

SECTION K

REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF CONTRACTORS

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SECTION K

REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF CONTRACTORS

Pursuant to Section H.33, the Representations, Certifications, and Other Statements of the contractor, dated **TBD**, made in response to Solicitation No. DE-SOL-0000638 for the DOE Environmental Management Nationwide Multiple Award Indefinite Delivery Indefinite Quantity (IDIQ) - Unrestricted contract is hereby incorporated by reference.

If there have been any changes to the FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters submitted with initial award of the IDIQ Basic Contract, the Contractor should submit any changes or updates to the Contracting Officer with this task proposal.

Any other updates shall be provided with the Contractor's proposal in response to this solicitation.

In addition, the following special provisions will apply to this task order:

K.101 FAR 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

- (a) *Definitions.* As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).
- (b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.
- (c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.
- (d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

- (e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, for each such failure.

K.102 FAR 52.209-2 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS--REPRESENTATION. (MAY 2011)

- (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) *Relation to Internal Revenue Code.* An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.
- (c) *Representation.* By submission of its offer, the Offeror represents that —
 - (1) It is not an inverted domestic corporation; and
 - (2) It is not a subsidiary of an inverted domestic corporation.

K.103 FAR 52.209-7 – INFORMATION REGARDING RESPONSIBILITY MATTERS (FEB 2012)

- (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 proceeding 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 (FAPIS) 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 FAPIS as required through maintaining an active registration in the Central Contractor Registration database via <https://www.acquisition.gov> (see 52.204-7).

K.104 FAR 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that --

- (a) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It has, has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.105 FAR 52.222-25 AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The Offeror represents that --

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

K.106 FAR 52.225-2 BUY AMERICAN ACT CERTIFICATE (INSIDE U.S.) (FEB 2009)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product." The terms "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act—Supplies."

(b) Foreign End Products:

Line Item No.:	Country of Origin:

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

K.107 FAR 52.225-20 PROHIBITION ON CONDUCTING RESTRICTED BUSINESS OPERATIONS IN SUDAN--CERTIFICATION (AUG 2009)

- (a) Definitions. As used in this provision—

"Business operations" means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

"Marginalized populations of Sudan" means—

- (1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) (50 U.S.C. 1701 note); and
- (2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.
"Restricted business operations" means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—
 - (1) Are conducted under contract directly and exclusively with the regional Government of southern Sudan;
 - (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
 - (3) Consist of providing goods or services to marginalized populations of Sudan;
 - (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
 - (5) Consist of providing goods or services that are used only to promote health or education; or
 - (5) Have been voluntarily suspended.
- (b) Certification. By submission of its offer, the Offeror certifies that the Offeror does not conduct any restricted business operations in Sudan.

K.108 FAR 52.225-25 PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN SANCTIONED ACTIVITIES RELATING TO IRAN—REPRESENTATION AND CERTIFICATION (NOV 2011)

(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; and

(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.

(d) Exception for trade agreements. The representation requirement of paragraph (c)(1) and the certification requirement of paragraph (c)(2) 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.

K.109 FAR 52.230-7 PROPOSAL DISCLOSURE—COST ACCOUNTING PRACTICE CHANGES (APR 2005)

The offeror shall check “yes” below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

Yes No

If the offeror checked “Yes” above, the offeror shall—

(1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

K.110 DEAR 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE FACILITIES (DEC 2000)

- (a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites.
- (b) By submission of its offer, the offeror agrees to provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR Part 707.
- (c) Failure of the Offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision renders the Offeror unqualified and ineligible for award.

K.111 ORGANIZATIONAL CONFLICTS OF INTEREST

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

(b) Each Contractor is to check the appropriate block for each of the questions below. The questions apply equally to (1) the Contractor, (2) intended subcontractors at any tier, (3) consultants, (4) affiliates of the foregoing, and (5) chief executives and directors of any of the foregoing who will be involved in performing the contract, and, accordingly, that the term "Contractor" is defined to include all five types of considerations. The questions shall be completed by each contractor or person identified.

(1) Does the Contractor depend upon industries or firms which could be affected by DOE actions related to the contract for a significant portion of its business, or have a relationship (financial, organizational, contractual or otherwise) with such industries or firms which could impair its objectivity or independence? Yes No

(2) Would any unfair competitive advantage accrue to the Contractor in either its private or government business pursuits from access to:

(i) data generated under the contract? Yes No

(ii) information concerning DOE plans and programs? Yes No

(iii) confidential and proprietary data of others? Yes No

(3) Will any proposed subcontractor perform any self-evaluation or inspection of a service or product, or evaluation or inspection of another with whom a relationship exists which could impair objectivity, including evaluation or inspection of goods or services which complete commercially with the performer's goods or services?

Yes No

(4) Will any of the Contractor's chief executives, directors, or entities which they own or represent, or any of the Contractor's affiliates be involved in the performance of the contract? Yes No

(5) Do you have any current business arrangements which may conflict with your role as contractor or subcontractor under this contract?" Yes No

(c) If the Contractor checked "yes" to any of the above in paragraph (b), the Contractor shall provide the statement described in paragraph (d) from each entity or person affirmatively responding.

(d) The statement must contain the following:

(1) A statement of any past (within the last 12 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 Contractor 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 each 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 the 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 contract.

(2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the services required by the Performance Work Statement to be provided in connection with the instant contract..

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

K.112 AGREEMENT TO USE NON-FEDERAL EVALUATORS

The U.S. Department of Energy (DOE) may employ non-Federal evaluators (including employees of DOE contractors) to evaluate proposals submitted in response to Solicitation No. DE-SOL-0004563. All such non-Federal evaluators are required to sign appropriate non-disclosure and conflict of interest statements prior to any such engagement. By submission of a signed offer under this solicitation, the contractor consents to such review by non-Federal evaluators.

K.113 DEAR 952.204-73 FACILITY CLEARANCE (MARCH 2011)

Section 2536 of title 10, United States Code, prohibits the award of a Contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the Contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the Contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who have either a Department of Defense or a Department of Energy Facility

Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form (SF) 328.

- (1) The Contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the Contractor must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.
- (2) Information submitted by the Contractor in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.
- (3) Following submission of a Standard Form 328 and prior to Contract award, the Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI which could affect the Contractor's answers to the questions in Standard Form 328. Following award of a Contract, the Contractor must immediately submit to the cognizant security office written notification of any changes in the extent and nature of FOCI which could affect the Contractor's answers to the questions in Standard Form 328. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

(b) Definitions.

- (1) Foreign Interest means any of the following:
 - (i) A foreign government, foreign government agency, or representative of a foreign government;
 - (ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
 - (iii) Any person who is not a citizen or national of the United States.
 - (2) Foreign Ownership, Control, or Influence (FOCI) means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.
- (c) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being

performed at the facility. It is DOE policy that all Contractors or Subcontractor Contractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the Contract. Approval for a Facility Clearance shall be based upon:

- (1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;
 - (2) A Contract or proposed Contract containing the appropriate security clauses;
 - (3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
 - (4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;
 - (5) A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;
 - (6) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and
 - (7) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.
- (d) A Facility Clearance is required prior to the award of a Contract requiring access to classified information and the granting of any access authorizations under a Contract. Prior to award of a Contract, the DOE must determine that award of the Contract to the Contractor will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the Contract. The Contracting Officer may require the Contractor to submit such additional information as deemed pertinent to this determination.
- (e) A Facility Clearance is required even for Contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- (f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime Contractor or the Contracting Officer for the prime contract.

K.114 COST AND FEE PROPOSAL CERTIFICATION

The Government publicly furnished certain cost, pricing, and/or estimating information regarding contract activities and requirements during the solicitation phase of this contract. By submitting a signed offer under this Solicitation, the Contractor certifies that:

- (a) It fully recognizes that such information was not warranted in any manner by the Government as to its accuracy or validity, and was for information only;
- (b) The Government does not represent such information as a preferred price offer under the solicitation; and
- (c) Irrespective of the Government-furnished information, the Contractor's estimated cost and estimated fee, upon which this task order award is based, was independently and fully derived from the Contractor's own estimating methods, that the Contractor assumes full and complete ownership of its offered estimated cost and estimated fee, and that it fully acknowledges that the Government makes no warranties, express or implied, as to the completeness or accuracy of the Government-furnished pricing and estimating information.

K.115 SIGNATURE / CERTIFICATION

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

Signature of the Officer or Employee
Responsible for the Contractor

Date of Execution

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

Name of Organization

Address

City, State, Zip Code
DE-SOL-0004563
Solicitation Number