Department of Energy

DOE HEADQUARTERS
WASHINGTON, D.C. 20585

November 25, 1997

To: All Prospective Offerors

SUBJECT: Request for Proposals (RFP) No. DE-RP01-98EE73584
Energy Savings Performance Contract for U.S. Northeast and Mid-Atlantic Regions

You are invited to submit a proposal to the United States Department of Energy (DOE) to provide energy savings services for the U.S. Northeast and Mid-Atlantic Regions. This cover letter is a summary of the salient elements of the acquisition. However, this cover letter is not an integral part of the RFP and in the event of any inconsistency between this letter and the enclosed RFP, the RFP data shall govern. In addition, you are cautioned that the only person you may contact prior to contract award is the designated DOE point of contact listed in Part IV - Section L, Provision L.4 of the RFP.

Contract Type Contemplated

It is intended that the contract will be a Firm-Fixed-Price Indefinite-Delivery/Indefinite Quantity (IDIQ) contract for energy savings services pursuant to the terms and conditions of the RFP. Sections A through J (Attachment A-D) of this RFP represent the draft contract and will be the basis for the contractual relationship between DOE and the solicited offerors. More specifically, Clauses H.12, H.13, H.14 and H.15 prescribe the procedures that will be used in implementing, evaluating, selecting and awarding each delivery order. Each of these provisions, and the remaining provisions of the RFP should be examined carefully before submitting proposals. It is suggested that interested parties become familiar with applicable FASA provisions prior to examining the provisions of the RFP (ref: Public Law 103-355, sections 303H, 303I, 303J, and 303K). Blank areas, indicated by "***" appearing throughout the RFP will be completed at time of award.

Government Furnished Property

It is anticipated that the contractor's principal place of performance will be the contractor's facilities to be named within the offeror's proposal.

The Government does not anticipate furnishing Government Property or Facilities for performance.

Organizational Conflicts of Interest

Award of a contract will be subject to the Organizational Conflicts of Interest (OCI) clearance of the selected offeror(s). Apparent successful offerors are required to submit the OCI information detailed in Section K of this RFP.

Set-Aside Information

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

this acquisition is subject to Public Law 95-507 which established a National Policy that Federal Acquisition provide maximum practicable opportunity for participation to Small Business concerns and Small Business concerns owned and controlled by socially and economically disadvantaged individuals and women.

Certificate of Procurement Integrity

As part of its proposal, the offeror must provide certification as required in Section K - Representations, Certifications, and Other Statements of Offerors, pursuant to FAR 52.203-8, Requirement for Certification of Procurement Integrity.

DOEs Qualified list of Energy Service Companies:
In order to be eligible for a contract award a contractor must be listed on DOEs Qualified list of Energy Service Companies. The List and how to obtain an application for the list can be located on the Internet at the following: http://www.eren.doe.gov/femp/escolst.html

Technical Data Package

Instructions for obtaining copies of the technical data package with site-specific information are set forth in Part IV, provision L.22.

Proposal Preparation Instructions

Proposal Preparation Instructions are set forth in Part IV - Section L.

Proposal Evaluation

Proposal Evaluation shall be in accordance with the criteria set forth in Part IV - Section M.

Proposal Due Date, Time and Place Designated for Receipt

Proposal due date, time and place designated for receipt of proposals and external marking instructions are set forth in Part IV - Section L, provision L.9.

Amendments to Solicitation:
This solicitation has been issued by electronic means only. Any amendments to the solicitation and/or answers to clarification questions will be posted on the same Internet site that the solicitation is posted to, the site address is as follows: http://pr.doe.gov/solicit.html It is the contractors responsibility to check the Internet site daily for solicitation amendments.

Award on Initial Offers

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 price and technical standpoint.

Ordering Period Limitation

Offerors should take note of the ordering period limitation clause in Section H that states that the ordering period may end at the end of the five year legal authority that commenced with the issuance of the regulation on Energy Savings Performance Contracting on April 10, 1995. The Government intends to modify the contract to extend the ordering period specified in Clause B.6, "Ordering" at a

future date.

DOE Point of Contact

Any questions must be submitted in writing via: an e-mail message to steven.jones@hq.doe.gov or fax to: Steven C. Jones @ (202) 426-0168 or mail to the point of address and point of contact listed in Clause L.4 "DOE Issuing Office Mailing Address and Point of Contact", to arrive in accordance with Clause L.43, "Questions Concerning the Solicitation". Each question should clearly specify the solicitation area (Attachment number, page, etc.) to which it refers. Please reference on e-mail and faxes, or mark the outside of the mailed envelope "SOLICITATION QUESTIONS - SOLICITATION NO. DE-RP01-98EE73584" to expedite handling.

Your interest in the Department's solicitation is appreciated. Should you need any further assistance please contact Steven C. Jones at (202) 426-0060.

Sincerely,

Berta Schreiber, Contracting Officer
Program Services Division
Office of Headquarters Procurement Services

Attachment: Super ESPC Summary

SUPER ESPC SUMMARY

The purpose of this introduction is to outline the major sections and intent of this Super Energy Savings Performance Contract (ESPC) Solicitation and provide an overview of the proposal process. In order to correctly and sufficiently submit a proposal to this solicitation it is STRONGLY RECOMMENDED that the entire document be read.

The purpose of this solicitation is to select energy service companies to provide energy retrofits in federally owned facilities under the format of an energy savings performance contract. The Federal agencies may choose to place delivery orders for their Government facilities located in the region(s) under the indefinite quantity contract(s). Federal agencies choosing to place delivery orders under the awarded indefinite quantity contracts will enter into a memorandum of understanding with the Department of Energy (DOE). DOE may authorize a Federal agency to place delivery orders or may place the delivery order on behalf of the Federal agency as agreed in the memorandum of understanding. If a Federal agency is designated as an authorized contract officer for placing delivery orders, the indefinite quantity contract(s) will be modified to indicate such designation.

The Super ESPC Solicitation has been limited to a total award for all delivery order contracts to not exceed $750,000,000, per contract region. As required by the Federal rules regarding ESPC contracts this contract may not exceed 25 years. The effect of this requirement is to shorten the maximum length of any delivery contract to the remaining years left in the Super ESPC contract.

This solicitation covers identified buildings and sites, two in each region, which will be the first delivery orders placed against the awarded indefinite quantity contracts. However, the number of indefinite quantity contracts awarded may exceed the number of identified buildings and sites contained in this solicitation. Therefore, each contractor awarded an indefinite quantity contract under this solicitation may not receive a delivery order for an identified building and site at the time of award, but will receive at least one delivery order for the minimum amount during the contract period.

The contractor shall receive monthly payments based on the annual fixed payment schedule, as established in each delivery order. The annual fixed payments may be adjusted based on annual energy audits that will be conducted on or about each anniversary of Government acceptance of the energy conservation measure (ECM) installation date for a specific awarded delivery order. In the event the annual energy audit reveals that the annual guaranteed energy savings (in both dollars and energy units) were not sufficient to cover the annual contractor payments for the annual period covered, then adjustments shall be made to the next annual year's payments for the shortfall and for the anticipated shortfall for the current year. These adjustments shall be made until the contractor can submit evidence, approved by the Contracting Officer for the delivery order, indicating that the performance efficiency problems causing the shortfall have been corrected. The annual payments made to the contractor, in any case, may not exceed the annual energy and maintenance savings created by the improvements made from installation of energy savings measures.

The RFP is divided into the twelve standard sections of a federal competitive procurement. The following table outlines these sections:

Section	Contents
B	Required Services/Prices
C	Description of Projects, Specifications
D	Packaging
E	Inspection Services
F	Delivery of Services
G	Contract Administration
H	Special Contract Requirements,
I	Referenced and Included Contract Clauses
J	RFP Attachments and Bid Site Specific Information
K	Representations, Certifications and other Offeror Statements
L	IDIQ Proposal Instructions, Conditions and Notices
M	Evaluation Factors for IDIQ Award

The proposal format is explained in Section L. The proposal is composed of three basic Volumes. Volume I contains general documents that must be completed by each offeror. In Volume II - Technical Proposal, the offeror will outline in detail (Part I) its experience in energy efficiency contracting and ability to organize and accomplish Section C outlined tasks when presented with a delivery order. Part II of this volume will ask the offeror to provide examples of how the offeror will accomplish this work by proposing specific ECMs for each of the three Super ESPC proposal sites. The Volume III - Price Proposal follows a similar format but requests information on the offeror's pricing structure in Part I and then asking that this structure be applied to the ECMs from the proposal sites in Part II. In summary, Part I of Volume II and III asks for the general approach and pricing the offeror will use on each delivery order and Part II of both Volumes asks that these parameters be applied to each of the proposal sites.

Due to the expected number of offerors for this solicitation all site specific technical price proposals must be based on the technical data library information (explained below) only. No facility access beyond the informational tours described below will be allowed. Specifically, the RFP is based on real sites, but in order to properly evaluate the proposals we have limited the scope and site conditions to those defined in the RFP. This has the effect of detaching the proposals from site conditions which may differ, or have changed, from those described in the RFP; but is necessary to ensure bids that can be evaluated with optimum objectivity. Furthermore, if site conditions are found to differ or have changed in any way, from the RFP, these differences will be worked out in the delivery order process.

See Sections L and M for complete details concerning the preparation and submittal of your proposal and its respective evaluation.

As explained in Section L.20, site tours have been planned in order to familiarize prospective offerors with the bid sites. As indicated in Section L these tours are not required in order to prepare the site specific proposals since the proposal is to be based only on the information contained in the site technical information packages. Since each tour group must be limited in size a number of tours are scheduled. You must complete the tour reservation form included in Section L in order to reserve a tour space. Each company will be limited to three tour participants in order to provide tour spaces for the anticipated number of offerors. The tour reservation form should be completed

and returned to the tour coordinator as soon as possible. The tours at the Mid-Atlantic region proposal sites will be held on December 15th and 16th, 1997, while the Northeast region site tours will be held on December 17 and December 19, 1997, respectively.

The identified proposal buildings and sites will be the first delivery orders placed under the awarded indefinite quantity contract(s). The technical library contains data on the identified buildings and sites that will be the first delivery orders placed under the awarded indefinite quantity contract(s). These data include building(s) and site information, energy use data, and information on existing energy-consuming systems. Due to the volume of the technical data and the variety of formats a technical library has been established at a 24-hour copy center in Washington, D.C.. Kinko's Copies will provide the technical data package upon request. Cost for the data package reproduction will be the responsibility of the offeror. The order instructions and contact information is located in Section L.22 of the solicitation.

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B.5 ORDER LIMITATIONS.

B.6 ORDERING. (OCT 1995)

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C.4 MEASUREMENT AND VERIFICATION OF ECM PERFORMANCE

C.5 INSTALLATION REQUIREMENTS FOR ECMs

C.6 OPERATION OF ECMs

C.7 MAINTENANCE OF ECMs

C.8 REPAIR OF ECMs

C.9 CONTRACTOR MAINTENANCE AND REPAIR RESPONSE TIME

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

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K.7 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS. (MAR 1996)

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

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PART I - THE SCHEDULE
SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 ITEMS BEING ACQUIRED/TOTAL PRICE (OCT 1991)

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, performance of the following items of work:

Provide Energy Savings Performance Contracting (ESPC) services for federal facilities located in the Department of Energy (DOE) Northeast and Mid-Atlantic regions, in accordance with Section C of this solicitation/contract, as follows:

Item 1 - Energy conservation services for Government facilities located in the seven (7) State Northeast region (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont).

Item 2 - Energy conservation services for Government facilities located in the six (6) State Mid-Atlantic region (Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia). NOTE: Washington D.C. is also a part of the Mid-Atlantic region.

Item 3 - Reports in accordance with "Reporting Requirements Checklist", located in Section J and the clause entitled "Uniform Reporting System" located in Section H.

TOTAL MAXIMUM CONTRACT VALUE, INCLUSIVE OF CONTRACTS ISSUED TO ALL AWARDEES, NOT TO EXCEED:

$1,500,000,000*

* Total maximum contract value is $750,000,000 per contract region.

B.2 REQUIRED SERVICES

The Government requires energy conservation services for Government facilities in the states identified in Clause B.1 and seeks to obtain these services using Indefinite-Delivery/Indefinite-Quantity (IDIQ)energy savings performance contract(s) (ESPCs).

The successful awardees will provide, at no capital cost to the Government, all labor, material, and equipment necessary to reduce energy and water consumption and provide cost savings at specific sites covered by delivery orders placed against the indefinite quantity contracts awarded. Contracted delivery order services may also include operations and maintenance services during a specific delivery order term, as required in the technical section of

this specification, the specific delivery order, and as proposed by the contractor and accepted by the Government.

B.4 52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(a) This is an Indefinite-Delivery/Indefinite-Quantity (IDIQ) contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".

© Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period.

B.5 ORDER LIMITATIONS.

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than **$150,000**, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract. The Government guarantees that a minimum of $150,000 worth of ESPC services shall be awarded to each contractor that receives an award for each region during the period of performance of the resulting contract(s). The $150,000 minimum may be met by a single order or by a combination of orders that exceed a total value of $150,000.

(b) Maximum order. The Contractor is not obligated to honor:

(1) Any order for a single item in excess of **$20,000,000**;

(2) Any order for a combination of items in excess of **$20,000,000**; or

(3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

© If this is a requirements contract (i.e., includes the Requirements

clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and © above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 7 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

B.6 ORDERING. (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders by an authorized Contracting Officer for a United States federal agency. Such orders may be issued beginning on the date of contract award through April 9, 2000. At the Government's discretion, the ordering period may end on this date, which is the conclusion of the five year legal authority that started with the issuance of the regulation on ESPC on April 10,1995. However, the Government intends to modify the contract at a future date to extend the ordering period.

(b) All delivery orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order and this contract, the contract shall control.

© If mailed, a delivery order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

B.7 REQUIRED IDIQ SCHEDULES

The IDIQ Schedules in Part III, Section J, Attachment A, of this contract shall be binding on the contractor(s) throughout the period of performance of the contract, and apply to all delivery orders issued against the contract(s). Following are descriptions of each of the five (5) schedules:

1) Schedule B-1 -- Indefinite Delivery/Indefinite Quantity (IDIQ) Contract: Schedule B-1 specifies the maximum mark-up that will be applied to all delivery orders issued under the contract.

2) Schedule B-2 -- Indefinite Quantity Contract: Schedule B-2 provides the maximum, fixed, annual percentage rate that, when added to the current Treasury Bill/Note rate 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 that shall apply to an individual delivery order shall be based on the reference

Treasury Bill/Note negotiated in the delivery order.

3) Schedule B-3 -- Installation Price: Schedule B-3 provides the elements of direct cost that compose installation price under the contract. Installation price elements will remain unchanged through the term of the contract.

4) Schedule B-4 -- Mark-up elements: Schedule B-4 provides the elements of mark-up under the contract. Mark-up elements will remain unchanged through the term of the contract.

5) Schedule B-5 -- Energy Savings Performance Period Price: Schedule B-5 provides the Energy Savings Performance Period (ESPP) price elements under the contract.

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 GENERAL REQUIREMENTS/PROJECT SCOPE

This contract is to acquire, for the region(s) identified in Clause B.1, under energy savings performance, Indefinite-Delivery/Indefinite Quantity (IDIQ) contract(s), energy conservation services to reduce energy and water consumption and associated utility costs (including operations and maintenance costs) as specified in each delivery order. The Contractor shall be responsible for providing all labor, material, and capital to install energy and water conservation projects as specified in each delivery order's term and providing operations and maintenance as specified within each delivery order. The scope of the IDIQ contract includes all Federal-owned facilities located in the region(s) defined in Clause B.1, unless otherwise restricted by each delivery order.

The cost of an ECM project must be covered by the reduced energy and related operation and maintenance cost savings incurred at the Federal-owned facility. The energy cost savings must be verified annually. The IDIQ contract may be used by authorized Federal agencies to acquire energy conservation measures. See Section H, Clause H.19 "OFFICIALS AUTHORIZED TO ISSUE DELIVERY ORDERS".

C.2 ENERGY CONSERVATION MEASURES (ECMs)

C.2.1 Types of Energy Conservation Measures

This contract and its delivery orders may include the following energy efficiency or renewable energy technology categories:

1. Boiler Plant Improvements, such as, but not limited to
   - boiler control improvements
   - upgrade of natural gas-fired boilers with new controls

2. Chiller Plant Improvements, such as, but not limited to
   - chiller retrofits or replacements
   - thermal energy storage

3. Building Automation System (BAS) / Energy Management Control System (EMCS), such as, but not limited to
   - HVAC upgrade from pneumatics to Direct Digital Control (DDC)
   - Upgrade or replace existing EMCS system

4. Heating, Ventilating, and Air Conditioning (not including boilers, chillers, and EMCS) such as, but not limited to
   - packaged air conditioning unit replacements
   - HVAC damper and controller repair or replacement
   - replace air conditioning and heating units with heat pumps

- window air conditioning replacement with high efficiency units
- cooling tower retrofits or replacements
- economizer installation
- fans and pump replacement or impeller trimming
- thermal energy storage
- variable air volume (VAV) retrofit

5. Lighting Improvements, such as, but not limited to
   - interior and exterior lighting replacements
   - lighting control improvements
   - occupancy sensors
   - LED exit sign installation
   - daylighting

6. Building Envelope Modifications, such as, but not limited to
   - insulation installation
   - weatherization
   - window replacement
   - reflective solar window tinting

7. Chilled Water and Chilled Water Piping Systems,Hot Water and Steam Distribution Systems, such as, but not limited to
   - hot water heaters
   - steam trap maintenance and replacement

8. Electric Motors, such as, but not limited to
   - motor replacement with high efficiency motors
   - variable speed motors or drives

9. Refrigeration, such as, but not limited to
   - replace ice/refrigeration equipment with high efficiency units

10. Electrical or Cogeneration Systems, such as, but not limited to
    - Natural Gas Fired Generator with Heat Recovery for Producing Steam

11. Renewable Energy Systems, such as, but not limited to
    - photovoltaic system installation
    - solar hot water system installation
    - wind energy system installation
    - passive solar heating

12. Electric Distribution Systems, such as, but not limited to
    - transformers
    - power quality upgrades

13. Energy related savings in Water and Sewer Conservation Systems
    - low-flow plumbing equipment
    - water efficient irrigation

- on-site sewer treatment systems

C.2.2 Restrictions on proposed ECMs.

ECMs installed by the contractor shall not do the following:

1. jeopardize the operation or environmental conditions of dedicated computers or computer rooms, or other environmentally controlled areas,

2. increase water consumption; e.g., once through fresh water cooling systems (note: evaporative cooling technologies may be considered where environmentally appropriate),

3. cogeneration or electrical generating project that produces electrical power exceeding that required by Government facilities,

4. result in an adverse effect upon the quality of the human environment (e.g. requires the preparation of an Environmental Impact Statement) or violates any Federal, State, or local environmental protection regulations,

5. degrade performance or reliability of existing Government equipment,

6. reduce extra capacity that was intentionally included for future growth, mobilization needs, safety, or emergency back-up,

7. violate current versions of national (i.e., National Electric Code, Uniform Building Code, etc.), State or local building codes), or

Any additional restrictions on ECMs will be specified in delivery orders issued under the contract.

C.2.3 Contract Requirements for ECMs

Installed ECMs shall comply with the requirements of each delivery order. Contract requirements also incorporate all Government approved contractor submittals, including: equipment design and installation specifications, compliance with codes and standards, design drawings, installation schedules, startup and testing submittals incorporated in delivery orders issued under the contract.

C.3 FACILITY PERFORMANCE REQUIREMENTS OF ECMs

Installed ECMs shall meet the performance requirements specified below unless stated otherwise in each delivery order.

C.3.1 Environmental & Lighting Conditions: Modifications to building lighting systems and environmental control systems shall not be permitted to exceed the ranges for Standards of Service specified in Paragraph C.3.2. Where automated control of lighting or environmental conditions are to be installed, the occupants must have the ability to override the system to accommodate required overtime work.

C.3.2 Standards of Service: Installed ECMs shall comply with the Standards of Service required for facilities as specified in each delivery order. The standards of service will include acceptable temperature and humidity ranges, air quality parameters, lighting levels, and other related factors.

C.3.2.1 HVAC Systems

a. Occupied Areas:

1) Comfort Range:

68° - 78°F dry bulb
30% - 60% relative humidity

2) In general occupied areas (except computer rooms) the following setbacks may be performed. During unoccupied periods during the heating season the temperature maybe reduced to 55°F dry bulb. During unoccupied periods cooling periods, the HVAC system may be turned off. However, the system must be designed so that it will restart if the temperatures approach levels that could damage equipment. In any case, temperatures must be restored to the 68° - 78°F dry-bulb range by the start of the next occupied period.

3) Outside air cannot be reduced below the quantities cubic feet per minute (CFM) per person found in ASHRAE 62-89 (or most current version), "Ventilation for Acceptable Indoor Air Quality".

b. Computer Rooms

1) Operating Range:

70° - 74°F dry bulb (or based on Mfr. specs)
45% - 55% relative humidity

2) No environmental control system temperature setbacks will be allowed in computer rooms.

c. The HVAC control system must be compatible with the present energy management control system. Thermostatic tolerance must be within plus or minus one degree Fahrenheit for all areas listed in C.3.2.1b and plus or minus two degrees Fahrenheit for areas in C.3.2.1a. Any system temperature change required for the operating rooms must not exceed 1 degree F in five (5) minutes.

C.3.2.2 Lighting Systems

a. Except where special circumstances exist, illumination levels shall be maintained as near as practical to the following standards:

1) 50 foot-candles at work station surfaces, measured at a height of 30 inches above floor level during working hours (For visually difficult or critical tasks, additional lighting may be authorized by the individual agencies administering each delivery order).

2) as near as practical to 30 foot-candles in work areas during working hours, measured 30 inches above floor level.

3) as near as practical to 10 foot-candles, but not less than 1 foot-candle in non-work areas during working hours (normally this will require levels of 5 foot-candles at the elevator boarding areas, a minimum of 1 foot-candle at the middle of corridors and stairwells as measured at the walking surface and 10 foot-candles in storage areas.

4) Refer to individual delivery orders for special requirements.

b. Additional performance requirements of lighting systems:

1) Replaced fixtures shall be equipped with lamps that incorporate the latest energy conservation technologies which are available and have a proven track record and meet our standards of service requirements (for example, T-8 lamps).
2) Total Harmonic Distortion of electronic ballasts used in fluorescent fixture retrofits shall not exceed 20%.
3) Occupancy sensors shall be infrared and motion sensing.
4) Light fixture lenses shall be A12.125

c. Installation of T-12 lamps shall not be allowed.

d. Parabolic louvers are preferred to reduce glare on computer monitor screens.

C.4 MEASUREMENT AND VERIFICATION OF ECM PERFORMANCE

This section provides an overview of the different measurement and verification (M&V) procedures and options that the contractor may be required to follow at different Federal facilities where they install ECMs. Each delivery order awarded shall specify the specific M&V requirements and procedures that shall apply to the delivery order based on various factors such as type of ECM, projected value of energy savings, certainty/uncertainty of savings being achieved, and the intended risk allocation between the Federal agency and the contractor.

The contractor shall comply with the version of the DOE/FEMP M&V Guidelines for Federal Energy Projects in effect at the time of delivery order award.

C.4.1 M&V General Approach

Measurement and verification (M&V) of projects has two components:

1. Confirming that (a) the baseline conditions were accurately defined and; (b) the proper equipment/systems were installed and they have the potential to generate the predicted savings. This confirmation verifies the ECMs potential to perform.

2. Determining the actual energy savings achieved by the installed ECM which verifies the ECMs performance.

The general approach to verifying baseline and post-installation conditions involves inspections, spot measurement tests, and/or commissioning activities.

The general approach to determining energy savings involves comparing energy use associated with a facility, or certain systems within a facility, before and after installation of the ECM. The before case is called the baseline. The after installation case is called the post-installation case. Therefore,

Energy savings = baseline energy use - post installation energy use

As the ESPC program is based on "pay for performance", each ECM or site covered by a delivery order has a site-specific verification plan to determine the achieved savings. For each site, the project baseline and post installation energy use are defined using a combination of metering, billing analysis and/or engineering calculations. In addition, values for certain factors affecting energy use and savings, and that are beyond the control of the contractor, may be stipulated by the Federal agency.

After each project is completed, the contractor submits a report that defines projected energy savings for the first year. Typically, first year payments to the contractor will be based on the projected savings values submitted in the report. The post installation report must be accepted and approved by the Federal agency.

For the remaining years of the delivery order term, the contractor provides annual (or at some other regular interval) "true-up" reports. These reports include inspection documentation of the installed equipment/systems and (perhaps) updated savings values using data obtained and analyzed during each year of the delivery order. As necessary, previous year's payments would be reconciled based on the results of the annual report. Future year's payments would be calculated based on information in the annual report.

C.4.2 Baseline Energy Use

Baseline conditions may be defined by either the Federal agency or the contractor. If the baseline is defined by the Federal agency then the contractor will have the opportunity to verify the baseline. If the baseline is defined by the contractor then the Federal agency will verify the baseline.

C.4.3 Post Installation Energy Use - Initial Verification

Post installation energy use commissioning will be based, in part, on initial performance verification by the contractor and the Federal agency that the proper equipment/systems were installed, are operating correctly, and have the potential to generate the predicted savings. Verification methods may include visual inspections, spot or short-term metering, and engineering calculations.

System/equipment commissioning is expected to be completed by the contractor.

C.4.4 Post-Installation Energy Use - Determining Energy Savings Performance and Regular Interval Verification

The contractor and Federal agency, at defined intervals during the term of the delivery order, will verify that the installed equipment/systems have been properly maintained, continue to operate correctly, and continue to have the potential to generate the predicted savings.

There are numerous factors that can affect energy savings during the term of a delivery order, such as weather, operating hours, ton-hours, and heat exchanger fouling. In general, but not always, an ESPC delivery order objective will be to adjust the baseline energy use up or down for factors beyond the control of the contractor (e.g., building occupancy, weather) and adjust the post installation energy use for contractor-controlled factors (e.g., maintenance of equipment efficiency).

Therefore, in order to calculate energy savings, the Federal agency may, under certain circumstances, stipulate the value of factors that may vary during the term of the delivery order. For example with a lighting project, the Federal agency would measure lighting fixture power draw before and after the retrofit and then stipulate the operating hours of the lighting system. Or, with a chiller replacement project the Federal agency would measure the before and after chiller performance curve and then stipulate the ton hours of cooling at the facility for calculation of annual energy savings.

For other projects, continuous or regular interval measurements may be collected throughout the term of the delivery order to determine energy savings. For example with a Variable Speed Drive

(VSD) project, post installation motor energy use could be continuously metered.

C.4.5 M&V Option and Method Required for Specific Project

The delivery order shall specify the M&V option(s) and method(s) that will be used for the project(s) or ECMs covered by the delivery order as well as any other specific details relevant to the M&V of the projects(s) or ECMs.

C.4.6 M&V Activities

The contractor shall perform the following required M&V activities:

1. Define a site-specific plan for the particular project being installed once the project has been fully defined and the detailed audit is completed; this will occur before the delivery order is awarded and the plan will be incorporated into the delivery order.

2. Define pre-installation baseline including (a) equipment/systems, (b) baseline energy use, © system performance factors (e.g., lighting levels, temperature setpoints, time clock settings, etc.), and/or (d) factors that influence baseline energy use, which may include site surveys, spot--short term or long term metering, and/or analysis of billing data. The definition of pre-installation baseline may occur before or after the delivery order is awarded.

3. Define post installation including (a) equipment/systems, (b) post installation energy use and/or © factors that influence post installation energy use which may include site surveys or spot--short-term or long-term metering, analysis of billing data, and/or engineering calculations.

4. Conduct annual M&V activities to verify operation of the installed equipment/systems and/or calculation of current year's energy savings.

C.5 INSTALLATION REQUIREMENTS FOR ECMs

C.5.1 ECM Installation Plans

a) The contractor shall prepare and submit ECM installation plans to the Federal agency for review and approval prior to starting ECM installation in accordance with the Reporting Requirements Checklist. Installation plans shall be certified by a registered engineer to assure compliance with applicable building codes and Federal agency design standards. The delivery order will specify site specific requirements of ECM installation plans. The

contractor is responsible for the technical adequacy of its work. Acceptance of the installation plans by the Government shall not relieve the contractor for adequacy of its design and installation work.

b) The Installation plan due date will be specified in the delivery order. Upon approval of the installation plan, bonds will be required in accordance with H.37.

c) ECM installation plans shall be prepared and include, at least the following, unless otherwise specified in the delivery order:

1. Manufacturer's Data. For all ECM equipment to be installed the contractor shall provide the manufacturer's descriptive literature of equipment including drawings, diagrams, performance and characteristic curves, and catalog cuts.

2. Shop Drawings. Shop drawings shall be prepared by the contractor, subcontractor, or any lower-tier subcontractor showing in detail:

   - The installation (i.e., form, fit, and attachment details) of the interface between ECM equipment and existing Government equipment.
   - The location of installed equipment on building floor plans.
   - Certification of ECM Compliance with Building Codes and Standards. The contractor shall provide registered engineer certification that ECMs comply with all applicable building codes and standards. ECM installation plans submitted to the contracting officer without evidence of the professional engineer (PE) certification shall be returned for resubmission.

3. Planned Service Interruptions. If any utility services must be discontinued temporarily to install work, such interruptions shall be described and indicated on the project installation schedule (see subparagraph 6 below). The description shall include the length of the interruption, its time (date, day of week, time of day, etc.), and a justification.

4. Site Plan and Compliance with Base Exterior Architectural Plan. If an ECM involves the installation of facilities or exterior structures, the contractor shall provide a site plan showing its location. The Contractor shall also provide a plan and elevation drawings of the facility or exterior structure showing its size and exterior appearance.

5. Acquisition of Permits. For any ECM installation requiring permits from regulatory agencies (i.e., hot-work permit for

welding), the contractor shall provide its plan and schedule for acquiring such permits.

6. Installation Schedules. The installation schedule shall show the order in which the contractor proposes to perform the work and the dates on which the contractor contemplates starting and completing all major milestones (including acquiring materials, equipment, permits). The schedule shall be in a form of a progress chart of suitable scale to indicate the amount of work scheduled for completion by any given date during the installation period.

7. Draft Operations and Maintenance. (O&M) plans and procedures as required in Sections C.6.3 and C.7.3.

C.5.2 Design and Construction Standards

1. The Delivery Order issued under the indefinite quantity contract(s) awarded will specify design and construction applicable to site or agency specific facility requirements. As a minimum, all ECMs, work, equipment and materials required for ECM installation shall comply with the most recent issue of the following standards:

   - National Electric Code (NEC).
   - National Electrical Safety Code (NESC).
   - National Fire Protection Association (NFPA) Standards including, but not limited to NFPA 101 - Life Safety Code.
   - U.S. Department of Labor - Occupational Safety and Health Administration (OSHA) Standards.
   - National Electrical Manufacturers Association (NEMA).
   - Underwriters Laboratory (UL).
   - American Institute of Architects (AIA) Masterspec
   - Other design standards required by the ordering Federal Agency.

2. No requirement of this solicitation shall supersede applicable regulations, local codes and/or standards. Any violation of such regulations and standards shall be brought to the attention of the Contracting Officer for clarification prior to proceeding with the work.

3. If conflicts between codes and/or standards exist, the Contracting Officer's Representative and applicable authority having jurisdiction shall determine the appropriate code to follow.

C.5.3 ECM Quality Control Inspection Program

a) The contractor shall be responsible for quality control during installation of ECMs. The contractor shall inspect and test all work performed during ECM installation to ensure compliance with

the delivery order's performance requirements. The contractor shall maintain records of inspections and tests, including inspections and tests conducted by or for utility or other regulatory agencies. The contractor shall prepare a Quality Control Inspection Program for review and acceptance by the Government. The ECM Quality Control Inspection Program shall be prepared and submitted with the ECM Installation Plan in accordance with requirements set forth in the delivery order awarded.

b) ECM Installation Quality Control Inspection Program shall detail the procedures, instructions, and reports that ensure compliance with the delivery order and this indefinite quantity contract. This plan shall include as a minimum:

1. The quality control organization, in chart form, showing the relationship of the quality control organization to the contractor's organization.

2. Names and qualifications of personnel in the quality control organization.

3. Area of responsibility and authority of each individual in the quality control organization.

4. A listing of outside organizations, such as testing laboratories, architects, and consulting engineers that will be employed by the Contractor, and a description of the services these firms will provide.

5. Procedures for reviewing all shop drawings, samples, certificates, or other submittals for delivery order and indefinite quantity contract compliance, including the name of the person(s) authorized to sign the submittals for the Contractor, as complying with the delivery order and indefinite quantity contract's requirements.

6. An inspection schedule, keyed to the installation schedule, indicating necessary inspections and tests, the names of persons responsible for the inspections and tests, and the time schedule for each inspection and test.

7. The procedures for documenting quality control operations, inspection, and testing, with a copy of all forms and reports to be used for this purpose. The contractor shall include a status log listing all submittals required by the inspection plan and stating the action required by the Contractor or the Government. The contractor shall also prepare and maintain a testing plan that shall contain a listing of all tests required by the delivery order or indefinite quantity contract's requirements.

C.5.4 Environmental Protection

ECMs shall cause no adverse impacts upon the quality of the human environment. Impacts on air quality (pollutants, noise level, and odors or fumes) and potable water use are examples of various areas of concern at the project site. Any planned building modifications shall comply with the National Environmental Policy Act (NEPA) and other applicable Federal, state, and local environmental protection regulations. Refer to the Section H Clause entitled Environmental Protection. The delivery order will identify specific known hazardous waste handling and storage requirements (e.g., PCB ballasts removed from lighting fixture retrofits).

C.5.5 Service Interruptions

1. For any planned utility service interruptions, the Contractor shall furnish a request to the Contracting Officer's designated representative for approval at least fifteen (15) working days in advance or as specified in the delivery order. The request shall identify the affected buildings and duration of planned outage.

2. The Government will coordinate with affected tenants and customers as applicable.

3. If the discontinued service is due to any emergency breakdown, the Contractor shall notify the Contracting Officer's designated representative as soon as possible and the Government will notify those affected tenants and customers as applicable.

4. Federal agencies may have additional requirements that may apply to specific delivery orders. These additional requirements may include liquidated damages for violations of service interruption provisions as may be specified in each particular delivery order.

C.5.6 As-Built Drawings

After completion of installation and Government acceptance of installed ECMs, the Contractor shall submit as-built drawings to the Contracting Officer or its designated representative in accordance with agency standards or specifications identified in the delivery order.

C.6 OPERATION OF ECMs

C.6.1 Contractor operations work includes all work and costs associated with operating installed ECMs. The operations work effort shall include operations tasks at specific stations, continuous or periodic equipment monitoring, and minor on-line equipment adjustments required to achieve all facility and energy conservation performance requirements of this contract.

C.6.2 The contractor shall be responsible for assuring the proper operation of all ECMs installed, specific operation responsibilities will be specified in the Delivery Order. Installed ECMs shall include all contractor installed equipment and those portions of Government equipment which have been modified or replaced to achieve proposed ECM performance. Examples of exceptions that may be specified in a delivery order are:

1. If the new operations work requirement for Contractor installed ECMs is similar to an existing operations work requirement for Government-owned equipment and does not have an impact on Government resources, the Contractor may request the Government in its proposed ECM to perform operations work on Contractor-installed equipment. The Government reserves the right not to accept operations work on installed ECM.

2. The Contractor finds it advantageous and proposes to assume responsibility for an operation of Government equipment to ensure that the ECM will be implemented properly to reduce energy consumption. Any operations work provided by the contractor on Government-owned equipment shall be at the contractor's expense.

3. The Government currently uses bargaining unit employees, contracted services, or in-house labor and considers it advantageous to retain specified operations functions of the installed ECMs.

C.6.3 When the implementation of an ECM results in a change in an existing operations work affecting Government or contractor equipment, the Contractor shall prepare a new written operations work procedure for approval by the Government. The due date for the operations work procedure will be specified in the delivery order. The Contractor shall train Government personnel in the new approved operations work procedure. The Government will permit its personnel to attend training sessions at reasonable times on the specific project site's premises.

C.6.4 The Government will use and operate government-owned equipment, and contractor equipment if Government assumes proposed operations work in C.6.2(1), C.6.2(3) or C.7.2.1 below, in accordance with operating procedures provided by the Contractor and approved by the Contracting Officer. The Contractor shall monitor equipment performance.

C.6.5 The Government will not move, turn off, or otherwise change any Contractor-owned equipment without the consent of the Contractor, unless such action is in accordance with the operation procedures provided by the Contractor; or if it is necessary in an emergency to prevent loss of life, injury or

damage to property, or severe discomfort to Government personnel, occupants, or patients.

C.7 MAINTENANCE OF ECMs

C.7.1 Maintenance work includes all work and costs associated with maintaining the delivery order's specific site energy producing and consuming systems. Maintenance work includes periodic equipment inspections, tests, calibrations, preventative maintenance tasks, and corrective maintenance actions required to ensure systems operate as intended.

C.7.2 The contractor shall be responsible for assuring the proper maintenance of all ECMs installed. Installed ECMs shall include all contractor installed equipment and those portions of Government equipment that have been modified or replaced to achieve proposed ECM performance. Specific maintenance functions will be specified in the Delivery Order. Examples of exceptions that may be specified in a Delivery Order are:

1. If the maintenance work is similar to an existing maintenance work requirement for Government-owned equipment and does not impact on Government resources, the Contractor may request the Government in its proposal to perform maintenance work on Contractor-owned equipment. The Government reserves the right to not accept the proposed responsibility for maintenance work on installed ECMs. If the Government accepts ECM maintenance responsibility, the Government reserves the right to provide the maintenance work in accordance with its own schedule rather than a Contractor-suggested schedule.

2. The Contractor proposes to assume responsibility for maintenance on Government-owned equipment in order to achieve proposed ECM performance. The Contractor may propose to provide either total maintenance or a level of maintenance needed to augment the existing maintenance provided by the Government. Any maintenance work provided by the Contractor on government-owned systems or equipment shall be at the Contractor's expense.

C.7.3 When the implementation of an ECM changes existing equipment maintenance schedules, the Contractor shall prepare a new written maintenance work procedure for approval by the Government. The due date for the maintenance work procedure will be specified in the delivery order. The Contractor shall train Government personnel in the new approved maintenance work procedure. The Government will permit its personnel to attend training sessions at mutually agreed to

times on the specific project site's premises.

C.7.4 The Government will maintain government-owned equipment, and contractor equipment if the Government assumes the proposed operations work in C.7.2, 1. above, in accordance with maintenance procedures provided by the Contractor and approved by the Contracting Officer.

C.7.5 The Government will not move, turn off, or otherwise change any Contractor-owned equipment without the consent of the Contractor, unless such action is in accordance with the maintenance procedures provided by the Contractor, or if it is necessary in an emergency to prevent loss of life, injury or damage to property, or severe discomfort to Government personnel, visitors, occupants, or patients.

C.8 REPAIR OF ECMs

C.8.1 Repair work includes all labor, material and equipment associated with the replacement or rebuilding of facilities, systems and equipment that have failed.

1. Contractor-Owned Items. When Contractor-owned facilities, systems, and equipment fail, the Contractor shall be responsible for repairs.

2. Government-Owned Items. When Government-owned facilities, systems, and equipment fail, the Government will be responsible for repairs within a reasonable time period. The Contractor shall provide repairs, at no expense to the Government, if the Government-owned facilities, systems, and equipment failure is a result of actions on the part of the Contractor. The Contractor shall make repairs within a period of time as specified in the delivery order. If the Contractor elects to assume repair responsibilities for Government-owned systems or equipment as part of an ECM proposal, the delivery order shall include a listing of the types of repairs that will be the contractor's responsibility.

C.9 CONTRACTOR MAINTENANCE AND REPAIR RESPONSE TIME

C.9.1 The contractor shall establish a point of contact (name and phone number) for use by the Government in providing response to Contractor equipment failures. The point of contact shall be available as specified in the delivery order throughout the delivery order's term. Initial telephone response to repair call messages shall be within the time frame specified in the delivery order. If a site visit is needed to repair equipment, repair personnel shall arrive on site within the time frame specified in the delivery order of the initial telephone response for non-emergency repairs or within the time frame specified within the delivery order for emergency repairs. Although normal contractor access is during the normal work hours specified for

the specific site in the delivery order, the contractor may be granted 24-hour per day access to the buildings for emergency work, unless otherwise restricted in the delivery order.

C.9.2 Emergency maintenance and repair work is defined as maintenance or repair necessary to correct an imminent failure of Section C.3 standards of service or any action necessary to protect the safety or health of the facility occupants, unless otherwise specified in the delivery order.

C.9.3 In the event the contractor fails to respond as required in the delivery order or in the event of an emergency, the Government may perform emergency repairs to contractor-owned equipment. The contractor shall hold the Government harmless in such cases where the contractor fails to respond in emergencies. In such situations the contractor will enter into negotiations, in good faith, with the Government for a downward equitable adjustment in the contractor payments.

C.10 OPERATIONS AND MAINTENANCE MANUALS AND TRAINING FOR ECMs

C.10.1 Operations and Maintenance Manuals

The contractor shall furnish operation and maintenance (O&M) manuals and recommended spare parts lists for O&M of the contractor-installed ECMs and modified Government equipment. O&M plans and spare parts lists shall be submitted per requirements set forth in the delivery order.

C.10.2 Government Personnel Training for ECMs

1. Thirty (30) days prior to the installation completion, the Contractor shall train Government personnel and/or Government Operation and Maintenance (O&M) contractors as required to operate, maintain, and repair ECM equipment and systems in the event of emergencies.

2. The Contractor shall train Government personnel and/or Government O&M contractors to operate, maintain, and repair ECM equipment ninety (90) days prior to the end of delivery order's term.

   a. . Training Program - General Requirements: The contractor shall provide a training program for Government personnel and/or Government O&M contractors as specified below. The program shall provide instruction on operation, troubleshooting, maintenance, and repair of ECMs. Training shall include both a classroom phase and a practical application phase. The course material shall include the operation and maintenance plans and manuals. The program shall be conducted at the delivery order's

specified site(s) in facilities provided by the Government.

C.11 GOVERNMENT PROJECTS

There shall be no restriction on Government projects of any kind including those that may provide energy conservation equipment, the removal of existing energy consuming equipment, or the addition of new energy consuming equipment for mission needs. The Government shall notify the Contractor when Government projects are to be implemented which may impact the installation or operations of Contractor installed ECMs. If the Government project affects determination of annual energy savings, then a baseline adjustment will be negotiated and incorporated into the delivery order by modification.

C.12 UTILITY ENERGY EFFICIENCY/RENEWABLE PROJECT FINANCIAL INCENTIVES

The implementation of an ECM may result in the Government being eligible for a financial incentive from the serving utility company. Unless otherwise specified in the delivery order, the Contractor shall be responsible for preparing any and all documentation required to apply for any applicable financial incentive. The Contractor shall submit the utility company application and documentation to the Contracting Officer for Government submission to the serving utility representative. When submitting any utility program application, the Contractor shall also submit a proposal as specified in the delivery order to address disposition of revenues acquired from the serving utility, which shall be negotiated with the Government.

SECTION D - PACKAGING AND MARKING

D.1 PACKAGING (APR 1984)

Preservation, packaging, and packing for shipment or mailing of all work deliverable hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rates.

D.2 MARKING (APR 1984)

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

(1) Identifies the contract by number under which the item is being delivered.

(2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).

(3) Indicate whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

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

D.3 RESPONSIBILITY

The contractor shall be responsible for acquiring, shipping, marking, packaging, storing, and installing supplies, equipment, and materials required to implement ECMs accepted and approved by the contracting officer.

D.4 SHIPMENTS

D.4.1 All shipments to and from the specific site covered by a delivery order shall be at the contractor's expense. The contractor shall supervise the packing, unpacking, and placement of equipment and systems and shall do so without charge to the Government.

D.4.2 Delivery of Data Items: Any reports or other products to be furnished hereunder shall be adequately packaged and marked to ensure safe delivery. All products must be clearly marked to identify the contents, the sender, the delivery order number, the indefinite quantity contract number, and the individual/office to which the reports or other products are being sent.

D.5 DELIVERY AND STORAGE

The contractor shall properly store, adequately protect, and carefully handle all equipment and materials to prevent damage. Delivery orders may specify any special State and local requirements for hazardous waste handling, storage, shipping, and disposal as required for known or anticipated generation of hazardous waste. See Clause H.27 "DISPOSAL".

SECTION E - INSPECTION AND ACCEPTANCE

E.1 INSPECTION (JAN 1990)

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative and will be conducted in accordance with the clauses of that title found in Section E below.

E.2 ACCEPTANCE (FEB 1987)

Acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer, or any duly designated representative.

E.3 52.246-12 INSPECTION OF CONSTRUCTION. (AUG 1996)

(a) Definition.

"Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

© Government inspections and tests are for the sole benefit of the Government and do not:

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (I) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may:

(1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor; or

(2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(I) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

E.4 INSPECTION AND ACCEPTANCE OF INSTALLED ECMs

Unless otherwise specified in the Delivery Order the contractor shall arrange for the inspection of construction work and construction oversight to verify that the energy efficiency equipment and/or system modifications are properly supplied, as designed and specified, and installed in accordance with the approved installation plan, any applicable standards and codes , the Delivery

Order specifications, and in a manner that will provide the intended long term function, energy savings and performance of the equipment. Any monitoring and verification equipment and systems installed shall be consistent with requirements defined in the approved M&V Plan. All start-up and testing shall be conducted in the presence of the Contracting Officer or the Contracting Officer's designated representative. Written acceptance of the project will be provided by the Contracting Officer or the Contracting Officer's designated representative within 10 days of satisfactorily completing all required correction actions.

a. The Government and contractor shall jointly inspect ECMs. Inspections will be conducted simultaneously, when possible, by both the Government and contractor representatives to facilitate mutual agreement on satisfactory delivery order performance.

b. The contractor shall notify the contracting officer fifteen (15) working days in advance of ECM installation completion (or such other notification period as may be specified in a delivery order) by submitting a written request for inspection. The request shall identify the location, describe the ECMs installed, schedule testing of ECMs for verifying energy savings performance, and recommend dates for inspection (if any).

c. The Government shall provide written notification to Contractor of scheduled date and time for Government inspection within ten (10) working days after receipt of inspection notification and request (or such other period as may be specified in delivery order).

d. Each delivery order may include additional agency specific or site specific inspection and acceptance requirements. The Contractor shall review each delivery order to determine the applicable inspection and acceptance requirements for that delivery order.

E.5 52.246-4 INSPECTION OF SERVICES - FIXED-PRICE. (AUG 1996)

(a) Definitions.

"Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

© The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may:

(1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(2) terminate the contract for default.

E.6 WARRANTY OF SERVICE (FAR 52.246-20) (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, as partial or complete performance of the contract.

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

b. Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 30 days from the date the defect or nonconformance is detected by the Government. This notice shall state either (1) the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Government does not require correction or reperformance.

c. If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.

d. If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

SECTION F - DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE OF INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ) CONTRACT AND DELIVERY ORDERS

The contractor shall be required to commence work under this contract within [number of days specified in the delivery order] after the contractor receives the notice to proceed, prosecute the work diligently and complete the installation of all energy conservation measures in accordance with the schedule established in the delivery order. The total contract period will not exceed 25 years.

F.1.1 The IDIQ contract delivery order period shall consist of a maximum basic performance period of twenty-five (25) years with an ordering period for placement of delivery orders beginning on the date of contract award through April 9, 2000.

F.1.2 The delivery order's term shall be specified in each delivery order. The delivery order term is comprised of the installation time for all ECMs after award (in months), and the energy savings performance period (in years). In no event shall a delivery order's contract term exceed twenty-five (25) years after the award of the IDIQ contract.

F.3 PRINCIPAL PLACE OF PERFORMANCE (APR 1984)

The principal place of performance will be specified in each delivery order.

F.4 DELIVERABLES

The contractor shall submit deliverables as specified in the Reporting Requirements Checklist, Attachment C.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 CORRESPONDENCE PROCEDURES

To promote timely and effective administration, correspondence submitted under this contract shall be subject to the following procedures:

(a) Technical Correspondence. Technical correspondence (as used herein, this term excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions of this contract) shall be addressed to the DOE Contracting Officer's Representative (COR), with an information copy of the correspondence to the DOE Contracting Officer (see below paragraph © and to the cognizant Government Contract Administration Office (if other than DOE) designated in Block 24 of the Contract Form (Solicitation, Offer, and Award Standard Form 33) of this contract or if a Standard Form 26 is used (Award/Contract) the Government Contract Administration Office designated in block 6 of this contract.

(b) Other Correspondence.

(1) If no Government Contract Administration Office is designated on the Contract Form of this contract, all correspondence, other than technical correspondence, shall be addressed to the DOE Contracting Officer, with information copies of the correspondence to the DOE COR, and to the DOE Patent Counsel (where patent or technical data issues are involved).

(2) If a Government Contract Administration Office is designated on the contract form of this contract, all administrative correspondence, other than technical correspondence, shall be addressed to the Government Contract Administration Office so designated, with information copies of the correspondence to the DOE Contracting Officer, DOE COR, and to the DOE Patent Counsel where patent or technical data issues are involved).

© The DOE Contract Specialist for the contract is located at the address in (d) below and is as follows:

Contract Specialist: Steven C. Jones
Telephone Number : (202)426-0060
FAX Number : (202)426-0168
E-mail address : steven.jones@hq.doe.gov

The Contractor shall use the DOE Contract Specialist as the focal point for all matters regarding this contract except technical matters (see (a) above for definition of technical matters).

(d) DOE Contracting Officer Address. The Contracting Officer address is as follows:

Contracting Officer (Do not use name of Contracting Officer)

U.S. Department of Energy
Headquarters Procurement Services
Program Services Division, HR-542
1000 Independence Avenue, S.W.
Washington, D.C. 20585
ATTN: DE-[***]

1) Administration of this IDIQ contract will be performed by the U.S. Department of Energy.

2) Administration of each delivery order will be performed by the contracting officer for the delivery order.

(e) Identification of Correspondence.

1) All correspondence and data submitted by the contractor under this IDIQ contract shall reference the contract number.

2) All correspondence and data submitted by the Contractor under a delivery order shall reference this contract number and the delivery order number.

G.2 BILLING INSTRUCTIONS

(a) The Contractor shall submit the original and three copies of invoices or vouchers in accordance with the Payments provisions of this contract to:

Department of Energy
Office of Headquarters Accounting Operations
Accounts Payable Division
P.O. Box 500
Germantown, MD 20875-0500

or to the billing address specified in individual delivery orders.

(b) Each invoice or voucher submitted shall include the following:

(1) Contract Number
(2) Contractor Name
(3) Date of Invoice
(4) Invoice Number
(5) Amount of Invoice
(6) Period Covered or Items Delivered
(7) Cumulative Amount Invoiced to Date

Additional invoice/voucher formatting requirements can be found in Section G.3.2 "Invoice Format".

G.3 INVOICES

G.3.1 Start of Invoice Submittals

1. The contractor may submit single invoices for ECM payments after the first full month at the end of the month for which the energy cost savings accrue, where all ECMs have been installed and accepted (ECMs must be successfully operational for a 30-day test period, unless otherwise specified in the delivery order). The Contracting Officer's Representative will make the determination of whether the ECMs have been performed in a satisfactory manner for the 30 day period.

2. In return, the contractor will receive payment based on the guaranteed annual cost savings from its installed energy conservation measures (ECMs) for a specific awarded delivery order. The contractor shall receive monthly payments based on the annual fixed payment schedule, as established in each delivery order [column (b) of Schedule H-4]. Any credits becoming due to the Government may be applied against the contractor's subsequent invoice with appropriate information attached.

G.3.2 Invoice Format

1. Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original").

2. The invoices shall be mailed to the address specified in each delivery order.

3. The invoice must include the following:

   a. Name and address of the contractor

   b. Invoice date

   c. Contract number and Delivery order number

   d. Name and address of the individual to whom payment is to be sent (must be the same as that in the contract or on a proper notice of assignment)

   e. Name (where practicable), title, phone number, and mailing address of person to be notified in the event of an improper invoice

   f. Monthly payment amount equal to 1/12 of annual contractor payment less any adjustments for previous year's energy savings shortfall and anticipated ECM performance shortfall for the current year as a result of the annual energy audit

   g. Any other information or documentation required by the contract or delivery order in accordance with the site specific M&V plan.

G.4 PAYMENT TO THE GOVERNMENT FOR ANNUAL COST SAVINGS SHORTFALL

If the actual cost savings in any year of performance of a delivery order is less than the guaranteed annual cost savings set forth in Schedule H-4 for the delivery order, the Contractor shall begin reimbursement to the Government for the shortfall within thirty (30) days after agreement has been reached on the annual energy audit results. Reimbursement of the Government overpayment of annual contractor payments due to annual cost savings shortfall may be made by deductions from the contractor's future invoices. However, direct reimbursement to the Government, by the contractor, is the preferred payment method.

Contractor failure to achieve the guaranteed annual cost savings specified in Schedule H-4, column (a) for the delivery order during a given year may result in a downward adjustment of monthly payments to the Contractor for the next year. The downward adjustment shall reduce payments by the shortfall determined by the annual energy audit for the previous year's payments and a reduction for the anticipated shortfall for the current year. The reduction for the current year's anticipated shortfall shall continue until the Contractor has submitted evidence that the technical problem creating the shortfall has been fixed. This evidence shall be submitted to the DOE Contracting Officer or the authorized Federal agency Contracting Officer for the delivery order for review and approval prior to modifying the adjustment for the current year.

This remedy is in addition to any other remedy the Government may have under the contract, delivery order, or under the law, including its right to terminate for default.

G.5 DOE CONTRACTING OFFICER'S REPRESENTATIVE (COR) ADDRESS (JAN 1990)

(a) The COR's address is as follows:

U.S. Department of Energy
ATTN: [***]
Office Symbol: [***]
1000 Independence Ave., S.W.
Washington, D.C. 20585
Telephone Number [***]

(b) The Contractor shall use the COR as the point of contact on technical matters (See the Correspondence Procedures clause, above, for definition), subject to the restrictions of the clause entitled "Technical Direction" located in Part I, Section H.

G.6 CONTRACT ADMINISTRATION FOR THE GOVERNMENT

G.6.1 The Contracting Officer for the indefinite quantity contract shall designate authorized representatives for administration of the indefinite quantity contract by providing the contractor with the authorized representative's name, code, telephone number, telex

number, and fax number.

G.6.2 The Contracting Officer for the indefinite quantity contract is the only individual that may designate another activity or activities to issue delivery orders under this indefinite quantity contract. The Contracting Officer shall modify this contract whenever the designated activity or activities changes.

G.6.3 The Contracting Officer for a delivery order shall designate authorized representatives for administration of the indefinite quantity contract by providing the contractor with the authorized representative's name, code, telephone number, telex number, and fax number.

G.7 DOE PATENT COUNSEL (APR 1984)

Information copies of correspondence being sent to the DOE Patent Counsel in accordance with the Correspondence Procedures clause, above, should be addressed as follows:

U.S. Department of Energy
GC-62
Attention: Assistant General Counsel for Technology Transfer and
1000 Independence Ave., S.W.
Washington, D.C. 20585

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 CONSECUTIVE NUMBERING (APR 1984)

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

H.2 52.217-1 LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS. (APR 1984)

(a) Funds available for performance are described in the Schedule. The amount of funds available at award is not considered sufficient for the performance required for any program year other than the first program year. When additional funds are available for the full requirements of the next succeeding program year, the Contracting Officer shall, not later than the date specified in the Schedule (unless a later date is agreed to), so notify the Contractor in writing. The Contracting Officer shall also modify the amount of funds described in the Schedule as available for contract performance. This procedure shall apply for each successive program year.

(b) The Government is not obligated to the Contractor for any amount over that described in the Schedule as available for contract performance.

© The Contractor is not obligated to incur costs for the performance required for any program year after the first unless and until written notification is received from the Contracting Officer of an increase in availability of funds. If so notified, the Contractor's obligation shall increase only to the extent contract performance is required for the additional program year for which funds are made available.

(d) If this contract is terminated under the Termination for Convenience of the Government clause, total contract price in that clause means the amount available for performance of this contract, as in paragraph (a) above, plus the amount established as the cancellation ceiling. Work under the contract in that clause means the work under program year requirements for which funds have been made available. If the contract is terminated for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

(e) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract under another clause (e.g., an Option or Changes clause) shall not constitute the notification contemplated by paragraph (a) of this clause.

H.3 52.217-2 CANCELLATION OF ITEMS. (JUL 1996)

(a) Cancellation, as used in this clause, means that the Government is cancelling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule,

unless a later date is agreed to, if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year, or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

© If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only (1) costs (I) incurred by the Contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized over the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include-

(1) Reasonable nonrecurring costs (see Subpart 15.8 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multiyear requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include-

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the cancelled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the cancelled work; or

(4) For service contracts, the remaining useful commercial life of facilities. "Useful commercial life" means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(I) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity cancelled for the purpose of computing allowable cancellation charges.

H.4 CONFIDENTIALITY OF INFORMATION (APR 1984)

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

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

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

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

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

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

the Contractor's organization directly concerned with the performance of the contract.

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

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

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

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

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

Additional Representations and Certifications may be required by the Contracting Officer for specific Delivery Orders issued against the contract.

H.6 TECHNICAL DIRECTION (JAN 1990)

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

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

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

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

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

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

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

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

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

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

© All technical directions shall be issued in writing by the COR.

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

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

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

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

H.7 MODIFICATION AUTHORITY (APR 1984)

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

(a) accept nonconforming work,

(b) waive any requirement of this contract, or

© modify any term or condition of this contract.

H.8 GOVERNMENT PROPERTY AND DATA (JAN 1992)

(a) Except as otherwise authorized by the Contracting Officer in writing, the Contractor is not authorized to acquire as a direct charge item under this contract any equipment (including office equipment), furniture, fixtures or other personal property items.

(b) Government Furnished Property and Data.

Except as otherwise authorized by the Contracting Officer in writing, only that property and data specifically included in the List of Government Property - Furnished, Part III, Section J, Attachment [***] to the contract, shall be furnished.

© Reporting Requirements.

(1) The reports required in accordance with 48 CFR 945 shall be submitted on the forms provided by DOE in accordance with 48 CFR 945 and the form's instructions.

(2) The reports are to include all capital equipment and sensitive items furnished under this contract, whether or not listed on the attachments referenced above.

H.9 SUBCONTRACTS (SEP 1996)

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

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

(2) any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR 15.804-2) and subcontractor Representations and Certifications (see Part IV, Section K and the document referenced in the Representations, Certifications and Other Statements of the Offeror clause are received); and

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

of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

(b) Prior to the award of any 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, in accordance with the clause contained in Section I of this contract. No work shall be performed by the subcontractor until the Contractor has cleared the subcontractor for Organizational Conflicts of Interest (OCI).

© The following subcontractors have been cleared by the Contracting Officer for Organizational Conflicts of Interest (OCI):

[***]

H.10 ORDERING PERIOD LIMITATION

At the Government's discretion, the ordering period may end at the end of the five year legal authority that started with the issuance of the regulation on Energy Savings Performance Contracting on April 10, 1995. The Government intends to modify the contract to extend the ordering period specified in Clause B.6, "Ordering" at a future date.

H.11 RIGHTS TO PROPOSAL DATA (APR 1984)

Pursuant to the Section I clause entitled "RIGHTS TO PROPOSAL DATA" the following portions of the contractors proposal is listed as proprietary data:

Contractor's proposal dated: [***]

Page numbers of proprietary data within the Contractor's proposal: [***]

H.12 PROCEDURES FOR DELIVERY ORDERS (SERVICES)

(a) Each delivery order shall:

(1) comply with (b) below;
(2) be issued as a delivery order on DOE F4250.3 Form (Order for Supplies or Services or on other federal agency user delivery order forms as appropriate; or on Standard Form 30 (Amendment of Solicitation/Modification of Contract) in the case of a modification to an order;
(3) incorporate the terms and conditions of this contract by reference;

(a) set forth the ECMs requested as contained in the Statement of Work;

(b) contain the price per energy unit to be used in calculating any savings shortfall;
© contain an energy use baseline, to be defined by either the Federal agency or the contractor as specified in each order;
(d) set forth the measurement and verification (M&V) procedure and define the M&V intervals;
(e) set forth the value of factors needed to calculate energy savings (i.e. ton-hours of cooling, operating hours, etc.);
(f) set forth specific hazardous waste handling and storage requirements (e.g., PCB ballasts removed from lighting fixture retrofits); ref: c6.4
(g) set forth time frame for completion of repairs;
(h) set forth applicable fire prevention procedures, rules, or regulations for fire prevention;
(I) set forth compliance requirements for the applicable agency's Spill Prevention Control and Countermeasures Plan;
(j) set forth agency- and/or site-specific inspection and acceptance criteria;
(k) installation plan due date and Government review and approval dates for the plan;
(l) set forth requirements for as-built drawings;
(m) include a Liquidated Damages clause and establish appropriate liquidated damages, if determined applicable by the agency;
(n) set forth security requirements;

(4) utilize DOE F1332.1 for the ordering of data requirements;
(5) set forth a delivery order maximum price;
(6) set forth packaging (preservation and packing) and marking requirements for deliverables;
(7) specify any Government Furnished Equipment or Government Furnished Information applicable to that order;
(8) set forth the Government's required delivery or performance date and the place of performance, indicating therein the Government facility to be utilized;
(9) set forth the applicable appropriation and accounting data;
(10) be signed by the authorized Contracting Officer (CO);

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

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

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

(d) The following schedules, which will have been completed for the award of the IDIQ contract award, will apply to all delivery orders issued under this contract:

The composition of each price element must be explained and shall remain constant so that the mark-up may be applied consistently for all delivery orders issued under this contract.

1) Schedule B-1 -- Indefinite Delivery/Indefinite Quantity (IDIQ) Contract: Schedule B-1 specifies the maximum mark-up that will be applied to all delivery orders issued under the contract.

2) Schedule B-2 -- Indefinite Quantity Contract: Schedule B-2 provides the maximum, fixed, annual percentage rate that, when added to the current Treasury Bill/Note rate 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 that shall apply to an individual delivery order shall be based on the reference Treasury Bill/Note negotiated in the delivery order.

3) Schedule B-3 -- Installation Price: Schedule B-3 provides the elements of direct cost that compose installation price under the contract. Installation price elements will remain unchanged through the term of the contract.

4) Schedule B-4 -- Mark-up elements: Schedule B-4 provides the elements of mark-up under the contract. Mark-up elements will remain unchanged through the term of the contract.

5) Schedule B-5 -- Energy Savings Performance Period Price: Schedule B-5 provides the Energy Savings Performance Period (ESPP) price elements under the contract.

H.13 PROCEDURES FOR AWARDING DELIVERY ORDERS

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

The DOE Contracting Officer or the designated Federal agency's contracting officer shall have the final decision authority as to the extent to which offers will be solicited for individual delivery orders, taking into account technical, economic, performance risk considerations, and the factors described in "Procedures for Delivery Orders (Services)" above. Such decision

shall not be subject to dispute under the contract's "Disputes" clause.

No protest under 48 CFR (FAR) Part 33 is authorized in connection with the issuance or proposed issuance of a delivery order under this contract except for a protest on grounds that the delivery order increases the scope, period, or maximum value of the contract.

a) Non-Competitive Award - The Contracting Officer may issue a Delivery Order to any one of the contractors if he determines unilaterally that:

1. Competition is precluded by the urgency of the requirement;

2. The delivery order requires the installation, operation and maintenance of ECMs that are highly specialized and only one

3. A contractor identified ECM project (may also be competitive);

4. It is necessary to place an order to satisfy a

minimum guarantee;

5. The delivery order is a logical follow-on to a delivery order previously issued to a contractor on a competitive basis.

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

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

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

H.14 REQUIREMENTS FOR PROPOSAL CONTENTS FOR DELIVERY ORDERS

A) **Government Identified ECM Project:** The Government anticipates awarding fixed price delivery orders. As ECM projects are identified by Federal agencies, the DOE Contracting Officer or an authorized Federal agency's

Contracting Officer will request a contractor or contractors to submit a delivery order proposal. The contractor(s) shall submit the requested price and technical proposal in sufficient detail as will permit prompt evaluation, selection, and negotiation and/or acceptance of a proposal thereof in accordance with Section H.12 and H.13 of this contract. Proposals shall be submitted initially on the most favourable terms from a price and technical standpoint to the Government. The Government reserves the right to accept or reject the initial proposal without further discussions.

B) **Technical and Price Proposal for Government Identified ECM Project:** As required by the solicitation for a delivery order, the Contractor shall submit a technical and price proposal.

I. Format for Technical Proposal

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

1. The contractor shall complete and submit Delivery Order Schedule H-7. Schedule H-7 summarizes all ECMs proposed for the Delivery Order.

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

(1) ECM No. _____

(2) ECM Title and Executive Summary

(a) Detailed Description of ECM

(b) Energy System and Location Affected (e.g. Chilled Water, Steam Distribution)

© ECM Interface with Government Equipment

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

(e) Expected Measure Lifetime

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

(g) Energy and related Operations and Maintenance Savings Proposed

(i) Proposed ECM annual energy and

related O&M savings (in all applicable energy/demand reduction units)

(ii) For each ECM proposed, provide a detailed energy analysis documenting the proposed annual energy and related O&M savings performance of the ECM after installation, start-up 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.

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

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

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

(k) **ECM Project Schedule** - Provide a project schedule to include the duration of the following key phases:

(I) Investment Grade Facility Audits to confirm ECM performance *(assume Government facility audit review of 30 days unless otherwise specified in the delivery order).*

(ii) Engineering/Design/Acceptance *(assume Government design review of 30 days unless otherwise specified in the delivery order).*

(iii) Equipment Procurement/Lead Time (i.e., date required to acquire equipment and delivery on-site).

(iv) Installation & Commissioning

2. Energy Baseline and ECM Performance Measurement

The Contractor shall describe how it will provide a complete measurement and verification (M&V) plan for each of the proposed ECMs covered by the delivery order. The M&V plan shall be consistent with DOE FEMP M&V Guidelines. The plan shall include, but not be limited to:

a. M&V Overview - Description of the measurement plan selected for this project referenced to the DOE FEMP M&V Guide which can be found on the Internet@: http://www.eren.doe.gov/femp/new_fed.html

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

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

(2) Parameters to be monitored - indicate parameters to be recorded that will be used in the 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.

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

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

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

baseline, baseline adjustment, energy savings calculation and the use of periodic measurements.

3. Management Approach

a. **Organization.** Show the organization for implementing and managing the building(s) and site specific project. Proposed organization shall contain the responsibilities of each element shown on the organization chart. Identify primary personnel for each project by name in each element. Show the lines of authority within the organization. If portions of the project are to be subcontracted (e.g., design of an energy conservation system), identify the subcontracted function, the subcontractor(s), the subcontractor's primary personnel for the project, and which element of the contractor's organization will manage the subcontract(s).

- **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.

- **ECM Training.** Describe in detail how training for each ECM will be provided for Government personnel. Approach should be customized depending on the Operations and Maintenance functions to be performed by Government personnel.

II. Format for Price Proposal

The offeror shall prepare and submit Schedules H-1 through H-3 and H-6 for its Delivery Order Proposals.

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.

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.

This schedule is for a specific ECM project or delivery order. The offeror shall complete Schedule H-1 for each delivery order to reflect:

1. 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,

2. proposed guaranteed annual cost savings for each year of proposed delivery order term, and

3. 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.

Schedule H-2 -- Delivery Orders: 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.

This schedule is for a specific ECM project or delivery order. The Contractor shall complete Schedule H-2 for each delivery order to reflect the estimated price, mark-up (up to the maximum proposed in Schedule B-1) and total for each discrete ECM and calculate the total estimated investment for all proposed ECMs for the delivery order. Total Investment = Installation Price * (1 + Mark-up). The total estimated investment is used to establish performance and payment bond amounts. See section H.37 for performance and payment bond details.

Schedule H-3 -- Delivery Orders: Schedule H-3 is submitted to present 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 contractor shall submit the finance charge and T-Note reference (not exceeding the values in Schedule B-2) at the bottom of Schedule H-3. 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.

This schedule is for a specific ECM project or delivery order. 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)].

Schedule H-6 -- ECM Descriptions and Projected Energy Savings Table:

Schedule H-6 presents a summary of the proposed annual savings that will be achieved following the installation of the proposed ECMs. Also included in the schedule is the calculated simple payback of each ECM. Schedule H-6 is to be updated with actual savings realized and included in subsequent annual Energy Audits for ECM performance.

Technology Category Number - Each ECM should be identified as fitting in

a technology category as described in Section C.2.1.

ECM No. - This number should be consistent throughout the contractors proposal

Annual Savings - The savings provided through an ECM shall be broken down into energy and O&M savings. The energy savings shall be presented in the energy type consumed by the equipment and also converted to BTU's for a project summary. Subsequent demand and dollar savings shall be derived from the utility rates presented for the project site.

Simple Payback - Shall be the Schedule H-2 Implementation price divided by the Annual Total Savings for each ECM.

The selected offeror shall prepare and submit Schedules H-4 and H-5 as part of preaward requirements:

Schedule H-4 -- Guaranteed Performance and Contractor Payments: Schedule H-4 is submitted to present the selected offerors guaranteed annual energy savings performance and contractor payments. Based on the detailed energy survey results, the selected contractor shall submit a completed Schedule H-4, reflecting the contractor's guaranteed annual cost savings (column (a)). The selected contractor shall submit a copy of the detailed energy survey findings, data, and calculations used to support Schedule H-4.

The contractor shall receive monthly payments based on the annual fixed payment schedule, as established in each delivery order Schedule H-4, (column (b). This represents the delivery order price and should be supported by information submitted in Schedule H-3.

Schedule H-5 -- Cancellation Ceilings: Schedule H-5 presents cancellation ceilings for specified time periods to establish the maximum termination liability in the event of contract cancellation or termination for convenience. Based on detailed energy survey results, the selected contractor shall submit a completed schedule H-5 reflecting the annual contractor payments from schedule H-4.

H.15 PROPOSAL EVALUATION FOR DELIVERY ORDERS

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

protest by the contractors.

1. Technical Evaluation Factors

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

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

a. Factor 1 - ECM Descriptions and Projected Energy Savings

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

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

(3) Impacts on Government facilities and operations are acceptable and reasonable.

(4) Suitability and service life of selected equipment for proposed ECM.

(5) Potential environmental impacts are adequately addressed.

(6) Proposed project implementation schedules and realistic and reasonable.

b. Factor 2 - Energy Baseline and ECM Performance Measurement

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

(2) Acceptable and reasonable sampling and data collection plans based on proposed ECMs.

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

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

c. Factor 3 - Management Approach

(1) Offeror's proposed organization to manage and accomplish the proposed ECMs is well suited and addresses all key elements to ensure successful project implementation and maintenance of ECM performance. Offeror's organization structure is adequate to provide required operation and maintenance of installed ECMs, whether operation and maintenance is done by the contractor or by the Government (and/or Government M&O contractor); offeror's proposed training is appropriate and suitable for the proposed O&M functions to be performed by the Government.

2. Price Proposal Evaluation Factors

a. Price proposals will be evaluated to assess:

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

(2) The reasonableness of the proposed price.

(3) The realism of the proposed price.

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

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

NOTE: The price proposal will not be point scored.

H.16 PROPOSAL FOR CONTRACTOR IDENTIFIED PROJECTS

A. **Contractor Identified ECM Project:** An ECM project may be identified by a contractor rather than a Federal agency. Any contractor identified ECM project proposed must be within the scope of the IDIQ contract. The contractor shall contact the COR before proceeding with preparation of any contractor identified project proposal. The DOE Contracting Officer or the official authorized to issue delivery orders will determine whether the contractor identified ECM project warrants further consideration and whether the ECM project will be acquired on a sole source basis from the contractor identifying the project or through a competition among two or more indefinite quantity contractors for the region. See "Procedures for Awarding Delivery Orders" Clause, subsection A, above for the factors that will be used by the appropriate contracting officer in determining whether the ECM project would be conducted as a competitive delivery order or a sole source delivery order. The Government shall not be liable for costs associated with audits and preparation of proposals for contractor identified ECM projects.

B. **Rights to Ideas and Technical Approach:** The Contractor is being afforded the opportunity to identify ECM projects within the region covered by the IDIQ contract. The Government will not have rights to the contractor's work products such as survey, data, feasibility study reports, and design documentation. In the event that the Government elects to have a contractor-identified ECM project performed, the Government may choose to compete the project among all contractors with awards under the IDIQ contract.

C. **Proposal for Contractor Identified ECM Project:** The Contractor shall submit a proposal to the DOE Contracting Officer or the official authorized to issue delivery orders for the contractor identified ECM project's building and site. The initial proposal for a contractor identified ECM project shall consist of the following information:

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

2. ECM Interface with Government Equipment: This section shall describe the interface between the proposed ECMs and remaining Government equipment or facility. A description of the ECMs impact on Government remaining equipment or facilities (i.e., increases/decrease load, reduces run time, etc.).

3. Energy and related Operations and Maintenance Savings Proposed: This section shall described the anticipated annual energy savings for the ECM project using Schedule H-6 (in all applicable energy/demand units). While a detailed energy analysis may not be feasible to submit at this time, the Contractor should submit its (a) assumptions on current facility or energy system operating conditions, (b) assumptions on proposed facility or energy system operating conditions, © energy savings calculations using formulas and procedures based on accepted engineering principles, including synergistic effects of other ECMs, and (d) references used for data, assumptions or empirical formulas. This section should contain sufficient information for the Government to determine whether it is a feasible project.

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

5. Anticipated Utility Interruptions or Support Required: This section should address any utility interruptions that might be

required for installation of the ECM project by type (e.g., gas, electricity, water, etc.), the extent (e.g., rooms, entire building, etc.), and the duration. Any anticipated Government support required during installation should also be identified.

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

7. Price Proposal: The contractor shall submit completed Schedules H-1 through H-3 and H-6 for the contractor identified ECM project.

H.17 PROPOSAL EVALUATION FOR CONTRACTOR-IDENTIFIED PROJECTS

Government Review: The Government will review the proposal submitted and make a determination as to whether the contractor identified ECM project is a project that the Government wants to pursue further. The Government shall also make a determination as to whether this contractor identified ECM project will be conducted as a competitive delivery order or as a sole source delivery order (See Section H Clause "Procedures for Awarding Delivery Orders" for details). The Government's determination is final and not subject to protest. The Government will attempt to complete its review and make its determination within sixty (60) days from receipt of the proposal by the appropriate contracting officer.

If the Government determines to pursue the contractor identified ECM project, either as a competitive delivery order or as a sole source delivery order, the required proposal to be submitted in response shall be in accordance with Section H Clause "Requirements for Proposal Contents for Delivery Orders", Part B) above.

H.18 PREAWARD REQUIREMENTS

Preaward requirements, consisting of the successful accomplishment of a Detailed Energy Survey and the provision of evidence of adequate project financing and bonding, must be met before the Government will make an award to a selected contractor.

1. Detailed Energy Survey and Establishment of Performance Guarantees:

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

solicitation's provided or assumed facility and energy systems operating conditions and proposed contractor-established energy baseline submitted in its proposal.

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

- Building physical conditions
- Hours of use or occupancy
- Area of conditioned space
- Inventory of energy-consuming equipment or systems
- Energy-consuming equipment operating conditions and loads
- Baseline weather (i.e., Cooling and Heating Degree Days)
- Energy and energy cost savings estimates
- Site specific M&V Plan
- Proposed construction and M&V schedules.

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

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

d. Based on the detailed energy survey results, the selected contractor shall submit a completed Schedule H-4 (Guaranteed), reflecting the contractor's guaranteed annual cost savings [Schedule 4 (Guaranteed), column (a)]. The selected contractor shall submit a copy of the detailed energy survey findings, data, and calculations used to support Schedule H-4 (Guaranteed). The selected contractor shall also resubmit Schedules H-2, H-3 and H-6 if they have been revised in light of the detailed energy survey. The selected contractor shall also submit a completed schedule H-5 reflecting the cancellation ceiling for each year of the energy savings performance period. The instructions and format for Schedules H-1 through H-6 are described in the

Section H Clause, Requirements for Proposal Contents for Delivery Orders.

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

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

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

a. If the selected contractor is to provide its own financing for project execution, the selected contractor shall have up to [time specified in delivery order], from Government's acceptance of detailed energy survey, Guaranteed Annual Cost Savings (Schedule H-4), to provide evidence of surety's commitment for bonding of proposed delivery order's building(s) and site per paragraph H.37.1.

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

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

a. If the selected contractor requires third party financing for project execution, the selected contractor shall have up to [time specified in delivery order], from Government's acceptance of detailed energy survey, Guaranteed Annual Cost Savings (Schedule H-4), to provide for delivery order projects proposed: (1) proof of financing commitment; and (2) evidence of surety's commitment for bonding per H.37.2.

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

financing.

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

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

H.19 OFFICIALS AUTHORIZED TO ISSUE DELIVERY ORDERS

Delivery Orders issued under this contract shall be authorized only by a DOE Contracting Officer or by the following approved procurement officials:

(NONE)

H.20 AVAILABILITY OF UTILITIES

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

H.21 CONTRACTOR-FURNISHED MATERIAL

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

H.22 GOVERNMENT PROPERTY REGULATIONS

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

H.23 FIRE PREVENTION

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

H.24 ENVIRONMENTAL PROTECTION

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

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

H.24.3 The contractor shall comply with 40 CFR Section 311, and with the requirements of the latest edition of the applicable Federal agency's Spill Prevention Control and Countermeasures Plan as required by the delivery order.

H.25 SALVAGE

All material and equipment removed or disconnected during the installation

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

H.26 ASBESTOS AND OTHER HAZARDOUS MATERIALS

As part of each ECM project proposed, it is preferred that the contractor shall include the cost of removal of any hazardous-containing material in each contractor-proposed ECM that involves the removal of such. If the need for removal of hazardous material is known by the contractor, but the cost is not included in the ECM project proposal, this need shall be identified by the contractor in the proposal.

Should the contractor propose and receive an award for an ECM project, and the hazardous material is identified after award, the contractor shall immediately stop work, take measures to reduce the contractor building personnel contamination, and immediately notify the Contracting Officer and the building manager of the hazardous material condition and location. The Government shall then either:

(a) remove and dispose of the material itself, by its own personnel or by separate contract award; or

(b) give the contractor the option of either a delivery order modification for removing and disposing of the material at its expense, via a renegotiation of either the guaranteed savings and contractor payments for the project and/or of the delivery order project term, or by separate award for the effort. If the contractor performs the effort, he shall be required to restore the site affected by that ECM to its original condition, and any equitable adjustment necessary due to the change to or elimination of the ECM involved shall be handled as a delivery order modification.

Specific delivery orders will specify the requirements if different than the above, and/or as known at time of award.
Should the contractor propose an ECM that involves the removal of previously identified asbestos-containing material, then it is the contractor's responsibility to remove the asbestos as part of the ECM project at its cost and expense. However, should the contractor propose an ECM and asbestos containing material is identified after award, the contractor shall immediately stop work, take measures to reduce contractor or building personnel contamination, and immediately notify the contracting officer and the building manager of the asbestos condition and location. The contractor shall then have the option of (a) removing and disposing of the material at its sole cost and expense or (b) of giving the Government the option of removing and disposing of the material at the Government's cost and expense. If the Government declines to exercise its option to remove and dispose of this material, the contractor shall be required to restore the site affected by that ECM to its original condition with compensation provided by the

Government. However, the contractor's obligation for its contracted Guaranteed Annual Cost Savings (per Schedule H-4) shall be equitably reduced as a result of this ECM not being installed.

H.27 DISPOSAL

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

H.27.1 Hazardous Material Handling and Disposal

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

H.27.2 PCB Handling and Disposal

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

H.28 SAFETY REQUIREMENTS

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

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

H.28.3 The contractor's workplace may be inspected periodically for OSHA violations. Abatement of violations will be the responsibility of the contractor and/or the Government as determined by the contracting officer or the contracting officer's designated representative. The contractor will provide assistance to the Government representative and the

Federal or State OSHA inspector if a complaint is filed. Any fines levied on the contractor by Federal or State OSHA offices due to safety/health violations will be paid promptly by the contractor.

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

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

H.29 SECURITY REQUIREMENTS

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

H.30 PASSES AND BADGES

All contractor employees shall obtain the required employee and vehicle passes for the specific ECM project. The contractor will, prior to the start of on-site work, submit to the contracting officer or the contracting officer's designated representative an estimate of the number of employees expected to be utilized at any one time on the delivery order. The Government will issue badges without charge. When an employee leaves the contractor's service, the employee's pass and badge shall be returned within 10 days. Passes and badges issued to contractor employees shall not negate the requirement for employee identification required in the "Identification of Contractor Employees," Section H.12.

H.31 IDENTIFICATION OF CONTRACTOR EMPLOYEES

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

H.31.1 Laminated badge at least 3" x 5" with a 1" x ½" picture of the employee on it and the contractor's logo in a distinctive position. Employee's full name and position shall be included. Badges shall be attached in a prominent place on an outer garment. Personnel with these badges must be registered with Security located at the project site.

H.31.2 Subcontractor employees must register with Security located at the project site. They will be issued a temporary Government badge and must be escorted by a contractor employee with a permanent badge at all times.

H.32 IDENTIFICATION OF CONTRACTOR VEHICLES

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

H.33 ACCESS TO BUILDINGS

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

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

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

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

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

H.33.4 Access to tenant command spaces must be scheduled with the contracting officer or the contracting officer's designated representative at least ten (10) days in advance. Notice

must include names of employees to be admitted, expected arrival time, and visit duration. Buildings that require an escort will be identified in the solicitation for a specific project. All access will be during normal working hours, Monday through Friday, as specified in the delivery order.

H.34 CONTRACTOR EMPLOYEES

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

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

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

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

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

H.35 REQUIRED INSURANCE

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

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

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

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

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

5. Other insurance as required by State law.

H.35.2 Prior to commencement of work, the contractor shall furnish to the contracting officer a certificate or written statement of the required insurance coverage. The policies evidencing required insurance coverage shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which the delivery order is to be performed and in no event less than thirty (30) days after written notice thereof to the contracting officer.

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

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

H.36 TITLE TO CONTRACTOR-INSTALLED EQUIPMENT

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

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

H.36.3 If the indefinite quantity contract or a specific delivery order is terminated for convenience, all rights, title, and interest in and to all improvements, additions, or equipment of all ECMs installed by the contractor to which the

Government determines to take possession shall vest in the Government. For those ECMs for which the Government takes possession and thereby obtains title, the contractor shall be compensated in accordance with FAR clause Termination for Convenience (52.249-2).

H.37 NOTICE OF PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Copies of standard bond forms SF-25 and SF-25A are provided as Attachment 5 to this solicitation as samples of the forms which will be required to be completed prior to Delivery Order awards in accordance with the following provisions.

H.37.1 Project Financing by Contractor

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

2. Within 30 days after award of delivery order or acceptance of ECM installation plans, whichever is later, the selected contractor shall provide a performance bond (Standard Form 25) and a payment bond (Standard Form 25A) in duplicate (see Attachment 5). The performance bond shall be in a penal sum equal to 100 percent of the total investment for all ECMs cited in Schedule H-2. The payment bond shall be in a penal sum as follows:

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

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

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

payment of laborers, suppliers, and subcontractors.

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

H.37.2 Project Financing by Third Party

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

2. Within 30 days of award of the delivery order or acceptance of installation plans, whichever is later, the selected contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the Government. The performance bond shall be in a penal sum equal to 100 percent of the total investment for all ECMs cited in Schedule H-2. The selected contractor shall furnish a payment bond (Standard Form 25A) in duplicate (see Attachment 5). The payment bond shall be in a penal sum equal as follows:

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

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

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

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

H.38 RESPONSIBILITY FOR LOSS OR DAMAGE TO CONTRACTOR PROPERTY

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

H.39 PERMITS

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

H.40 PROTECTION OF FINANCIER'S INTEREST

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

H.40.2 The Government will consider:

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

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

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

4. A proposed takeover of delivery order performance in the event the contractor defaults in performance. Requests for takeover of the delivery order on substantially the same terms and conditions will be approved, if the proposed substitute party is acceptable to the Government and such