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Section B - Supplies or Services/Prices

B.1 DOE-B-2012 SUPPLIES/SERVICES BEING PROCURED/DELIVERY REQUIREMENTS (OCT 2014)

The Contractor shall furnish all personnel, equipment, material, supplies, and services and otherwise do all things necessary for, or incident to the performance and providing of the following items of work:

Coal-Based Power Plants of the Future

Base Contract: Coal-Based Power Plants of the Future – Conceptual Design

Firm Fixed Price $ TBD

Option I: Coal-Based Power Plants of the Future - Pre-FEED (preliminary front end engineering design)

\*Note: As part of the conceptual design requirement, the Awardee may submit a finalized price for the Pre-FEED study.

Firm Fixed Price $ TBD

These services shall be performed for the National Energy Technology Laboratory (NETL) in accordance with Part III, Section J, Attachment A-1, Performance Work Statement.

 (End of Clause)

Section C - Description/Specifications

C.1 DOE-C-2002 PERFORMANCE WORK STATEMENT (OCT 2014)

The Performance Work Statement (PWS) is located in Part III -- Section J, Attachment A-1 to this contract. To assist with an understanding of NETL, an introduction has been included and is located in Part III – Section J, Attachment A-1.

 (End of Clause)

Section D - Packaging and Marking

D.1 DOE-D-2001 PACKAGING AND MARKING (OCT 2014)

(a) Preservation, packaging and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s), including electronic means.

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

(1) Identifies the contract by number pursuant to which the item is being delivered;

(2) Identifies the deliverable item number or report requirement which requires the delivered item; and

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

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

(End of Clause)

Section E - Inspection and Acceptance

E.1 52.246-7 INSPECTION OF RESEARCH AND DEVELOPMENT - FIXED-PRICE. (AUG 1996)

(a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work 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.

(b) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the Government performs any inspection or test 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. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises.

(d) The Government shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Government failure to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.

(e) The Government has the right to reject nonconforming work. If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Officer may authorize), the Contracting Officer may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute.

(f) Inspection and test by the Government does not relieve the Contractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies (work) at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule; or (2) within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Government elects not to require correction or replacement. When supplies (work) are (is) returned to the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.

(End of clause)

Section F - Deliveries or Performance

F.1 DOE-F-2003 PERIOD OF PERFORMANCE (OCT 2014)

**BASE CONTRACT PERIOD**

The work to be performed under this Contract shall commence on the effective date of the contract and shall continue for ninety (90) calendar days.

**OPTION I PERIOD**

If the Government elects to exercise the option, the work to be performed under this Option I Period shall commence on the date the option is exercised and shall continue for two-hundred and ten (210) calendar days.

 (End of Clause)

Section G - Contract Administration Data

G.1 DOE-G-2005 BILLING INSTRUCTIONS (OCT 2014)

(a) Contractors shall use Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, when requesting payment for work performed under the contract.

(b) Contractors shall submit vouchers electronically through the Oak Ridge Financial Service Center's (ORFSC) Vendor Inquiry Payment Electronic Reporting System (VIPERS). VIPERS allows vendors to submit vouchers, attach supporting documentation and check the payment status of any voucher submitted to the DOE. Instructions concerning contractor enrollment and use of VIPERS can be found at https://vipers.doe.gov.

(c) A paper copy of a voucher that has been submitted electronically will not be accepted.

(End of Clause)

G.2 CORRESPONDENCE PROCEDURES

To promote timely and effective administration, correspondence (except for invoices and reports) 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, with an information copy of the correspondence to the DOE Contract Specialist.

(b) Property Correspondence

Property correspondence (as used herein, this term includes correspondence which addresses matters which relate to property issues which come under the contract's Government property provisions) shall be addressed to the DOE Property Administrator, with information copies of the correspondence to the DOE Contracting Officer's Representative and the DOE Contract Specialist.

(c) Indirect Rate Correspondence

All correspondence relating to the establishment, revision, and negotiation of billing and final indirect cost rates shall be addressed to the Contracting Officer for Indirect Cost Rate Management, with information copies of the correspondence to the DOE Contract Specialist.

(d) Correspondence on Patent or Technical Data Issues

Subject inventions shall be reported to the Office of Intellectual Property Law, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Building 201, Argonne, IL 60439.

All other correspondence concerning patent or technical data issues shall be addressed to the NETL Patent Attorney, the DOE Contract Specialist, and the Contracting Officer's Representative.

(e) Other Correspondence

All other correspondence shall be addressed to the DOE Contract Specialist with information copies of the correspondence to the DOE Contracting Officer's Representative.

(f) Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., (DE- TBD) and identifying the specific contract action requested.

(End of Clause)

G.3 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR

A support service Contractor performs the function of processing of all invoices submitted to the National Energy Technology Laboratory, against its awards. Therefore, this Contractor has access to cost/rate information. A special provision in this Contractor's award requires the confidential treatment by all Contractor employees of any and all business confidential information of other Contractors and financial assistance recipients to which they have access.

(End of Clause)

Section H - Special Contract Requirements

H.1 DOE-H-2013 CONSECUTIVE NUMBERING (OCT 2014)

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

(End of clause)

H.2 DOE-H-2041 SUSTAINABLE ACQUISITION UNDER DOE SERVICE CONTRACTS (OCT 2014)

(a) Pursuant to Executive Orders 13423, Strengthening Federal Environmental, Energy and Transportation Management, and 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in a manner that will promote the natural environment and protect the health and well-being of its Federal employees and contractor service providers. The Contractor shall use its best efforts to support DOE in meeting those commitments, including sustainable acquisition or environmentally preferable contracting which may involve several interacting initiatives, such as -

(1) Alternative Fueled Vehicles and Alternative Fuels;

(2) Biobased Content Products (USDA Designated Products);

(3) Energy Efficient Products;

(4) Non-Ozone Depleting Alternative Products;

(5) Recycled Content Products (EPA Designated Products); and

(6) Water Efficient Products (EPA WaterSense Labeled Products).

(b) The Contractor should become familiar with these information resources:

(1) Recycled Products are described at http://epa.gov/cpg.

(2) Biobased Products are described at http://www.biopreferred.gov/.

(3) Energy efficient products are described at http://energystar.gov/products for Energy Star products.

(4) FEMP designated products are described at http://www.eere.energy.gov/femp/procurement

(5) Environmentally Preferable Computers are described at http://www.epeat.net.

(6) Non-Ozone Depleting Alternative Products are described at http://www.epa.gov/ozone/strathome.html.

(7) Water efficient plumbing fixtures are described at http://epa.gov/watersense.

(c) If, in the course of providing services at the DOE site, the Contractor’s services necessitate the acquisition of any of the above types of products, it is expected that the Contractor will acquire the sustainable, environmentally preferable models unless the product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products, or does not meet reasonable performance standards. While there is no formal reporting, DOE prepares a sustainable acquisition annual report and the Contractor may be asked by the Contracting Officer to provide information in support of DOE’s report.

(End of Clause)

H.3 DOE-H-2044 MATERIAL SAFETY DATA SHEET AVAILABILITY (OCT 2014)

In implementation of the clause at FAR 52.223-3, Hazardous Material Identification and Material Safety Data, the Contractor shall obtain, review and maintain a Material Safety Data Sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used; and maintain an accurate inventory and history of use of hazardous materials at each use and storage location. The MSDS shall conform to the requirements of 29 CFR 1910.1200(g).

(End of Clause)

H.4 DOE-H-2076 LOBBYING RESTRICTIONS (NOV 2018)

In accordance with 18 U.S.C. § 1913, the Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of clause)

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

The Representations, Certifications and Other Statements of the Contractor for this contract are hereby incorporated by reference.

(End of clause)

H.6 TECHNICAL DIRECTION

(a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(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 Performance Work Statement.

(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 Performance Work Statement;

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

 (3) In any manner causes an increase or decrease in the total estimated contract cost,

 the fixed fee (if any), 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 clause and within the 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; or

(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".

(End of clause)

H.7 MODIFICATION AUTHORITY

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

(a) accept nonconforming work,

(b) waive any requirement of this contract, or

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

(End of clause)

H.8 KEY PERSONNEL

A. Introduction

The key personnel specified below, are considered to be essential to the success of all work being performed under this award. This Clause provides specific requirements, in addition to the requirements of the clause in Section I entitled, “DEAR 952.215-70 Key Personnel.” Any changes to these personnel require prior DOE Contracting Officer’s written approval.

B. Key Personnel Team Requirements

The Contracting Officer and designated Contracting Officer’s Representative(s) shall have direct access to the Key Personnel.

C. Definitions

For the purposes of this clause, Changes to Key Personnel is defined as: (i) any changes to the position assignment of a current Key Person under the contract, except for a person who acts for short periods of time, in the place of a Key Person during his or her absence, the total time of which shall not exceed 30 working days during any given year; (ii) utilizing the services of a new substitute Key Person for assignment to the contract; or (iii) assigning a current Key Person for work outside the Contract.

D. Contract Reductions for Changes to Key Personnel

1. Notwithstanding approval by the Contracting Officer, anytime the Key Personnel (the initial Key Personnel or any substitution approved by the Contracting Officer) is changed for any reason after being placed in the position, the contract price may be permanently reduced by $25,000 for each and every occurrence of a change to the Key Personnel.

3. The Contractor may request, in writing, that the Contracting Officer consider waiving all or part of a reduction. Such written request shall include the factual basis for the request. The Contracting Officer shall have unilateral discretion to make the determination to waive or not waive all or part of a reduction associated with change to key personnel.

E. Key Personnel for this Contract

The Key Personnel that have been approved for this contract are identified below. Any changes to these personnel require prior

DOE Contracting Officer’s written approval.

Name Position/Title

TBD / TBD

Prior to diverting any of the specified individuals, the Contractor shall notify the Contracting Officer not less than thirty (30) calendar

days prior to the diversion or substitution of key personnel and shall submit a written justification (including qualifications of

proposed substitutions) to permit evaluation. The proposed changes will be approved in writing at the sole discretion of the

Contracting Officer.

(End of clause)

H.9 CONTRACTOR COMMUNICATION RELEASES

The DOE policy and procedure on news releases requires that all Contractor communication releases (i.e. press releases, public statements) be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) business days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned news releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

(End of clause)

H.10 PERMITS AND LICENSES

No later than thirty (30) days after issuance of a task order, the Contractor shall submit to the DOE Contracting Officer Representative (COR) a list of Environment, Safety and Health approvals that, in the Contractor's opinion, shall be required to complete the work under the task order. This list shall include the topic of the approval being sought, the approving authority, and the expected submit/approval schedule. The COR shall be notified as specific items are added or removed from the list and processed through their approval cycles.

The Contractor agrees to include this clause in their first-tier subcontracts and agrees to enforce the terms of this clause.

(End of clause)

H.11 HAZARDOUS WASTES MANIFESTS AND LABELS

The contractor shall not identify, on waste manifests or container labels or otherwise, the DOE or the NETL as the owner or generator of hazardous waste without written permission, signed by the contracting officer or his/her designee.

(End of clause)

H.12 INDEMNITY -- ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS

Should the contractor, in the performance of work under this contract, fail to comply with the requirements of environmental permits, local laws or regulations, state laws or regulations, federal laws or regulations, the Performance Work Statement and its attachments, and cause any environmental, health, or safety liability to be assessed against the Government, the contractor agrees to indemnify the Government for this liability. This requirement shall be placed in all subcontracts awarded by the contractor under this contract. The provisions of this clause are limited to liabilities not otherwise addressed by other provisions of this contract.

(End of clause)

H.13 COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL REQUIREMENTS

In performing work under this contract, the Contractor shall comply with all relevant federal, state, and local statutes, ordinances, laws, and regulations and DOE/NETL directives (e.g. orders, policies, and procedures).

(End of clause)

H.14 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) – PRIOR APPROVALS

The National Environmental Policy Act of 1969 (NEPA) requires that all federal agencies consider the impacts of their projects on the human environment. As part of the DOE’s NEPA requirements, the contractor shall be required to supply to the DOE certain environmental information. DOE funds may only be expended by the contractor on activities consistent with 40 CFR 1506.1, until DOE notifies the contractor that all NEPA requirements have been satisfied. In the event that the Contractor expends its own or third party funds on activities not authorized by this provision, such expenditures are entirely at the Contractor's risk that DOE's NEPA analysis will support such activities.

(End of clause)

H.15 COMPLIANCE WITH INTERNET VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY

This contract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology. The contractor agrees that:

(1) All deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4 systems and products; and

(2) it has IPv6 technical support for development and implementation and fielded product management available.

Should the contractor find that the Performance Work Statement or specifications of this contract do not conform to the IPv6 standard, it must notify the Contracting Officer of such nonconformance and act in accordance with instructions of the Contracting Officer.

(End of clause)

H.16 AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE) USAGE

ADPE requirements which were not included in the Contractor's original proposal may not be acquired (leased or purchased) without the prior written consent of the Contracting Officer. Whenever Contracting Officer written consent is required, the Contractor will furnish to the Contracting Officer information concerning the need for and selection of such ADPE, the specific make(s) and model(s), and the lease versus purchase determination.

The Government may require the Contractor to register the copyright on software developed for the Government under this contract.

(End of clause)

H.17 NO THIRD PARTY BENEFICIARIES

This Contract is for the exclusive benefit and convenience of the parties hereto. Nothing contained herein shall be construed as granting, vesting, creating, or conferring any right of action or any other right or benefit upon past, present, or future employees of the Contractor, or upon any other third party. This provision is not intended to limit or impair the rights which any person may have under applicable Federal statutes.

(End of clause)

Section I - Contract Clauses

I.1 52.202-1 DEFINITIONS. (NOV 2013)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless-

(a) The solicitation, or amended solicitation, provides a different definition;

(b) The contracting parties agree to a different definition;

(c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or

(d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

(End of clause)

I.2 952.202-1 DEFINITIONS.

As prescribed in 902.201, insert the clause at 48 CFR 52.202-1, Definitions, in all contracts. The following shall be added to the clause as paragraph (c):

(c) When a solicitation provision or contract clause uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or clause is prescribed in effect at the time the solicitation was issued, unless an exception in (a) applies.

(End of clause)

I.3 52.203-5 COVENANT AGAINST CONTINGENT FEES. (MAY 2014)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) *Bona fide agency,* as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

*Bona fide employee,* as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

*Contingent fee,* as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

*Improper influence,* as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

I.4 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (SEP 2006)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

(End of clause)

I.5 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (SEP 2006) - ALTERNATE I (OCT 1995)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

(End of clause)

I.6 52.203-7 ANTI-KICKBACK PROCEDURES. (MAY 2014)

(a) *Definitions*.

*Kickback,* as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

*Person,* as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

*Prime contract,* as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

*Prime Contractor,* as used in this clause, means a person who has entered into a prime contract with the United States.

*Prime Contractor employee,* as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

*Subcontract,* as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

*Subcontractor,* as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

*Subcontractor employee,* as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from-

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under under this contract which exceed $150,000.

I.7 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (MAY 2014)

(a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may-

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which-

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either-

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

I.8 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (MAY 2014)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be -

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee conrtracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts -

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may -

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

I.9 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (OCT 2010)

(a) *Definitions*. As used in this clause-

*Agency* means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.

*Covered Federal action* means any of the following actions:

(1) Awarding any Federal contract.

(2) Making any Federal grant.

(3) Making any Federal loan.

(4) Entering into any cooperative agreement.

(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

*Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

*Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

*Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

*Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

*Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

*Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

*Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

*Recipient* includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

*Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

*State* means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition*. 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contractor the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions*. The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees*. (i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern-

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub.L. 95-507, and subsequent amendments.

(2) *Professional and technical services*. (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) *Disclosure*. (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) *Penalties*. (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability*. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) *Subcontracts*. (1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding $150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding $150,000.

(End of clause)

I.10 52.203-16 PREVENTING PERSONAL CONFLICTS OF INTEREST. (DEC 2011)

(a) *Definitions*. As used in this clause-

*Acquisition function closely associated with inherently governmental functions* means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.

(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

*Covered employee* means an individual who performs an acquisition function closely associated with inherently governmental functions and is-

(1) An employee of the contractor; or

(2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

*Non-public information* means any Government or third-party information that-

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public and the Government has not yet determined whether the information can or will be made available to the public.

*Personal conflict of interest* means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. (A *de minimis* interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not covered under this definition.)

(1) Among the sources of personal conflicts of interest are-

(i) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition may arise from-

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;

(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

(b) *Requirements*. The Contractor shall-

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest, by-

(i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:

(A) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household.

(B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).

(C) Gifts, including travel; and

(ii) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee-

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

(ii) Prohibit use of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation-

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause; and

(6) Report to the Contracting Officer any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include-

(i) Failure by a covered employee to disclose a personal conflict of interest;

(ii) Use by a covered employee of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement.

(c) *Mitigation or waiver*. (1) In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Contractor may submit a request through the Contracting Officer to the Head of the Contracting Activity for-

(i) Agreement to a plan to mitigate the personal conflict of interest; or

(ii) A waiver of the requirement.

(2) The Contractor shall include in the request any proposed mitigation of the personal conflict of interest.

(3) The Contractor shall-

(i) Comply, and require compliance by the covered employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or

(ii) Remove the Contractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

(d) *Subcontract flowdown.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts-

(1) That exceed $150,000; and

(2) In which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions (*i.e.*, instead of performance only by a self-employed individual).

(End of clause)

I.11 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS. (APR 2014)

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

(End of clause)

I.12 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES. (DEC 2000)

(a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.

(b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

(End of Clause)

I.13 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER. (MAY 2011)

(a) *Definitions*. As used in this clause -

*Postconsumer fiber* means-(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

(End of clause)

I.14 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE. (OCT 2018)

(a) *Definitions*. As used in this clause-

*Electronic Funds Transfer (EFT) indicator* means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

*Registered in the System for Award Management (SAM)* means that-

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into SAM;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

*System for Award Management (SAM)* means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes-

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

(3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

*Unique entity identifier* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See *www.sam.gov* for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in SAM after the initial registration, the Contractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d)(1)(i) If a Contractor has legally changed its business name or "doing business as" name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to-

(A) Change the name in SAM;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (d)(1)(i) of this clause, or fails to perform the agreement at paragraph (d)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in SAM. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at *www.sam.gov* for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

(e) Contractors may obtain additional information on registration and annual confirmation requirements at *https://www.sam.gov*.

(End of clause)

I.15 RESERVED

I.16 952.208-70 PRINTING. (APR 1984)

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

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

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

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

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

(End of clause)

I.17 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (OCT 2015)

(a) *Definition. Commercially available off-the-shelf (COTS)* item, as used in this clause-

(1) Means any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition in FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

(b) The Government suspends or debars Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of $35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed $35,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that-

(1) Exceeds $35,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

(End of clause)

I.18 52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS. (NOV 2015)

(a) Definitions. As used in this clause-

*Inverted domestic corporation* means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

*Subsidiary* means an entity in which more than 50 percent of the entity is owned-

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

(b) If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

(c) Exceptions to this prohibition are located at 9.108-2.

(d) In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

(End of clause)

I.19 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST. (AUG 2009)

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

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of (Contracting Officer see 48 CFR 909.507-2 and enter specific term) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

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

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

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not-

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

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

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

(c) Disclosure after award.

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

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

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

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

(End of clause)

I.20 52.215-2 AUDIT AND RECORDS - NEGOTIATION. (OCT 2010)

(a) As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs*. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Certified cost or pricing data*. If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to-

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.* (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports*. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition -

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold and -

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which certified cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

I.21 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT. (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

(End of clause)

I.22 952.215-70 KEY PERSONNEL. (DEC 2000)

(a) The personnel listed in section H, Key Personnel are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:

(1) Notify the Contracting Officer reasonably in advance;

(2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and

(3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.

(b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

(End of clause)

I.23 52.217-8 OPTION TO EXTEND SERVICES. (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 60 days prior to the end of the contract.

(End of clause)

I.24 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT. (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 15 days provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 1 year.

(End of clause)

I.25 52.222-3 CONVICT LABOR. (JUN 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons--

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

I.26 RESERVED

I.27 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (APR 2015)

(a) *Definitions*. As used in this clause-

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at *www.dol.gov/ofccp/LGBT/LGBT\_FAQs.html*.

*Segregated facilities* means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at *www.dol.gov/ofccp/LGBT/LGBT\_FAQs.html*.

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

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

I.28 52.222-26 EQUAL OPPORTUNITY. (SEP 2016)

(a) *Definitions*. As used in this clause-

*Compensation* means any payments made to, or on behalf of, an employee or offered to an applicant as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, bonuses, commissions, vacation and holiday pay, allowances, insurance and other benefits, stock options and awards, profit sharing, and retirement.

*Compensation information* means the amount and type of compensation provided to employees or offered to applicants, including, but not limited to, the desire of the Contractor to attract and retain a particular employee for the value the employee is perceived to add to the Contractor's profit or productivity; the availability of employees with like skills in the marketplace; market research about the worth of similar jobs in the relevant marketplace; job analysis, descriptions, and evaluations; salary and pay structures; salary surveys; labor union agreements; and Contractor decisions, statements and policies related to setting or altering employee compensation.

*Essential job functions* means the fundamental job duties of the employment position an individual holds. A job function may be considered essential if-

(1) The access to compensation information is necessary in order to perform that function or another routinely assigned business task; or

(2) The function or duties of the position include protecting and maintaining the privacy of employee personnel records, including compensation information.

*Gender identity* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at *www.dol.gov/ofccp/LGBT/LGBT\_FAQs.html*.

*Sexual orientation* has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at *www.dol.gov/ofccp/LGBT/LGBT\_FAQs.html*.

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b)(1) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(2) If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor's activities (41 CFR 60-1.5).

(c)(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(5)(i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by-

(A) Incorporation into existing employee manuals or handbooks; and

(B) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(7) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(8) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(9) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(10) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(11) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.

(End of clause)

I.29 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES. (JUL 2014)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

I.30 52.222-37 EMPLOYMENT REPORTS ON VETERANS. (FEB 2016)

(a) *Definitions*. As used in this clause, "active duty wartime or campaign badge veteran," "Armed Forces service medal veteran," "disabled veteran," "protected veteran," and "recently separated veteran," have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are protected veterans (*i.e*., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (*i.e*., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by filing the VETS-4212 "Federal Contractor Veterans' Employment Report" (see "VETS-4212 Federal Contractor Reporting" and "Filing Your VETS-4212 Report" at *http://www.dol.gov/vets/vets4212.htm*).

(d) The Contractor shall file VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date-

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

I.31 52.222-50 COMBATING TRAFFICKING IN PERSONS. (MAR 2015)

(a) *Definitions*. As used in this clause-

*Agent* means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

*Coercion* means-

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person.

*Commercially available off-the-shelf (COTS) item* means-

(1) Any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

*Employee* means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

*Forced Labor* means knowingly providing or obtaining the labor or services of a person-

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

*Involuntary servitude* includes a condition of servitude induced by means of-

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

*Severe forms of trafficking in persons* means-

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

*Subcontract* means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

*United States* means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy*. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not-

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees recruitment fees;

(7)(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements*. The Contractor shall-

(1) Notify its employees and agents of-

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification*. (1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of-

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies*. In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in-

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) *Mitigating and aggravating factors*. When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors*. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors*. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation*. (1) The Contractor shall, at a minimum-

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from-

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan*. (1) This paragraph (h) applies to any portion of the contract that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $500,000.

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate-

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements*. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at *http://www.state.gov/j/tip/*.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at *help@befree.org*.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting*. (i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification*. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that-

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either-

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts*. (1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that-

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds $500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

(End of clause)

I.32 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION. (OCT 2015)

(a) *Definitions*. As used in this clause-

*Commercially available off-the-shelf (COTS) item*-

(1) Means any item of supply that is-

(i) A commercial item (as defined in paragraph (1) of the definition at 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products. Per 46 CFR 525.1(c)(2), "bulk cargo" means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

*Employee assigned to the contract* means an employee who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at 22.1803. An employee is not considered to be directly performing work under a contract if the employee-

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

*Subcontract* means any contract, as defined in 2.101, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

*United States,* as defined in 8 U.S.C. 1101(a)(38), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements*. (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall-

(i) *Enroll*. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees*. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract*. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of-

(i) *All new employees*. (A) *Enrolled 90 calendar days or more*. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days*. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract*. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees*. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of-

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site*. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: *http://www.dhs.gov/E-Verify*.

(d) *Individuals previously verified*. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts*. The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that-

(1) *Is for*- (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than $3,500; and

(3) Includes work performed in the United States.

(End of clause)

I.33 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. (MAY 2011)

(a) Definitions. As used in this clause-

*Toxic chemical* means a chemical or chemical category listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of section 302 of EPCRA.

(2) The emergency notice requirements of section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.

(5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

(End of clause)

I.34 52.223-6 DRUG-FREE WORKPLACE. (MAY 2001)

(a) *Definitions*. As used in this clause-

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

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

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

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

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

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

(b) The Contractor, if other than an individual, shall - within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration); or as soon as possible for contracts of less than 30 days performance duration -

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

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

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

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

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

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

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

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

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

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

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

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

I.35 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING. (AUG 2011)

(a) *Definitions*. As used in this clause -

*Driving* - (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

*Text messaging* means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to -

(1) Adopt and enforce policies that ban text messaging while driving -

(i) Company-owned or rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as -

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

(End of clause)

I.36 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (JUN 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at *http://www.treas.gov/offices/enforcement/ofac/sdn*. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR chapter V and/or on OFAC's Web site at *http://www.treas.gov/offices/enforcement/ofac*.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

I.37 952.226-71 UTILIZATION OF ENERGY POLICY ACT TARGET ENTITIES. (JUN 1996)

(a) Definition. Energy Policy Act target groups, as used in this provision means-

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent-

(i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Obligation. In addition to its obligations under the clause of this contract entitled Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.

(End of clause)

I.38 52.227-1 AUTHORIZATION AND CONSENT. (DEC 2007) -- ALTERNATE I (APR 1984)

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

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

I.39 52.227-13 PATENT RIGHTS--OWNERSHIP BY THE GOVERNMENT. (DEC 2007)

(a) *Definitions*. As used in this clause--

*Invention* means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.)

*Made* means-

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, means that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

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

*Subject invention,* means any invention of the Contractor made in the performance of work under this contract.

(b) *Ownership*. (1) Assignment to the Government. The Contractor shall assign to the Government title throughout the world to each subject invention, except to the extent that rights are retained under paragraphs (b)(2) and (d) of this clause.

(2) *Greater rights determinations*. (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license provided in paragraph (d) of this clause. The request for a greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the subject invention pursuant to paragraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause, and to the reservations and conditions deemed to be appropriate by the agency.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the agency an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government. (1) Regarding each subject invention to which the Contractor retains ownership, the Contractor agrees as follows:

(i) The Government will have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(ii) The agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c) and in accordance with the procedures set forth in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of the contract award.

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

(iv) When licensing a subject invention, the Contractor shall--

(A) Ensure that no royalties are charged on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government;

(B) Refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government;

(C) Provide for this refund in any instrument transferring rights in the subject invention to any party.

(v) When transferring rights in a subject invention, the Contractor shall provide for the Government's rights set forth in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

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

(d) *Minimum rights to the Contractor*. (1) The Contractor is hereby granted a revocable, nonexclusive, paid-up license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to any of its domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency except when transferred to the successor of that part of the Contractor's business to which the subject invention pertains.

(2) The Contractor's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR 27.302(i)(2) and 27.304-1(f).

(3) When the Government elects not to apply for a patent in any foreign country, the Contractor retains rights in that foreign country to apply for a patent, subject to the Government's rights in paragraph (c)(1) of this clause.

(e) *Invention identification, disclosures, and reports*. (1) The Contractor shall establish and maintain active and effective procedures to educate its employees in order to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters. The procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show the procedures for identifying and disclosing subject inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of these procedures for evaluation and for a determination as to their effectiveness.

(2) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale (i.e., sale or offer for sale), public use, or publication of the subject invention known to the Contractor. The disclosure shall identify the contract under which the subject invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale, or public use of the subject invention and whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

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

(i) Interim reports every 12 months (or a longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and stating that all subject inventions have been disclosed (or that there are none) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were none, and listing all subcontracts at any tier containing a patent rights clause or stating that there were none.

(4) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (e)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

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

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

(i) Any inventions are subject inventions;

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

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

(2) The Contractor shall disclose to the Contracting Officer, for the determination of ownership rights, any unreported invention that the Contracting Officer believes may be a subject invention.

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

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

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

(ii) Disclose any subject invention pursuant to paragraph (e)(2) of this clause;

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

(iv) Provide the information regarding subcontracts pursuant to paragraph (i)(4) of this clause.

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

(3) The Contracting Officer will not make final payment under this contract before the Contractor delivers to the Contracting Officer, as required by this clause, all disclosures of subject inventions, an acceptable final report, and all due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized. The Contracting Officer will not withhold any amount under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment shall not be construed as a waiver of any Government rights.

(h) *Preference for United States industry*. Unless provided otherwise, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the agency upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

(i) *Subcontracts*. (1) The Contractor shall include the substance of the patent rights clause required by FAR Subpart 27.3 in all subcontracts for experimental, developmental, or research work. The prescribed patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

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

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

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

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

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

(End of clause)

I.40 952.227-13 PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT. (SEP 1997)

(a) Definitions.

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

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

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

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

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109- 6 or successor regulations. See 10 CFR part 784.

"Agency licensing regulations" and "applicable agency licensing regulations", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocations of principal rights.

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

(2) Greater rights determinations.

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

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

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

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

(c) Minimum rights acquired by the Government.

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

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

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees; (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

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

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

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

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

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

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

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

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

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

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

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

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

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

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

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

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

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

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

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

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

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

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

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

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause. (5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

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

(i) Any such inventions are subject inventions;

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

(iii) The Contractor and its inventors have complied with the procedures. (2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

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

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

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

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

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

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

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause. (2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause. (3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

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

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

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

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer. (3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause. (4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded. (5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

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

(j) Atomic energy.

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

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

(k) Background Patents.

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

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

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

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

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

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

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

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

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

(m) Forfeiture of rights in unreported subject inventions.

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

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

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

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

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

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

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

(End of clause)

I.41 52.227-14 RIGHTS IN DATA-GENERAL. (MAY 2014)

(a) *Definitions.* As used in this clause-

*Computer database* or *database* means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

*Computer software*- (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

*Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

*Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

*Form, fit, and function data* means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

*Limited rights* means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

*Limited rights data* means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

*Restricted computer software* means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

*Restricted rights,* as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

*Technical data,* means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 116).

*Unlimited rights* means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in-

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to-

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright*- (1) Data first produced in the performance of this contract. (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor-

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except-

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor-

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may-

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.* (1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall-

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) (Reserved)

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

I.42 52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (FEB 2013)

(a) As used in this clause-

*After-imposed Federal tax* means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

*After-relieved Federal tax* means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

*All applicable Federal, State, and local taxes and duties* means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

*Contract date* means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

*Local taxes* includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b)(1) The contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

I.43 52.232-1 PAYMENTS. (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if -

(a) The amount due on the deliveries warrants it; or

(b) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

(End of clause)

I.44 52.232-2 PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS. (APR 1984)

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

I.45 52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to -

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

I.46 52.232-17 INTEREST. (MAY 2014)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if-

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

I.47 52.232-18 AVAILABILITY OF FUNDS. (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

I.48 52.232-23 ASSIGNMENT OF CLAIMS. (MAY 2014)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 6305 (hereafter referred to as *the Act*), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

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

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

(End of clause)

I.49 52.232-25 PROMPT PAYMENT. (JAN 2017)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments--(1) Due date. (i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) Certain food products and other payments. (i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are--

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

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

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) Computing penalty amount. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance is deemed to occur constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivers the supplies or performs the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. If actual acceptance occurs within the constructive acceptance period, the Government will base the determination of an interest penalty on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes and any interest that may be payable in accordance with the clause at FAR 52.233-1, Disputes.

(6) Discounts for prompt payment. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR part 1315.

(7) Additional interest penalty. (i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR part 1315 in addition to the interest penalty amount only if--

(A) The Government owes an interest penalty of $1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(7)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible--

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payment. If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(d) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

I.50 52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER - SYSTEM FOR AWARD MANAGEMENT. (OCT 2018)

(a) *Method of payment*. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either-

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information*. The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to SAM.

(c) *Mechanisms for EFT payment*. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment*. If the Contractor's EFT information in SAM is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into SAM; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Liability for uncompleted or erroneous transfers*. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for -

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and -

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in SAM and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) *Payment information*. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in SAM.

(End of clause)

I.51 52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS. (JUN 2013)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

I.52 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS. (DEC 2013)

(a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of clause)

I.53 52.233-1 DISPUTES. (MAY 2014)

(a) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(b) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(d)(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

I.54 52.233-3 PROTEST AFTER AWARD. (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

I.55 52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM. (OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

I.56 52.242-13 BANKRUPTCY. (JUL 1995)

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

(End of clause)

I.57 52.243-1 CHANGES - FIXED-PRICE. (AUG 1987) - ALTERNATE V (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or time required for, performing this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in (1) the contract price, the time of performance, or both; and (2) other affected terms of the contract, and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

I.58 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (OCT 2018)

(a) *Definitions.* As used in this clause-

*Commercial item* and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation 2.101, Definitions.

*Subcontract* includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

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

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (OCT 2015) (41 U.S.C. 3509), if the subcontract exceeds $5.5 million and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(iv) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (JUN 2016), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause 52.204-21.

(v) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018) (Section 1634 of Pub. L. 115-91).

(vi) 52.219-8, Utilization of Small Business Concerns (OCT 2018) (15 U.S.C. 637(d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vii) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(viii) 52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).

(ix) 52.222-35, Equal Opportunity for Veterans (OCT 2015)(38 U.S.C. 4212(a));

(x) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).

(xi) 52.222-37, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

(xii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

(xiii)(A) 52.222-50, Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O. 13627).

(B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

(xiv) 52.222-55, Minimum Wages under Executive Order 13658 (DEC 2015), if flowdown is required in accordance with paragraph (k) of FAR clause 52.222-55.

(xv) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706), if flowdown is required in accordance with paragraph (m) of FAR clause 52.222-62.

(B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).

(xvi)(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a) if flow down is required in accordance with 52.224-3(f).

(B) Alternate I (JAN 2017) of 52.224-3, if flow down is required in accordance with 52.224-3(f) and the agency specifies that only its agency-provided training is acceptable).

(xvii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xviii) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013), if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

(xix) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

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

(End of clause)

I.59 52.245-1 GOVERNMENT PROPERTY. (JAN 2017)

(a) *Definitions.* As used in this clause-

*Cannibalize* means to remove parts from Government property for use or for installation on other Government property.

*Contractor-acquired property* means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

*Contractor inventory* means-

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract, *e.g.,* as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

*Contractor's managerial personnel* means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location; or

(3) A separate and complete major industrial operation.

*Demilitarization* means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

*Discrepancies incident to shipment* means any differences (*e.g.,* count or condition) between the items documented to have been shipped and items actually received.

*Equipment* means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

*Government-furnished property* means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

*Government property* means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

*Loss of Government property* means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to-

(1) Items that cannot be found after a reasonable search;

(2) Theft;

(3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

*Material* means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

*Nonseverable* means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

*Precious metals* means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

*Production scrap* means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, *e.g.,* textile and metal clippings, borings, and faulty castings and forgings.

*Property* means all tangible property, both real and personal.

*Property Administrator* means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

*Property records* means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

*Provide* means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

*Real property* See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

*Sensitive property* means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

*Unit acquisition cost* means-

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the Contractor's records that reflect consistently applied generally accepted accounting principles.

(b) *Property management.* (1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair, and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.

(c) *Use of Government property.* (1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are-

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

(d) *Government-furnished property.* (1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)(i) The Contracting Officer may by written notice, at any time-

(A) Increase or decrease the amount of Government-furnished property under this contract;

(B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or

(C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) *Title to Government property.* (1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) *Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts.* (i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon--

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) *Contractor plans and systems.* (1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:

(i) *Acquisition of Property.* The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.

(ii) *Receipt of Government Property.* The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.

(A) *Government-furnished property.* The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

(B) *Contractor-acquired property.* The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.

(iii) *Records of Government property.* The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.

(A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:

(*1*) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.

(*2*) Quantity received (or fabricated), issued, and balance-on-hand.

(*3*) Unit acquisition cost.

(*4*) Unique-item identifier or equivalent (if available and necessary for individual item tracking).

(*5*) Unit of measure.

(*6*) Accountable contract number or equivalent code designation.

(*7*) Location.

(*8*) Disposition.

(*9*) Posting reference and date of transaction.

(*10*) Date placed in service (if required in accordance with the terms and conditions of the contract).

(B) *Use of a Receipt and Issue System for Government Material.* When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.

(iv) *Physical inventory.* The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).

(v) *Subcontractor control.* (A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property.

(B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the Contracting Officer.

(vii) *Relief of stewardship responsibility and liability.* The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

(A) This process shall include the corrective actions necessary to prevent recurrence.

(B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:

(*1*) Date of incident (if known).

(*2*) The data elements required under paragraph (f)(1)(iii)(A) of this clause.

(*3*) Quantity.

(*4*) Accountable contract number.

(*5*) A statement indicating current or future need.

(*6*) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.

(*7*) All known interests in commingled material of which includes Government material.

(*8*) Cause and corrective action taken or to be taken to prevent recurrence.

(*9*) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.

(*10*) Copies of all supporting documentation.

(*11*) Last known location.

(*12*) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when--

(*1*) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;

(*2*) Property Administrator grants relief of responsibility and liability for loss of Government property;

(*3*) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(*4*) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) *Utilizing Government property.* (A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

(ix) *Maintenance.* The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

(g) *Systems analysis.* (1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(h) *Contractor Liability for Government Property.* (1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss of Government property furnished or acquired under this contract, except when any one of the following applies--

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

(5) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

(1) Any delay in delivery of Government-furnished property.

(2) Delivery of Government-furnished property in a condition not suitable for its intended use.

(3) An increase, decrease, or substitution of Government-furnished property.

(4) Failure to repair or replace Government property for which the Government is responsible.

(j) *Contractor inventory disposal.* Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer or authorizing official.

(1) *Predisposal requirements.* (i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.

(ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)

(2) *Inventory disposal schedules.* (i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report--

(A) Government-furnished property that is no longer required for performance of this contract;

(B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and

(C) Termination inventory.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.

(iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer.

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Information technology (*e.g.,* computers, computer components, peripheral equipment, and related equipment);

(E) Precious metals in raw or bulk form;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) The Contractor shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals in raw or bulk form, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

(3) *Submission requirements.* (i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than--

(A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;

(B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.

(ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.

(4) *Corrections.* The Plant Clearance Officer may--

(i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and

(ii) Require the Contractor to correct an inventory disposal schedule.

(5) *Postsubmission adjustments.* The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.

(6) *Storage.* (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(7) *Disposition instructions.*

(i) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(ii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(8) *Disposal proceeds.* As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(9) *Subcontractor inventory disposal schedules.* The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(3) of this clause.

(k) *Abandonment of property.* (1) The Government shall not abandon sensitive property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) *Communication.* All communications under this clause shall be in writing.

(m) *Contracts outside the United States.* If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

I.60 952.247-70 FOREIGN TRAVEL. (JUN 2010)

Contractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, Official Foreign Travel, or its successor in effect at the time of award.

(End of Clause)

I.61 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE). (APR 2012)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of -

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including -

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

(i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted -

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

I.62 52.249-5 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS). (AUG 2016)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under subparagraph (b)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(f) The cost principles and procedures in subpart 31.3 of the Federal Acquisition Regulation (FAR), Contracts with Educational Institutions (defined as institutions of higher education in the OMB Uniform Guidance in 2 CFR part 200, subpart A, and 20 U.S.C. 1001), as in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution and is a nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200), the cost principles and procedures in subpart 31.7 of the FAR, Contracts with Nonprofit Organizations, shall apply; unless the Contractor is a nonprofit institution listed in the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, as exempted from the cost principles in subpart E, in which case the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

(g) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

(End of clause)

I.63 52.249-9 DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT). (APR 1984)

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to -

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this paragraph may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed or partially completed work not previously delivered to, and accepted by, the Government and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

I.64 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS. (AUG 2009)

(a) The Contractor shall take advantage of travel discounts offered to Federal Contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the Contractor employee to furnish them a letter of identification signed by the authorized Contracting Officer.

(b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.

(c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.

(d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.

(e) Car rentals. Surface Deployment and Distribution Command (SDDC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.

(f) Obtaining travel discounts.

(1) To determine which vendors offer discounts to Government contractors, the Contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The Contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

(2) The vendor providing the service may require the Government contractor to furnish a letter signed by the Contracting Officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

SIGNATURE, Title and telephone number of Contracting Officer

(End of clause)

Section J - List of Documents, Exhibits and Other Attachments

J.1 List of Documents, Exhibits, and Other Attachments

| Attachment Number |  Title |
| --- | --- |
| A |  Performance Work Statement |

J.A PERFORMANCE WORK STATEMENT

**Coal-Based Power Plants of the Future**

**Background**

Changes to the United States (U.S.) electricity industry are forcing a paradigm shift in how the nation’s power generating assets are operated. Coal-fired power plants optimized as baseload resources are being increasingly relied on as load-following resources to support electricity generated from intermittent renewable capacity, as well as to provide critical ancillary services to the grid. These fundamental changes to the operating and economic environment in which coal plants function are expected to persist into the next decade and beyond.

The aspects of coal-fueled electricity generation that in the past led coal to be the fuel of choice for low cost power are less relevant today due in large part to sustained low natural gas prices, decreasing capital costs of competing electricity generating technology options, and more frequent dispatch as load-following units. Historically, coal represented a stable, low-cost fuel option compared to more volatile, higher priced natural gas. The advent of hydraulic fracturing for production of shale gas and the projection that natural gas will remain low cost for the foreseeable future has all but eliminated the fuel cost advantage of coal. Trends in capital costs of competing electricity generating technologies, both natural gas fueled and renewable options, have only added pressure on capital intensive coal projects. Renewable power generation sources are causing non-renewable electricity generators to vary output to accommodate the intermittency of wind and solar power.

The eroding economic environment for coal-based electric power generation has resulted in very few new domestic coal plants coming online in recent years. Over the long-term, wide-scale retirements of the nation’s existing fleet of coal-fired power plants – without replacement – may lead to a significant undermining of the reliability of America’s electricity supply.

Nevertheless, the need for considerable dispatchable generation, critical ancillary services, grid reliability and energy security concerns, combined with potentially higher future natural gas prices, create the opportunity for advanced coal-fired generation, for both domestic and international deployment. Deployment of new coal plants will require a different way of thinking and advances beyond today’s utility scale power plant concepts (e.g. base-load units) and state-of-the-art technologies as well as innovative approaches to design and construction. To that end, DOE envisions that the future coal fleet may be based on electricity generating units possessing the following traits:

* High overall plant efficiency (40%+ HHV or higher at full load, with minimal reductions in efficiency over the required generation range).
* Modular (unit sizes of approximately 50 to 350 MW), maximizing the benefits of high-quality, low-cost shop fabrication to minimize field construction costs and project cycle time
* Near-zero emissions, with options to consider plant designs that inherently emit no or low amounts of carbon dioxide (amounts that are equal to or lower than natural gas technologies) or could be retrofitted with carbon capture without significant plant modifications
* The overall plant must be capable of high ramp rates and achieve minimum loads commensurate with estimates of renewable market penetration by 2050
* Integration with thermal or other energy storage to ease intermittency inefficiencies and equipment damage
* Minimized water consumption
* Reduced design, construction, and commissioning schedules from conventional norms by leveraging techniques including but not limited to advanced process engineering and parametric design methods
* Enhanced maintenance features including technology advances with monitoring and diagnostics to reduce maintenance and minimize forced outages
* Integration with coal upgrading, or other plant value streams (e.g., co-production)
* Capable of natural gas co-firing

**General Requirements**

The Department of Energy (DOE) Office of Fossil Energy (FE) and the National Energy Technology Laboratory (NETL) seek to understand the configurations, equipment features, performance characteristics, and cost implications for a future commercial coal plant incorporating as warranted, the aforementioned attributes.

Therefore, the NETL, is requiring a conceptual design(s) with an option for a preliminary front end engineering designs (pre-FEED) on advanced coal-fired power plants.. Conceptual designs may contain advanced (not currently commercial) technologies and/or equipment as long as there is a plausible Research, Development and Demonstration pathway to completion of pilot-scale testing by 2030 with potential market penetration in the 2030-timeframe.

The objectives for this requirement are as follows:

* Base Award: Develop conceptual design(s)to provide an overview of the integrated plant concept/configuration proposed to achieve the design criteria, listed in Appendix B of this requirement.
* Option : Develop a pre-FEED study based on an evaluation of the conceptual design.

The technologies to be considered do not require commercial performance guarantees. The plant conceptual designs are projected to include commercial and pre-commercial plant components that require additional R&D. Firms are encouraged to involve input from equipment manufacturers, technology developers, and/or utilities in determining component options.

Base Award: **Conceptual Designs– Commercial Plant Configuration Options**

The objective of the base award is to develop conceptual design(s) that provide an overview of integrated plant concepts/configurations proposed to achieve the objectives of this requirement.

Some specific concept examples have been identified (detailed in Appendix A) as examples for the contractor to consider as innovative power generation cycles which could be evaluated for potential commercial piloting. The contractor is not limited to the examples in Appendix A, and may propose other plant configurations and technology that the contractor considers would also meet the objectives of this solicitation. However, each study must adhere to the Common Design Basis established for this activity (detailed in Appendix B).

Power plant system configurations should consider options or configurations for the coal and other fuel processing unit or system components, whether they be pulverized coal boiler designs, fluidized bed combustors, direct injection burners or engines, topping combustors, gasifiers, pyrolyzers or other fuel processors that are worthy of consideration for incorporation into the coal plant of the future. Likewise, the power cycle may consider various incarnations of the steam cycle (e.g., 4200psi/1300F/1200F/1200F or similar), other working fluids (e.g. supercritical CO2, in-direct or direct cycles) or combinations of working fluids as may be considered worthy for evaluation. Similarly, natural gas co-firing (up to 30%) may be incorporated into the design, per guidance in Appendix B, to the extent that it contributes significantly to one or more flexible operation metrics.

***Conceptual Design Content Requirements***

Each Conceptual Design submission must be limited to a single concept or technology. Offerors may submit more than one proposal; however, unrelated conceptual designs and technologies should not be consolidated into a single Conceptual Design. Each conceptual design will be awarded based on the submittal.

The Conceptual Design must conform to the following content requirements:

|  |  |  |
| --- | --- | --- |
| **Section** | **Page Limit****(30 pages maximum)** | **Description** |
| **Cover Page** | 1 page maximum (does not count against 20 page maximum) | The cover page should include: a title for the power plant system that best describes its features, the specific concept area interest being addressed (i.e., CO2 Capture Ready or Inherently Capture), and any statements regarding confidentiality. |
| **Business Case**  | 5 pages maximum | Succinctly describe:* Market scenario including, but not limited to:
* Coal type(s)
* Natural gas price
* Renewables penetration
* CO2 constraint and/or price
* Domestic and/or international market applicability
* Market advantage of the concept
* Estimated cost of electricity (and ancillary products) that establishes competitiveness of the concept
 |
| **Plant Concept Description and Important Traits (refer to Background section)** | 15 pages maximum | Succinctly describe:* The proposed plant concept, including its basic operating principles and how it is unique and innovative;
* Description regarding the ability of the plant concept to meet the specific design criteria outlined in the RFP. If specific criteria can’t be met, or are cost prohibitive to meet, discussion shall include details on how they would be overcome.
* The proposed technology’s target level of performance (applicants should provide technical data or other support to show how the proposed target could be met) including:
* Expected plant efficiency range at full and part load
* Emissions control summary
* CO2 control (Inherently Capture) or capture ready strategy
* Brief description of system including:
* Size of the commercial offering
* Advanced technology aspects
* List of components that are not commercially available
* Block flow diagram of integrated system
* Brief description of each process block
* Extent and manner of use of other fuels in conjunction with coal
* Description of any thermal or energy storage that is integrated and used
* Power system working fluid and process conditions
* Features that minimize water consumption
* Techniques to reduce design, construction, and commissioning schedules from conventional norms including:
* Modularization characteristics (e.g., off-site fabrication of equipment or subsystems, or laydown area pre-assembly, in whole or part)
* Parametric design
* Advanced process engineering

May provide graphs, charts, or other data to supplement plant concept description. Supplements will not be counted toward the page length. |
| **Technology Development Pathway Description** | 6 pages maximum | Succinctly describe:* The current state-of-the-art in the relevant field and application, including key shortcomings, limitations, and challenges;
* How the proposed plant concept will overcome the shortcomings, limitations, and challenges in the relevant field and application;
* The key technical risks/issues associated with the proposed plant concept;
* Asssessed technology gaps and R&D needed for commercialization by 2030; and
* Development pathway description for the plant concept that will overcome key technical risks/issues, including need for and size of pilot plant.
 |
| **Technology Original Equipment Manufacturers (OEM)** | 4 pages maximum | Identify and succinctly describe the proposed technology OEMs, including:* List of commercial equipment
* List of equipment requiring R&D
* Describe whether the A&E firm has worked with the OEMs of the proposed equipment, and if so briefly describe prior work
* Whether the A&E firm has adequate access to information on the equipment included in the proposed concept
 |

The Contractor shall include, with their submission of the Conceptual Design, a firm-fixed price if different than the original submitted not-to-exceed amount, for the completion of the Option I Pre-FEED Study,

**Document Delivery Requirements**

The Contractor is required to provide a complete draft conceptual design for review and comment by DOE. Upon receipt of DOE’s comments for the draft conceptual design, the Contractor shall revise the draft conceptual design accordingly and submit a revised final version for DOE concurrence. Copies of the approved final Conceptual Design will be provided. The Contractor will use electronic media as much as practicable. Review copies (e.g., versions of the draft and final) will be provided electronically.

Microsoft Word format is required with the submission of deliverables in electronic media. Normal text will be typed using 12-point Times New Roman font. Final deliverables of the approved draft and final Conceptual Design shall also be made available as print-ready .pdf files for DOE.

An administrative record file containing all data, information, correspondence, conversation records (telephone and e-mail), and all other information pursuant to the conceptual design shall be maintained by the Contractor. All records shall be in writable .pdf format so they are searchable and indexed in a Microsoft Excel spreadsheet. The file will be provided to DOE immediately upon completion of all Conceptual Designs.

**Option Item: Pre-FEED Case Study**

The Government reserves the right to unilaterally exercise the option for a Pre-FEED study.

The objective of the option award is to complete a pre-defined design package (Pre-FEED study) to prove the technical and economic feasibility of the integrated plant concept/configuration proposed to achieve the objectives of this requirement. This study will require that firms involve input from, and partner with, equipment manufacturers, technology developers, and/or utilities in determining component options detailed in the developed cases.

***Pre-FEED Case Study Content Requirements***

Each Pre-FEED Case Study will be limited to the configuration from the conceptual design completed under the Base Award. Unrelated conceptual deigns and technologies should not be consolidated in this Option Item.

To obtain consistent performance and cost estimates, Pre-FEED studies shall be based on AACE International Recommended Practice No. 18R-97 Cost Estimate Classification System – As Applied in Engineering, Procurement, and Construction for the Process Industries. The following Pre-FEED areas are to be included in the report and should be based on a nominal AACE Class 4 Estimate Classification:

1. Coal-fired power plant scope description
2. Plant production/facility capacity
3. Approximate plant location
4. Project code of accounts (to be based on DOE/NETL QGESS documents, see link below)
5. Plant and component system descriptions
6. Plant performance summary
7. Heat and material balances
8. Water balances
9. Steady state emissions data
10. Plant auxiliary load summaries
11. Overall block flow diagram
12. Process flow diagrams
13. Equipment summary showing which pieces are commercial and which will require R&D
14. Assessment of available data for commercial equipment and vendor contacts as needed
15. Technology gap analysis for non-commercial equipment/components of the concept plant to quantify the performance advances and cost reductions needed to allow the plant to meet the projected performance detailed in the Pre-FEED analysis
16. Commercial pathway analysis characterizing RD&D needed to complete pilot-scale testing by 2030, including the necessity for a pilot plant or explanation of how the component R&D would be resolved if a pilot plant is not feasible*.*
17. Assessment of modularization potential – the degree to which modularization (e.g., off-site fabrication of equipment or subsystems, or laydown area preassembly, in whole or part) and associated construction time and/or cost savings may apply to a plant of the identified size.

The Pre-FEED Case Study shall be performed in a manner consistent with the Quality Guidelines for Energy Systems Studies (QGESS, [https://www.netl.doe.gov/research/energy-analysis/search-publications/vuesearch?search=netl&id=17&value=quality%20guidelines](https://www.netl.doe.gov/research/energy-analysis/search-publications/vuesearch?search=netl&id=17&value=quality%20guidelines%20)). It is required that the geographic location, ambient conditions, coal type, applicable environmental regulations, etc. will be as defined in Appendix B and cost parameters (year $, financing assumptions, etc.) will be consistent with the Quality Guidelines for Energy Systems Studies (QGESS, <https://www.netl.doe.gov/research/energy-analysis/search-publications/vuedetails?id=1022>). The capital and O&M costs shall be reported at a level of detail similar to that found in DOE/NETL Baseline studies (see e.g. <https://www.netl.doe.gov/energy-analyses/temp/CostandPerformanceBaselineforFossilEnergyPlantsVolume1aBitCoalPCandNaturalGastoElectRev3_070615.pdf>, pp. 132-136). The estimated accuracy of the cost estimates should be explicitly stated.

***Deliverable Requirements***

Required Key Deliverables for the Option Item Pre-FEED Case Study are provided in the table below. These deliverables are intended to incrementally define the Pre-FEED Case Study Final Report. Details and requirements associated with these incremental deliverables are listed in the Pre-FEED Case Study Content Requirements table below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Deliverable** | **Description** | **Anticipated****Due Date****(# of Days after Exercise of Option)** | **Accompanying Meeting Requirement** |
| Kickoff Presentation | Review of conceptual design and discussion of the approach and plan to complete subsequent Pre-FEED Case Study. | Within10 | Yes |
| Design Basis Report | A description of the Conceptual Design study results, a compilation of salient design assumptions, including but not limited to: plant capacity, fuel type and composition, ambient conditions, site characteristics, environmental targets, equipment performance targets, selected flexibility traits and target, and projected plant capacity factor. | 60 | Yes |
| Performance Results Report | A summary of key process performance parameters, including but not limited to: gross and net plant output, plant auxiliary loads, net plant efficiency, water consumption, environmental performance, and performance relative to the plant flexibility metrics provided in Appendix A. | 105 | Yes |
| Technology Gap Analysis | An inventory of plant components that are commercially available and plant components that require additional development. A development pathway should be provided for components requiring additional development. | 105 | Yes |
| Cost Results Report | The estimated capital and operating costs of the plant concept shall be provided at a level of detail commensurate with NETL’s Baseline reports. | 145 | Yes |
| Project Execution Plan Presentation | A description of a project timeline that culminates in a detailed design for the project concept and includes all necessary steps such as non-commercial component development, site selection, permitting, and detailed design. | 160 | Yes |
| Final Pre-FEED Case Study Report | A compilation of the design basis, performance results, cost results, and technology gap analysis that addresses all comments received on the individual sections. | 210 | Yes |

The final deliverables will be a public report and presentation titled “Pre-FEED studies for the Coal-FIRST Initiative”

Content requirements for these key deliverables are defined as follows:

|  |  |  |
| --- | --- | --- |
| **Deliverable** | **Section** | **Description** |
| **All deliverables** | **Cover Page** | The cover page should include: a title for the power plant system that best describes its features, the specific concept area interest being addressed (i.e., CO2 Capture Ready or Inherently Capture), and any statements regarding confidentiality. |
| **All deliverables** | **Concept Background** | Based on results of the Conceptual Design Concept Study results, including: * Coal-fired power plant scope description
* Plant production/facility capacity
* Plant location consistent with the NETL QGESS
* Business case from conceptual design
 |
| **Design Basis Report and Final Report** | **Process Description** | * The proposed plant concept based on the Conceptual Design Study results, including its basic operating principles and how it is unique and innovative
* Description regarding the ability of the plant concept to meet the specific design criteria outlined in the RFP. If specific criteria can’t be met, or are cost prohibitive to meet, discussion shall include details on how they would be overcome.
* The proposed technology’s target level of performance including:
* Expected plant efficiency range at full and part load
* Emissions control summary
* CO2 control (Inherently Capture) or capture ready strategy
* Brief description of system including:
* Size of the commercial offering
* Advanced technology aspects
* List of components that are not commercially available
* Brief description of each process block
* Extent and manner of use of other fuels in conjunction with coal

If included in the Conceptual Design, provide:* Description of any thermal or energy storage that is integrated and used
* Power system working fluid and process conditions
* Features that minimize water consumption
* Techniques to reduce design, construction, and commissioning schedules from conventional norms including:
* Modularization potential and characteristics (e.g., off-site fabrication of equipment or subsystems, or laydown area pre-assembly, in whole or part)
* Parametric design
* Advanced process engineering

Provide graphs, charts, or other data to supplement plant concept description. |
| **Design Basis Report and Final Report** | **Design Basis** | The design basis report shall include:* Site characteristics
* Ambient conditions
* Fuel type and composition
* Flexible plant performance targets
* Water requirements
* System size basis
* Environmental targets
* Projected plant capacity factor
* Major equipment performance assumptions
 |
| **Performance Results Report and Final Report** | **Performance Results** | * Performance Model
* Plant performance summary (including gross and net output, auxiliary loads, and other relevant data)
* Heat and material balances (including process flow diagram with numbered major streams and corresponding mass and energy balance table)
* Water balances (including water demand, internal recycle, raw water withdrawal, process water discharge, and raw water consumption)
* Steady state emissions data (for all criteria pollutants and CO2)
* Equipment summary showing which pieces are commercial and which will require R&D
* Assessment of available data for commercial equipment and vendor contacts as needed
 |
| **Cost Results Report and Final Report** | **Cost Results** | * Description of cost estimating methodology
* Reference plant capital and operating costs at baseline conditions at a level of detail commensurate with the NETL Baseline studies
* Project O&M costs for the range of flexibility conditions
* Estimated COE and applicable sensitivity analysis results based on the technology concept and required design criteria
 |
| **Technology Gap Analysis and Final Report** | **Technology Gap Analysis and Commercial Pathway**  | * The current state-of-the-art in the relevant field and application, including key shortcomings, limitations, and challenges;
* How the proposed plant concept will overcome the shortcomings, limitations, and challenges in the relevant field and application;
* The key technical risks/issues associated with the proposed plant concept;
* Perceived technology gaps and R&D needed for commercialization by 2030; and
* Development pathway description for the plant concept that will overcome key technical risks/issues, including need for and size of pilot plant.

Identify and describe the key technology OEMs, including* List of commercial equipment
* List of equipment requiring R&D
* Describe whether the A&E firm has worked with the OEMs of the proposed equipment, and if so briefly describe prior work
* Whether the A&E firm has adequate access to information on the equipment included in the proposed concept
 |
| **Final Report** | **Business Case**  | * Market scenario including, but not limited to:
* Coal type(s)
* Natural gas price
* Renewables penetration
* CO2 constraint and/or price
* Domestic and/or international market applicability
* Market advantage of the concept
* Estimated cost of electricity (and ancillary products) that establishes competitiveness of the concept
 |
| **Project Execution Plan Presentation and Final Report (Appendix)** | **Project Execution Plan** | A description of a project timeline that culminates in a detailed design for the project concept and includes:* Non-commercial component development
* Project financing
* Site selection
* Partnering with technology providers
* Permitting
* Detailed design
 |

APPENDIX A

Guidance for Conceptual Design Configurations as Defined by DOE

The following concepts are for guidance and may be considered as a base in any of these configurations if deemed as a suitable fit. Please note that the contractor is not limited to these concepts and may propose alternative approaches based on their expertise that are responsive to the design criteria laid out in Appendix B.

1. Supercritical CO2 Cycle: direct fired (syngas or pyrolysis gas) cycle e.g. Allam Cycle or indirect fired (CO2 in lieu of steam as working fluid) combustor configuration combinations such as: atmospheric PC, CFB with air or oxy-combustion; pressurized oxy-combustion (flameless combustion)
2. Combination of pyrolysis/gasification concepts used for power generation with or without poly-generation
3. Advanced combustion turbines with air or oxygen blown gasification concepts
4. Advanced Ultra-Supercritical Steam Cycle
* Boiler configuration combinations such as: atmospheric PC, CFB with air or oxy-combustion; pressurized oxy-combustion (flameless combustion)
1. Modular gasifiers for power generation with chemical storage or production of salable chemicals (e.g. ammonia, naphtha, phenols)
2. Pressurized oxy-combustion with liquid O2 Storage
3. Direct Injection Carbon Engines (DICE) using micronized coal, etc.
4. Other technologies ready for demonstration

The listing order of these technologies should not be viewed as DOE’s preference. Some of these concepts are illustrated below:

1. **CO2 Capture Ready – Advanced high efficiency low emissions plant capable of being readily retrofitted with CO2 capture (e.g., space available, accommodation for a future thermo-mechanical integration of a capture system) at a future date:**
	1. **Coal Fired Combustor (PC, CFB, air/oxygen, atmospheric/pressurized) with Supercritical CO2 Power Cycle**

Indirect SCO2 Power cycle with a coal-fired boiler providing indirect heat to the supercritical CO2 cycle (sCO2). The concept plant replaces the conventional reheat Rankine cycle with a recompression sCO2 Brayton cycle with a 2-stage intercooled main CO2 compressor and a reheat turbine, and the inclusion of a flue gas cooler (economizer) to recover low grade heat from the flue gas into the low temperature end of the sCO2 power cycle. In addition, the power cycle includes additional high temperature heat recovery not included in a simple recompression Brayton cycle. A high temperature economizer within the PC/CFB heats the high pressure sCO2 exiting the high temperature recuperator (HTR) and this stream is heated further in a very high temperature recuperator (VTR) using the effluent from the reheat turbine stage.

**Case 1.a – PC/CFB Combustor (Air/Oxygen as oxidant, atmospheric/pressurized) with sCO2 Based Power Generation**

******

*This illustration is a concept representation, it is expected that contractor will develop the full concept and provide the full cycle analysis.*

* 1. **Ultra-Supercritical Coal Plant**

PC, CFB, pressurized oxy-combustion etc) with an advanced steam Rankine cycle incorporating energy storage and special circuitry for cold start to full load in 1.5-2.0 hours. Some salient features include:

* Steam Ranking cycle conditions of 4200 psi/1300°F Superheater/1200°F Reheater/1200°F Reheater (double reheat)
* Natural gas for startup and load control, 30% of full load. It is envisioned that natural gas co-firing may be required to achieve 4%/min ramp rate as well as stable operation at 20% load.
* The steam cycle should be designed for CO2 capture ready with conventional amine technology. Any integration with CO2 cycle shall lead to minimum impact on overall efficiency
* Based on potential material availability in next 3-5 years, if designer finds reliable operation with upgraded conditions, designer shall provide upgraded efficiency improvement.

***Case 1.b – Advanced Supercritical (AUSC) Power Plant Concept***



*This is just an illustration and does not show all the streams such as double re-heat etc.*

* 1. **Coal + Natural Gas Combined Cycle**

Coal plus Natural Gas Combined Cycle incorporating energy storage with accommodations for cold start to full load in 1.5 hours. The NGCC unit would provide all the parasitic load requirement for the power plant with excess provided to the grid. The flue gases from the HRSG would provide heat to the combustion air for the coal plant and discharged to its own stack. The cycle is expected to partially combine the Brayton cycle with Rankine cycle to boost the efficiency for the overall plant and offer faster dispatch. Salient features of this plant include:

* AUSC boiler (PC, CFB, pressurized oxy-combustion etc) to supply the heat to generate 100% saturated steam, and 70% SH and 70% RH.
* The NGCC unit will be designed to provide 30% SH/RH to the main steam turbine cycle via HRSG with duct burners.
* Natural gas combined cycle will be started first and integrated with AUSC coal-fired boiler to heat up warm quickly. It is envisioned that natural gas CC may be used to achieve 4%/min ramp rate as well as stable operation below 20% load.
* The steam cycle should be designed to be CO2 capture ready with conventional amine technology. Any integration with CO2 capture shall lead to minimum impact on overall efficiency. Eventually exhaust from the HRSG could be used to supply process steam to the CO2 process
* Based on potential material availability in next 3-5 years, if the designer finds reliable operation with upgraded conditions, the designer shall provide upgraded efficiency improvement.

**Case 1.c – Advanced Supercritical (AUSC) Concept with Integration with NGCC**



*This illustration is a concept representation, it is expected that contractor will develop the full concept and provide the full cycle analysis based on the proposed boiler concept (PC, CFB, or pressurized oxy-combustion).*

1. **Inherently Capture – Advanced high efficiency low emissions plant incorporating an ASU or contains processes that inherently separate oxygen from air:**
	1. **Direct fired sCO2 w/ syngas/pyrolysis gas**

In this concept, conventional oxygen blown gasification plant will be used to produce syngas. The syngas will then be used in direct-fired supercritical CO2 power generation using the Allam Cycle. The overall concept is shown in the following block diagram as Case 2.a.

***Case 2.a – Gasification (Air/Oxygen as oxidant) with sCO2 Turbines to achieve high overall efficiency***



*This illustration is a concept representation, it is expected that contractor will develop the full concept and provide the full cycle analysis.*

* 1. **IGCC with Polygeneration for Off-Peak Chemical Energy Storage**

In this concept, coal will be converted to coal-derived syngas at a near-constant feed rate, matched for peak demand. Raw syngas is cleaned of particulates, sulfur, mercury, and other regulated toxics. The clean syngas is sent to a combustion turbine to generate power during peak and near-peak electric demand periods. Exhaust gases raise steam in a heat recovery steam generator, and steam is used for power production in a steam turbine (not shown) and/or process heat for other parts of the process. During off-peak electric demand periods, syngas would be diverted away from combustion turbine and into a fuels synthesis area for polygeneration. A water-gas-shift (WGS) reactor would be used to optimize CO-to-H2 ratio and provide CO2 capture possibility. The liquid fuels produced form fuels synthesis (e.g. Fischer-Tropsch synthesis or methanol synthesis) could be stored in on-site tanks. Liquid fuels could be sold to petrochemical complex for refining or the crude liquid could be used at the IGCC plant to supplement combustion turbine firing during peak loads, or to provide full turbine generator output while gasifier is in startup mode. The Gasifier could be air blown or oxygen blown. An oxygen blown configuration would probably provide syngas optimized for fuels synthesis. An air separation unit (ASU) could be integrated into the facility. To accommodate needs of an evolving electric grid, the ASU could be designed to have variable load, and maximize production when electricity was available at lowest cost. On-site storage of oxygen would be necessary to deliver constant oxygen flow to gasifier as the ASU runs at variable capacity.

***Case 2.b – IGCC with Polygeneration for Off-Peak Chemical Energy Storage***



1. **Any Novel/Modified Concept/s that can be Demonstrated**

Contractors are encouraged to provide any other concept/s that have the potential to be commercialized in 2030. The contractor should closely work with technology developers to ensure the adequate design of the technology that can be demonstrated on a large scale.

**APPENDIX B**

**Common Design Basis for Conceptual Design Configurations**

All conceptual designs shall be developed based on the following common design basis:

**Exhibit 1: Site characteristics**

|  |  |
| --- | --- |
| **Parameter** | **Value** |
| Location | Greenfield, Midwestern U.S. |
| Topography | Level |
| Size (Pulverized Coal), acres | 300 |
| Transportation | Rail or Highway |
| Ash Disposal  | Off-Site |
| Water | 50% Municipal and 50% Ground Water |

**Exhibit 2: Site ambient conditions**

|  |  |
| --- | --- |
| **Parameter** | **Value** |
| Elevation, (ft) | 0 |
| Barometric Pressure, MPa (psia) | 0.101 (14.696) |
| Average Ambient Dry Bulb Temperature, °C (°F) | 15 (59) |
| Average Ambient Wet Bulb Temperature, °C (°F) | 10.8 (51.5) |
| Design Ambient Relative Humidity, % | 60 |
| Cooling Water Temperature, °C (°F)A | 15.6 (60) |
| **Air composition based on published psychrometric data, mass %** |
| N2 | 72.429 |
| O2 | 25.352 |
| Ar | 1.761 |
| H2O | 0.382 |
| CO2 | 0.076 |
| Total | 100.00 |

AThe cooling water temperature is the cooling tower cooling water exit temperature.
This is set to 8.5°F above ambient wet bulb conditions in ISO cases.

**Exhibit 3: Design coals – Bituminous/Sub-Bituminous**

|  |  |
| --- | --- |
| Rank | **Bituminous**  |
| Seam | **Illinois No. 6 (Herrin)** |
| Source | **Old Ben Mine** |
| **Proximate Analysis (weight %)A** |
|  | **As Received** | **Dry** |
| Moisture | 11.12 | 0.00 |
| Ash | 9.70 | 10.91 |
| Volatile Matter | 34.99 | 39.37 |
| Fixed Carbon | 44.19 | 49.72 |
| Total | 100.00 | 100.00 |
| Sulfur | 2.51 | 2.82 |
| HHV, kJ/kg (Btu/lb) | 27,113 (11,666) | 30,506 (13,126) |
| LHV, kJ/kg (Btu/lb) | 26,151 (11,252) | 29,544 (12,712) |
| **Ultimate Analysis (weight %)** |
|  | **As Received** | **Dry** |
| Moisture | 11.12 | 0.00 |
| Carbon | 63.75 | 71.72 |
| Hydrogen | 4.50 | 5.06 |
| Nitrogen | 1.25 | 1.41 |
| Chlorine | 0.29 | 0.33 |
| Sulfur | 2.51 | 2.82 |
| Ash | 9.70 | 10.91 |
| OxygenB | 6.88 | 7.75 |
| Total | 100.00 | 100.00 |
| Rank | **Sub-Bituminous**  |
| Seam | **Montana Rosebud** |
| Source | **Old Ben Mine** |
| **Proximate Analysis (weight %)A** |
|  | **As Received** | **Dry** |
| Moisture | 25.8 | 0.00 |
| Ash | 8.2 | 10.91 |
| Volatile Matter | 30.3 | 39.37 |
| Fixed Carbon | 35.7 | 49.72 |
| Total | 100.00 | 100.00 |
| Sulfur | 0.73 | 0.98 |
| HHV, kJ/kg (Btu/lb) | 19,923 (8,564) | 26,787 (11,516) |
| LHV, kJ/kg (Btu/lb) | 19,150 (8,252) | 25,810 (11,096) |
| **Ultimate Analysis (weight %)** |
|  | **As Received** | **Dry** |
| Moisture | 25.77 | 0.00 |
| Carbon | 50.07 | 67.45 |
| Hydrogen | 3.38 | 4.56 |
| Nitrogen | 0.71 | 0.96 |
| Chlorine | 0.01 | 0.01 |
| Sulfur | 0.73 | 0.98 |
| Ash | 8.19 | 10.91 |
| OxygenB | 11.14 | 15.01 |
| Total | 100.00 | 100.00 |

**Exhibit 4: Natural gas characteristics**

|  |
| --- |
| **Natural Gas Composition** |
| **Component** | **Volume Percentage** |
| Methane | CH4 | 93.1 |
| Ethane | C2H6 | 3.2 |
| Propane | C3H8 | 0.7 |
| *n*-Butane | C4H10 | 0.4 |
| Carbon Dioxide | CO2 | 1.0 |
| Nitrogen | N2 | 1.6 |
| MethanethiolA | CH4S | 5.75x10-6 |
|  | **Total** | 100.00 |
|  | **LHV** | **HHV** |
| kJ/kg (Btu/lb) | 47,454 (20,410) | 52,581 (22,600) |
| MJ/scm (Btu/scf) | 34.71 (932) | 38.46 (1,032) |

AThe sulfur content of natural gas is primarily composed of added Mercaptan (methanethiol, CH4S) with trace levels of H2S. Note: Fuel composition is normalized and heating values are calculated.

**Exhibit ‑5 MATS and NSPS emission limits for PM, HCl, SO2, NOx, and Hg**

|  |  |
| --- | --- |
| **PollutantA** | **PC****(lb/MWh-gross)** |
| SO2 | 1.00 |
| NOx | 0.70 |
| PM (Filterable) | 0.09 |
| Hg | 3x10-6 |
| HCl | 0.010 |

**Exhibit‑6 Environmental targets for IGCC cases**

|  |  |  |
| --- | --- | --- |
| **Pollutant** | **(lb/MWh-gross)** | **Control Technology** |
| SO2 | 0.40 | Selexol, MDEA, or Sulfinol (depending on gasifier technology)A |
| NOx | 0.70 | Low NOx burners and syngas nitrogen dilution |
| PM (Filterable) | 0.07 | Quench, water scrubber, and/or cyclones and candle filters (depending on gasifier technology) |
| Hg | 3x10-6 | Dual carbon bed |
| HCl | 0.002 | Quench, water scrubber, calcium hydroxide treatment, sour water stripper |

AThe sulfur control technologies are used to remove H2S formed in the gasifier to ultimately limit SO2 emissions after the syngas is combusted in the CT

**Specific Design Criteria for Conceptual Design Configurations**

All conceptual designs shall feature plants shall meet the following Specific Design Criteria:

1. Greater than or equal to 4% ramp rate (up to 30% Heat Input from natural gas can be used)
2. Cold/Warm start – less than 2 hours
3. 5:1 turndown with full environmental compliance
4. CO2 capture ready steam cycle
5. Zero Liquid Discharge
6. Solids Disposal – Mostly salable product, limited landfill
7. Dry Bottom and Fly ash discharge
8. Employ efficiency improvement technologies that maintain greater than 40% plant cycle efficiency for a maximum load range (identified) without carbon capture. Examples of such technologies may include:
* Install Neural Network (NN) and Intelligent Soot-blowers
* Limit air heater outlet temperature to 250 F by using alkali injection
* Install high efficiency motors
* Limit excess air to 12% and air heater leakages to less than 5% sustainable for 2 years
* Sliding pressure for high efficiency at low load
* Self-cleaning condenser design with backpressure of 1.5” Hg to be achieved consistently
* FGD system could be wet FGD/ammonia FGD/Circulating Dry Scrubber
* Other low-cost solutions to improve efficiency

Concept papers should focus on meeting these targets. However, if any of these criteria are prohibitive for the concept, than an explanation must be provided for why those criteria are not met in the proposed concept (technology gap, R&D need, cost issue, etc).

Section K - Representations, Certifications, and Other Statements of Bidders

K.1 52.204-8 Annual Representations and Certifications. (APRIL 2016)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 541715.

(2) The small business size standard is 1,000 employees.

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

(b)(1) If the provision at [52.204-7](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137850), System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at [52.204-7](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137850) is not included in this solicitation, and the offeror is currently registered in the System for Award Management (SAM), and has completed the Representations and Certifications section of SAM electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

□ (i) Paragraph (d) applies.

□ (ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) [52.203-2](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137583), Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in [Part 13](https://www.acquisition.gov/sites/default/files/current/far/html/FARTOCP13.html#wp271421);

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137684), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed $150,000.

(iii) [52.204-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137777), Taxpayer Identification. This provision applies to solicitations that do not include the provision at [52.204-7](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137850), System for Award Management.

(iv) [52.204-5](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1149919), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) [52.209-2](https://www.acquisition.gov/sites/default/files/current/far/html/52_207_211.html#wp1144766), Prohibition on Contracting with Inverted Domestic Corporations—Representation.

(vi) [52.209-5](https://www.acquisition.gov/sites/default/files/current/far/html/52_207_211.html#wp1144909), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vii) [52.209-11](https://www.acquisition.gov/sites/default/files/current/far/html/52_207_211.html#wp1146404), Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(viii) [52.214-14](https://www.acquisition.gov/sites/default/files/current/far/html/52_214.html#wp1129381), Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(ix) [52.215-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_215.html#wp1144523), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(x) [52.219-1](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1135900), Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(xi) [52.219-2](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1135943), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xii) [52.222-22](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147663), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147711), Equal Opportunity.

(xiii) [52.222-25](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147704), Affirmative Action Compliance.This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147711), Equal Opportunity.

(xiv) [52.222-38](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1148142), Compliance with Veterans’ Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xv) [52.223-1](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1168785), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at [52.223-2](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1168786), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xvi) [52.223-4](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1168826), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xvii) [52.225-2](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169013), Buy American Certificate. This provision applies to solicitations containing the clause at [52.225-1](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1192900).

(xviii) [52.225-4](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169071), Buy American—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038).

(A) If the acquisition value is less than $25,000, the basic provision applies.

(B) If the acquisition value is $25,000 or more but is less than $50,000, the provision with its Alternate I applies.

(C) If the acquisition value is $50,000 or more but is less than $77,533, the provision with its Alternate II applies.

(D) If the acquisition value is $77,533 or more but is less than $100,000, the provision with its Alternate III applies.

(xix) [52.225-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169193), Trade Agreements Certificate. This provision applies to solicitations containing the clause at [52.225-5](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169151).

(xx) [52.225-20](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1181379), Prohibition on Conducting Restricted Business Operations in Sudan—Certification. This provision applies to all solicitations.

(xxi) [52.225-25](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1188714), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxii) [52.226-2](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169667), Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

\_\_ (i) [52.204-17](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1152369), Ownership or Control of Offeror.

\_\_ (ii) [52.204-20](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1152940), Predecessor of Offeror.

\_\_ (iii) [52.222-18](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1160855), Certification Regarding Knowledge of Child Labor for Listed End Products.

\_\_ (iv) [52.222-48](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1152427), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment- Certification.

\_\_ (v) [52.222-52](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1162560), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

\_\_ (vi) [52.223-9](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1168892), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA–Designated Products (Alternate I only).

\_\_ (vii) [52.227-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_227.html#wp1139116), Royalty Information.

\_\_ (A) Basic.

\_\_(B) Alternate I.

\_\_ (viii) [52.227-15](https://www.acquisition.gov/sites/default/files/current/far/html/52_227.html#wp1145584), Representation of Limited Rights Data and Restricted Computer Software.

(d) The offeror has completed the annual representations and certifications electronically via the SAM website accessed through [https://www.acquisition.gov](https://www.acquisition.gov/). After reviewing the SAM database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_12.html#wp1073667)); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

|  |
| --- |
| FAR Clause # Title Date Change |
| \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_\_\_ |

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

K.2 52.209-2 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS-REPRESENTATION. (NOV 2015)

(a) *Definitions. Inverted domestic corporation* and *subsidiary* have the meaning given in the clause of this contract entitled Prohibition on Contracting with Inverted Domestic Corporations (52.209-10).

(b) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(c) *Representation.* The Offeror represents that-

(1) It is [ ] is not [ ] an inverted domestic corporation; and

(2) It is [ ] is not [ ] a subsidiary of an inverted domestic corporation.

(End of provision)

K.3 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS. (OCT 2015)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that-

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

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

(B) Have [ ] have not [ ], within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation);

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

(D) Have [ ], have not [ ], within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds $3,500 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

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

(2) *Principal,* for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

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

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

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

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

(End of provision)

K.4 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS. (OCT 2018)

(a) *Definitions*. As used in this provision-

*Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

*Federal contracts and grants with total value greater than $10,000,000* means-

(1) The total value of all current, active contracts and grants, including all priced options; and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

*Principal* means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror has [ ] does not have [ ] current active Federal contracts and grants with total value greater than $10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in-

(A) The payment of a monetary fine or penalty of $5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of $100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management, which can be accessed via *https://www.sam.gov* (see 52.204-7).

(End of provision)

K.5 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS. (FEB 2016)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Veterans), it has filed the most recent VETS-4212 Report required by that clause.

(End of provision)

K.6 52.225-25 PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN SANCTIONED ACTIVITIES RELATING TO IRAN-REPRESENTATION AND CERTIFICATIONS. (AUG 2018)

(a) *Definitions*. As used in this provision-

Person-

(1) Means-

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology-

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically-

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(b) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703-4, by submission of its offer, the offeror-

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds $3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq*.) (see OFAC's Specially Designated Nationals and Blocked Persons List at *https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx*).

(d) Exception for trade agreements. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if-

(1) This solicitation includes a trade agreements notice or certification (e.g., 52.225-4, 52.225-6, 52.225-12, 52.225-24, or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

K.7 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST-DISCLOSURE. (JUN 1997)

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

(b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.

(c) The statement must contain the following:

(1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

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

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

(End of provision)

Section L - Instructions,Conditions, and Notices to Bidders

L.1 CONTENT OF RESULTING CONRACT

Any contract awarded as a result of this RFP will contain PART I - The Schedule, PART II - Contract Clauses, and PART III, Section J - List of Attachments (excluding those attachments included in this RFP relating only to submission of proposals). Blank areas appearing in these sections, indicated by "(TBD)" will be completed prior to contract award. As indicated in Section H, the Contractor’s proposal will be considered incorporated by reference to the resulting award. In the event of any conflict between the other terms and conditions of the contract and those presented in the Contractor’s proposal, the contract shall prevail.

Offerors should carefully review the information contained therein, and, as appropriate, state any proposed exceptions/deviations.

(End of provision)

L.2 RESPONSIBLE PROSPECTIVE CONTRACTORS

This is an unrestricted competition, all responsible individuals, corporations, non-profit organizations, educational institutions, and state or local Governments regardless of size may submit proposals for consideration. The general and additional minimum standards for responsible prospective Contractors set forth at FAR 9.1 apply.

Only proposals offering the full range of services in the Performance Work Statement (PWS) will be evaluated and considered for award.

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

**An Offeror’s proposal that fails to adequately identify a** **key team member (organization) with substantiated experience in the completion of FEED studies and detailed design for commercial power plants including coal-based systems will be eliminated from further consideration before a detailed evaluation is performed.**

**An Offeror may submit multiple proposals. However, each proposal must be limited to a single concept or technology. Unrelated conceptual designs and technologies should not be consolidated into a single Conceptual Design. Single proposals containing multiple concepts or technologies may be eliminated from further consideration before a detailed evaluation is performed.**

(End of provision)

L.3 AWARD WITHOUT DISCUSSIONS

The Government intends to evaluate proposals and award a contract without discussions with Offerors (except clarifications as described in FAR 15.306). Therefore, the Offeror’s initial proposal should contain the Offeror’s best terms from a cost/price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. The Government reserves the right to conduct discussions with Offerors whose proposals have been determined to be within a competitive range.

(End of provision)

L.4 FEDCONNECT

The Department of Energy’s (DOE), National Energy Technology Laboratory (NETL) is using the FedConnect web portal (found at <https://www.fedconnect.net>) to disseminate the synopsis, receive questions, and accept responses for this requirement. **ONLY RESPONSES SUBMITTED THROUGH FEDCONNECT WILL BE CONSIDERED FOR AWARD.**

To get started, download a copy of the quick start guide, FedConnect, Ready, Set, Go Guide <https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf> which will provide assistance/instructions on registering, finding an opportunity, sending and receiving messages, and submitting a response.

To register, please visit the [FedConnect](https://www.fedconnect.net/) web portal at <https://www.fedconnect.net>, and click on the link: “Click here to register”. Please note that before you can register in FedConnect, you will need a DUNS (<http://fedgov.dnb.com/webform>) and a System for Award Management (SAM) account ([www.sam.gov](http://www.sam.gov)). You are encouraged to register as soon as possible and should allow at least 14 days to complete these registrations.

**YOU ARE ENCOURAGED TO SUBMIT YOUR PROPOSAL EARLY AS EXTENSIONS WILL NOT BE GRANTED DUE TO ERRORS IN REGISTERING/SUBMITTING.**

To find this RFP, click on “Search Public Opportunities” and search by the RFP Number, **89243319RFE000015**. Please bookmark this page and check it frequently for updates to this RFP. It is highly recommended that once you access the opportunity that you request to be alerted for amendments, messages, and any e-mail alerts associated with this RFP. To do so, you will need to click on the “Register to Receive Notifications” button under “What do I do now?” If someone from your company has already registered interest for this opportunity, the “Register to Receive Notifications” button will not display. Instead, you will have the option to join the response team by clicking the Join the Team button within the Response Team section.

All questions regarding the content of this solicitation must be submitted electronically via FedConnect. You must register with FedConnect to respond as an interested party to submit questions, and to view responses to questions. Questions will not be answered over the phone. The Contracting Officer must receive questions regarding the RFP via FedConnect no later than ten (10) business days prior to the established due date. The Government reserves the right to not respond to any questions received after this timeframe.

Please note - FedConnect is owned and operated by Compusearch Software Systems Inc., not by the Department of Energy and DOE does not provide help desk assistance for FedConnect. For assistance with FedConnect, please contact FedConnect directly:

By e-mail: support@FedConnect.net

By phone: 1-800-899-6665 (8:00 a.m. to 8:00 p.m., Eastern Daylight Time, except Federal holidays).

(End of provision)

L.5 ELECTRONIC SUBMISSION OF PROPOSALS

Offerors must submit their proposal in accordance with the Proposal Preparation Instruction contained herein. Proposals and amendments of proposals shall only be accepted through FedConnect and must be received no later than 1600 EST on Tuesday, January 15, 2019.

Electronic files of a large size may take a considerable amount of time to upload. It is your responsibility to allow an adequate amount of time for your proposal submission.

You are strongly encouraged to submit your proposal at least 24 hours before the specified deadline in order to have time to resolve any transmission problems.

**PROPOSALS, OR PROPOSAL FILES, THAT HAVE A FEDCONNECT DATE/TIME STAMP LATER THAN THE IDENTIFIED DEADLINE WILL BE CONSIDERED “LATE” AND WILL NOT BE REVIEWED OR CONSIDERED FOR AWARD.** The Offeror shall be notified that their proposal was determined as being submitted late and was not further evaluated.

It is the responsibility of the Offeror, prior to the offer due date and time, to verify successful transmission.

(End of provision)

L.6 Number of Awards

It is anticipated that there will be multiple award(s) resulting from this solicitation.

(End of provision)

L.7 52.204-7 SYSTEM FOR AWARD MANAGEMENT. (OCT 2018)

(a) *Definitions*. As used in this provision-

*Electronic Funds Transfer (EFT) indicator* means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

*Registered in the System for Award Management (SAM)* means that-

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14) into SAM;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in SAM;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record "Active".

*Unique entity identifier* means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See *www.sam.gov* for the designated entity for establishing unique entity identifiers.

(b)(1) An Offeror is required to be registered in SAM when submitting an offer or quotation, and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in SAM.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at *www.sam.gov* for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

(1) Company legal business name.

(2) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(3) Company physical street address, city, state, and Zip Code.

(4) Company mailing address, city, state and Zip Code (if separate from physical).

(5) Company telephone number.

(6) Date the company was started.

(7) Number of employees at your location.

(8) Chief executive officer/key manager.

(9) Line of business (industry).

(10) Company headquarters name and address (reporting relationship within your entity).

(d) Processing time should be taken into consideration when registering. Offerors who are not registered in SAM should consider applying for registration immediately upon receipt of this solicitation. See *https://www.sam.gov* for information on registration.

(End of provision)

L.8 52.214-34 Submission of Offers in the English Language. (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

L.9 52.214-35 Submission of Offers in U.S. Currency. (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

L.10 52.215-1 INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION. (JAN 2017)

(a) *Definitions*. As used in this provision-

*Discussions* are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

*In writing, writing, or written* means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

*Proposal modification* is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

*Proposal revision* is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

*Time,* if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations*. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals*. (1) Unless other methods (*e.g.*, electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show-

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Submission, modification, revision, and withdrawal of proposals*. (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision, received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and -

(*1*) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(*2*) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(*3*) It is the only proposal received.

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

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date*. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data*. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall -

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

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award*. (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

L.11 52.215-22 Limitations on Pass-Through Charges--Identification of Subcontract Effort. (OCT 2009)

(a) Definitions. Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this solicitation entitled "Limitations on Pass-Through Charges" (FAR 52.215-23).

(b) General. The offeror's proposal shall exclude excessive pass-through charges.

(c) Performance of work by the Contractor or a subcontractor.

(1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal--

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal--

(i) The amount of the subcontractor’s indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

(End of provision)

L.12 52.216-1 TYPE OF CONTRACT. (APR 1984)

The Government contemplates award of multiple Firm Fixed Price contracts resulting from this solicitation.

(End of provision)

L.13 52.233-2 SERVICE OF PROTEST. (SEP 2006)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Brent Burns, Contracting Officer, 3610 Collins Ferry Road MS I07, Morgantown, WV, 26507.

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

(End of provision)

L.14 952.233-2 SERVICE OF PROTEST.

As prescribed in 933.106(a), add the following to the end of the Provision at 48 CFR 52.233-2:

(c) Another copy of a protest filed with the Government Accountability Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

(End of provision)

L.15 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY. (AUG 2009)

(a) If a protest of this procurement is filed with the Government Accountability Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to 48 CFR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103-355. Such request must be in writing and addressed to the Contracting Officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of 48 CFR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

(End of provision)

L.16 952.233-5 AGENCY PROTEST REVIEW. (SEP 1996)

Protests to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 48 CFR 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protesters to discuss their concerns with the Contracting Officer prior to filing a protest.

(End of provision)

L.17 UNNECESSARILY ELABORATE PROPOSALS AND FILE SIZE LIMITATIONS

Unnecessarily elaborate proposals beyond those sufficient to present a complete and effective response to this solicitation are not desired. Elaborate art work, graphics and pictures may increase the document's file size. It is suggested that in preparing your proposal that you create files less than 5 MB. However, this file size may not be appropriate in all situations. As the nature of the proposal may create large files, offerors may wish to use "Zip" file compression software such as WinZip. Using this compression software will diminish the file size, thus reducing the time needed to upload and download a proposal.

(End of provision)

L.18 False Statements

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

(End of provision)

L.19 PROPOSAL PREPARATION INSTRUCTIONS - GENERAL

(a) General - Proposals are expected to conform to solicitation provisions and be prepared in accordance with this section. To aid in evaluation, the proposal must be clearly and concisely written as well as being neat, indexed (cross-indexed as appropriate) and logically assembled. All pages of each part must be appropriately numbered and identified with the solicitation number and the name of the Offeror

The term “Offeror” as used in this Section L refers to the single legal entity submitting the offer which may be a “Contractor team arrangement” as that term is defined in FAR 9.601. The Offeror may be pre-existing or a newly formed business entity for the purposes of competing for this contract.

(b) Overall Arrangement of Proposal - The Offeror must be registered and have access to the FedConnect website located at [www.fedconnect.ne](http://www.fedconnect.ne)t. The overall proposal must consist of three separate volumes individually titled as stated below. The Offeror must submit each proposal volume utilizing FedConnect.

VOLUME NUMBER TITLE PAGE LIMITATIONS

Volume I Offer and Other Documents None

Volume II Technical Proposal See Proposal Preparation

Instructions in Volume II,

Technical Proposal

Volume III Price Proposal None

(c) Do not assume that because you have had similar contracts with the Federal Government, including the Department of Energy, that the reviewer knows of your performance under such contracts and will make assumptions regarding a proposal based on that knowledge. Any proposals received in response to this solicitation will be reviewed strictly as submitted and in accordance with the evaluation criteria specified in Section M.

L.20 PROPOSAL PREPARATION INSTRUCTIONS - OFFER AND OTHER DOCUMENTS - VOLUME 1

(a) General

Volume I, Offer and Other Documents consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgements, justification for non-competitive proposed subcontracts, identification of technical data to be withheld, request for waiver of patent clauses, and any exceptions or deviations taken.

(b) Format and Content

For consistency, the Offeror is instructed to use the file names specified below. File name extensions shall clearly indicate the software applications used for preparation of the documents (i.e. ".pdf" for Adobe Acrobat (version 11.0 or earlier) or ".doc or .docx" for Word (version 2016 or earlier).

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

FILE FILE NAME

File 1 Offer Cover Sheet <company name>File 1 Offer Cover Sheet.---

File 2 SF33 Form -- Solicitation, Offer and Award <company name>File 2 SF33.---

File 3 Financial Responsibility <company name>File 3 Financial.---

File 4 Administrative Discussion <company name>File 4 Administrative.---

(c) FILE 1, OFFER COVER SHEET

The filename shall be in this format <company name>File 1 Offer Cover Sheet.---.

The Offer Cover Sheet shall contain the following information:

- Solicitation number and title: 89243319RFE000015, Coal-Based Power Plants of the Future

- Offeror name, address, and DUNS

- Indicate the business size (e.g. large business, small business, Veteran Owned Small Business, Woman-owned Small Business, etc.)

- If proposing any kind of partnership, each individual member (including Limited Liability Corporations (LLC) and Joint Ventures (JV)), indicate the names, addresses, and DUNS of the partner companies and the date the partnership was approved. If the partnership is a JV and has not been approved by the Small Business Administration, provide the date the JV application was submitted for approval.

- If proposing subcontractors, indicate the name(s), address(s), business size, and DUNS of each subcontractor.

(d) FILE 2, SF33 FORM - SOLICITATION, OFFER AND AWARD

The filename shall be in this format <company name>File 2 SF33.---.

The SF33 Form has been uploaded with the solicitation, as a separate Word document (SF33.doc), which can be used for the Offeror to complete, save and submit as File 2. The following areas must be completed on the SF33:

(1) Offerors shall complete Blocks 12, 15A, 15B, 15C, 16, 18, and sign in block 17 (typed name of authorized organizational representative). The SF33 is to be fully executed, including the acknowledgment of amendments, if applicable.

(2) The Offeror's Acceptance Period (See Block 12) entered shall not be less than 180 calendar days.

(3) Signature Authority. The person signing the SF33 must have the authority to commit the Offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the solicitation, to make an award without further discussion if it so elects. Proposals submitted through FedConnect constitute submission of electronically signed proposals. The name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the Offeror to the conduct of a project) must be typed in the signature block on the form to be accepted as an electronic signature. A scanned copy of the signed document is not required.

(e) FILE 4, FINANCIAL RESPONSIBILITY

The filename shall be in this format: <company name>File 3 Financial.---.

TABLE OF CONTENTS

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

To demonstrate the organization’s current financial strength and responsibility, the Offeror shall provide the financial data detailed below. NOTE: If the Offeror is a joint venture or partnership, financial information must be provided for each member of the joint venture or each partner.

(a) published financial statements for the three prior annual accounting periods, including Balance Sheet, Statement of Operations (Profit and Loss Statement), and Statement of Changes in Financial Position;

(b) the estimated percentage this proposed contract will represent of the Offeror’s total business for the first year of the contract;

(c) a copy of the most recent 10K report filed with the Securities and Exchange Commission, if any; and

(d) if the Offeror is a limited liability corporation or other partnership entity (including joint ventures) then a performance guarantee agreement is required for each individual entity making up the teaming arrangement. The performance guarantee shall be executed by a financially responsible guarantor, guaranteeing that all contractual obligations of the Offeror will be met. The performance guarantee(s) are required in order to determine financial responsibility. A model performance guarantee agreement is provided in Part III, Section J of this solicitation. The executed performance guarantee(s) shall replace the model agreement in the executed contract.

The DOE reserves the right to obtain additional financial information from Offerors in order to determine financial responsibility, and to more fully assess potential organizational conflicts of interest.

(f) ADMINISTRATIVE DISCUSSION

The filename shall be in this format: <company name>File 4 Administrative.---.

TABLE OF CONTENTS

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

The Offeror’s administrative discussion shall address the following:

Authorized Negotiators. The Offeror shall include the name, title, address, telephone (including cellular telephone, if available), fax number, email address, and company affiliation for all individuals authorized to negotiate on behalf of the Offeror.

Exceptions and Deviations – Exceptions and deviations are not sought and the Government is under no obligation to enter into discussions. However, the Offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the resulting contract (as identified in Part IV, Section L, provision entitled Content of Resulting Contract), Offeror Representations and Certifications, and the requirements included in Volume I -- Offer and Other Documents, Volume II -- Technical Proposal, and Volume III -- Cost Proposal. Any exceptions taken must contain sufficient justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Any exceptions or deviations to Section I of the RFP, or any FAR or DEAR clauses elsewhere in the RFP, will make the proposal non-responsive to this RFP. If the Offeror does not submit their Representations and Certifications electronically as indicated in Section K then the Offeror must submit them as an exception and include them in this file. This file shall also contain any justification for noncompetitive proposed subcontracts and any request for waiver of patent clauses.

NOTE: An Offeror’s failure to submit a complete and sufficient offer, or an Offeror’s taking of exceptions or deviations, or an Offeror indicating conditional assumptions, to the terms of this solicitation, may make the offer unacceptable for award without discussions. If an Offeror proposes exceptions, deviations, and/or conditional assumptions, DOE may make an award to another Offeror that did not take exceptions, deviations, and/or conditional assumptions of this solicitation.

(End of provision)

L.21 PROPOSAL PREPARATION INSTRUCTIONS - TECHNICAL PROPOSAL VOLUME II

(a) GENERAL

1. Volume II – The Technical Proposal consists of written information intended to present the Offeror’s understanding, capabilities, and approach to satisfy the requirements of the Performance Work Statement (PWS). The Technical Proposal should be specific and complete in every detail. The Technical Proposal should be practical and be prepared simply and economically, providing a straightforward, concise delineation of the requested information.
2. The Technical Proposal shall be evaluated strictly on the merit of the material submitted. The proposal shall not merely offer to perform work in accordance with the PWS but shall clearly describe the rationale and benefits of the approach proposed. The PWS provides a general description of the required work elements; therefore, simply repeating the PWS without sufficient elaboration will not be acceptable.
3. **No contractual cost information is to be included in the Technical Proposal.**  Where estimated labor-hours and skill mixes will provide clarity, they shall be provided with no indication as to the cost (e.g. labor-hours shall be stated in direct productive labor hours (DPLH) figures only).

(b) FORMAT AND CONTENT

The following provides instructions for submitting the Technical Proposal. Information on the evaluation of the proposal is found in Section M. Failure to provide complete information may result in a lower evaluation score.

For consistency, the Offeror is instructed to use the file names specified below when submitting documents. All files must be in portable document format (i.e. ".pdf" for Adobe Acrobat (version 11.0 or earlier), ".doc or .docx" for Word (version 2016 or earlier), or “.xls or .xlsx” for Excel files (version 2016 or earlier)).

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

FILES FILENAME

 File 1: Technical Merit of Proposed Concept <company name>Technical Merit.---

File 2: The Availability and Competence of Experienced Engineering, Scientific, or Other Technical Personnel Team Members <company name>Team.---

File 3: Resumes and Commitment Letters <company name>Resumes.---

 File 4: Proposed Technical Approach to Accomplish the Concept <company name> Technical Approach.---

File 5: Relevant Past Performance <company name>Performance.---

The Technical Proposal (inclusive of all files not listed as exceptions) shall be subject to the following page limitations:

* File 1, Technical Merit of Proposed Concept shall be limited to a total of 10 pages
* File 2, The Availability and Competence of Experienced Engineering, Scientific, or Other Technical Personnel Team Members shall be limited to a total of 10 pages
* File 3, Resumes shall be limited to a total of 6 pages and Commitment Letters shall be limited to 1 page per letter.
* File 4, Proposed Technical Approach to Accomplish the Concept shall be limited to a total of 10 pages
* File 5, Relevant Past Performance – The Performance Reference Information Form (Exhibit E) is limited to the form and one additional sheet, the Past Performance Questionnaire (Exhibit D) is limited to the form. Relevant past performance discussion is limited to 2 pages per contract/project, per entity.

The page limits identified above do not apply to the cover pages, table of contents, glossary(ies), list of acronyms, Exhibits C (Past Performance Information Questionnaire Cover Letter), or cross reference matrix(es). Proposal pages that exceed the identified page limitation listed in this solicitation shall not be evaluated and will be removed from the end of the respective file (end of the section counting towards the page limitation; e.g. items excluded from the page limitation such as a glossary appearing at the end of the file will not be removed, only those pages that count towards the page count and that exceed the authorized limit shall be removed). In addition, information contained in any of the files (regardless of the page limitations for each file/criterion) may be taken into consideration in the evaluation of any of the criterion of the Technical Proposal.

All pages shall be single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. DOE believes a thorough and concise technical proposal can be prepared within the requested page limit. The 12 point font is mandatory to ensure readability of the proposal and is intended for the proposal body text. It is not the Government’s intent to require 12 point font size in headers/footers and/or to require Offerors to redo their graphics or tables to conform to this font size. However, readability is at the risk of the Offeror and graphics/tables with less than 12 point font may not be considered in evaluation of the proposal if they are not legible and clear to the evaluator.

**FILE 1: TECHNICAL MERIT OF PROPOSED CONCEPT (<company name>Technical Merit.---)**

The Offeror’s technical merit of proposed concept discussion shall be submitted as File 1 of their Technical Proposal, which has a maximum page limit of 10 pages. To help facilitate the review process, and to ensure that all review criteria are addressed, the Offeror shall use the following format when preparing the materials discussion file. The filename shall be in this format <company name>Technical Merit.---. This format relates to the technical evaluation criteria found in Part IV – Section M. Additional headings may be included as desired.

COVER PAGE

This file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. The title of the proposed effort should be concise and descriptive of the work to be performed. All subsequent pages shall be appropriately num­bered and identified with the name of the Offeror, the date, and the solicitation number to the extent practica­ble.

TABLE OF CONTENTS

The technical merit of proposed concept file shall include a Table of Contents to facilitate locating the elements of the proposal. All exhibits, figures and tables should be identified.

**TECHNICAL MERIT OF PROPOSED CONCEPT (Criterion 1)**

The Offeror shall describe the proposed plant concept and rationale for how the concept advances today’s utility scale power plant concepts and state of the art technologies to accomplish the specific design criteria outlined in the RFP (efficiencies, modularity, emissions, ramp rates, off-design operation, integration, etc).

This description should include preliminary projected cost and performance estimates for the proposed plant configuration and associated technologies as well as discussion regarding how the proposed concept would meet these design criteria. This discussion should highlight remaining technical and cost challenges (including R&D gaps) associated with the proposed plant concept with a logical discussion regarding how they can be overcome.

The Offeror shall provide a description demonstrating their determination that the concept is at an appropriate readiness to enable a high-quality pilot plant FEED study in the 2022 timeframe.

**FILE 2: THE AVAILABILITY AND COMPETENCE OF EXPERIENCED ENGINEERING, SCIENTIFIC, OR OTHER TECHNICAL PERSONNEL TEAM MEMBERS PROPOSED; (<company name>TEAM.---)**

The availability and competence of experienced engineering, scientific, or other technical personnel team members proposed shall be submitted as File 2 of the Offeror’s Technical Proposal, which has a maximum page limit of 10 pages. To help facilitate the review process, and to ensure that all review criteria are addressed, the Offeror shall use the following format when preparing the management, organization, and technical resources file. The filename shall be in this format <company name>Team.---. This format relates to the technical evaluation criteria found in Part IV – Section M. Additional headings may be included as desired.

COVER PAGE

This file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. The title of the proposed effort should be concise and descriptive of the work to be performed. All subsequent pages shall be appropriately num­bered and identified with the name of the Offeror, the date, and the solicitation number to the extent practica­ble.

TABLE OF CONTENTS

This availability and competence of experienced engineering, scientific, or other technical personnel team members proposed discussion file shall include a Table of Contents to facilitate locating the elements of the proposal. All exhibits, figures and tables should be identified.

**THE AVAILABILITY AND COMPETENCE OF EXPERIENCED ENGINEERING, SCIENTIFIC, OR OTHER TECHNICAL PERSONNEL TEAM MEMBERS PROPOSED (Criterion 2)**

In this section, the Offeror shall provide a discussion of the proposed teaming and subcontracting approach on the extent to which it provides an effective and efficient vision and plan for integrating relevant subcontracts and team arrangements that support the completion of the PWS requirements. The Offeror shall discuss the strength and completeness of the proposed project team in relation to the proposed technology concept. Specific detail shall be provided regarding the inclusion of the appropriate technology development organizations (e.g. original equipment manufacturers of key components of the power plant system).

The discussion shall include substantiated credentials, capabilities, and experience with respect to the work outlined in the proposed approach to be performed by the key personnel and partnering organizations.

The Offeror shall describe its proposed subcontractors commercial experience and abilities to analyze and provide FEED and/or Pre-FEED studies for commercial power plants including coal-based systems. The Offeror shall also demonstrate experience evaluating a broad range of technologies for coal-fired generation.

The Offeror shall discuss proposed Key Personnel and Critical Team Members on the extent, depth, and quality of the proposed individual’s education, qualifications, capabilities, professional development, and relevant hands-on work experience; including both the Offeror’s and subcontractors’ Key and Critical Team Members.

The Offeror shall provide a Letter of Commitment from all proposed key team member’s (organization’s).

Letters of commitment shall demonstrate a firm commitment to performing under this contract and describe the priority of this effort within its organization. The letter of commitment related to subcontractor(s) shall clarify that the business entity intends to perform as a subcontractor to (insert Offeror’s name) for the period of performance necessary to complete their proposed portion of work. All letters of commitment shall be signed by individuals authorized to bind their individual organization and be submitted in .pdf format. Failure to submit the required letter of commitment for any major or critical subcontractor may result in the Offeror receiving a lower rating for Criterion 2. Refer to Technical Evaluation Criterion 2.

**Key Personnel** - The Offeror shall identify one Key Personnel which is considered essential to the successful accomplishment of the work to be performed under the contract. The designated Key Personnel shall also have a substantial, hands-on role in to performing work described in the Performance Work Statement (PWS). Examples of key personnel could be the Program/Contract Manager or Project Coordinator, Principle Investigator, etc. The Offeror shall describe the suitability of the proposed Key Personnel based on the experience, and qualifications.

The Key Personnel identified will be incorporated into Section H, Clause “Key Personnel.” Key Personnel identified by the Offeror will be subject to the clause in Section I entitled, DEAR 952.215-70 Key Personnel.

The Offeror shall provide a Resume and a Letter of Commitment for the person designated to fill Key Personnel position(s).

**Critical Team Members** - In this section, the Offeror shall also identify Critical Team Members that are considered necessary to performance on this contract. Critical team members are those individuals that will directly contribute to the work described in the Performance Work Statement (PWS), and have specialized skills, knowledge and experience that are required to execute specific work functions. Critical team members are considered to add significant value to the success of the contract.

The Offeror shall discuss the skills, knowledge and experience of the critical team members proposed to accomplish the Performance Work Statement (PWS). The discussion shall include the critical team members education, experience, and professional development that encompass pertinent skills, years of experience and training. The Offeror shall provide documented background of work experience in areas relevant to that required by the PWS, and how this experience will be used to support the project.

The Offeror shall provide a Resume and Letter of Commitment for the person’s proposed as Critical Team Members.

**FILE 3: RESUMES AND LETTERS OF COMMITMENT (<company name>Resumes.---) (In Support of Criterion 2)**

Resumes shall be submitted as File 3 of the Technical Proposal. The filename shall be in this format <company name>Resumes.---. Resumes shall be provided for all key personnel/critical team members of the Offeror’s Technical Proposal. Resumes shall be limited to a total of 6 pages.

COVER PAGE

The Resume file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. All subsequent pages shall be appropriately numbered and identified with the name of the Offeror, the date, and the solicitation number to the extent practicable.

TABLE OF CONTENTS

The Resume file shall include a Table of Contents to facilitate locating the elements of the proposal.

Criterion 2 The Availability and Competence of Experienced Engineering, Scientific, or Other Technical Personnel Team Members (File 2) and Resumes and Letters of Commitment (File 3).

RESUMES

The Offeror shall provide resumes for the designated Key Personnel and all Critical Team Members proposed. Do not provide resumes of non-key/non-critical personnel. Each resume shall describe the education, technical expertise, and relevant experience of the individual on work similar to the work identified in the PWS and should be commensurate with the proposed position. These are to be demonstrative type resumes and not simply list previous positions and work locations of the individual. Resumes shall describe how work experience relates to contract scope and the individual's capability to function effectively in the proposed position. The resume should not just identify where the person has worked, it should also describe the type of work performed and indicate the advancements, education, personal accomplishments, pertinent publications, and qualifications relevant to the position for which the applicant is proposed. The resume should answer the question, “How does my experience qualify me for the proposed position under this contract?”

A sample resume format is provided below:

NAME: Individual’s full name

PROPOSED POSITION: Title and Description

ORGANIZATION AFFILIATION: Specify whether Offeror’s Organization, Subcontract, or Team/Partner

EXPERIENCE: Provide a summary of the overall relevant experience and capabilities applicable to the work identified in the PWS. List specific examples of work performed, accomplishments, achievements, responsibilities and authority gained.

EDUCATION: Identify institution, degree or certificate earned, and dates. Only degrees from accredited institutions shall be cited. Degrees from institutions that are not accredited will not be considered.

PROFESSIONAL AND/OR TECHNICAL TRAINING: For each relevant training course cited, list the title of the training, the training institution, the date of the training, and any special certifications or licensing received for the training.

PROFESSIONAL REGISTRATION/CERTIFICATION: Identify professional membership, special training, professional registrations, awards, etc. For each relevant professional registration/certification, list Title, State/Society, Year, and a brief statement detailing activities/accomplishments.

LIST OF PERTINENT PUBLICATIONS, HONORS, AWARDS, AND OTHER ACHIEVEMENTS: Provide a brief statement detailing relevant accomplishments, publications, awards, honors, etc.

COMMITMENT LETTERS

1. Key Personnel - Letters of commitment for Key Personnel shall demonstrate their availability and commitment to the contract for a specified period of time. For those individuals who are not already employees of the proposing organization, the letter of commitment shall also demonstrate their availability and willingness to accept the position proposed. All letters of commitment shall be signed and be submitted in .pdf format. Failure to submit the required Letter of commitment for any Key Personnel and/or Essential Personnel may result in the Offeror receiving a lower rating for this criterion.

Commitment Letters shall be limited to 1 page per letter.

Failure to submit the required letter of commitment for a Key Personnel may result in the Offeror receiving a lower rating for Criterion 2.

2. Teaming Members/Subcontractors (organizations) – Letters of commitment from all proposed teaming member organizations or subcontractors shall demonstrate their firm commitment to performing under this contract and describe the priority of this effort within its organization. The letter of commitment related to teaming members shall certify that the business entity intends to perform as a member to (insert Offeror’s name) for the completion of this contract. All letters of commitment shall be signed by individuals authorized to bind their individual organization and be submitted in .pdf format. Failure to submit the required letter of commitment for any teaming member may result in the Offeror receiving a lower rating for Criterion 2.

**FILE 4: PROPOSED TECHNICAL APPROACH to accomplish the concept (<company name>Technical Approach.---)**

The Offeror’s proposed technical approach to accomplish the concept discussion shall be submitted as File 4 of their Technical Proposal, which has a maximum page limit of 10 pages. To help facilitate the review process, and to ensure that all review criteria are addressed, the Offeror shall use the following format when preparing the technical approach file. The filename shall be in this format <company name>Technical Approach.---. This format relates to the technical evaluation criteria found in Part IV – Section M. Additional headings may be included as desired.

COVER PAGE

This file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. The title of the proposed effort should be concise and descriptive of the work to be performed. All subsequent pages shall be appropriately num­bered and identified with the name of the Offeror, the date, and the solicitation number to the extent practica­ble.

TABLE OF CONTENTS

This proposed technical approach discussion file shall include a Table of Contents to facilitate locating the elements of the proposal. All exhibits, figures and tables should be identified.

**PROPOSED TECHNICAL APPROACH TO ACCOMPLISH THE CONCEPT (Criterion 3)**

In this section, the Offeror shall describe its technical approach to accomplishing the tasks (scope) of the PWS including submitting a draft Concept Paper and a draft R&D Gap Analysis.

The Offeror shall describe the proposed approach to achieving the goals of the RFP. This includes: the tools that will used in carrying out the study; the cost, performance, and market data or databases that will be used; metrics used to evaluate the cost and performance relative to the design/performance criteria for the type of plant envisioned by DOE in the completion of conceptual design; and completion of pre-FEED study in accordance with the RFP expectations.

**FILE 5: RELEVANT PAST PERFORMANCE (<company name>Performance.---)**

The Offeror’s Relevant Past Performance shall be submitted as File 5 of the Technical Proposal. The filename shall be in this format <company name>Performance.---. The following page limitations apply for Relevant Past Performance:

* Performance Reference Information Form (Exhibit E) is limited to the form and one additional sheet.
* Past Performance Questionnaires (Exhibit D).
* Relevant past performance discussion is limited to 2 pages per contract/project, per entity.

The Past Performance Questionnaires that are completed by the reference point(s)-of-contact are not subject to the Section L provision entitled “52.215-1 Instruction to Offerors – Competitive Acquisition” related to late proposals. However, all other performance information (e.g. performance reference information form and relevant past performance discussion not received by the deadline will be considered late and may result in the Offeror receiving a lower score for this criterion.

To help facilitate the review process and to insure addressing all the review criteria, the Offeror shall use the following format when preparing File 5.

COVER PAGE

This file shall include a cover page indicating the solicitation number, name of the Offeror, and file name. All subsequent pages shall be appropriately numbered and identify the solicitation number and the name of the Offeror.

TABLE OF CONTENTS

This file shall include a Table of Contents to facilitate locating the elements of the proposal.

**RELEVANT PAST PERFORMANCE (Criterion 4)**

The Offeror shall provide no more than three contracts for similar services that have been active (excluding closeout activities) during the past five years, prior to closing date of this solicitation, to be evaluated as relevant past performance. If the Offeror is a new business entity, subsidiary, teaming arrangement (Limited Liability Corporation (LLC) or Joint Venture (JV)), then the Offeror shall provide no more than three (3) contracts for each of the critical team member organizations making up the Offeror’s business unit (e.g., two team members join together to form a JV then each member of the JV shall provide no more than three contracts, for a total of six in this example, and submit those for consideration). In addition to the three contracts submitted for the Offeror organization, the Offeror shall provide no more than three contracts for similar services that are active or have been completed during the past five years, prior to the closing date of this solicitation, for each of the critical team members proposed (named) to perform a specified portion of work (e.g. prime contractor shall have up to three contracts identified relevant to the work it plans to perform, Critical Team Member A shall have up to three contracts identified relevant to the work it plans to perform, Critical Team Member B shall have up to three contracts identified relevant to the work it plans to perform for a total of (including the Offeror’s) not more than nine contracts identified for this example.)

The Offeror and all proposed subcontractors shall describe their past performance in performing relevant work (similar in size and scope) to that described in the PWS. Relevant past performance shall be similar in size (dollar value or staffing levels) and scope (type and nature of work) to the work described in the PWS (both must be similar in order to be considered relevant). The Offeror shall include a rationale of how they determined each referenced contract to be similar in size and scope. To be considered recent past performance the contract shall either be currently active or completed within the past five years, from the closing date of this solicitation. The Offeror and all subcontractors bear the burden of demonstrating the relevancy of their past performance information.

The Offeror and all critical team members shall provide Exhibits C and D for each contract or project cited, to the appropriate point of contact for that contract or project. The reference point of contact for each contract or project should complete and submit the Past Performance Questionnaire (Exhibit D) (completed by the reference point-of-contact) directly to the Contracting Officer identified in the Past Performance Information Questionnaire cover letter, prior to the closing date of the RFP. Past Performance Questionnaires (completed by the reference point-of-contact) not submitted in this manner may not be considered. The contract or project information provided to the point of contact for completion of the questionnaire must be sufficient to enable cross-referencing of the Past Performance Reference Information Forms and the returned questionnaires.

|  |  |  |  |
| --- | --- | --- | --- |
| **Exhibit** | **Item** | **Purpose** | **Completed By:** |
| E | Performance Reference Information Form | Identifies information on the contract or project for which relevant past performance information is being collected. | The Offeror and all subcontractors. |
| C | Past Performance Information Questionnaire Cover Letter | Informs the identified reference that past performance information is being collected and identifies who past performance information is being collected on and the address and completion date for submission. | The Offeror and all subcontractors complete the information in the exhibit and provide it to the identified reference along with the appropriate relevant past performance forms.NOTE: The identified reference does not need to include this exhibit back to the Government when submitting the relevant past performance forms. |
| D | Past Performance Questionnaire | Collects past performance information on the contract or project cited.  | The identified references specific to the contract or project cited for the references complete and return directly to the Government as instructed in the cover letter.  |

In addition, the Offeror and all subcontractors shall submit the following relevant past performance information to supplement the information collected in Exhibit E, Past Performance Reference Information Form:

* clearly indicate if the work was performed as the Prime or as a subcontractor
* list of major subcontractors and their specific role and responsibility in the project;
* period of performance: start date and end date;
* places of performance (city, state, country) if different than the location identified in block 2 of the reference information form;
* staffing level;
* types of deliverables; and
* information on problems encountered on the identified contracts and subcontracts and the corrective actions taken to resolve those problems.

Offerors and all major or critical subcontractors should not provide general performance information on the identified contracts as this information will be obtained from the references. The Government may contact some or all of the references provided as well as other sources to obtain past performance information to be evaluated. References other than those identified by the Offeror and subcontractors may be contacted by the Government and used in the evaluation of past performance. The Government may obtain information from federal databases regarding past performance and use that information in its evaluation. Refer to Technical Evaluation Criterion 4.

(End of provision)

L.22 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME III PRICE PROPOSAL

Volume III, Price Proposal, consists of the Offeror’s fixed price for the work described in the PWS and shall be submitted as Volume III, File 1, Price Exhibit.

**FILE 1: Price Proposal (<company name>Price Proposal.---)**

For the purpose of the solicitation, the Price Proposal shall be inclusive of all required services associated with the lump sum firm-fixed-price for the work described in the PWS. The price proposal shall include separate lump sum firm-fixed-price amounts for the Base and Option for the total effort.

**Base Contract: Coal-Based Power Plants of the Future – Conceptual Design**

A not-to-exceed amount is set at $150,000 for any individual base contract award issued under this solicitation.

**Option I: Coal-Based Power Plants of the Future - Pre-FEED (preliminary front end engineering design)**

A not-to-exceed amount is set at $1,000,000 for any individual Option I award issued under this solicitation.

Format

For consistency, the Offeror is instructed to use the file names specified below. Filename extensions shall clearly indicate the software application used for preparation of the documents, i.e. ".pdf" for Adobe Acrobat (version 11.0 or earlier), ".doc or .docx" for Word (version 2016 or earlier), or “.xls or .xlsx” for Excel files (version 2016 or earlier).

Volume III, price proposal, shall include the following components:

|  |  |
| --- | --- |
| **AWARD** | **PRICE** |
| Base Contract Award – Concept Design | $ |
| Option I - PreFeed | $ |
| **TOTAL BASE PLUS OPTION PRICE** | $ |

(End of provision)

L.23 PREBID/PREPROPOSAL CONFERENCE - NONE

No prebid/preproposal conference for this solicitation is planned.

(End of provision)

L.24 LIST OF EXHIBITS

EXHIBIT DESCRIPTION

 C Past Performance Questionnaire Cover Letter

 D Past Performance Information Questionnaire

 E Past Performance Reference Information Form

(End of provision)

EXHIBIT C – PAST PERFORMANCE INFORMATION QUESTIONNAIRE COVER LETTER

The Department of Energy is seeking your assistance on a very important procurement.

\_\_*[insert name of Offeror]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_is participating in a proposal for a DOE contract. \_*[insert name of Offeror]*\_has identified you as someone who is familiar with their past performance on similar work. We are asking you to complete the attached Past Performance Information Questionnaire to help DOE evaluate \_\_*[insert name of Offeror]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s past performance.

We greatly appreciate your time and assistance in completing this questionnaire. In accordance with Part 15.506 of the Federal Acquisition Regulation, the names of individuals providing reference information about past performance will not be disclosed.

Please return the completed questionnaire by January 15, 2018 to:

US Department of Energy

National Energy Technology Laboratory

3610 Collins Ferry Road

PO Box 880

Morgantown, WV 26507-0880

Attn: Jason Efaw, Contract Specialist, MS I07

|  |
| --- |
| **Past Performance Information Questionnaire for:\_[Insert Name of Offeror** **or Team Member] \_\_\_\_\_\_\_**  |
| **Respondent: Please fill in the following table**: |
|  |
| 1. Complete Name and Title of Responder  |
| 2. Company or Agency Name, Address, Telephone Number, Facsimile Number (w/Area Code), and  E-mail Address |
| 3. Contract Name or Title, Contract Number and Type of Contract |
| 4. Signature |

EXHIBIT D – PAST PERFORMANCE QUESTIONNAIRE

|  |  |
| --- | --- |
| **4 = Outstanding** | Performance was substantially and consistently above contract requirements. Contractor displayed an overall superior understanding of contract requirements, and used innovative approaches leading to enhanced performance. |
| **3 = Good** | Performance was above minimum contract requirements. Contractor displayed a thorough understanding of contract requirements. |
| **2 = Satisfactory** | Performance met minimum contract requirements. |
| **1 = Marginal** | Performance was below minimum contract requirements. Contractor displayed a lack of thorough understanding of contract requirements in one or more significant performance areas. |
| **0 = Unsatisfactory** | Performance completely failed to meet the minimum contract requirements. Contractor displayed a total lack of understanding of contract requirements. |
| **NA = Not Applicable** |  |
| **DK = Don’t Know** | No knowledge available to respond to this question. |

For any rating(s) less than 2, please attach an explanatory narrative. We greatly appreciate your time and assistance in completing this questionnaire.

[Page 1 of 3]

**Past Performance Information Questionnaire for: \_[Insert Name of Offeror or Team Member]\_\_\_\_\_\_**

|  |  |
| --- | --- |
| 1. How would you rate the Contractor’s performance in the following areas: Meeting contract milestones? Submitting deliverables timely? Adherence to contract schedules? | **[4] [3] [2] [1] [0] [NA] [DK]****[4] [3] [2] [1] [0] [NA] [DK]****[4] [3] [2] [1] [0] [NA] [DK]** |
| 2. How would you rate the Contractor’s ability to perform within the contract ceiling or estimated cost? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 3. Did the Contractor utilize cost efficiencies in performance of your contract? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 4. How would you rate the Contractor’s cost performance? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 5. Did the Contractor submit accurate and timely invoices? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 6. If proposals were generated for changes, requests for equitable adjustment, or claims, how would you rate the reasonableness of the pricing? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 7 How would you rate the Contractor’s key personnel performance? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 8 How would you rate the Contractor’s ability to recruit and retain strong, well-qualified key personnel? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 9. Did the Contractor utilize an effective project management system that included planning, budgeting, status tracking, reporting, baseline management, critical path analysis, and work breakdown structure? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 10. Has there been a positive or negative trend in contract performance (“0” would be a very negative trend, “4” would be a very positive trend) | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 11. How would you rate the Contractor’s ability to create teaming/partnering relationships to achieve project goals? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 12. How would you rate the Contractor’s ability to integrate activities with other Contractors on multiple Contractor sites? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 13. Was the Performance Work Statement executed effectively by the Contractor in a consistently high quality manner? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 14. How would you rate the Contractor’s responsiveness to technical direction? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 15. Was the Contractor’s Environment Safety & Health (ES&H) program in compliance with contract requirements and protective of workers, public, and the environment? | **[4] [3] [2] [1] [0] [NA] [DK]** |

**Past Performance Information Questionnaire for: \_[Insert Name of Offeror or Team Member]\_\_\_\_\_\_**

|  |  |
| --- | --- |
| 16. Was the Contractor effective in subcontract management and did it meet subcontracting goals? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 17. Did the Contractor provide an effective and efficient transition from the previous Contractor? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 18. Did the Contractor effectively manage regulatory compliance programs and regulatory interfaces? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 19. Did the Contractor’s corporate office effectively support your contract? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 20. Did the Contractor develop and implement an effective quality assurance program? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 21. Did the Contractor effectively implement human resources requirements and manage labor relations? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 22. Did the Contractor manage effectively including cooperation with the technical representatives, the Contracting Officer, and other stakeholders showing flexibility and responsiveness? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 23. Was the Contractor effective in working with organized labor, community groups, media, and other stakeholders? | **[4] [3] [2] [1] [0] [NA] [DK]** |
| 24. Provide an overall assessment of the Contractor’s performance. | **[4] [3] [2] [1] [0]** |
| 25. Would you hire this Company again? | **[ ] Yes [ ] No** |

Please Provide Any Additional Comments Below

EXHIBIT E – PAST PERFORMANCE REFERENCE INFORMATION FORM

|  |
| --- |
| **1. Complete name of Government agency, commercial firm, or other organization** |
|  |
| **2. Complete address** |
|  |
| **3. Contract number or other reference and type** | **4. Date of contract** |
|  |  |
| **5. Date work commenced** | **6. Date work was completed or scheduled to be completed** |
|  |  |
| **7. Contract Type and Contract Value** | **8. Final amount invoiced or amount invoiced to date** |
|  |  |
| **9a. Technical point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)** | **9b. Contracting point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)** |
|  |  |
| **9c. Environmental Regulator point of contact (name, title, company/agency, address, telephone number, fax number, and e-mail address)**  | **10. Consultants and partners/subcontractors used (names, addresses, and phone numbers)** |
|  |  |
| **11. Project/Contract Title** |
|  |
| **12. Description of contract work (Describe nature and scope)** |
| **13. Current Status of Contract (choose one)****[ ] Work Continuing, On Schedule****[ ] Work Continuing, Behind Schedule****[ ] Work Completed, No further Action Pending or Underway****[ ] Work Completed, Routine Administrative Action Pending or Underway****[ ] Work Completed, Litigation Pending or Underway****[ ] Terminated for Convenience****[ ] Terminated for Default****[ ] Other (explain):**Attach additional sheet if necessary (one additional sheet maximum) |

Instructions for Completing the Reference Information Worksheet

Item 1. Insert the complete name and address of the customer, including parent organization, if any. Do not use acronyms.

Item 2. Insert the customer’s complete address, including both post office box and street address, if applicable.

Item 3. Insert any contract number or other contract reference used by the customer and contract type.

Item 4. Insert the date on which the contract came into existence.

Item 5. Insert the date on which you started to perform the work.

Item 6. Insert the date on which the customer agreed that the work was satisfactorily completed (including substantial completion), aside from any pending or on-going administrative actions, claims negotiations, or litigation.

Item 7. Insert the contract type and contract value (separately listing fee if cost-type).

Item 8. Insert the final sum of all invoices, or the sum of all invoices to date, including agreed upon and disputed amounts, paid and awaiting payment.

Item 9a. Insert the name, title, company/agency, address, telephone number, facsimile number, and e‑mail address (if available) of the program or project manager, quality assurance representative, or other customer technical representative who is most familiar with the quality of your work under the contract.

Item 9b. Insert the name, title, company/agency, address, telephone number, facsimile number, and e‑mail address (if available) of the contracting officer, purchasing agent, or other customer contracting or purchasing representative who is most familiar with your work under the contract.

Item 9c. Insert the name, title, company/agency, address, telephone number, facsimile number, and e‑mail address (if available) of (a) lead environmental regulator(s) or a State regulatory office director under whose authority environmental regulations would be enforced.

Item 10. Insert names and phone numbers of consultants and partners/subcontractors used.

Item 11. Insert the title of the project and/or contract.

Item 12. Describe the nature and scope of the work. Describe the relevance of the work to the current acquisition and discuss performance. The objective is to show how the work that you did or are doing is similar in nature and scope to the work that is to be performed under the contract contemplated by the request for proposals. Describe any unusual circumstances of performance or problems that may be relevant to the work that is to be performed. Tell your side of the story of any conflicts with the customer concerning which they may make adverse remarks about your performance. Describe any actions that you have taken or plan to take to correct any shortcomings in your performance.

Item 13 Check the box which most accurately describes the current contract status.

Section M - Evaluation Factors for Award

M.1 EVALUATION OF OPTIONS.

Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

M.2 PROPOSAL EVALUATION - GENERAL

The Offeror(s) selected for award will be the responsible Offeror(s) whose proposal is determined to be the best overall value to the Government based on the evaluation criteria set forth in this section. Only proposals offering the full range of services in the Performance Work Statement are eligible for award.

(End of provision)

M.3 COMPLIANCE WITH THE REQUEST FOR PROPOSAL

Volume I Offer and Other Documents will not be point scored or adjectively rated. The proposal preparation instructions contained in Section L are designed to provide guidance to Offerors concerning the type and depth of information the Government considers necessary to conduct an informed evaluation of each proposal.

The Offeror's compliance with the proposal instructions as outlined in Volume I, Offer and Other Documents (such as format and content) will be reviewed and serve as the basis for a determination of responsiveness to the requirements contained in this solicitation.

If the proposal fails to comply with material RFP requirements or to meaningfully address major portions of the RFP as to be grossly and obviously deficient it may be eliminated from further consideration before a detailed evaluation is performed.

Deviations/exceptions taken to this solicitation will not necessarily cause a proposal to be considered unacceptable. However a large number of deviations/exceptions or one or more significant deviations may result in the rejection of the proposal as unacceptable. In the event a proposal is rejected, a notice will be sent to the Offeror stating the reason(s) that the proposal will not be considered for further evaluation.

(End of provision)

M.4 BASIS FOR CONTRACT AWARD

The Government intends to award multiple contracts to the responsible Offerors whose proposal is responsive to the solicitation and is determined to be the best value to the Government. The Government reserves the right to make any number of awards, or no award, if considered to be in the Government's best interest to do so.

Selection of the best value to the Government will be achieved through a process of evaluating the strengths and weaknesses of each Offeror’s proposal in accordance with the Evaluation Criteria set forth in this Section M. In determining the best value to the Government, the Technical Proposal Criteria are significantly more important than the Total Firm-Fixed-Price. Price proposals are required not-to-exceed the threshold’s established in Section L.

The Government is more concerned with obtaining a superior Technical Proposal than making an award at the lowest Total Firm-Fixed-Price. In determining potential trade-offs to arrive at the best value selection, the Government will assess the strengths, weaknesses, and deficiencies between or among competing technical proposals from the standpoint of 1) what the difference might mean in terms of anticipated performance; and 2) what the estimated cost would be for the Government to take advantage of that difference. However, the Government will not make an award at a price premium it considers disproportionate to the benefits associated with the evaluated superiority of one technical proposal over another. Thus, to the extent that Offerors’ Technical Proposals are evaluated as technically equivalent (equal or so close to be considered equal in merit), the Total Lump Sum Firm-Fixed-Price is more likely to be a determining factor.

**In determining the best value for the Government for multiple awards, the Government shall take into consideration awards made to multiple technology concepts (e.g. prior to making multiple selections for the same technology concept the Government will consider a different technology concept, if proposals are received which contain different technology concepts**).

**An Offeror’s proposal that fails to adequately identify a key team member (organization) with substantiated experience in the completion of FEED studies and detailed design for commercial power plants including coal-based systems will be eliminated from further consideration before a detailed evaluation is performed.**

**An Offeror’s proposal containing multiple concepts or technologies may be eliminated from further consideration before a detailed evaluation is performed.**

(End of provision)

M.5 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA

Volume II Technical Proposal is of significantly greater importance than the Volume III Price Proposal.

Volume II, Technical Proposal will be adjectively rated. The relative importance of the Technical Proposal Criteria is as follows:

Criterion 1 and 2 Criterion are of equal importance. Criterion 3 and 4 are of equal importance and when combined are of less importance that either Criterion 1 or 2 . The individual elements that comprise Criteria 1, 2, 3, and 4 are not listed in order of importance and will not be individually weighted, but rather will be considered as a whole in developing an overall rating for each criterion.

(End of provision)

M.6 EVALUATION CRITERIA – TECHNICAL PROPOSAL

The Technical Proposal will be evaluated in accordance with the following criteria. In addition, information contained in any of the files may be taken into consideration in the evaluation of any criterion of the Technical Proposal.

TECHNICAL CRITERION 1: TECHNICAL MERIT OF PROPOSED CONCEPT

The Offeror shall be evaluated on the degree to which the proposal clearly demonstrates that the proposed plant concept has the potential to meet the specific design criteria outlined in the RFP. This includes the reasonableness of and detail provided for the projected cost and performance estimates for the proposed plant configuration and associated technology relative to the features and design criteria that DOE envisions, and the adequacy of the discussion around any design criteria that may prove especially challenging for the proposed concept to meet.

The Offeror shall be evaluated on the Offeror’s analysis of the remaining technical and cost challenges for the power plant concept. This includes a detailed assessment of key technology R&D gaps (by component, e.g. boiler, turbine, condenser, etc.) and a discussion of the appropriate scale for piloting the proposed technology.

The Offeror shall be evaluated on the degree to which the proposal demonstrates remaining technical and cost challenges can be overcome such that the proposed power plant concept will be ready for a high-quality pilot plant FEED study in the 2022 timeframe.

TECHNICAL CRITERION 2: THE AVAILABILITY AND COMPETENCE OF EXPERIENCED ENGINEERING, SCIENTIFIC, OR OTHER TECHNICAL PERSONNEL TEAM MEMBERS PROPOSED

The Offeror will be evaluated on the proposed subcontracting and teaming approach on the extent to which it provides an effective and efficient vision and plan for integrating relevant subcontracts and team arrangements that support the completion of the PWS requirements.

The Offeror will be evaluated on the strength and completeness of the proposed project team in relation to the proposed technology concept, with specific regard to the inclusion of the appropriate technology development organizations (e.g. original equipment manufacturers of key components of the power plant system). This includes substantiated credentials, capabilities, and experience with respect to the work outlined in the proposed approach to be performed by the key personnel and partnering organizations. The Offeror will be evaluated on the level of commitment of the proposed team.

The Offeror will be evaluated on the degree to which the proposed team demonstrates their commercial experience and ability to analyze and provide FEED and/or Pre-FEED studies for commercial power plants including coal-based systems.

The Offeror (and its team) will be evaluated on the demonstrated experience evaluating a broad range of technologies for coal-fired generation.

The Offeror will be evaluated on the proposed Key Personnel and Critical Team Members on the extent, depth, and quality of the proposed individual’s education, qualifications, capabilities, professional development, and relevant hands-on work experience; including both the Offeror’s and subcontractors’ Key and Critical team Members.

TECHNICAL CRITERION 3: THE TECHNICAL APPROACH PROPOSED TO ACCOMPLISH THE CONCEPT(S)

The proposed approach will be evaluated to determine the reasonableness, completeness, and merit of the Offeror’s approach. The approach will be evaluated to determine the likelihood that the overall approach will result in successful achievement of the requirements in the PWS and to the extent that the proposed approach will satisfy the goals of the contract.

The Offeror will be evaluated on the adequacy and feasibility of the proposed approach to achieving the goals of the RFP. This includes: the tools that will used in carrying out the study; the cost, performance, and market data or databases that will be used; metrics used to evaluate the cost and performance relative to the design/performance criteria for the type of plant envisioned by DOE in the completion of conceptual design; and completion of pre-FEED study in accordance with the RFP expectations.

TECHNICAL CRITERION 4: RELEVANT PAST PERFORMANCE

The Government will evaluate the Offeror’s past performance to determine the degree to which it demonstrates the likelihood it can successfully perform the requirements of the PWS. The Government will similarly evaluate the relevant past performance of the subcontractor(s) proposed (named) by the Offeror. To be considered recent past performance the contract shall either be currently active or completed within the past five years of the closing date of this solicitation. In the case of a joint venture, LLC, or other team arrangement formed for the purpose of competing for this contract, the Government will evaluate relevant past performance of the entities that comprise the newly formed entity. Relevant past performance includes current or past contracts similar in size (dollar value or staffing levels) and scope (type and nature of work) to the work described in the PWS. The Government will use information either furnished by the Offeror and reference(s) and/or information obtained from other independent data sources in evaluating relevant past performance.

**For Offerors without a record of relevant past performance or for whom relevant past performance information is not available, the Offeror will not be evaluated favorably or unfavorably.**

(End of provision)

M.7 EVALUATION CRITERIA – PRICE

Volume III, Price Proposal will neither be point-scored, nor adjectively rated, but will be evaluated to determine reasonableness. The Government will evaluate each Offeror’s proposed price, using one or more of the techniques defined in FAR 15.404, in order to determine if the proposed price is fair and reasonable.

A not-to-exceed amount has been provided in Section L. Pricing that exceeds that predefined amount may not be evaluated and not considered for award. For price evaluation, a total evaluated price will consist of only the base price for each offeror.

(End of provision)