

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 may provide additional site specific requirements.

#### **C.16.2 PCB Handling and Disposal**

If PCB ballasts exist at the site covered by a delivery order, then the delivery order shall contain the necessary provisions 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.

### **C.17 SAFETY REQUIREMENTS**

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 of this contract (FAR 52.236-13). The Government will not provide safety equipment to the Contractor. Additional safety requirements may be included in delivery orders based on individual Federal agency implementing regulations, and/or specific requirements of the delivery order projects.

Other specific requirements relative to safety are as follows:

- a. Prior to commencing work, the Contractor shall meet with the Agency Contracting Officer and the Agency COR to agree upon administration of the safety program.
- b. The Contractor's workplace may be inspected periodically for OSHA violations. Abatement of violations shall be the responsibility of the Contractor and/or the Government as determined by the Contracting Officer. The Contractor will provide assistance to the Government representative and 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.
- c. In accordance with the Accident Prevention clause in Section I referenced above, the Contractor shall report to the Contracting Officer all accidents within twenty-four (24) hours of their occurrence.
- d. Also in accordance with the Accident Prevention clause in Section I, the Contractor shall submit to the Agency Contracting Officer 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 Agency Contracting Officer within twenty-four (24) hours of the occurrence.
- e. The contractor shall be solely responsible for initiating, maintaining, and supervising all safety provisions, precautions and programs in the course of the performance of this contract. The contractor shall take adequate steps and precautions for and shall provide adequate protection to prevent damage, injury, damage or loss to (1) both Government or contractor personnel involved in the performance of the work under this contract, and to other persons who may be affected thereby; (2) materials and equipment to be installed, whether in storage on or off the project site, under the care, custody or control of the contractor or lower tier subcontractors; (3) and other property that may be present at the job site and adjoining areas. The contractor shall erect and maintain, as required by existing conditions and performance of the subcontract, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting of danger signals and other warning signs against hazards, promulgating safety regulations, and notifying the Agency COR and other subcontractors at or near the project site and adjacent sites.

**SECTION D - PACKAGING AND MARKING**

**D.1 RESPONSIBILITY**

The contractor shall be responsible for acquiring, shipping, marking, packaging, storing, and installing (and maintaining if indicated in the delivery order) all supplies, equipment, and materials required to implement PV/ECMs accepted and approved by the Agency Contracting Officer during negotiations for specific delivery order projects.

**D.2 PACKAGING**

Preservation, packaging, and packing for shipment or mailing of all deliverables against this contract, as well as against specific delivery orders, 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.3 MARKING**

(a) Each package, report or other deliverable against this contract, as well as against specific delivery orders, shall be accompanied by a letter or other document which:

- (1) Identifies the contract by number, as well as the specific delivery order if applicable, under which the item is being delivered;
- (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s); and
- (3) Indicates 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 (either the DOE Contracting Officer for the contract or the Agency Contracting Officer for a specific delivery order), 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 delivery order, or if none, to the DOE Contracting Officer.

**D.4 SHIPMENTS**

All shipments to and from the specific delivery order site 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.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 or agency-specific requirements for hazardous waste handling, storage, shipping and disposal as required for known or anticipated generation of hazardous waste. (See Provision C.16, "Disposal," in the statement of work at Section C.)

## SECTION E - INSPECTION AND ACCEPTANCE

### E.1 INSPECTION

Inspection of all items and services provided under this contract, or by any delivery order issued against it, shall be accomplished by the DOE Contracting Officer's Representative (COR) for the contract, or the COR designated by the ordering agency in a specific delivery order, or their duly designated representatives, and will be conducted in accordance with the provisions and clauses of that title found in Section E below.

### E.2 ACCEPTANCE

Acceptance of all work and effort under this contract or any delivery order issued against it (including "Reporting Requirements," if any) shall be accomplished by the DOE Contracting Officer for the contract, or the agency Contracting Officer for a specific delivery order, or any duly designated representative of each.

### E.3 52.246-12 INSPECTION OF CONSTRUCTION - FIXED PRICE (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.

(c) 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 re-inspection 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 non-conforming 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 PV/ECMs**

Each delivery order will include specific inspection and acceptance criteria pertinent to the delivery order project. The following general inspection and acceptance requirements shall apply to each delivery order, unless otherwise indicated in the order:

(a) The Government and contractor shall jointly inspect PV and 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 Agency Contracting Officer fifteen (15) working days in advance of PV and 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 PV/ECMs installed, schedule testing of PV/ECMs for verifying energy savings performance, and recommend dates for inspection (if any).

(c) The Government shall provide written notification to the 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 recommended 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.

(c) 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 52.246-20 WARRANTY OF SERVICE (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, 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 non-conformance 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 only upon issuance of delivery orders against it. The contractor shall be required to commence work on specific delivery orders within the number of days specified in the delivery order, once the contractor has received a notice to proceed. The contractor shall then prosecute the work diligently and complete the installation of all energy conservation measures (PV/ECMs) in accordance with the schedule established in the delivery order.

**F.1.1 Contract Term:**

The IDIQ contract term shall consist of a maximum basic performance period of twenty-five (25) years from date of contract award, with an ordering period for placement of delivery orders beginning on the date of contract award through April 9, 2000. (See Section B.4 for additional information on the ordering period.)

**F.1.2 Delivery Order Term:**

The delivery order term shall be specified in each delivery order. The delivery order term is comprised of the installation time for all PV/ECMs after award as indicated on Schedule DO-Ib (in months), and the energy savings performance period as indicated on Schedule DO-Ib (in years). (See Part III, Section J, Attachment 3 for these DO Schedules.) In no event shall a delivery order's term exceed twenty-five (25) years after the award of the IDIQ contract.

**F.3 PRINCIPAL PLACE OF PERFORMANCE**

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

**F.4 DELIVERABLES**

There are no specific contractor deliverables for this contract. The contractor shall, however, be required to submit the deliverables specified in the Reporting Requirements included in each specific delivery order, in accordance with the instructions contained in them. The Anticipated Delivery Order Reporting Requirements in Part III, Section J, Attachment 4 provide an indication of what those deliverables are expected to be.

## SECTION G - CONTRACT ADMINISTRATION DATA

### G.1 CONTRACT ADMINISTRATION FOR THE GOVERNMENT

- (a) ADMINISTRATION OF THE CONTRACT: Administration of this contract shall be accomplished by the Golden Field Office of the Department of Energy, at the address on the award sheet. The following individuals at the Golden Field Office are responsible for that administration:
1. Contracting Officer/Contract Specialist: The Contracting Officer and Contract Specialist for this contract is Beth H. Peterman, telephone no.: (303) 275-4719; fax no.: (303) 275-4754.  
The contractor shall use the DOE Contracting Officer as the focal point for all matters regarding this contract except technical matters.
  2. Contracting Officer's Representative (COR): The COR for this contract is Jeffrey L. Hahn, telephone no.: (303) 275-4775; fax no.: (303) 275-4753.  
The contractor shall use the COR as the focal point for all technical matters **ONLY**.

All correspondence, other than technical correspondence, shall be addressed to the Contracting Officer, with information copies to other Government personnel as appropriate. All technical correspondence, excluding correspondence where patent or technical data issues are involved or which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions of the contract, may be addressed to the COR, with informational copies to the Contracting Officer.

- (b) ADMINISTRATION OF DELIVERY ORDERS: Administration of delivery orders issued against this contract shall be accomplished by the Contracting Officer and COR, and any other individuals as appropriate, identified in each delivery order by the ordering agency contracting office.

### G.2 INVOICING INSTRUCTIONS

The Contractor shall submit invoices in accordance with the specific instructions provided in each delivery order issued against this contract. These instructions will vary by ordering agency, and will include invoice format, invoice contents and any attachments or enclosures, submission and addressing instructions, etc. Included with each invoice will be PV/ECM performance data as required by the site-specific M&V Plan.

### G.3 START OF INVOICE SUBMITTALS FOR DELIVERY ORDER PROJECTS

- (a) The contractor may submit invoices for PV/ECM payments when all PV/ECMs have been installed, and accepted, unless otherwise specified in the delivery order. The Agency COR for the specific delivery order shall make the determination of whether the PV/ECMs have performed in a satisfactory manner for the 30 day period.
- (b) The contractor will receive monthly payments based on the annual fixed payment schedule, as established in each delivery order [column (b) of Schedule DO-Ib]. Any credits becoming due to the Government may be applied against contractor's subsequent invoices, with appropriate information attached.

**G.4 PAYMENT TO THE GOVERNMENT FOR GUARANTEED SAVINGS SHORTFALL**

Contractor failure to achieve annual cost savings that exceed values specified in Schedule DO-Ib, column (b) for a specific delivery order, will result in overpayment of negotiated contractor annual payments. Guaranteed savings performance shortfall will be established from the M&V documentation acquired from monthly invoices and the annual PV/ECM performance verification report. Reimbursement of the Government overpayment of annual contractor payments due to annual cost savings shortfall shall be made by deductions from the contractor's future monthly invoice(s). The Government may also adjust the next year's monthly contractor payments downward to meet the projected annual cost savings level established by the annual ECM performance verification M&V documentation. If monthly contractor payments are adjusted, they will be restored when the contractor can provide evidence that the cause of energy cost savings shortfall has been corrected and ECM performance for the following year will exceed annual contractor payments in Schedule DO-Ib, column (b). This remedy is in addition to any other remedy the Government may have under the contract or under the law, including its right to terminate for default.

## SECTION H - SPECIAL CONTRACT REQUIREMENTS

### H.1 CANCELLATION OF ITEMS

(a) Cancellation, as used in this clause, means that the Government is canceling its requirements for all items 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.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not greater than the cancellation ceiling specified in Schedule DO-Ib, and as applicable at the time of cancellation.

(d) The cancellation charge will cover only (1) costs (i) incurred by the prime contractor and/or subcontractor(s); (ii) reasonably necessary for performance of the contract; and (iii) that would have been equitably amortized in the unit prices for the entire multiyear contract period but, because of the cancellation, are not so amortized; and (2) a reasonable profit 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 Agency Contracting Officer.

(f) The Contractor's claim may include -

(1) Reasonable nonrecurring costs (see FAR 15.8) which are applicable to and normally would have been amortized in all items to be furnished under the 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 by the unit price 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 canceled work;

- (2) Any cost already paid to the Contractor;
- (3) Anticipated profit on the canceled 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.2 CONFIDENTIALITY OF INFORMATION

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

- (1) Information which, at the time of receipt by the Contractor, is in the public domain;
- (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (3) Information which the Contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

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

(c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material aspects, 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.3 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR**

The Representations, Certifications and Other Statements of the Offeror for this contract, dated [date to be inserted at award], are hereby incorporated by reference. They are located in the official contract file for the award.

Additional representations and certifications may be required by the Agency Contracting Officer for specific delivery orders. These include but are not limited to those listed at the end Section I of this contract, "Contract Clauses."

**H.4 TECHNICAL DIRECTION**

(a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR) identified elsewhere in this contract, or to that of the Agency COR for each delivery order issued against the contract. The term "technical direction" is defined to include:

- (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
- (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
- (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.

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

- (1) Constitutes an assignment of additional work outside the Statement of Work;
- (2) Constitutes a change as defined in the contract clause entitled "Changes";
- (3) Causes an increase or decrease in the total price or the time required for contract performance;
- (4) Changes any of the expressed terms, conditions or specifications of the contract; or
- (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.

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

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

- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract;
- (2) Advise the Contractor 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.5 SUBCONTRACTS

- (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;
  - (2) any applicable subcontractor Representations and Certifications (see Part IV, Section K of this solicitation; and
  - (3) any required prior notice and description of the subcontract is given to the Agency Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Agency 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) The Contractor shall also obtain and furnish to the Agency Contracting Officer either an OCI Disclosure Statement or Representation form in accordance with DEAR 952.209-72 "Organizational Conflicts of Interest Disclosure or Representation" for all subcontractors to be utilized under this contract. No work shall be performed by the subcontractor until the Contracting Officer has cleared the subcontractor for Organizational Conflicts of Interest (OCI).
- (c) The following subcontractors have been cleared by the Contracting Officer for Organizational Conflicts of Interest (OCI): **[names to be inserted at time of DELIVERY ORDER awards]**

## H.6 RIGHTS TO PROPOSAL DATA

Pursuant to the Section I clause entitled "RIGHTS TO PROPOSAL DATA" the following portions of the contractors proposal is listed as proprietary data (The offeror shall insert as indicated below):

Contractor's proposal dated: **[date to be inserted at award]**

Page numbers of proprietary data within the Contractor's proposal: **[to be inserted at award]**

## H.7 GOVERNMENT PROPERTY REGULATIONS

The contractor and its employees shall be knowledgeable of and observe all Government property regulations, posted or otherwise, at the site where performance occurs for specific delivery order projects. A copy of the applicable agency regulations for the specific project site will be provided by the Agency COR for the project, upon contractor request.

## H.8 RESPONSIBILITY FOR LOSS OR DAMAGE TO CONTRACTOR PROPERTY

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

## H.9 CONTRACTOR EMPLOYEES

- (a) 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 Agency Contracting Officer for the delivery order, or the Agency Contracting Officer's designated representative, with the name(s) of the responsible supervisory person(s) authorized to act for the contractor.
- (b) The contractor shall furnish sufficient personnel to perform all work specified within the delivery order.
- (c) Contractor employees shall conduct themselves in a proper, efficient, courteous, and businesslike manner.
- (d) The contractor shall remove from the site any individual whose continued employment is deemed by the Agency Contracting Officer or the Agency 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.10 SECURITY REQUIREMENTS

- (a) **Passes and Badges:** All contractor employees shall obtain employee and vehicle passes and badges as required by the agency for the specific delivery order project site. The contractor will, prior to the start of on-site work, submit to the Agency Contracting Officer for the delivery order, or the Agency 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 Ten (10) days.
- (b) **Contractor Vehicles:** Each contractor vehicle shall display the contractor's name such that it is clearly visible. Contractor vehicles shall, at all times, display a valid state license plate and safety inspection sticker.

(c) **Contractor Access to Buildings:**

(1) It shall be the contractor's responsibility, through the Agency Contracting Officer or the Agency Contracting Officer's designated representative, to obtain access to buildings on the delivery order project site, as necessary, and arrange for the buildings to be opened and closed for the following:

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

ii. 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 Agency 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.

(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. The contractor shall be responsible for the cost of replacing any keys that are furnished to and lost by its employees. If the Agency Contracting Officer or the Agency 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 Agency Contracting Officer's designated representative has reasonable cause to assume that the combination has been compromised.

(3) Access to tenant command spaces must be scheduled with the Agency 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.

(d) **Contractor Access to secure areas:** Certain areas of a project site may require that the contractor and its employees have an escort, and/or place limits on the days and times that the contractor and its employees may work in these areas. Specific delivery orders will identify any such secure areas and the requirements for contractor access to them.

## H.11 WORK SCHEDULE REQUIREMENTS

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

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

**H.12 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 Agency Contracting Officer or the Agency Contracting Officer's designated representative before work commences.

**H.13 FIRE PREVENTION**

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

**H.14 WAGE DETERMINATIONS AND DAVIS BACON WAGE RATES**

In proposing against the site data package at Attachment 5, the offeror shall comply with the requirements of any U.S. Department of Labor Wage Determination(s) which may be appropriate for the location of the site, and indicate what was used.

**H.15 REQUIRED INSURANCE**

(a) The contractor shall procure at its expense and maintain during the entire period of performance under this IDIQ contract and the delivery orders awarded to the contractor against it 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 following 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.

(b) Prior to commencement of work, the contractor shall furnish to the Agency 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 Agency Contracting Officer.

- (c) The contractor agrees to insert the substance of this clause in all subcontracts hereunder.
- (d) 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.16 ADDITIONAL DELIVERY ORDER CLAUSES FOR WORK ON DOE FACILITIES HAVING CLASSIFIED INFORMATION**

- a) If the PV/ECM project covered by a delivery order involves work to be performed at a Department of Energy facility that has classified information (section 41 of the Atomic Energy Act of 1954, as amended), DEAR 952.204-2 Security (Apr 1984) and DEAR 952.204-70 Classification (Apr 1984) may apply to that delivery order. The specific delivery order for such site shall incorporate these clauses, if applicable.
- b) If the PV/ECM project covered by a delivery order involves work to be performed at a Department of Energy facility that has classified information (section 41 of the Atomic Energy Act of 1954, as amended), the contractor may be required to submit its representation concerning foreign ownership, control, or influence over contractor, DEAR 952.204-73 (see Section L); and the clause DEAR 952.204-74 Foreign Ownership, Control, or Influence over Contractor (Apr 1984) may apply to that delivery order. The solicitation for such site would request the representation, and the specific delivery order for such site would incorporate the clause, if applicable.

#### **H.17 USE OF NON-GOVERNMENT PERSONNEL IN EVALUATIONS**

The Government requires non-Government personnel from Federally-Funded Research and Development Centers (FFRDCs) (i.e., the Lawrence Berkeley Laboratory and the National Renewable Energy Laboratory), as well as from various private contractor consultants, as advisors/participants in proposal evaluation because the technical proposal evaluations require specialized training, experience and skill resources available from the FFRDCs and private contractor consultants that are not available within the Department of Energy.

#### **H.18 LIQUIDATED DAMAGES**

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

**H.19 TITLE TO AND RESPONSIBILITY FOR CONTRACTOR-INSTALLED EQUIPMENT**

- (a) 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.
- (b) The contractor may modify, replace, or change the systems and equipment during the delivery order from that originally approved. However, any proposed modification, replacement, or change shall require notification and coordination with and approval of the Agency Contracting Officer. Any such modification, replacement, or change of systems or equipment shall be performed by the contractor at no cost to the Government and shall not interfere with Government operations and mission.
- (c) 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.
- (d) If the IDIQ 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 PV/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.20 NOTICE OF PAYMENT AND PERFORMANCE BOND REQUIREMENTS**

Copies of standard bond forms, SF-25 and SF-25A, will be required to be completed prior to delivery order awards, in accordance with the following provisions.

**H.20.1 Project Financing by Contractor**

- (1) The Government will notify the selected contractor of its intent to award the delivery order. Pursuant to Section H.29, 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 PV/ECM installation plans, whichever is later, the selected contractor shall provide a performance bond (Standard Form 25) and a payment bond (Standard Form 25A) in duplicate. The performance bond penal sum shall be in an amount equal to 100 percent of the investment in all PV/ECMs cited in Schedule DO-II and affecting facility energy systems, plus the estimated cost of restoring the site of the PV array to its original condition. Thus performance bonding for the cost of the PV array is not required.

The performance and payment bonds shall remain in effect during the total installation period for all PV/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 PV/ECM installation period shall include all time required for installation, testing, measuring initial performance, and Government acceptance of all installed PV/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 PV/ECMs installed on or affixed to Government property under this IDIQ contract or under a specific delivery order.

#### **H.20.2 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 PV/ECMs cited in Schedule DO-II. The selected contractor shall furnish a payment bond (Standard Form 25A) in duplicate. The payment bond penal sum shall be sufficient to cover all subcontractors, laborers and suppliers in the amount of any liens they could hold in a non-Federal contract, or as required by state law.

The performance and payment bonds shall remain in effect during the total installation period for all PV/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 PV/ECMs.

(3) Because PV/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 PV/ECMs installed on or affixed to Government property under this IDIQ contract or under a specific delivery order.

#### **H.21 PROTECTION OF FINANCIER'S INTEREST**

(a) 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.

- (b) The Government will consider:
- (1) Requests for assignments of monies due or to become due under a delivery order, provided the assignment complies with the Assignment of Claims Act.
  - (2) Requests for the Government to provide lenders or financiers copies of any cure or show-cause notice issued to contractor.
  - (3) Requests by lenders or lienholders for extension of response time to cure or show-cause notices.
  - (4) A proposed takeover of delivery order performance in the event the contractor defaults in performance. Requests for takeover of the delivery order on substantially the same terms and conditions will be approved, if the proposed substitute party is acceptable to the Government and such takeover is in the Government's best interests.
- (c) The Government review and approval of the above requests will not be unreasonably withheld.

## **H.22 UTILITY ENERGY EFFICIENCY/RENEWABLE PROJECT FINANCIAL INCENTIVES AND TAX CREDITS**

The implementation of a PV/ECM system 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 Agency 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.

Likewise, tax credits may be available based on the proposed delivery order project. The contractor shall disclose to the Government any Federal or state tax credits applicable to the project, to include what portions of the credits are to be passed on to the Government in the form of reduced project costs. Subcontractors shall also be required to investigate and ensure that full advantage is taken of any available tax credits.

**THE FOLLOWING PROVISIONS H.23 THROUGH H.29 PRESCRIBE THE PROCEDURES FOR SOLICITATION AND AWARD OF DELIVERY ORDERS AGAINST THIS IDIQ CONTRACT, ONCE AN AWARD IS MADE. THEY DO NOT REPRESENT EVALUATION CRITERIA OR PROPOSAL REQUIREMENTS FOR THIS SOLICITATION, AND ARE PROVIDED FOR THE INFORMATION OF THE POTENTIAL OFFERORS, AS THEY WILL BE INCLUDED IN THE IDIQ AWARD(S).**

## **H.23 FEDERAL ENERGY MANAGEMENT PROGRAM (FEMP) DELIVERY ORDER REQUEST FOR PROPOSAL (DO RFP) FORMAT**

The DOE Contracting Officer for this contract will create a prescriptive delivery order request for proposal (DO RFP) format for use by ordering agencies in requesting offers from the contractor(s) for specific delivery order projects, and will make it available upon request to any authorized Contracting Officer from any Federal agency.

This format will provide, in contract chronological order, only those provisions and clauses throughout the contract which need to be addressed in developing the description of a specific project, and the differing or additional agency and site specific requirements relative to it. In addition, the DO RFP will include a Standard Data Package (SDP) format Attachment which provides the framework for the technical description of the specific project site.

Ordering agencies will be encouraged to use these formats, or comparable ones that they develop providing the same relevant information, in requesting offers for specific projects and for placing delivery orders against this contract. The purposes for requiring use of standard DO RFP and SDP formats are to (1) facilitate rapid processing of delivery order project procurements and awards; (2) minimize the contract administration required for this contract and its delivery orders; and (3) promote consistency among the agencies ordering against the IDIQ contracts, for the benefit of the IDIQ contractors receiving awards.

#### **H.24 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 other 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 the provisions in either paragraph (a) or (b) below.

The DOE Contracting Officer or the 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 below. Such decision shall not be subject to dispute.

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

The contractor agrees that issuance of a delivery order in accordance with any of the procedures in this provision 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.

##### **(a) Single Source Awards**

The Agency Contracting Officer may issue a delivery order to any one of the contractors receiving an award from this solicitation if he determines unilaterally, pursuant to 41 U.S.C. 253 j, that:

1. The agency's need for the services ordered is of such unusual urgency that providing such opportunity to all contractors would result in unacceptable delays in fulfilling the need;
2. The delivery order requires the installation, operation and maintenance of ECMs that are highly specialized and only one contractor is capable of providing the ECMs at the level of quality required because the services ordered are unique or highly specialized;
3. It is necessary to place an order with a particular contractor in order to satisfy a minimum guarantee;

4. The delivery order should be placed on a sole source basis in the interest of efficiency and economy because it is a logical follow-on to a delivery order previously issued to a contractor on a competitive basis; and

5. It is a Contractor-identified project for which rationale can be identified and documented that consideration of other IDIQ contractor offers for the project site is not in the best interests of the Government and/or the IDIQ contractors.

b. **Awards Based on Fair Consideration of IDIQ Contractors**

1. The Agency Contracting Officer may make selections of IDIQ contractors and issue delivery orders based on competition among two or more of the awardees for these ESPC efforts. When competition is conducted, the evaluation criteria specified in the provision at Section H.26, "Proposal Evaluation for Delivery Order ECM Projects," and the "Requirements for Full Proposal Contents for Government-Identified and Contractor-Identified Delivery Order Projects," in the provision at Section H.25 shall be used in evaluating and selecting the IDIQ contractor for the delivery order project, unless other proposal requirements and evaluation criteria are specified in the DO RFP for the project.

2. The Agency Contracting Officer may issue delivery orders based on evaluation of performance against previous delivery orders against this contract. 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 the provisions at Sections H.25 and H.26, or as specified in the DO RFP for the delivery order project.

The Government anticipates awarding fixed price delivery orders against this contract. PV/ECM projects may be identified by either Federal agencies or by the contractor(s), and therefore the provisions below provide proposal preparation instructions (Section H.25) and evaluation procedures (Section H.26) for both scenarios. In addition, there are initial proposal requirements for Contractor-Identified PV/ECM projects ONLY, which are applicable prior to full proposal preparation and evaluation (Sections H.27 and H.28). All of these instructions and procedures represent the MAXIMUM anticipated to be expected for competitively pursuing a specific delivery order project. Ordering agencies may identify different instructions and procedures in the DO RFPs for their specific delivery order projects; however, the instructions and procedures provided below will apply unless other instructions which supersede or revise them are identified in the DO RFPs.

**A Government-identified PV/ECM Project** is one identified by a Federal agency for a PV/ECM project. A **Contractor-Identified ECM Project** is one identified by one of the multiple awardee IDIQ contractors for a PV/ECM project. As projects are identified by Federal agencies, or as Contractor-Identified projects are pursued, the Agency Contracting Officer for the requirement will request a contractor or contractors to submit a delivery order proposal. The contractor(s) shall submit the requested price and technical proposals in sufficient detail as will permit prompt evaluation, selection (if applicable), and negotiation and/or acceptance of a proposal thereof in accordance with Sections H.25 and H.26 of this contract, or as modified by Sections H.25 and H.26 of the DO RFP.

**H.25 REQUIREMENTS FOR FULL PROPOSAL CONTENTS FOR BOTH GOVERNMENT-IDENTIFIED AND CONTRACTOR-IDENTIFIED DELIVERY ORDER PV/ECM PROJECTS**

Proposals shall be submitted initially on the most favorable 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. As required by the DO RFP for a delivery order project, the contractor shall submit a technical and price proposal, as follows:

(NOTE: All proposals submitted in response to a DO RFP shall be limited to a total of fifty (50) overall pages, to include technical and price, not including required delivery order (DO) Schedules. Proposal text shall be typed in 12 pitch (or equivalent) and printed, unreduced in size, on 8-1/2" by 11" paper. The focus is to be on content, NOT appearance, and therefore glossy presentations, binders, foldouts, etc. are NOT desired, and it is encouraged that they DO NOT be included in the site proposals.)

**H.25.1 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. PV and ECM Descriptions and Projected Energy Savings (including PV/ECM Summary Schedule for Delivery Order)

i. The Contractor shall complete and submit Delivery Order Schedule DO-IV summarizing all PV/ECMs proposed for the delivery order.

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

(1) PV/ECM No. \_\_\_\_\_

(2) PV/ECM Title and Executive Summary

(a) Detailed Description of PV/ECM

(b) Location Affected

(c) PV/ECM Interface with Government Equipment

(d) Proposed Equipment Identification - Provide manufacturer, model number and optional equipment proposed for each PV/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 PV/ECM such as relocation or removal of equipment.

(g) Energy Savings Proposed

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

ii. For each PV/ECM proposed, provide a detailed energy analysis documenting the proposed annual energy savings performance of PV/ECM after installation, startup and testing. Documentation of the analysis shall include, at a minimum:

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

- (h) Utility Interruptions - Specify extent of any utility interruptions needed for installation of proposed PV/ECMs.
- (i) Agency Support Required - Specify any government agency support required during implementation of the PV/ECM.
- (j) Potential Environmental Impact - Briefly describe any potential environmental impact resulting from installed PV/ECM.
- (k) PV/ECM Project Schedule - Provide a project schedule to include the duration of the following key phases:
- i. Investment Grade Facility Audits to confirm PV/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 PV/ECM Performance Measurement

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

- i. M&V Overview - Description of the measurement plan selected for this project referenced to the FEMP M&V Guide.
- ii. Specific M&V Plan - Define a site specific plan, which must include the following elements for each proposed PV/ECM:
  - (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 area.

(4) Data collection plan, including:

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

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

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

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

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

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

iii. Pre-Installation energy and facility performance baseline including:

(1) equipment/systems,

(2) baseline energy use,

(3) factors which influence baseline energy use, and

(4) system performance factors (e.g., lighting levels, temperature set points).

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

### 3. Management Approach

- **Organization.** Show the organization for implementing and managing the site specific project. Proposed organization shall contain the responsibilities of each element shown on the organization chart. Identify primary personnel by name in each element. Show the lines of authority within the organization. If portions of the project are to be subcontracted (e.g., design of an energy conservation system), identify the subcontracted function, the subcontractor(s), the subcontractor's primary personnel, and which element of the contractor's organization will manage the subcontract(s).
- **Maintenance and Operations.** For Offeror Provided Maintenance and Operation show the organization structure and describe the approach for installed PV/ECMs for performance of the delivery order's maintenance and operation requirements.

#### H.25.2 Format for Price Proposal:

The offeror shall prepare and submit Schedules DO-Ia, DO-II, DO-III and DO-IV for its delivery order proposals. The selected offeror(s) ONLY shall also be required to prepare and submit Schedule DO-Ib and may update other schedules, as appropriate and required, during negotiations and as part of their preaward requirements. These schedules are provided in Part III, Section J, Attachment 3 to this contract.

Since every price proposal submitted for a delivery order project will be evaluated to make determinations of price realism and reasonableness, an understanding of the magnitude of the effort and an understanding of the requirements of the DO RFP, the IDIQ contractor is required to provide adequate supporting documentation for the implementation and performance period pricing, as well as estimated savings, proposed in the various DO schedules composing the price proposal. All pricing, savings and payments information proposed will also be required to be traceable from one schedule to another.

Explanations of these schedules and instructions for their completion are provided as below.

**Schedule DO-Ia --- Proposed Estimated Annual Cost Savings and Annual Contractor Payments:**

Schedule DO-Ia is used to submit the offeror's proposed estimated annual cost savings, and annual contractor payments for a specific delivery order PV/ECM project, and shall be submitted with all delivery order proposals. The values submitted on Schedule DO-Ia are for 12-month periods, beginning after completion by the contractor of the implementation period for all PV/ECMs, and acceptance by the Government. The estimated annual cost savings proposed for each year of the proposed delivery order performance period shall be based on projected energy savings presented in the technical proposal for the delivery order project, and trace to the other DO schedules required for submission. The annual contractor payments proposed shall be for each year of the proposed delivery order performance period after PV/ECM implementation and acceptance by the Government.

Each DO RFP shall specify the fixed rates that will be used for utilities during the delivery order's period of performance. The estimated annual cost savings in column (a) of Schedule DO0Ia shall be based on the specified fixed rates for utilities. If specified rates are not used, then the DO RFP must indicate how the contractor is to propose.

**Schedule DO-Ib --- Guaranteed Annual Cost Savings, Annual Contractor Payments, and Annual Cancellation Ceilings:**

Schedule DO-Ib shall be submitted to present the selected offeror's guaranteed annual energy savings, annual contractor payments and annual cancellation ceilings. Based on the detailed energy survey results, the selected contractor only shall submit a completed DO-Ib, reflecting the contractor's guaranteed annual cost savings in column (a). The selected contractor shall submit a copy of the detailed energy survey findings, data and calculations used to support Schedule DO-Ib with the DO-Ib submission.

The contractor shall receive monthly payments based on the negotiated annual fixed payment schedule, as established in the Schedule DO-Ib, column (b), and included in the delivery order award. This represents the delivery order price and, as with DO-Ia, will have been supported by the information submitted in the other DO schedules submitted with the delivery order proposal, originally or as revised as part of the detailed energy survey.

Column (c) of Schedule DO-Ib shall present annual cancellation ceilings to establish the maximum termination liability in the event of contract cancellation or termination for convenience. Actual termination charges will be negotiated.

**Schedule DO-II --- Estimated Investment for each Delivery Order Project PV/ECM:**

Schedule DO-II shall be submitted for all delivery order project proposals with estimated pricing, and the schedule may be revised and resubmitted by the selected contractor upon completion of their detailed energy survey. Schedule DO-II presents the offeror's estimated implementation period investment for each PV/ECM contained in a specific project or delivery order. It reflects the equipment proposed for installation for each PV/ECM indicated along with its implementation price, the contract mark-up (up to the maximum proposed in Schedule IDIQ-I) applied to this pricing, the subtotals of investment for each discrete PV/ECM, and then the calculations of the total estimated implementation price, or investment for all proposed PV/ECMs for the delivery

order project. Also provided is a column (a) that provides the average annual O&M and Repair cost for each PV/ECM. This information is requested as a trace to the information provided in Schedule DO-III.

The total PV/ECM investment will be used to establish performance and payment bond requirements for the PV/ECM implementation period.

**Schedule DO-III --- Proposed Performance Period Cash Flow for Each Delivery Order Project PV/ECM:**

Schedule DO-III shall be submitted for all delivery order project proposals with estimated pricing, and the schedule may be revised and resubmitted by the selected offeror upon completion of their detailed energy survey. Schedule DO-III presents the contractor's proposed project cash flow for a specific PV/ECM delivery order project. The schedule is divided into two sections. The Implementation Period section pertains to the total investment (which would trace back to Schedule DO-II) plus the debt service stream on that investment. The Performance Period section pertains to the total expenses associated with the services the contractor supplies to manage the project, and maintain and verify PV/ECM performance during the performance period of the delivery order term. The offeror shall propose the estimated delivery order cash flows for each year of the proposed delivery order term. The pricing provided in this schedule shall be traceable to the information provided in Schedules DO-Ia, DO-Ib and DO-II.

As required at the base of the Schedule, the offeror shall specify the total finance charge being applied in the Schedule pricing to amortize the investment (up to the maximum, based on Schedule IDIQ-II), the Treasury note index used, its issue date and the dated source used for the Treasury note index indicated.

CONTRACTORS/OFFERORS SHALL PROVIDE ADEQUATE SUPPORTING DOCUMENTATION FOR THE IMPLEMENTATION AND PERFORMANCE PERIOD PRICING SUBMITTED IN SCHEDULES DO-II AND DO-III, TO INCLUDE PRICE LISTS, CATALOG PRICING, THE BASES OF ESTIMATES USED FOR MANHOURS, ETC. If inflation is included in the calculations, an explanation of the method used and rationale therefor must be provided.

**Schedule DO-IV --- PV/ECM Descriptions and Projected Energy Savings/Energy Supplied Table:**

Schedule DO-IV shall be submitted for all delivery order project proposals. Schedule DO-IV presents a summary of the proposed estimated annual savings that will be achieved following the installation of the PV/ECM's included in the delivery order proposal. Both the PV/ECM number and technology category, per Section C.2.1 numbering shall be provided, as well as an adequate description of the PV and each ECM and the other indicated energy information. The PV/ECM numbers indicated in this schedule shall be consistent throughout the offeror's proposal, both technical and price. The annual savings requested for each PV/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 in the DO RFP for the project site.

CONTRACTORS/OFFERORS SHALL PROVIDE ADEQUATE SUPPORTING DOCUMENTATION FOR THE ESTIMATED SAVINGS SUBMITTED IN SCHEDULE DO-IV.

## H.26 PROPOSAL EVALUATION FOR DELIVERY ORDER PV/ECM PROJECTS

Proposals will be evaluated using the criteria specified herein unless otherwise specified in the DO RFP for a delivery order project. 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, nor where the price proposal does not substantiate the technical approach and estimated savings. **Therefore, the Government will select the contractor whose proposal is the best value to the Government to perform the delivery order, based on technical AND price evaluations.** Award after selection will be conditioned upon the selected contractor meeting the preaward requirements as specified in the provision at Section H.29, "Preaward Requirements."

It is the intention of the Government to utilize the Oral Presentations method for evaluation of delivery order PV/ECM Projects to the maximum extent possible. The following information relative to evaluation, as well as the information and submission indicated as required in Section H.25 above may be modified in specific DO RFPs to accommodate these procedures.

### H.26.1 Technical Evaluation Factors

Factor 1 - Descriptions of Optimization of PV Systems and ECMs and Projected Energy Savings

Factor 2 - Energy Baseline & PV/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 - PV/ECM Descriptions and Projected Energy Savings

Each offeror will be evaluated on his/her demonstrated capability to provide each of the site specific required PV/ECMs and ability to accurately project energy savings. Elements to be evaluated include:

- i. The proven technical feasibility, reasonableness, and acceptability of the proposed PV/ECMs
- ii. The level and reasonableness of the proposed energy savings
- iii. Verification that the energy analysis is based on sound assumptions and engineering principles; verification that impacts on Government facilities and operations are acceptable and reasonable; the suitability and service life of selected equipment for each proposed PV/ECM; proposed environmental impacts are adequately addressed, verification that proposed project implementation schedules are realistic and reasonable.

#### b. Factor 2 - Energy Baseline and PV/ECM Performance Measurement

Offerors will be evaluated on the following measurement elements and capabilities:

- i. The baseline and M&V plan demonstrates a clear understanding of compliance with M&V protocols.

- ii. Verification that the sampling and data collection plans are acceptable and reasonable and that they are based on proposed PV/ECMs
- iii. Methods to establish pre and post-installation conditions and determine energy savings are adequate and reasonable
- iv. Periodic measurement approaches for PV/ECMs and facility performance are adequate and reasonable to provide assurance of continued effective monitoring of PV/ECM performance.

c. **Factor 3 - Management Approach**

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

#### **H.26.2 Price Proposal Evaluation Factors**

Price proposals will be evaluated to assess:

- a. The completeness and traceability of the proposed price (i.e. sum of annual contractor payments) to the offeror's technical approach to and understanding of the PV/ECM project proposed.
- b. The reasonableness as well as realism of the proposed price (payments), relative to the technical project proposed, and the estimated savings indicated as achievable, based on an evaluation of the DO Schedules submitted by the offeror, as well as the pricing detail provided to support them.
- c. That guaranteed annual energy cost savings exceed the annual contractor payment for each year of the performance period.
- d. That the mark-up(s) and project finance charges proposed for the project are the same as or lower than those contained in the IDIQ contract as negotiated maximums for the contractor.

The price proposal will not be point scored.

#### **H.27 REQUIREMENTS FOR INITIAL PROPOSAL CONTENTS FOR CONTRACTOR-IDENTIFIED DELIVERY ORDER PV/ECM PROJECTS**

Before an IDIQ contractor may submit a Contractor-Identified PV/ECM project, the IDIQ contractor must first obtain the concurrence of the DOE COR for this contract. This request for concurrence should be in writing and the request should provide sufficient information such that the DOE COR is able to discuss the request with the agency where the project is proposed to be performed. The DOE Contracting Officer will provide the requested concurrence, or nonconcurrence, of the DOE COR, in writing, and within thirty (30) days of the request. Upon this concurrence, an initial proposal, within the scope of the IDIQ contract, must be submitted.