the Government returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in this contract. The Contractor shall also bear the responsibility for the supplies while in transit.

(10) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation under this contract.

(c) Remedies available to the Government. (1) The rights and remedies of the Government provided in this clause -

(i) Shall not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.

(2) Within [ ] [Contracting Officer shall insert period of time] after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at [ ] [Contracting Officer shall insert locations where corrections may be performed].

(3) In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.

(4) This clause shall not be construed as obligating the Government to increase the contract price.

(5)(i) The Contracting Officer shall give the Contractor a written notice, specifying any failure or refusal of the Contractor to -

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;

(B) Correct defects as directed under paragraph (b)(4) of this clause; or

(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the Contracting Officer's written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise -

(i) Obtain detailed recommendations for corrective action and either -

(A) Correct the supplies or services; or

(B) Replace the supplies or services, and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

Table of Contents

Attachment	Title
A	Sample Reporting Requirements Checklist for Delivery Orders
B	History of Federal Energy Legislation That Assigns Temperature Set Points, Ventilation Requirements, and Lighting Levels
C	DOE Qualified List of Energy Services Contractors

(Note: all attachments appear at the end of this document.)

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS

K.1 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

_____ _____
(Name) (Title)

_____ _____
(Name) (Title)

(insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in

any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

K.2 52.204-3 TAXPAYER IDENTIFICATION. (MAR 1994)

(a) Definitions.

"Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) Taxpayer Identification Number (TIN).

☐ TIN:_____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis.

_____

(d) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) Common Parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

☐ Name and TIN of common parent:

Name _____

TIN _____

K.3 52.204-5 WOMEN-OWNED BUSINESS. (OCT 1995)

(a) Representation. The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

(b) Definition. "Women-owned business concern," as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

K.4 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS. (MAR 1996)

(a) The Offeror certifies:

(1) to the best of its knowledge and belief, that:

(i) The Offeror and/or any of its Principals:

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐ , within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☐ , within a 3-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

K.5 RESERVED

K.6 52.215-6 TYPE OF BUSINESS ORGANIZATION (JUL 1987)

The offeror or quoter, by checking the applicable box, represents that --

(a) It operates as ☐ a corporation incorporated under the laws of the State of _____, ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture; or

(b) If the offeror or quoter is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in
_____ (Country).

K.7 52.215-11 AUTHORIZED NEGOTIATORS (APR 1984)

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations, (list names, titles, and telephone numbers of the authorized negotiators).

NAME	TITLE	TELEPHONE NUMBER

K.8 52.215-19 PERIOD FOR ACCEPTANCE OF OFFER. (APR 1984)

In compliance with the solicitation, the offeror agrees, if this offer is accepted within ___ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date specified in the solicitation for receipt of offers, to furnish any or all items on which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

K.9 52.215-20 PLACE OF PERFORMANCE. (APR 1984)

(a) The offeror or quoter, in the performance of any contract resulting from this solicitation, ___ intends, ___ does not intend (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or quoter as indicated in this proposal or quotation.

(b) If the offeror or quoter checks intends in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street Address, City, County, State, Zip Code)	Name and address of Owner and Operator of the Plant or Facility if Other than Offeror or Quoter

K.10 52.215-35 ANNUAL REPRESENTATIONS AND CERTIFICATIONS - NEGOTIATION. (JAN 1997)

The offeror has (check the appropriate block):

___ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated [insert date of signature on submission] which are incorporated herein by reference and are current, accurate, and complete as of the date of this offer, except as follows [insert changes that affect only this solicitation; if "none," so state]:

___ (b) Enclosed its annual representations and certifications.

K.11 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS. (JAN 1997)

(a)(1) The standard industrial classification (SIC) code for this acquisition is 8711.

(2) The small business size standard is $20M.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations.

(1) The offeror represents as part of its offer that it ( ) is, ( ) is not a small business concern.

(2) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ( ) is, ( ) is not a small disadvantaged business concern.

(3) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ( ) is, ( ) is not a women-owned small business concern.

(c) Definitions.

Joint venture, for purposes of a small disadvantaged business (SDB) set-aside or price evaluation preference (as prescribed at 13 CFR 124.321), is a concern that is owned and controlled by one or more socially and economically.

Small business concern, as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

Small disadvantaged business concern, as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically

disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

Women-owned small business concern, as used in this provision, means a small business concern--

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Notice. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small or small disadvantaged business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

K.12 52.219-2 SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION (FEB 1990)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.

(b) *Definitions.*

"Asian-Pacific Americans," as used in this provision, means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

"Indian tribe," as used in this provision, means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation as defined in 13 CFR 124.100 which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians, or which is

recognized as such by the State in which such tribe, band, nation, group or community resides.

"Native Americans," as used in this provision, means American Indians, Eskimos, Aleuts, and native Hawaiians.

"Native Hawaiian Organization," as used in this provision, means any community service organization serving Native Hawaiians in, and chartered as a not-for-profit organization by, the State of Hawaii, which is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

"Small disadvantaged business concern," as used in this provision, means a small business concern that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

"Subcontinent Asian Americans," as used in this provision; means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

(c) *Qualified groups.* The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other individuals found to be qualified by the SBA under 13 CFR 124. The offeror shall presume that socially and economically disadvantaged entities also include Indian tribes and Native Hawaiian Organizations.

K.13 52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JAN 1997)

(a) Definition.

"Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(b) [Complete only if the Offeror has certified itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]

The Offeror ___ is, ___ is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of Employees	Avg. Annual Gross Revenues
____ 50 or fewer	____ $1 million or less
____ 51 - 100	____ $1,000,001 - $2 million
____ 101 - 250	____ $2,000,001 - $3.5 million
____ 251 - 500	____ $3,500,001 - $5 million
____ 501 - 750	____ $5,000,001 - $10 million
____ 751 - 1,000	____ $10,000,001 - $17 million
____ Over 1,000	____ Over $17 million

K.14 52.219-21 SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (Jan 1997)

[Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.]

Offeror represents as follows:

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

No. of Employees	Avg. Annual Gross Revenues
____ 50 or fewer	____ $1 million or less
____ 51 - 100	____ $1,000,001 - $2 million
____ 101 - 250	____ $2,000,001 - $3.5 million
____ 251 - 500	____ $3,500,001 - $5 million
____ 501 - 750	____ $5,000,001 - $10 million
____ 751 - 1,000	____ $10,000,001 - $17 million
____ Over 1,000	____ Over $17 million

K.15 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that (a) it ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

K.16 52.225-1 BUY AMERICAN CERTIFICATE (DEC 1989)

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled "Buy American Act--Supplies", and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products	Country of Origin
_____	_____
_____	_____
_____	_____
_____	_____

(List as necessary)

Offerors may obtain from the Contracting Officer lists of articles, materials, and supplies excepted from the Buy American Act.

K.17 52.222-21 CERTIFICATION OF NONSEGREGATED FACILITIES (APR 1984)

(a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will--

(1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

(2) Retain the certifications in the files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR

CERTIFICATIONS OF NONSEGREGATED FACILITIES.

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

K.18 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APRIL 1984)

The offeror represents that --

(a) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925 or the clause contained ins section 201 of Executive Order No. 11114;

(b) It ☐ has, ☐ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.19 52.223-1 CLEAN AIR AND WATER CERTIFICATION (APR 1984)

The Offeror certifies that --

(a) Any facility to be used in the performance of this proposed contract is ☐, is not ☐ listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c) in every nonexempt subcontract.

K.20 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING. (OCT 1996)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this

contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or--

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulation; or

(v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

K.21 52.222-28 Equal Opportunity Preaward Clearance of Subcontracts. (APR 1984)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of $1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

K.22 SIGNATURE/CERTIFICATION

By signing below, the bidder/offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The bidder/offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the bidder/offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Signature of the Officer or Employee Responsible for the Bid/Offer

Typed Name and Title of the Officer or Employee
Responsible for the Bid/Offer

Name and Address of Organization

Solicitation Number