

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 or increase the sums withheld up to the

maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) "Subcontracts."

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

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

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

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

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

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

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

(i) "Preference United States industry." Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in

individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) "Atomic energy."

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 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 that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

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

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

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

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

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

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

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

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

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

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

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

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

(3) Pending written assignment of the patent application and patents on a subject invention

determined by the Secretary of Energy or designee to be forfeited (such determination to be 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.2 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST. (JUNE 1996)

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

(b) Scope. The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) Use of Contractor's Work Product.

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

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

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

(2) Access to and use of information.

(i) If the contractor, in the performance of this contract, obtains access to

information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C 552a), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

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

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

(c) Disclosure after award.

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

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

(d) Subcontracts.

(1) The contractor shall include a clause, substantially similar to this clause, including this paragraph in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR (FAR) Part 13 and involving performance of advisory and assistance services as that term is defined at 48 CFR (FAR) 37.201. The terms 'contract,' 'contractor,' and 'contracting officer' shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the contractor shall obtain from the proposed subcontractor or consultant the disclosure

required by 48 CFR (DEAR) 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the contractor shall take actions to avoid, neutralize, or mitigate to the satisfaction of the contractor the organizational conflict. If the conflict cannot be avoided or neutralized, the contractor must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

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

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

**I.3 970.5204-59 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.4 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY
DATA. (NOV 1991)**

(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) The apparently successful offeror, by acceptance of the contract, certifies that the list in paragraph (b) of this clause is complete. 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 or the certification submitted under paragraph (c) 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.5 952.227-75 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.6 52.228-2 ADDITIONAL BOND SECURITY. (APR 1984)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if -

- (a) Any surety upon any bond furnished with this contract becomes unacceptable to the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by the Government; or
- (c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer.

I.7 52.228-5 INSURANCE - WORK ON A GOVERNMENT INSTALLATION. (SEP 1989)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

I.8 52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986) -- ALTERNATE I (APR 1984)

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C.

15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

I.9 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION. (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

I.10 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

(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.11 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 reformed 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.12 52.246-23 LIMITATION OF LIABILITY. (APR 1984)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that (1) occurs after Government acceptance of the supplies delivered under this contract and (2) results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of -

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d) The Contractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.

I.13 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS). (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

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

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The

new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

I.14 52.242-13 BANKRUPTCY. (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

I.15 52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

I.16 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.17 952.208-70 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.18 970.5204-2 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.19 952.223-72 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.20 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.21 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 1984)

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of

those terminations.

- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and

acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

- (e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:
 - (1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of --
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and
 - (iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
 - (3) The reasonable costs of settlement of the work terminated, including --

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.
- (h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulations, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- (i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f) or (k), the Government shall pay the Contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (j) In arriving at the amount due the Contractor under this clause, there shall be deducted --
- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
- (k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting

Officer.

- (1)(1)The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2)If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (m)Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

I.22 52.246-13 INSPECTION - DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS. (APR 1984)

(a) Unless otherwise designated by the specifications, all workmanship performed under the contract is subject to Government inspection at all times and places where dismantling or demolition work is being performed. The Contractor shall furnish promptly and without additional charge all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the Government. The Government shall perform inspections in a manner that will not unduly delay the work.

(b) The Contractor is responsible for damage to property caused by defective workmanship. The Contractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in contract performance, and promptly replace them with satisfactory items. If the Contractor fails to proceed at once in a workmanlike manner with performance of the work or with the correction of defective workmanship, the Government may (1) by contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor and (2) terminate for default the Contractor's right to proceed. The Contractor and any surety shall be liable, to

the extent specified in the contract for any damage or cost of repair or replacement.

I.23 52.227-1 AUTHORIZATION AND CONSENT. (JUL 1995) -- ALTERNATE I (JUL 1995)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold (however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.)

PART III - LIST OF DOCUMENTS, EXHIBITS
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SECTION J - LIST OF ATTACHMENTS

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

K.152.203-2 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.252.203-4 CONTINGENT FEE REPRESENTATION AND AGREEMENT (APR 1984)

(a) *Representation.* The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror --

(Note: The offeror must check the appropriate boxes. For interpretation of the representation, including the term "bona fide employee," see Subpart 3.4 of the Federal Acquisition Regulation.)

(1) has, has not employed or retained any person or company to solicit or obtain this contract; and

(2) has, has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) *Agreement.* The offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer --

1. A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

2. A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

**K.352.203-8 REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY --
ALTERNATE I (SEP 1990)**

(a) *Definitions.* The definitions at FAR 3.104-4 are hereby incorporated in this provision.

(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, *[Name of certifier]*, am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (solicitation number).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of *[Name of Offeror]* who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: *(Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXISTS)*

(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

[Signature of the officer or employee responsible for the offer and date]

[Typed name of the officer or employee responsible for the offer]

*Subsections 27(a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

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 TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of Certification)

(c) For procurements, including contract modifications, in excess of \$100,000 made using procedures other than sealed bidding, the signed certifications shall be submitted by the successful Offeror to the Contracting Officer within the time period specified by the contracting Officer when requesting the certificates except as provided in subparagraphs (c)(1) through (c)(5) of this clause. In no event shall the certificate be submitted subsequent to award of a contract or execution of a contract modification:

(1) For letter contracts, other unpriced contracts, or unpriced contract modifications, whether or not the unpriced

contract or modification contains a maximum or not to exceed price, the signed certifications shall be submitted prior to the award of the letter contract, unpriced contract, or unpriced contract modification, and prior to the definitization of the letter contract or the establishment of the price of the unpriced contract or unpriced contract modification. The second certification shall apply only to the period between award of the letter contract and execution of the document definitizing the letter contract, or award of the unpriced contract or unpriced contract modification and execution of the document establishing the definitive price of such unpriced contract or unpriced contract modification.

- (2) For basic ordering agreements, prior to the execution of a priced order; prior to the execution of an unpriced order, whether or not the unpriced order contains a maximum or not to exceed price; and, prior to establishing the price of an unpriced order. The second certificate to be submitted for unpriced orders shall apply only to the period between award of the unpriced order and execution of the document establishing the definitive price for such order.
- (3) A certificate is not required for indefinite delivery contracts (see Subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed \$100,000.
- (4) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104-4(e)) exceeds \$100,000.
- (5) For purposes of contracts entered into under section 8(a) of the SBA, the business entity with whom the SBA contracts, and not the SBA, shall be required to comply with the certification requirements of subsection 27(e). The SBA shall obtain the signed certificate from the business entity and forward the certificate to the Contracting Officer prior to the award of a contract to the SBA.
- (6) Failure of an Offeror to submit the signed certificate within the time prescribed the Contracting Officer shall cause the offer to be rejected.
- (d) Pursuant to FAR 3.104-9(d), the Offeror may be requested to execute additional certifications at the request of the Government. Failure of the Offeror to submit the additional certifications shall cause its offer to be rejected.
- (e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interests of the Government, such as disqualification of the Offeror.
- (f) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing

contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that Section 27 has been reinstated. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

- (g) Certifications under paragraphs (b) and (d) of this provisions are material representations of fact upon which reliance will be placed in awarding a contract.

K.452.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

- (a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989, --
- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit with its offer OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

K.5 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.6 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.7 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.8 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE - ADVISORY AND ASSISTANCE CONTRACTS (JUNE 1996)

(a) Organizational conflicts of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms. The requirements of this provision apply individually to any of the proposer's identified consultants or subcontractors that also furnish advisory and assistance services in performance of this contract.

(c) The statement must contain the following:

- (1) Name of the agency and the number of the solicitation in question.
- (2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.
- (3) A description of the nature of the services rendered by or to be rendered on the instant contract.
- (4) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any

entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

(5) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) above.

(d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulations.

K.952.215-6 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.10 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
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K.11 52.215-19 PERIOD FOR ACCEPTANCE OF OFFER. (APR 1984)

In compliance with the solicitation, the offeror agrees, if this offer is accepted within 210 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.12 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.13 52.215-35 ANNUAL REPRESENTATIONS AND CERTIFICATIONS - NEGOTIATION. (DEC 1989)

The offeror certifies that annual representations and certifications (check the appropriate block):

___ (a) Dated _____ (insert date of signature on submission) which are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this bid, except as follows (insert changes that affect only this solicitation; if none, so state): _____

___ (b) Are enclosed.

K.14 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS. (OCT 1995)

(a)(1) The standard industrial classification (SIC) code for this acquisition is [insert SIC code].

(2) The small business size standard is [insert size standard].

(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 and certifies 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. 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.1552.219-2 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.1652.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JUL 1991)

(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 provisions at 52.219-1 as a small business concern under the size standards of this solicitation.)

The Offeror represents and certifies as part of its offer that it 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.1752.219-21 SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JUL 1991)

(Complete only if the Offeror has certified itself under the size standards of this solicitation.)

Offeror represents and certifies 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.)

<i>No. of Employees</i>	<i>Avg. Annual Gross Revenues</i>
_____ 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.1852.219-22 SIC CODE AND SMALL BUSINESS SIZE STANDARD (JAN 1991)

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

(b)(1) The small business size standard is \$20 Million.

(2) 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 proposed to furnish a product which it did not itself manufacture, is 500 employees.

K.1952.222-25 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.2052.225-1 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.2152.222-21 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.22 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 in 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.23 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.24 52.223-5 CERTIFICATION REGARDING A DRUG-FREE WORKPLACE. (JUL 1995)

(a) Definitions. As used in this provision,

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11-1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. Directly engaged is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror (other than an individual) responding to a solicitation that is expected to exceed the simplified acquisition threshold, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will--no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed--

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about -

(i) The dangers of drug abuse in the workplace;

- (ii) The Contractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs;
- and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision that, as a condition of continued employment on the contract resulting from this solicitation, the employee will -

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Take appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.

(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) Failure of the offeror to provide the certification required by paragraph (b) or (c) of this provision,

renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a)(2)(i).)

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision 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 title 18, United States Code, section 1001.

K.25 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING. (OCT 1995)

(a) The offeror, by signing this offer, certifies that --

___ (1) To the best of its knowledge and belief, it is not subject to the filing and reporting requirements described in Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) sections 313(a) and (g) and Pollution Prevention Act (PPA) section 6607 because none of its owned or operated facilities to be used in the performance of this contract currently --

___ (i) Manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c).

___ (ii) Have more than 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) Meet the reporting thresholds in 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) Fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102.

___ (2) If awarded a contract resulting from this solicitation, its owned or operated facilities to be used in the performance of this contract, unless otherwise exempt, will file and continue to file for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313(a) and (g) and PPA section 6607 (42 U.S.C. 13106).

(b) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive order 12969, August 8, 1995 (60 FR 40989-40992).

K.26 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

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Energy Savings Performance Contract
08/20/96

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 Date of Execution 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

SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

L.1 FAR 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (JUN 1988)

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

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) SOLICITATION PROVISIONS:

FAR Clause No. Clause Name

52.214-34	Submission of Offers in the English Language (Apr 1991)
52.214-35	Submission of Offers in U.S. Currency (Apr 1991)
52.215-13	Preparation of Offers (Apr 1984)
52.215-33	Order of Precedence (Jan 1986)
52.215-34	Evaluation of Offers for Multiple Awards (Mar 1990)
52.215-38	Preparation of Offers-Construction (Jan 1991)
52.222-24	Preaward On-site Equal Opportunity Compliance Review (Apr 1984)

L.2 CONSECUTIVE NUMBERING (APR 1984)

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

L.3 CONTENT OF RESULTING CONTRACT (NOV 1987)

Any contract awarded as a result of this solicitation will contain PART I - The Schedule, PART II - Contract Clauses, and PART III - List of Documents, Exhibits and Other Attachments. Blank areas appearing in these sections, indicated by "[]", will be filled in by the Contract Specialist after negotiations have been completed.

L.4 DOE ISSUING OFFICE MAILING ADDRESS AND POINT OF CONTACT (OCT 1992)

U.S. Department of Energy
Headquarters Procurement Operations
Operations Division B (HR-561.21)
1000 Independence Avenue, S.W.
Washington, DC 20585-1615

Point of Contact: Sara Wilson
Telephone No.: 202-634-4411

L.5 52.215-5 SOLICITATION DEFINITIONS. (JUL 1987)

"Government" means United States Government.

"Offer" means proposal in negotiation.

"Solicitation" means a request for proposals (RFP) or a request for quotations (RFQ) in negotiation.

L.6 52.215-7 UNNECESSARILY ELABORATE PROPOSALS OR QUOTATIONS. (APR 1984)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's or quoter's lack of cost consciousness. Elaborate art work, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor wanted.

L.7 AMENDMENT OF THE SOLICITATION (APR 1984)

The only method by which any term of this solicitation may be modified is by an express, formal amendment to the solicitation generated by the issuing office. No other communication made at any scheduled preproposal conference or subsequent discussions, whether oral or in writing, will modify or supersede the terms of this solicitation. Receipt of an amendment to a solicitation by an offeror must be acknowledged in accordance with the solicitation provision "Amendments to Solicitations." Such acknowledgment must be received prior to the hour and date specified for receipt of offers.

L.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 210 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.

L.9 TIME, DATE AND PLACE PROPOSALS ARE DUE (OCT 1992)

(a) Bid/Proposal Submission by U.S. Mail

Bids/Proposals must be received through the below mailing address:

Document Control Specialist, HR-562
U.S. Department of Energy
Headquarters Procurement Operations
1615 M Street, N.W., Room 240
Washington, DC 20036

by NO LATER THAN 4:30 p.m. local prevailing time on **October 4, 1996** (CAUTION: See bid/proposal submission instructions, including the provision describing treatment of Late Proposals, Modifications and Withdrawals).

(b) Bid/Proposal Submission by Other than U.S. Mail

Offerors electing to submit bid/proposals by means other than the U.S. Mail, including commercial courier service, assume the full responsibility of insuring that proposals are received at the following hand-carry address by the date and time specified above:

Document Control Specialist, HR-562
U.S. Department of Energy
Headquarters Procurement Operations
1615 M Street, N.W., Room 240
Washington, DC 20036

Such bids/proposals must be closed and sealed as if for mailing.

(c) Mailing Labels

Labels are attached this solicitation package which may be used for submitting your offer and amendments thereto. The packages used in submitting your offer (and any amendments thereto) should be marked substantially as shown on the attached labels. To use the labels, the offeror must complete the blanks shown for the RFP No., the closing time and date and add his return address. NOTE that one label is for use if the offer is mailed, and one label is for use if the offer is hand delivered.

L.10 52.215-9 SUBMISSION OF OFFERS (DEC 1989)

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the

solicitation.

(d) Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to the Government, and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

L.11 52.215-10 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS. (JUL 1995)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term working days excludes weekends and U.S. Federal holidays;

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(5) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for best and final offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the Contracting Officer's request for best and final offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by U.S. Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, quotation, or modification shall be processed as if mailed late. Postmark means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine

impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(h) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

L.12 52.215-12 RESTRICTION ON DISCLOSURE AND USE OF DATA. (APR 1984)

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall -

(a) Mark the title page with the following legend:

"This proposal or quotation includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed - in whole or in part - for any purpose other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror or quoter as a result of - or in connection with - the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets _____ (insert numbers or other identification of sheets)"; and

(b) Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation."

L.13 52.215-14 EXPLANATION TO PROSPECTIVE OFFERORS. (APR 1984)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

L.14 52.215-15 FAILURE TO SUBMIT OFFER. (JUL 1995)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

L.15 52.215-16 CONTRACT AWARD. -- ALTERNATE II (OCT 1995)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers if such action is in the public interest, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

(c) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications conducted for the purpose of minor clarification). Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

(d) The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within

the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer, as provided in paragraph (d) above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

(g) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

(h) The Government may disclose the following information in post-award debriefings to other offerors: (1) the overall evaluated cost or price and technical rating of the successful offeror; (2) the overall ranking of all offerors, when any ranking was developed by the agency during source selection; (3) a summary of the rationale for award; and (4) for acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror.

L.16 52.216-1 TYPE OF CONTRACT. (APR 1984)

The Government contemplates award of an Indefinite Delivery, Indefinite Quantity (IDIQ) type contract resulting from this solicitation.

L.17 INTENTION TO PROPOSE (APR 1984)

Please review this solicitation. To enable us to anticipate the number of submissions to be evaluated and to keep our "Source Lists" current, please complete the information in the Intention to Propose Attachment (see Part III, Section J) and mail to the address shown on the attachment by the earliest practical date.

L.18 FALSE STATEMENTS (NOV 1987)

Proposals must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001.

L.19 EXPENSES RELATED TO PROPOSAL OR BID SUBMISSIONS (APR 1984)

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or bid, or in making necessary studies or designs for the preparation thereof or to acquire or contract for any services.

L.20 SITE TOUR PLAN

Offerors or quoters are urged to inspect the three sites for their price proposals. The purpose of the site visit is only to satisfy offerors regarding all general and local conditions that may effect the cost of contract performance. Since all site specific proposals are based solely on the technical data package information any discrepancies between the site and the data package will be settled by the information in the data package. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

Tours of the three sites will be conducted on the following schedule:

NOAA Site, Seattle, WA September 5th, 1996
FAA Site, Auburn, WA September 6th, 1996
US Coast Guard Station, Kodiak, AK September 10th, 11th, 1996

Several tours will be held at each site in order to accommodate all offerors. No opportunities for site visits will be provided after the initial tours. Offerors planning to attend the site tours must complete the tour request form found in Section J of this solicitation. As instructed in the tour request directions, offerors must complete the request form and fax it to the tour coordinator. In order to accommodate all tour participants you must indicate first, second, and third choices for tour times. All tour requests must be received by September 3, 1996 to allow time for schedule confirmation.

L.21 52.237-1 SITE VISIT. (APR 1984)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

L.22 PROJECT SITE TECHNICAL DATA

The technical data library is located at Kinko's Copies in Bellevue, WA. The complete address of the copy center is shown below.

Kinko's at Crossroads
1313 156th Avenue NE

Bellevue, WA 98007
Tel: (206) 957-4415
Fax: (206) 957-4470

The copy center is open 24 hours a day, 7 days a week. Requests for technical data should indicate the data package (outlined below), the method of delivery (express mail, US mail, etc.) and the form of payment. Offerors must request information from the "Department of Energy Super ESPC Solicitation Library". All copying and delivery costs are the sole responsibility of the offeror. Requests can be made by fax or by telephone.

There are three data packages in the technical library. Each package includes all available data for each individual project site. The packages are identified as follows:

Package 1 - National Oceanic and Atmospheric Administration, Seattle, WA

Package 2 - Federal Aviation Administration, Auburn, WA

Package 3 - United States Coast Guard, Kodiak, AK

Each package contains information in the following categories:

- a. General Site Information
- b. Table of Required ECMs
- c. Existing energy system specification and consumption data
- d. Site utility rate and consumption data
- e. Site maps and available building drawings
- f. Site specific project requirements and rebate programs

As previously stated, all site specific proposals are to be prepared using technical data obtained exclusively from the technical library. Any assumptions used due to incomplete information should be clearly identified.

Also located in the technical library are the Section J Attachment A Bond Forms, SF-25 and SF-25A. These forms may be obtained by requesting the Bond Forms package.

**L.23 SMALL BUSINESS SIZE STANDARD AND SET-ASIDE INFORMATION (UNRESTRICTED)
(APR 1984)**

This acquisition is unrestricted and contains no set-aside provisions.

L.24 NUMBER OF AWARDS

It is anticipated that there will be a minimum of one and a maximum of five awards resulting from this

solicitation.

L.25 AN EQUAL RIGHTS NOTE (APR 1984)

Wherever, in the solicitation or contract "man," "men," or their related pronouns may appear, either as words or as parts of words (and other than with obvious reference to named male individuals), they have been used for literary purposes and are meant in their generic sense (i.e., to include all humankind - both female and male sexes).

L.26 ALTERNATE PROPOSAL INFORMATION - NONE (APR 1984)

Alternate proposals are not solicited, are not desired, and shall not be evaluated.

L.27 PROPOSAL PREPARATION INSTRUCTIONS - GENERAL (JAN 1993)

(a) General

Proposals are expected to conform to the solicitation provision entitled "Preparation of Offers" and be prepared in accordance with this section. To aid in evaluation, proposals shall be clearly and concisely written as well as being neat, indexed (cross-indexed as appropriate) and logically assembled. All pages of each part shall be appropriately numbered, and identified with the name of the offeror, the date, and the solicitation number to the extent practicable.

(b) Overall Arrangement of Proposal

(1) The overall proposal shall consist of three (3) physically separated volumes, individually entitled as stated below. The required number of each proposal volume and the required packaging and grouping is also shown in the matrix below.

(2) Signed Originals. Copy No. 1 of the proposal shall contain the signed original of all documents requiring signature by the offeror. Use of reproductions of signed originals is authorized in all other copies of the proposal.

If this solicitation includes Qualification Criteria (see Section M), Qualification Criteria shall be addressed in a separate volume, as indicated below.

Proposal Volume - Title	Total Copies Required	To be packaged as follows:		
		Group 1	Group 2	Group 3

Volume I - Offer & Other Documents	2			
Volume II - Technical	6			
Volume III - Cost/Price	3			

(c) Each group, designated above, is to be packaged individually. This does not preclude packaging more than one, or all groups in a single overall package. Mark the group number on the outside of the individual package or packages. External markings and place for submission are indicated on the attached labels; provided the offeror completes the information required in the spaces on the labels and adds the return address.

L.28 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME I, OFFER AND OTHER DOCUMENTS (APR 1984)

(a) General

Volume I, Offer and Other Documents consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgments, make or buy program, justification for noncompetitive proposed subcontracts, identification of technical data to be withheld, request for waiver of patent clauses, any other administrative information, and a summary of exceptions and deviations taken. Although it incorporates them by reference, it does not physically include the other volumes.

(b) Format and Content

Volume I, Offer and Other Documents, shall include the following documents (in the order listed):

- (1) The Proposal Form fully executed.
- (2) Offeror Representations, Certifications, and Acknowledgments fully executed.
- (3) Additional information to be furnished by the offeror.
- (4) Competition in Subcontracting.
- (5) Exceptions and Deviations taken to the model contract.
- (6) Summary of Exceptions and Deviations taken in other Volumes.

(c) The Proposal Form

(1) Use of the Form. The Proposal Form (See Part III, Section J) is to be executed fully and used as the cover sheet (or first page) of each copy of Volume I, Offer and Other Documents.

(2) Acceptance Period. The acceptance period entered on the Proposal Form by the offeror shall not be less than that prescribed in the solicitation provision entitled "Offer Acceptance Period", which shall apply if no other period is offered.

(3) Signature Authority. The person signing the Proposal Form must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the solicitation, to make an award without further discussion if it so elects.

(d) Offeror Representations, Certifications, and Other Statements of Offerors. Offeror Representations, Certifications, and Other Statements of Offerors (see Part IV, Section K) are to be executed fully and a copy included in each copy of Volume I, Offer and Other Documents.

(e) Additional Information to be Furnished

(1) Government Property

(i) Unless otherwise stated, the offeror is expected to furnish all property (including, but not limited to facilities, equipment, special tooling, and material) necessary for the performance of the work defined in this solicitation. Government property as used herein means all Government-furnished property, together with all property acquired by the Contractor, title which vests in the Government.

(ii) Indicate in this Volume I whether or not the proposal is based on the use of Government property. If the offeror proposes to use Government property to perform the work (whether or not such property is presently in the possession of the offeror), provide the particulars in the Price Proposal volume, along with a statement signed by an executive corporate official (or the equivalent in a non-corporate entity) which:

(A) Expresses the offeror's unwillingness or financial inability to acquire the necessary property with the Offeror's resources; or

(B) Explains that time will not allow the Offeror to make the necessary arrangements to obtain timely delivery of such property to meet the Government's requirements even though the Offeror is willing and financially able to acquire the property. Such an explanation is to include cost benefit studies that treat lease versus buy versus use of the Government property. In this case, existing Government property, if available, may be provided until the property acquired by the offeror is delivered, installed, etc.

(f) Offeror shall provide evidence of acceptance onto the DOE Qualified List of Energy Service Companies or shall show evidence of actions taken in applying for acceptance onto the Qualified List.

(g) Offeror shall complete Schedule H-5, Cancellation Ceilings, for each site listed in the technical data package.

L.29 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME II, TECHNICAL PROPOSAL

- a. General Requirements. Technical Proposals shall be precise, factual, complete and descriptive in sufficient detail to allow the Government to evaluate the offeror's proposed approach and qualifications to perform the required services. Technical proposal evaluation factors are provided in Section M.

In order that your Technical Proposal may be evaluated strictly on the merit of the material submitted, no contractual cost/price information is to be included in your Technical Proposal. Where estimated manhours will provide clarity, they shall be quoted in manhour figures only, with no indication as to the cost of these manhours.

- b. Proposal Length Requirements. The proposal text should be typed, single-spaced, Courier font, 12 pitch (or equivalent) and printed, unreduced in size, on 8-1/2" by 11" paper. In no case shall the General Regional Contract Capabilities - Part I, exceed fifty (50) pages in length, including exhibits and personnel biographies. Part II narrative description of technical approach shall not exceed twenty-five (25) pages in length for each site plus a maximum of five (5) pages for each site specific ECM. Illustrations shall be legible, and foldouts shall, in general be held to 11" wide by 17" long in size. A limited number of foldouts may be longer, as appropriate (e.g. progress flow sheets, work breakdown structure, etc.). Technical Proposals exceeding the stipulated page limit will be evaluated on the first 50 pages only for Part I and first 25 pages only for each site plus the first 5 pages per ECM for Part II.

- c. Format and Content

Volume II, Technical Proposal, shall include the following components:

- Table of Contents and List of Tables and Figures
- Technical Discussion
- Technical Exceptions and Deviations

These major headings may be subdivided or supplemented by the offeror as appropriate.

(1) Table of Contents and List of Tables and Figures. A suitable table of contents shall be provided for each section for ready reference to key paragraphs, figures, and illustrations.

(2) Technical Discussion. This section shall contain the major portion of the Technical Proposal. It should clearly address each of the Technical Proposal evaluation criteria in Part IV Section M, and at a minimum cover the subordinate factors or subcriteria listed thereunder, if any. It should be presented in as much detail as practical and include the following aspects for appropriate criteria or subordinate factors.

- (i) Specific statement of the problem(s). Discuss major difficulties anticipated, if any.
- (ii) Principles and techniques which may be applied in the solution(s) of the

problem(s), and an evaluation of the various methods considered and substantiation of those selected. Indicate degree of success expected.

(iii) Complete detailed statement of proposed solution(s), including preliminary design layout, sketches, and other information of components as applicable.

(iv) Other Pertinent Information. This section shall contain any other pertinent information which will supplement or aid in the understanding and evaluation of the Technical Proposal.

(3) Summary of Exceptions and Deviations. This section shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the technical requirements of the solicitation.

Any exceptions, etc., taken must contain sufficient amplification and justification to permit evaluation. All benefits to the Government shall be explained for each exception taken. Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. However, a large number of exceptions, or one or more significant exceptions not providing benefit to the Government may result in rejection of the proposal(s) as unacceptable.

d. The Technical Proposal shall consist of the following sections, in the order listed, and shall provide a response to each item.

L.29.1 PART I - INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT -- GENERAL REGIONAL CONTRACT CAPABILITIES

Criterion 1. Past Performance

Energy Project Experience: The offeror shall briefly describe up to five previous energy conservation projects and facility energy management services that demonstrate the offeror's ability to successfully implement the types of ECMs it proposes to offer agencies in this regional contract. Projects may include those with the Federal Government, state or local governments, and commercial customers. Of those projects demonstrating successful implementation of the types of ECM's offered, identify those projects similar to the Energy Savings Performance Contract requirements of this statement of work and solicitation. The description of each project shall include the project title, contract number (if applicable), location, dates and the name and telephone number of the government project manager, contracting officer and technical representative. In addition to project client contacts, the offeror should address, at a minimum, the following items:

- Proposer's role in projects listed, whether the contractor was the prime or the subcontractor; including design, financing and implementing the project;

- Types of ECMs successfully implemented;
- If applicable, for energy savings performance or other performance based contracts, specify:
 - (a)The initial energy consumption of client facilities;
 - (b)The annual energy and cost savings proposed in the contract; and
 - (c)The actual annual energy and cost savings achieved.

•Project Installation Cost

- Describe project performance in terms of schedule and budget (e.g. on time/on budget, early, late, under/over budget, reasons), quality control and workmanship
- Subcontractors used in previous projects
- Describe any contract termination actions taken by client.

Energy Project Financing Experience.

- The offeror shall describe the approach to providing project financing for previous performance based energy services contracts. Describe financial instruments or approaches used on previous projects (provide site specific examples of financing approaches, as applicable to performance based, contractor financed projects identified in L.29.1, Criterion 1, "Energy Project Experience") and identify financier points of contact, and phone numbers.
- Identify sureties the firm has utilized to acquire performance and payment bonds during the construction phases, and provide surety points of contact and phone numbers.

Criterion 2.ECMs and Related Technical Capability

For each ECM Technology Category in section C.2.1 describe:

- The offering firm's capability to successfully implement the ECMs representative of each Technology Category not included in the past projects described under criteria 1.
- How the offeror will acquire the skills and capabilities to successfully implement ECMs representative of each Technology Category required which are currently outside the firm's current capability or experience.
- The baseline development and measurement & verification (M&V) methods proposed for determining energy

savings performance of installed ECMs required. The offeror shall demonstrate an understanding of DOE/FEMP M&V Guidelines for Federal Energy Projects for each technology category covered in the guidelines.

- Specify the level of operation, maintenance, and repair responsibility the Offeror shall assume.
- Describe the preventative maintenance, inspection, and repair program to be provided.
- Identify ECMs for which contractor would provide Government employee training.

Criterion 3. Regional Projects Management Approach

--**Regional Project Delivery & Management Organization.** Describe and illustrate the overall management system and organization for managing projects within the contract region. Particular emphasis should be placed on how cost, schedule, and technical performance status is determined, assessed, and projected through contract completion, on a company level. It shall include the method of price tracking, reporting, and control on the management level. Proposal shall contain the responsibilities of each element of project implementation and continuous performance based services shown on the organization chart. Identify personnel integral to performance in each element. Show the lines of authority within the organization. The Offeror shall describe its organization to provide operations, maintenance, repair and training services for projects throughout the contract region. Specify criteria used to establish location of local service point(s) and available hours of service. If portions of the project are to be subcontracted (e.g., design of an energy conservation system), identify the subcontracted function, and which element of the contractor's organization will manage the subcontract(s).

--**Personnel Qualifications** - Functional areas include, but are not limited to: facility auditing and energy engineering analysis, design and engineering, installation, operations and maintenance, performance measurement and verification. Provide personnel qualifications which include education, dates of employment, pertinent experience in facility energy engineering, operation and maintenance and project and installation management, any professional certifications and licenses held, labor category and organizational position (corporate as well as project).

--**Subcontracting Plan.**

- **Subcontracting and Subcontract Management:** This subsection shall describe the subcontract management system to be used under the contract. Particular emphasis should be placed on procedures for source selection and how performance status is determined, assessed, and projected through subcontract completion.

- The offeror shall select proposed subcontractors (including suppliers) on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the solicitation. Competitive solicitation of proposed subcontractors shall be discussed as well as non-competitive selection of proposed subcontractors. Non-competitive selection of proposed subcontractors must be justified.
- Failure to select proposed subcontractors on a competitive basis may adversely affect the standing of the Offeror unless it is demonstrated that competition is not feasible nor practicable.
- Describe extent of proposed small and disadvantaged business participation or efforts which will be used to obtain such participation.

L.29.2 PART II - DELIVERY ORDER -- TECHNICAL APPROACH FOR SITE SPECIFIC PROJECTS

For each of the Project Sites identified in the technical data package referenced in Clause L.22, Project Site Technical Data, the Offeror shall prepare a technical narrative addressing the technical approach for required ECMs. All technical data necessary for the site specific technical and price proposal is located in the solicitation technical library. All site specific proposals are to be prepared using technical data obtained exclusively from the technical library. Any assumptions made due to incomplete information should be clearly identified in the offeror's proposal. The technical approach shall be prepared in the following format:

Criterion 4. ECM Descriptions and Projected Energy Savings

The Offeror shall complete and submit a table comprising the following list of elements. For each project site, the offeror shall submit narrative information for items, as applicable, in the format specified below for each required ECM:

ECM No. _____

ECM Title and Executive Summary

- Detailed Description of ECM
- Location Affected
- ECM Interface with Government Equipment
- Proposed Equipment Identification - Provide manufacturer, model number and optional equipment proposed for each ECM component, including manufacturer's literature and specifications.

- **Physical Changes** - List major physical changes to equipment or facilities required to install proposed ECM such as relocation of equipment.
- **Energy Savings Proposed**
 - Proposed ECM annual energy savings (in all applicable energy/demand reduction units)
 - For each ECM proposed, provide a detailed energy analysis documenting the proposed annual energy savings performance of ECM after installation, startup and testing. 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.
 - **Utility Interruptions** - Specify extent of any utility interruptions needed for installation of proposed ECM.
 - **Agency Support Required** - Specify any government agency support required during implementation of the ECM.
 - **Potential Environmental Impact** - Briefly describe any potential environmental impact resulting from installed ECM.
 - **ECM Project Schedule** - Provide a project schedule to include the duration of the following key phases:
 - Investment Grade Facility Audits to confirm ECM performance (*assume Government facility audit review of 30 days*).
 - Engineering/Design/Acceptance (*assume Government design review of 30 days*).
 - Equipment Procurement/Lead Time (i.e., date required to acquire equipment and delivery on-site).
 - Installation & Commissioning

Criterion 5. Energy Baseline and ECM Performance Measurement

The Offeror shall describe how it will provide a complete measurement and verification (M&V) plan for each of the proposed ECMs. The plan shall include, but not be limited to:

- M&V Overview - Description of the measurement option selected for this project.
- Site-Specific M&V Plan - Define a site specific plan, which must include the following elements for each project:
 - Objectives - a statement of what is to be estimated (i.e., gross annual KWh savings on a project basis).
 - Parameters to be monitored - indicate parameters to be recorded that will be used in the estimation 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.
 - Sampling plan (if required), including:
 - Designation of usage groups - define usage groups for areas with similar characteristics.
 - 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.
 - Data collection plan, including:
 - 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.
 - Identification of instrumentation and metering equipment - name and documentation on equipment specifications of monitoring devices.
 - Calibration of equipment - describe protocols for calibrating equipment.
 - Data gathering and quality control - describe quality control procedures for checking completeness and accuracy of the recorded data.
 - Period of monitoring - specify periods of monitoring including duration and frequency.
 - 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.
- Pre-Installation energy and facility performance baseline including (1) equipment/systems, (2) baseline energy use, (3) factors which influence baseline energy use, and (4) system performance factors (e.g., lighting levels, temperature set points).

- Post-installation facility conditions including (1) equipment/systems, (2) post-installation energy use, and/or (3) factors that influence post-installation energy use.
- Determination of energy savings based on the selected approach and the pre and post-installation conditions.
- Plan for future periodic (annual) measurements of ECM and facility performance and calculation of current period (year) savings.
- Plan for resolving disputes regarding issues such as baseline, baseline adjustment, energy savings calculation and the use of periodic measurements.

Criterion 6. Site Management Approach

- **Organization.** Show the organization for implementing and managing the site specific project. Proposed organization shall contain the responsibilities of each element shown on the organization chart. Identify primary personnel 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 of an energy conservation system), identify the subcontracted function, the subcontractor(s), the subcontractor's primary personnel, and which element of the contractor's organization will manage the subcontract(s).
- **Maintenance and Operations.**

Offeror Provided Maintenance and Operation - Show the organization structure and describe the approach for installed ECMs for performance of the delivery order's maintenance and operation requirements.

L.30 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME III, PRICE PROPOSAL - OTHER

(a) General: The Price Proposal consists of the offeror's price to perform the work as set forth in the Statement of Work. The Delivery Order Schedule H-1 column (c) total is considered to be the price proposed by the contractor. Since each Price Proposal will be evaluated to determine such matters as the reasonableness of price, and an understanding of the magnitude of effort, it should be accurate, complete and well documented. Offerors are requested to provide documentation providing evidence of catalog prices or published price lists to support the reasonableness of proposed prices, or a portion of a proposed price, where possible. Contractual price information is not to be included in the Technical Proposal, Volume II, or the Offer and Other Documents, Volume I. Pricing exhibits to be completed are attached to this solicitation. (See Part III, Section J).

(b) As a minimum, the Price Proposal shall contain the information specified below:

Each offeror is cautioned that adequate pricing details, as applicable, must accompany the price proposal.

(1) Estimating Procedure - Provide an explanation of the offeror's estimating procedures. Discuss the rationale

used to determine the various price elements. For effective discussions, it is essential that there be a clear understanding of:

- (i) The existing verifiable data;
- (ii) The judgmental factors applied in projecting from known data to the estimate;
- (iii) The contingencies used by the offeror in the proposed price;

In short, the offeror's estimating procedures need to be explained.

- (2) Other - The offerors should provide any other information or supporting documentation as deemed appropriate.
- (3) Audit and Contract Administration Cognizance - Provide the name, address, and telephone number of the Government audit office and contract administrative office for the offeror and any proposed subcontractors.
- (4) Modifications to Price Proposal - Any modification to the Price Proposal shall clearly indicate the price impact of the modification to the same level of detail shown in the original proposal. Once the prospective Contractor has been selected, the prices submitted with this proposal shall not be subject to increase, unless changes are made in the requirements of the request for proposals. Furthermore, increases shall be considered only in regard to those requirements that are actually affected by the changes (whether they are initiated by the Government or the offeror), and then only to the extent that such increases will be considered separately, and not as part of a combined overall negotiation of the price for the proposed contract.
- (5) Exceptions and /Deviations - The Offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the Price Proposal. Any exceptions, etc., taken must contain sufficient amplification and justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. However, a large number of exceptions, or one or more significant exceptions not providing benefit to the Government may result in rejection of such proposal(s) as unacceptable.

L.30.1PART I - SCHEDULES TO BE INCORPORATED INTO THE INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT

L.30.1.1 Price Schedules Required The offeror shall prepare and submit the following price schedules. The schedules listed below will be incorporated into the resultant contract.

1. Section A - a completed Standard Form 33;

2. Section B - Completed Schedules B-1 - Margins,
 B-2 - Indexed Finance Rates,
 B-3 - Installation Elements,
 B-4 - Margin Elements, and
 B-5 - Energy Savings Period Price Elements

L.30.1.2 Instructions for Completing Schedules

The offeror shall provide its proposed maximum margin percentage that will apply to all delivery orders in Schedule B-1. The price proposal shall also indicate the offeror's handling of four components of price that the successful contractor will address in submitting a proposal for a delivery order. These components will be explained in Schedules B-2, B-3, B-4 and B-5. Instructions for completing schedules are provided below.

The composition of each price element must be explained and shall remain constant so that the margin may be applied consistently for all subsequent delivery orders.

1. Schedule B-1 -- Margin, Indefinite Delivery/Indefinite Quantity Contract: The offeror shall complete Schedule B-1 by proposing the maximum margin that will be applied to all delivery orders under the proposed IDIQ contract. Schedule B-1 must be completed for the base contract period as well as each option period.

The margin is the percentage difference between the contractor's proposed payment and the combination of the amortized construction/installation price and O&M costs for the ECM project. The offeror shall propose the types or categories of costs that are included in its margins, which listing shall be included in any resultant indefinite quantity contract awarded and apply to delivery orders issued under the contract. The types or categories of costs that should be included in a margin based on the offeror's accounting system would include the following:

- cost to perform surveys prior to approval of feasibility studies,
- indirect labor and associated fringe benefits that cannot be directly attributed to a specific task and therefore must be distributed across several tasks or projects, which is normally included in indirect costs (e.g., overhead),
- indirect costs such as material handling costs, overhead costs (excluding fringe benefits), and general and administrative expenses,
- profit to the contractor.

These types, categories or elements of costs shall not be recovered by the contractor except through the margin proposed, negotiated, and included in the indefinite quantity contract for application to delivery orders placed. The margin shall not include construction/installation price, Energy Savings Performance Period price, or project finance charges. The margin proposed is to be a maximum figure and may be voluntarily decreased by the contractor in subsequent delivery order proposals.

- a) 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.

- b) **Multiple Technology Category Projects.** If an ECM project has more than one technology category, the costs will be broken down into technology categories according to the schedule. The margin for each technology category will be applied to the categorical cost for that part of the project and summed to obtain the proposed contractor payment. If a project is proposed which does not match the technologies listed, the margin for miscellaneous work will be used, subject to approval of the Contracting Officer.

2. Schedule B-2 -- Project Finance Charges, IDIQ Contract: The offeror shall complete Schedule B-2 by proposing the maximum, fixed, annual percentage rate that, when added to the current Treasury Note rate (as defined by the US Treasury Internet Page : www.ustreas.gov/treasury/bureaus/pubdebt/noteauc.html) will be the total percentage project finance charge (not including finance processing fees) that the contractor will charge the Government as a total finance charge for all ECM projects or delivery orders. The finance charge rate that shall apply to an individual delivery order shall be based on the most recent applicable Treasury Note rate prior to the date of the delivery order. If the offeror is proposing different finance charges for the periods of the IDIQ contract, the offeror shall propose the Treasury Note term applicable to each proposed financing period.

Finance charges are the contractor's costs of financing the construction/installation price of an ECM project (delivery order) after installation, inspection and acceptance by the Government.

3. Schedule B-3 -- Installation Elements, IDIQ Contract: The offeror shall complete Schedule B-3 by proposing the elements of direct cost that compose installation price under the proposed IDIQ contract. Installation price elements will remain unchanged through the term of the contract.
4. Schedule B-4 -- Margin Elements, IDIQ Contract: The offeror shall complete Schedule B-4 by proposing the elements of margin under the proposed IDIQ contract. Margin elements will remain unchanged through the term of the contract.
5. Schedule B-5 -- Energy Savings Performance Period Price, IDIQ Contract: The offeror shall complete Schedule B-5 by proposing Energy Savings Performance Period (ESPP) Price elements under the proposed IDIQ contract. Price elements will remain unchanged through the term of the contract. ESPP price shall be the estimated direct costs for operation and maintenance for the specific delivery order's ECM project. Examples of the types, categories or elements of ESPP costs would be direct labor, material and spare parts required to perform operation and maintenance of the installed ECMs for the delivery order.

L.30.1.3 Financial Condition and Capability Statement

1. Provide a current balance sheet, profit and loss statement for all quarters reported on the current fiscal year, and an audited financial statement for each of the last three fiscal years.

2. Describe fully any assets other than cash, accounts receivable, land, buildings, and equipment carried on the above balance sheet.
3. Describe fully the impact of this project on the offeror's organization and any contingency, limitation, and conditions affecting availability of funds for this project.

L.30.2PART II - DELIVERY ORDER -- PRICE PROPOSAL FOR SITE SPECIFIC PROJECTS

The schedules listed below will be incorporated into any resultant delivery order.

1. Offerors shall indicate on each site specific price proposal that offers are valid for not less than ninety (90) days after receipt of an award for the indefinite quantity contract.
2. The offeror's price proposal for each site specific project shall consist of:

Section B - Completed Schedules H-1 through H-3

These schedules shall be completed for each site, and a summary schedule shall also be provided. Offerors shall submit documentation providing evidence of catalog or market price to support the reasonableness of its proposed price whenever possible.

a) Schedule H-1 -- Delivery Orders: Schedule H-1 is used to submit the offeror's proposed estimated annual cost savings, the proposed guaranteed annual cost savings, and the annual contractor payments for a specific ECM project (delivery order). The values submitted on Schedule H-1 are for 12-month periods, beginning after complete installation of ECMs by the contractor and acceptance by the Government. See Section H for definition of acceptance. Contractors shall submit Schedule H-1 with all delivery order proposals.

The three data packages in the technical library for the IDIQ project sites (See L.22, "Project Site Technical Data") contain identified energy system retrofits on which the offeror is required to submit proposals. The offeror shall prepare and submit Schedule H-1 for each identified ECM project covered by this solicitation.

Each delivery order's solicitation document shall specify the fixed rates that will be used for utilities 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 fixed rates for utilities.

The offeror shall complete Schedule H-1 for each delivery order to reflect:

- i. the estimated annual cost savings for each year of proposed delivery order term based on projected energy savings presented in technical proposal for the delivery order,

- ii. proposed guaranteed annual cost savings for each year of proposed delivery order term, and
- iii. annual contractor payments for each year of proposed delivery order term after ECM installation and acceptance by the Government.

The contractor shall adjust Schedule H-1 to reflect the actual years included in the contractor's proposed delivery order term.

b) Schedule H-2 presents the offeror's estimated investment for each ECM contained in a specific project or delivery order. Total ECM investment is used to establish bonding requirements for the ECM installation period. See Section H for details.

The three data packages in the technical library for the IDIQ project sites (See L.22, "Project Site Technical Data") contain identified energy system retrofits on which the offeror is required to submit proposals. The offeror shall prepare and submit Schedule H-2 for each identified ECM project covered by this solicitation.

The Contractor shall complete Schedule H-2 for each delivery order to reflect the construction/installation price, maximum margin and total for each discrete ECM and calculate the total estimated investment for all proposed ECMs for the delivery order. The total estimated investment is used to establish performance and payment bond amounts. See section H for details.

c) Schedule H-3 presents the Contractor's proposed project cash flow for a specific ECM project (delivery order). The schedule is divided into two sections. The Installation Phase section pertains to the debt service stream and the profit on investment. The Service Phase pertains to the price and profit associated with the services the contractor supplies to maintain and verify ECM performance during the delivery order period. The successful contractor(s) will be required to submit this schedule for specific delivery orders.

The three data packages in the technical library for the IDIQ project sites (See L.22, "Project Site Technical Data") contain identified energy system retrofits on which the offeror is required to submit proposals, as well as submitting a proposal for the indefinite quantity contract. The offeror shall prepare and submit Schedule H-3 for each identified ECM project covered by this solicitation.

The Contractor shall propose the estimated delivery order cash flows for each year of the proposed delivery order term to support the price proposal [Annual Contractor Payments, Schedule H-1, Column (c)].

L.31 CLASSIFIED MATERIAL - NONE (NOV 1987)

Performance under the proposed contract is not anticipated to involve access to classified material.

L.32 NOTICE OF LABOR PROVISIONS (APR 1984)

a. LISTING OF EMPLOYMENT OPENING (APR 1984)

Offerors should note that this solicitation includes a provision requiring the listing of employment openings with the local office of the Federal - State employment service system where a contract award is for \$10,000 or more. (See clauses, "Affirmative Action for Special Disabled and Vietnam Era Veterans and "Affirmative Action for Handicapped Workers" of the Contract Clauses).

b. INFORMATION FROM DEPARTMENT OF LABOR (APR 1984)

General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contract Work Hours Standards Act (40 U.S.C. 327-333), and the Service Contract Act of 1965 (41 U.S.C. 351-358) may be obtained from the Department of Labor, Washington, D.C. 20310, or from any regional office of that agency. Requests for information should include the RFP number, the name and address of the issuing agency, and a description of the supplies or services.

L.33 RESPONSIBLE PROSPECTIVE CONTRACTORS (APR 1984)

(a) The general and additional minimum standards for responsible prospective Contractors set forth at FAR 9.1 and DEAR 909.104-1 apply.

(b) DOE may conduct preaward surveys in accordance with FAR 9.106 and may solicit from available sources, relevant information concerning the offeror's record of past performance, and use such information in making determinations of prospective offeror responsibility.

L.34 DISCUSSIONS WITH OFFERORS

The Contracting Officer may conduct written or oral discussions with all responsible offerors whose proposals have been determined to be within the competitive range. Offerors will be notified of the date, time, and place for any such discussions. Any such discussions will be conducted in accordance with DOE acquisition policies and procedures.

L.35 INFORMATION OF AWARD (APR 1984)

Written notice to unsuccessful offerors or bidders and contract award information will be promptly released in accordance with DOE regulations.

L.36 DISPOSITION OF SOLICITATION DOCUMENTS (APR 1984)

Drawings, specifications, and other documents supplied with the solicitation may be retained by the offeror (unless there is a requirement for a document to be completed and returned as a part of the offer).

L.37 DISPOSITION OF PROPOSALS OR BIDS (APR 1984)

Proposals or bids will not be returned (except for timely withdrawals).

L.38 DEAR 952.233-2 SERVICE OF PROTEST (DEC 1995)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Document Control Specialist - Protests
U.S. Department of Energy
Headquarters Procurement Operations
1615 M Street, N.W., Room 240 (HR-562)
Washington, DC 20036

(b) The copy of any protest shall be received in the office designated above on the same day a protest is filed with the GSBCA or within one day of filing a protest with the GAO.

(c) Another copy of a protest lodged with the General Accounting Office or the General Services Administration Board of Contract Appeals shall be furnished to the following address within one day after the filing of the protest with the General Accounting Office:

U.S. Department of Energy
Assistant General Counsel for
Procurement and Financial Assistance (GC-61)
1000 Independence Avenue, S.W.
Washington, DC 20585
Fax: (202) 586-4546

L.40 52.209-7 ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE--MARKETING CONSULTANTS. (OCT 1995)

(a) Definitions.

(1) "Marketing consultant" means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a government contract by that offeror. An independent Contractor is not a marketing consultant when rendering:

- (i) Services excluded in subpart 37.2;
- (ii) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);
- (iii) Routine legal, actuarial, auditing, and accounting services; or
- (iv) Training services.

(2) "Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An individual or firm that employs, retains, or engages contractually one or more marketing consultants in connection with a contract, shall submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

(c) The certificate must contain the following:

- (1) The name of the agency and the number of the solicitation in question.
- (2) The name, address, telephone number, and federal taxpayer identification number of the marketing consultant.
- (3) The name, address, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultants involvement in the contract.
- (4) A description of the nature of the services rendered by or to be rendered by the marketing consultant.
- (5) The name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s), if, based on information provided to the Contractor by the marketing consultant, any marketing consultant is rendering or, in the 12* months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the Government or any other client (including any foreign government or person).
- (6) A statement that the person who signs the certificate for the prime Contractor has informed the marketing consultant of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1.

(7) The signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the apparent successful offeror and the marketing consultant.

(d) In addition, the apparent successful offeror shall forward to the Contracting Officer a certificate signed by the marketing consultant that the marketing consultant has been told of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1, and the marketing consultant has made inquiry, and to the best of the consultant's knowledge and belief, the consultant has provided no unfair competitive advantage to the prime Contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of the consultant's knowledge and belief, does or may exist, has been disclosed to the offeror.

(e) Failure of the offeror to provide the required certifications may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

L.41 52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW. (APR 1984)

An award in the amount of \$1 million or more will not be made under this solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of \$1 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

L.42 ANTICIPATED AWARD DATE

For purposes of price proposal preparation, offerors should use October 1996 as anticipated award date.

L.43 QUESTIONS CONCERNING THE SOLICITATION

All questions concerning this solicitation must be submitted in writing. The Department of Energy will respond in writing if such questions are received by the Government within fourteen calendar days of the date the solicitation is issued. The DOE will continue to accept questions up to the closing date of the solicitation, however, time may not permit answers to questions received after the first fourteen calendar days of the solicitation period to be prepared and issued.

L.44 CONTRACT BASE PERIOD

BASE PERIOD

Term: Twenty-Five (25) years

Total Maximum Firm Fixed Price of Contract, inclusive of contracts issued for all awardees: \$750,000,000

Minimum Firm Fixed Price of each Contract, per awardee: \$150,000

L.45 USE OF NON-GOVERNMENT PERSONNEL IN EVALUATIONS

The government requires non-government personnel from Federally-Funded Research and Development Centers (FFRDCs) (Lawrence Berkeley Laboratory and National Renewable Energy Laboratory; and John Rogers Consulting) 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.

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 GENERAL (JULY 1991)

a) Proposals will be evaluated in accordance with applicable DOE acquisition policies and procedures. Evaluation will be performed to determine the offeror's potential for completing the work as specified in the RFP, cost/price reasonableness, and ranking with competing offerors.

b) Award will be made to that responsible offeror(s), whose offer(s), conforming to this RFP, is (are) considered most advantageous to the Government, considering the evaluation criteria in this Section M.

M.2 EVALUATION CRITERIA

Proposals will be evaluated using the criteria specified herein. 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 [*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. Offerors are encouraged to submit creative and innovative approaches to the Statement of Work.

A. TECHNICAL CRITERIA. Technical aspects of proposals will be evaluated in accordance with the following criteria:

1. Criterion 1 - Past Performance

Each offeror will be evaluated on his/her performance under existing and prior projects for similar products or services. Performance information will be used for both responsibility determinations and as an evaluation factor against which offerors' relative rankings will be compared to assure best value to the government. The government will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. The Performance Information Form identified in Section J will be used to collect this information. References other than those identified by the offeror may be contacted by the government with the information received used in the evaluation of the offeror's past performance.

The evaluation of prior performance capabilities will include: the offeror's demonstrated capability to manage, design, implement, finance and maintain energy conservation projects of similar size and technologies to those required; the offeror's demonstrated capability to provide a full range of turnkey services from management to financing, either independently or with a joint venture/teaming approach; the offeror's demonstrated ability to provide good quality control, workmanship and to conform to specifications; the offeror's demonstrated performance in accurately estimating and managing project cost effectiveness; the offeror's demonstrated ability to successfully develop, implement and adhere to work schedules; the

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

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

2. Criterion 2 - ECMs and Related Technical Capability

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

3. Criterion 3 - Regional Projects Management Approach

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