

## **Part IV – Representations and Instructions**

### **Section L**

#### **Instructions, Conditions, and Notices to Offerors**

## Section L

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**L.1 FAR 52.252-1 Solicitation Provisions Incorporated by Reference (Feb 1998)**

This solicitation incorporates one (1) or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer (CO) will make their full text available. The Offeror is cautioned that the listed provisions may include blocks that must be completed by the Offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the Offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at these addresses:

<https://www.acquisition.gov/far/>  
<http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>

<b>FAR/DEAR Reference</b>	<b>Title</b>	<b>Fill-In Information; See FAR 52.104(d)</b>
FAR 52.204-7	System for Award Management (Oct 2018)	
FAR 52.204-16	Commercial and Government Entity Code Reporting (Aug 2020)	
FAR 52.214-34	Submission of Offers in the English Language (Apr 1991)	
FAR 52.214-35	Submission of Offers in U.S. Currency (Apr 1991)	
FAR 52.215-1	Instructions to Offerors – Competitive Acquisition (Jan 2017)	
FAR 52.215-16	Facilities Capital Cost of Money (Jun 2003)	
FAR 52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost of Pricing Data (Oct 2010) – Alt III (Oct 1997) and Alt IV (Oct 2010)	Alt III, (c) As specified in Section L Alt IV, (b) As specified in Section L
FAR 52.215-22	Limitations on Pass-Through Charges – Identification of Subcontract Effort (Oct 2009)	
FAR 52.222-5	Construction Wage Rate Requirements – Secondary Site of the Work (May 2014)	
FAR 52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (Feb 1999)	(b) Minority Goal: 10.2%; Female Goal: 6.9% (e) (See Master IDIQ Contract Section F.7)
FAR 52.222-24	Pre-Award On-Site Equal Opportunity Compliance Evaluation (Feb 1999)	
FAR 52.222-46	Evaluation of Compensation for Professional Employees (Feb 1993) (Note: The requirement for a Total Compensation Plan is considered to be otherwise satisfied based on compliance with the proposal preparation instructions in this Section.)	
FAR 52.237-1	Site Visit (Apr 1984)	
FAR 52.250-2	SAFETY Act Coverage Not Applicable (Feb 2009)	
DEAR 952.227-84	Notice of Right to Request Patent Waiver (Feb 1998)	
DEAR 952.233-4	Notice of Protest File Availability (Aug 2009)	
DEAR 952.233-5	Agency Protest Review (Sep 1996)	

## **L.2 FAR 52.252-5 Authorized Deviations in Provisions (Apr 1984)**

- (a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the provision.
- (b) The use in this solicitation of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

## **L.3 DEAR 952.219-70 DOE Mentor-Protégé Program (May 2000) (DEVIATION) (Issued by DOE Policy Flash 2019-15)**

The Department of Energy has established a Mentor-Protégé Program to encourage its prime contractors to assist small business concerns, Historically Black Colleges and Universities and Minority Institutions, and other minority institutions of higher learning in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the Contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protégé firms will develop and submit “lessons learned” evaluations to DOE at the conclusion of the agreement. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

## **L.4 FAR 52.216-1 Type of Contract (Apr 1984)**

The Government contemplates award of an Indefinite-Delivery/Indefinite-Quantity (IDIQ) contract under which Fixed-Price (FP) and/or Cost Reimbursement (CR) Task Orders may be issued resulting from this solicitation.

## **L.5 DOE-L-2017 Expenses Related to Offeror Submissions (Oct 2015)**

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

## **L.6 DOE-L-2021 Guidance For Prospective Offerors - Impact of Teaming Arrangements On Small Business Status (Oct 2015)**

- (a) This procurement has been set aside for small business. In order to ensure that award is made to an eligible small business, prospective offerors, in consultation with legal counsel, are encouraged to review the Small Business Administration's (SBA's) size eligibility standards found at Title 13 of the Code of Federal Regulations, Section 121 (13 C.F.R. § 121). In particular, offerors proposing a joint venture, subcontracting, or another form of teaming arrangement shall review 13 C.F.R. § 121.103, "How does SBA determine affiliation?" prior to submitting a proposal.
- (b) The SBA is the sole authority for making determinations of small business status for small business programs. Such determinations are binding on the Offeror and the Contracting Officer. Accordingly, a finding by the SBA of affiliation between an Offeror and its proposed team member(s) or subcontractor(s) may result in the Offeror being found to be other than a small business and therefore ineligible for contract award.

## **L.7 DOE-L-2022 Alternate Bid/Proposal Information – None (Oct 2015)**

Alternate bid/proposals are not solicited, are not desired, and will not be evaluated.

### **L.8 DOE-L-2024 Notice of Intent – Use of Non-Federal Evaluators and Advisors (Oct 2015)**

The Government may utilize non-federal evaluators and/or advisors or other non-federal support personnel for evaluating proposals received in response to this solicitation. Such personnel shall be required to sign nondisclosure agreements and to comply with personal and organizational conflicts of interest requirements in accordance with the FAR and DEAR 915.207-70(f)(5) and (6). Under the statutes governing procurement integrity, these non-federal personnel may not disclose any information learned by participating in this acquisition. See the *Procurement Integrity Act*, 41 U.S.C. §§ 2101-2107.

### **L.9 DOE-L-2025 Intention to Bid/Propose (Oct 2015)**

In order to facilitate the efficiency of the Government’s solicitation and award process through advance information on the anticipated number of Offerors, potential Offerors are requested to submit the name, DUNS Number, address, and telephone number of its firm or organization and any subcontractors to MoabRAC@emcbc.doe.gov not later than 20 calendar days prior to the proposal due date. If the bid/proposal is to be submitted by a teaming arrangement, the Offeror is requested to submit the above information for all members of the proposing team. DOE may utilize this information to interface regarding necessary FedConnect and System for Award Management registrations.

### **L.10 Offer Acceptance Period**

The Offeror’s proposal shall be valid for 270 calendar days after the required due date for proposals.

### **L.11 DOE-L-2001 Proposal Preparation Instructions – General (Oct 2015) Alternate I and Alternate II (Oct 2015) (Revised) (TAILORED)**

#### (a) Definitions.

- (1) Offeror. The term “Offeror,” as used in this Section L, refers to the single entity submitting the proposal. The Offeror may be a single corporation or a “Contractor team arrangement” as defined in FAR 9.601(1), for example, a limited liability company (LLC), limited liability partnership (LLP), joint venture (JV), or similar entity or arrangement. The Offeror may be an existing or newly formed business entity. The term “newly formed entity” refers to any business entity (e.g., JV, LLP, LLC, or similar entity or arrangement) formed solely for the purpose of submitting a proposal for this procurement. Such an entity may not have a record of its own past performance due to the fact that it may have been formed recently by affiliated entities for the purpose of submitting a proposal for this procurement. If the Offeror is a newly formed entity, it must be legally established on or before the date for submission of proposals. (See Volume I instructions regarding any requirement for a performance guarantee agreement.)
- (2) Teaming Subcontractor. A “Teaming Subcontractor” is any subcontractor that will perform work that is:
  - (i) Incorporated into the Offeror’s Management Proposal;
  - (ii) Considered necessary by the prime Offeror to enhance its team’s Management Proposal or ability to meet delivery requirements within the Master IDIQ PWS; and either:
    - (A) Planned to perform Master IDIQ PWS Section C.4.4.6, or
    - (B) At a minimum, planned to perform work estimated at \$4,000,000.00 annually.

Teaming Subcontractors are evaluated consistent with the terms of this solicitation and thus are not subject to post-award subcontract consent pursuant to FAR 52.244-2.

(b) Availability of the solicitation, amendments, and other documents-electronic media.

- (1) In order to further the Government policy of maximizing electronic commerce and making the acquisition process optimally cost-effective, electronic media will be used for distributing the solicitation, amendments thereto, and other documents to the public. These documents will be posted via the FedConnect website at <https://www.fedconnect.net>. This electronic medium will constitute the official distribution method for this solicitation. All amendments and any other official communications from DOE regarding this solicitation will be posted through this medium. Offerors and all other interested parties are responsible to maintain continual surveillance of the website to remain abreast of the latest available information (Offerors and other interested parties are encouraged to utilize the website’s “Notifications” feature). No changes to this solicitation will be effective unless the changes are incorporated into the solicitation by an amendment. No other communication, whether oral or in writing, will modify or supersede the terms of the solicitation.
- (2) The solicitation, amendments, reference documents, and other communications are also available through the Environmental Management Consolidated Business Center (EMCBC) procurement website at <https://www.emcbc.doe.gov/SEB/moabrac/>. Sensitive information, such as Official Use Only (OUO) information, will require the Offeror to complete and return a nondisclosure agreement as instructed on the procurement website.

(c) Submission of proposals.

- (1) The Offeror must be registered in FedConnect at <https://www.fedconnect.net>. The Offeror must also be registered in the System for Award Management at <https://www.sam.gov>.
- (2) Offerors must submit proposals electronically through FedConnect by the date and time specified in Standard Form 33, *Solicitation, Offer and Award*, in Section A of this solicitation and other provisions of Section L. It is imperative that the Offeror read and understand how to submit its proposal using the FedConnect web portal. All proposal documents required by this solicitation must be uploaded and received in their entirety in the FedConnect Responses web portal no later than the date and time specified in Standard Form 33, *Solicitation, Offer and Award*, in Section A of this solicitation. Failure to submit a response that is received through the FedConnect Responses web portal by the stated time and date may result in the proposal not being considered. By submitting a proposal, the Offeror agrees to comply with all terms and conditions as set forth in this solicitation. DOE does not provide help desk assistance regarding FedConnect, and questions regarding FedConnect shall be addressed directly to FedConnect in accordance with instructions found on its website. Subcontractor submissions of proprietary information may provide a password protected document file to the prime and share the password with the Contracting Officer via email, at [michael.forsgren@emcbc.doe.gov](mailto:michael.forsgren@emcbc.doe.gov). The subcontractor proposal must adhere to the proposal due date/time in the solicitation and be submitted by the prime Offeror via FedConnect.
- (3) Electronic submission of a proposal via FedConnect shall be required. The proposal shall contain visibly identifiable and time-stamped digital signatures on all documents requiring digital signatures by the Offeror. The digitally signed, electronic submission of the proposal in FedConnect shall be considered the Offeror’s official offer and will be considered binding. The electronic version of the Offeror’s ‘Estimating Flat File’ submitted through FedConnect will constitute part of the binding offer.

(4) RESERVED

(d) Solicitation instructions and proposal information.

- (1) Proposals are expected to conform to all solicitation requirements and the instructions contained in this Section L. The Government will evaluate proposals on the basis of the information provided in the proposal. The Government will not assume that an Offeror possesses any capability unless set forth in the proposal. This applies even if the Offeror has existing contracts with the Federal Government, including DOE.
  - (2) These instructions are not evaluation factors. Evaluation factors are set out in Section M, *Evaluation Factors for Award*, of this solicitation. However, failure to provide the requested information may make an Offeror ineligible for award or adversely affect the Government's evaluation of an Offeror's proposal. In addition, a proposal will be eliminated from further consideration before the initial rating if the proposal is deficient as to be totally unacceptable on its face. A proposal will be deemed unacceptable if it does not represent a reasonable initial effort to address itself to the material requirements of the solicitation, or if it does not substantially and materially comply with the proposal preparation instructions of this solicitation. cursory responses or responses which merely repeat or reformulate the solicitation will not be considered responsive to the requirements of the solicitation. In the event that 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 under this solicitation.
- (e) Proposal volumes and page limitations.
- (1) The overall proposal shall consist of separate volumes, organized and individually entitled as stated below, with the following page limitations:
    - (i) Volume I, *Offer and Other Documents* - No page limit.
    - (ii) Volume II, *Management Proposal* - See page limitations identified in each factor.
    - (iii) Volume III, *Cost and Fee/Profit Proposal* - No page limit.
  - (2) All attachments, annexes, and appendices shall be counted toward any page limitation set forth below, unless otherwise stated. The following do not count toward the page limitations: table of contents, title pages, glossary, divider tabs, and blank pages. Those pages that exceed the limits set forth in each factor below will not be considered in the evaluation; page counting will begin with the first page of each volume and continue up to the page limitation. No material may be incorporated by reference as a means to circumvent the page limitations.
  - (3) Except as may be provided elsewhere in the solicitation, Offerors shall not cross reference to other volumes of the proposal and shall provide complete information within the appropriate volume. All cost and pricing information shall be submitted and addressed only in Volume III, *Cost and Fee/Profit Proposal*, unless otherwise specified.
- (f) Proposal specifications.
- (1) Table of contents. Each volume shall contain a table of contents and a glossary of abbreviations and acronyms. The table of contents in each volume shall identify the section, subsection, paragraph titles, and page numbers, as well as all spreadsheets, charts, tables, figures, diagrams, design drawings, and graphs.
  - (2) Page size. Page size shall be 8½ × 11 inches for text pages, excluding foldouts. When 8½ × 11 inch pages contain text on both front and back, this is considered two pages. Page size for foldouts shall not exceed 11 × 17 inches; foldouts may be used for large tables, charts, graphs, diagrams, design drawings, or other schematics. Each page of a foldout shall count as two (2) pages. Where both sides of a foldout contain material, the foldout shall count as four (4) pages.

Tables of contents, lists of figures, dividers, tabs, or similar inserts that do not provide any substantive information are not counted as a page.

- (3) Print type. Paragraph text shall be 12 point or larger, single spaced, using Times New Roman font, including paragraph text in the Section L attachments (including Attachment L-3, “Past Performance Reference Information Form”). Paragraph headings and section titles may use Arial or Times New Roman font 12 point or larger. Headers and footers, spreadsheets, charts, tables, diagrams or design drawings, and graphs must be 9 point or larger using Times New Roman or Arial font. Bold and italics are acceptable, and narrow is not acceptable.
- (4) Page margins. Page margins for text pages and 11 x 17 shall be a minimum of one inch at the top, bottom, and each side. Tabloid pages (11 x 17’s) may only be used for graphics, spreadsheets, and large tables. Paragraphs of text and section heading are not allowed on 11 x 17’s. Each page shall, within the one inch top or bottom margins, set forth the solicitation number; name of the Offeror; and, as applicable, the legend in accordance with paragraph (e)(2), Restriction on disclosure and use of data, of Section L provision FAR 52.215-1, *Instructions to Offerors-Competitive Acquisition*. The page margins may also include page numbers. This is the only information that can be displayed within the margins. Two columns of text per page on portrait pages and 3 columns of text per page on landscape pages are acceptable.
- (5) Page numbering. All pages shall be sequentially numbered by volume and by individual sections within each volume. The only exception is financial statements and annual reports, which shall be segregated within the Volume III submission, thereby not requiring the documents to be sequentially numbered.
- (6) File format. Files submitted shall be readable and searchable using Microsoft® Word®, Excel®, or Adobe® portable document format file (PDF) (must be in a searchable format, not scanned) except for scanned Volume I signed documents and the following specific Volume III files:
  - (a) Electronic copies of financial statements and annual reports shall be submitted in PDF (portable document format files are required).
  - (b) Any proprietary software utilized in preparation of proposal information shall be provided along with licenses required to allow operation of the proprietary software. Any files provided in accordance with this section shall be in the native format.
  - (c) Cost and Fee/Profit Proposal tables shall be organized and submitted in native file format.The files shall not be password protected or contain other security restraints unless access information is provided.
- (7) RESERVED
- (8) RESERVED
- (g) Classified information. The Offeror shall not provide any classified information in response to this solicitation.
- (h) Questions.
  - (1) Questions regarding this solicitation must be submitted to [MoabRAC@emcbc.doe.gov](mailto:MoabRAC@emcbc.doe.gov) no later than 8 calendar days after the original solicitation issuance date. If DOE has not acknowledged receipt of submitted questions within three business days, the Offeror may contact the CO to confirm receipt of questions. Each question shall clearly specify the solicitation area to which it refers. Responses to questions, as appropriate, will be posted on the procurement website as soon as practicable. DOE will make every effort to have all questions answered at least two weeks

before the proposal submission date. The Government will not identify prospective Offerors submitting questions. Offerors must check the procurement website periodically to ascertain the status of answers to questions.

- (2) This solicitation is considered complete and adequately describes the Government's requirements. If an Offeror believes that there is an error in the solicitation, or an omission, the Offeror shall submit a question to [MoabRAC@emcbc.doe.gov](mailto:MoabRAC@emcbc.doe.gov).
- (i) 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.
- (j) Examination of data. By submission of a proposal, the Offeror grants to the CO, or an authorized representative of the CO, the right to examine, for purposes of verifying the data submitted, those books, records, documents, and other supporting data (regardless of form) that will permit an adequate evaluation of the proposal. This right may be exercised in connection with any reviews deemed necessary by the CO prior to award.
- (k) Commitment of public funds. The CO is the only individual who can legally award a contract and commit the Government to the expenditure of public funds in connection with the proposed acquisition. Any other commitment, either explicit or implied, is invalid.
- (l) Content of resulting contract. Any contract awarded as a result of this solicitation will contain the following sections of the solicitation: Part I - The Schedule; Part II - Contract Clauses; Part III, List of Documents, Exhibits and Other Attachments; and Part IV, Section K - Representations, Certifications, and Other Statements of Offerors. Section K will be incorporated into the contract by reference.
- (m) Allowable Salary for Key Personnel. Award of the Contract, as proposed, does not constitute a determination of allowability of key personnel salaries contained in the successful offer. As provided in Section H, entitled, *Special Provisions Applicable To Workforce Transition and Employee Compensation: Pay and Benefits*, and as required by the Transition Task Order, within 20 days after the effective date of the Transition Task Order, the Contractor will submit data to the CO for each key personnel position listed in the Contract for a determination of cost allowability for reimbursement/payment under the Contract. To support a reasonableness determination, the Contractor shall also provide compensation market survey data to support/justify the requested salary and any other information as requested by the CO. The key personnel salaries shall not exceed the proposed key personnel compensation contained in the successful offer.

**L.12 DOE-L-2002 Proposal Preparation Instructions, Volume I – Offer and Other Documents – Alternate II, Alternate III, Alternate IV, Alternate V, and Alternate VI (Oct 2015)**

- (a) Cover letter. The Offeror may provide a brief cover letter. The cover letter will not be considered in the evaluation.
- (b) General. Volume I – Offer and Other Documents, contains the offer to enter into a contract and other documents. Visibly identifiable and time-stamped digital signatures on all documents requiring digital signature by Offerors shall be contained in Volume I. Offerors shall include the information listed in the following paragraphs in Volume I, assembled in the order listed. In cases where the Offeror is required to fill in information in a contract clause, the Offeror shall submit only those pages that require input of information or a signature. Those specific areas are:

- (1) Section B:
  - (i) DOE-B-2015, Task Order Fee/Profit Ceiling (Oct 2014) (Revised)
- (2) Section H:
  - (i) DOE-H-2017, Responsible Corporate Official and Corporate Board of Directors (Oct 2014) (Revised)
  - (ii) DOE-H-2052, Representations, Certifications, and Other Statements of the Offeror (Oct 2014) (Revised)
  - (iii) DOE-H-2058, Designation and Consent of Teaming Subcontracts – Alternate I (Oct 2014) (Revised)
  - (iv) DOE-H-2070, Key Personnel – Alternate I (Oct 2014) (Revised)
  - (v) Organizational Conflict of Interest – Affiliate(s)
- (3) Section I:
  - (i) FAR 52.223-3, Hazardous Material Identification and Material Safety Data (Jan 1997) – Alternate I (Jul 1995)
  - (ii) FAR 52.227-23, Rights to Proposal Data (Technical) (Jun 1987)
- (4) Section J:
  - (i) Attachment J-13, “IDIQ Labor Rate Schedule” (Attachment L-6, “Cost and Fee/Profit Elements Workbook”)
- (5) Task Fill-Ins
  - (i) Attachment L-7, “Contract Transition Task Order”
- (c) Standard Form 33, *Solicitation, Offer and Award* – one visibly identifiable and time-stamped digital signature on the Standard Form (SF) 33 must be provided.
  - (1) The person digitally signing the SF 33 must have the authority to commit the Offeror to the terms and conditions of the resulting contract, Sections A - J. By digitally signing and submitting the SF 33, the Offeror commits to accept the resulting Contract as contained in the solicitation, unless an exception or deviation to the terms and conditions as stated in the solicitation is explicitly stated by the Offeror in accordance with the below subsection (g), *Exceptions and Deviations*.
  - (2) The Offeror must acknowledge receipt of all amendments to the solicitation in block 14 of the SF 33.
  - (3) The Offeror shall insert 270 calendar days in block 12 of the SF 33 in accordance with Section L provision entitled, *Offer Acceptance Period*.
- (d) Administrative information. Offerors shall provide the following information:
  - (1) Solicitation number (reference paragraph (c)(2)(i) of the Section L provision FAR 52.215-1, *Instructions to Offerors - Competitive Acquisition*).

- (2) Offeror name. Name, address, telephone and facsimile numbers, e-mail, and Data Universal Numbering System Number (DUNS) of the Offeror (reference paragraph (c)(2)(ii) of the Section L provision FAR 52.215-1, *Instructions to Offerors Competitive- Acquisition*).
  - (3) Authorized signatory. Name and title of person authorized to sign the proposal (reference paragraph (c)(2)(v) of the Section L provision FAR 52.215-1, *Instructions to Offerors - Competitive Acquisition*).
  - (4) Negotiators. Name(s), title(s), telephone number, and email address of persons authorized to negotiate on the Offeror's behalf (reference paragraph (c)(2)(iv) of the Section L provision FAR 52.215-1, *Instructions to Offerors - Competitive Acquisition*).
  - (5) Government agency administration. Government agency(ies) and name of its representative(s) having administrative cognizance over the Offeror or parent company within the meaning of FAR subpart 42.3, *Contract Administration Office Functions*, including financial auditing, employment opportunity oversight, etc. Include agency name, address, and telephone number.
  - (6) Offeror's Authorized Participants – Virtual Oral Interviews. Offerors shall provide the name, employer/company, and email address of the Offeror's authorized key personnel participants for the Oral Interviews. The Offeror shall also provide the name, employer/company, and email address of the Offeror's authorized non-key personnel participant to provide IT technical support for the virtual platform connection and equipment; and/or persons required to assist any of the key personnel with disabilities.
- (e) Subcontractors and other entities. Offerors shall provide the following information:
- (1) Name, address, and DUNS number for all proposed Teaming Subcontractors as defined in DOE-L-2001, Proposal Preparation Instructions – General, Section (a)(2). This information is only required for Teaming Subcontractors. Any non-teaming subcontractors will require subcontract consent after award pursuant to FAR 52.244-2.
  - (2) If the Offeror is a joint venture, limited liability company, limited liability partnership, or other similar entity (multi-member, shared ownership) provide:
    - (i) Name, address, and DUNS of the parent or member company(ies) of the Offeror - joint venture members, limited liability company members, limited liability partnership members, etc.; and
    - (ii) Teaming agreement(s) and operating agreement (if applicable), that will remain in effect after any contract award, that describe the business arrangement between the parent or member company(ies) of the Offeror, including the identity of the one member/partner who has the majority interest in the Offeror.
- (f) Representations and certifications.
- (1) If the Offeror has completed the annual representations and certifications electronically via the System for Award Management website in accordance with Section K provision FAR 52.204-8, *Annual Representations and Certifications*, and those representations and certifications are current, accurate, complete, and applicable to this solicitation, the Offeror does not need to resubmit such representations and certifications in response to this solicitation. However, if any of these annual representations and certifications requires a change, the Offeror shall submit those changes in accordance with FAR 52.204-8.
  - (2) If the Offeror has not completed the annual representations and certifications electronically via the System for Award Management, the Offeror shall complete and provide all of the

representations, certifications, and other statements of the Offeror as required in this solicitation's Section K.

- (3) The Offeror shall also complete any additional representations, certifications, or other statements required in this solicitation's Section K, *Representations, Certifications, and Other Statements of the Offeror*.

(g) Exceptions and deviations.

- (1) Exceptions and/or deviations are not sought, and the Government is under no obligation to enter into discussions related to such. The Offeror shall specifically identify and fully explain any proposed exception to or deviation from the terms and conditions of the solicitation. Any proposed exceptions or deviations must identify the applicable solicitation section, clause or provision number, paragraph number, and the proposal volumes to which the exception or deviation applies. In addition to identifying this complete information in Volume I, any deviations or exceptions shall also be identified in the other volumes to which the deviation or exception applies, Volumes II and III. Only exceptions or deviations specifically identified in this section, if accepted by the Government, will take precedence over the terms and conditions of the solicitation.
- (2) Any exceptions or deviations by the Offeror to the terms and conditions stated in the solicitation for the resulting contract will make the offer unacceptable for award without discussions. If an Offeror proposes exceptions or deviations to the terms and conditions of the contract, then the Government may make an award without discussions to another Offeror that did not take exception to the terms and conditions of the contract.

(h) Performance guarantee agreement.

If the Offeror is a joint venture, limited liability company, or other similar entity, the Offeror shall provide the Performance Guarantee Agreement in accordance with Section H clause DOE-H-2016, *Performance Guarantee Agreement*. See Section L, Attachment L-1 entitled, "Performance Guarantee Agreement", for form and text of the required Performance Guarantee Agreement.

(i) Responsible Corporate Official and Corporate Board of Directors.

The Offeror shall provide the name of the responsible corporate official and other information related to the corporate board of directors in accordance with Section H clause DOE-H-2017, *Responsible Corporate Official and Corporate Board of Directors (Revised)*.

(j) Organizational Conflicts of Interest (OCI).

The Offeror, including each entity participating in a joint venture, limited liability company (LLC), or teaming agreement thereof as defined in FAR 9.601(1), as well as any Teaming Subcontractor(s), shall provide a fully executed Section K.6, *Organizational Conflicts of Interest Disclosure*, and any necessary statements required by the provision. If the Offeror believes there is an existing or potential OCI, the Offeror shall submit an appropriate draft OCI mitigation plan with its proposal. If the Department identifies an existing or potential OCI, the Offeror shall submit any information requested by the Department, including a draft OCI mitigation plan. If the Department requires additional explanation or interpretation regarding the proposed mitigation plan for evaluation purposes, this would be handled as clarifications or communications with Offerors, in accordance with paragraphs (a) and (b) of FAR Section 15.306, *Exchanges with Offerors After Receipt of Proposals*. Note: This proposal requirement is separate and distinct from the Contract requirement stated at Section H clause DOE-H-2035, *Organizational Conflict of Interest Management Plan*, which applies throughout the full period of performance.

(k) Equal opportunity compliance.

The Offeror shall provide all of the information required to perform a pre-award onsite equal opportunity compliance evaluation in accordance with FAR 52.222-24. This information shall include the company name, address, phone number, and point of contact for the Equal Employment Opportunity Commission. This information shall be provided for the Offeror, including each entity participating in a joint venture, LLC, or teaming agreement thereof as defined in FAR 9.601(1), as well as any known subcontractors with anticipated subcontracts of \$10 million.

(l) Instructions Regarding Non-Public Government Information/Source Selection Information

- (1) The Offeror shall not utilize non-public government information (as defined by the United States Office of Government Ethics at 5 CFR § 2635.703(b)) or source selection information (as defined in FAR 2.101) in the preparation of the Offeror's proposal submission that results in an unfair competitive advantage in the procurement. An Offeror's utilization of any individual(s) who possesses non-public government information or source selection information (obtained through their employment or by other means) may result in a perceived or actual unfair competitive advantage. Utilization of non-public government information or source selection information to prepare its proposal in response to the subject solicitation may disqualify the Offeror's proposal from award. Utilization of information obtained by a contractor over the normal course of business is not subject to the Organizational Conflict of Interest provisions of this solicitation.
- (2) The Offeror shall identify former DOE employees subject to post-employment restriction(s) involved in the Offeror's written and/or oral proposal development during the time in which the individual was still subject to post-employment restriction(s). For any former DOE employees identified, the Offeror shall provide:
  - (i) The time period, nature, and extent of the former DOE employee's involvement in the Offeror's written and/or oral proposal development.
  - (ii) A description of whether or not such individuals shared any non-public government information (as defined by the United States Office of Government Ethics) or source selection information (as defined in FAR 2.101) with the Offeror during the development of its proposal, and if so, specific details regarding what information was shared.
  - (iii) If no such individual participated in the Offeror's written and/or oral proposal development, the Offeror shall respond stating such.

(m) Facility Clearance verification. (Revised)

The Offeror shall submit the following for the Offeror, JV/LLC member(s), and Teaming Subcontractors (if applicable) who will perform work under a contract resulting from this solicitation and require access authorizations (see Section L provision DEAR 952.204-73, *Facility Clearance*): (1) DOE Facility Clearance code or your Department of Defense (DOD) assigned Commercial and Government Entity (CAGE) code; (2) the date the Offeror's, JV/LLC member(s)', and Teaming Subcontractor's (if applicable) completed Standard Form 328 was submitted, and (3) the date of the Contracting Officer's affirmative FOCI determination. If the Offeror, JV/LLC member(s), or any of its Teaming Subcontractors (if applicable) do not possess such a CAGE code or DOE/NRC facility clearance number, the Offeror, JV/LLC member(s), and Teaming Subcontractor (if applicable) shall submit FOCI information in accordance with the Section L provision DEAR 952.204-73, *Facility Clearance*. Further information is available at <https://foci.anl.gov/>. All Offerors, JV/LLC member(s), and Teaming Subcontractors (if applicable)

that do not possess a CAGE code or DOE/NRC Facility Clearance number, shall complete the required entries into the DOE Foreign Ownership, Control, or Influence (FOCI) Electronic Submission System (ESS) located at <https://foci.anl.gov/>. Use of the DOE FOCI ESS is mandatory for all Offerors, JV/LLC member(s), and Teaming Subcontractors (if applicable) that do not possess a Facility Clearance. Teaming Subcontractor(s) that will not require access authorizations consistent with Section I clause DEAR 952.204-73 are not required to submit the information contained within this provision, and the Offeror’s proposal shall clearly state that the Teaming Subcontractor(s) will not require access authorizations for the work proposed to be performed by the Teaming Subcontractor(s). Be sure to designate Key Management Personnel (KMP) (specific to FOCI only; this is not the same as Key Personnel as defined in Section H) in e-FOCI that hold the appropriate security clearance level as required by the scope of work and for the facility clearance. At a minimum, KMP must include the positions of the President and Facility Security Officer (FSO). If any member of the Offeror (including Teaming Subcontractors) or Tier Parents of the Offeror are under FOCI, the Offeror shall submit a draft FOCI Mitigation Plan for review by the appropriate Cognizant Security Office (CSO). If the CSO has questions regarding any of the FOCI Verification, Facility Clearance Information, and/or the draft FOCI Mitigation Plan, it may reach out to the Offeror during the evaluation process for clarifications. Note: This will not constitute “negotiations” (or “discussions”) as defined in paragraph (d) of FAR Section 15.306, Exchanges with Offerors After Receipt of Proposals or obligate the Government to conduct discussions; nor constitute a “proposal revision” as defined in FAR 15.001.

Offerors, JV/LLC member(s), and Teaming Subcontractors (if applicable) are encouraged to transmit FOCI information before the deadline for proposal submission. Under the DOE FOCI ESS, electronic signatures cannot be accepted; thus, the signed original SF-328 executed in accordance with the form’s instructions, and any other forms requiring a signature or seal shall be printed, signed, and submitted to the federal FOCI Operations Manager at the mailing address provided in the system. When filling out the New User Registration information in the DOE FOCI ESS, select “the Savannah River Site – EMCBC” as the FOCI Office that will review your submission for this solicitation when it is completed. Include the solicitation name and number in the “Reason for Request” field. If the Department identifies missing information, the Offeror shall submit any information requested by the Department (FOCI Manager or CO) as soon as possible.

### **L.13 DOE-L-2003 Proposal Preparation Instructions, Volume II – Management Proposal – General (Oct 2015) (Revised)**

- (a) The Management Proposal (Volume II), consists of written information to allow Offerors to demonstrate their approach and capabilities to perform the prospective contract. The instructions contained in this and other provisions of the solicitation are provided to assist Offerors in preparing their proposals and are not evaluation factors, however failure to comply with these instructions may result in a deficient proposal. The Management Proposal will be evaluated in accordance with the evaluation factors stated in Section M provision entitled, *Evaluation Factors for Award*.
- (b) Offerors shall address, in the Management Proposal, those areas contained in the respective Section L provisions below. Each of these areas corresponds to the evaluation factors contained in Section M of the solicitation.
- (c) The Management Proposal shall comply with the requirements contained in the Section L provision DOE-L-2001, *Proposal Preparation Instructions – General* and other applicable provisions of the solicitation, including any required format and page limitations. Offerors shall be specific and complete in addressing the information required to be included in the Management Proposal.

Moreover, the Offeror shall not merely restate the work scope and/or other solicitation requirements in its Management Proposal.

- (d) If an Offeror's approach includes the use of Teaming Subcontractors, then the Offeror's proposal submission, including Volumes II and III, shall include "Teaming Subcontractors" as defined in DOE-L-2001, *Proposal Preparation Instructions – General*, paragraph (a)(2).
- (e) No cost or price information shall be included in the Volume II, Management Proposal.

#### **L.14 Proposal Preparation Instructions, Volume II – Key Personnel**

**Factor 1: Key Personnel** (*The Key Personnel section shall not exceed five pages, exclusive of resumes and letters of commitment. The key personnel resumes are limited to four pages for each resume.*)

Offerors shall include the following information in the Volume II - Management Proposal, related to the proposed key personnel:

- (a) Key personnel. The Offeror shall propose the required Program Manager, Moab Operations/Site Manager (individual primarily responsible for technical implementation of its Closure Strategy), and Crescent Junction Operations/Site Manager; and the Offeror may propose other key personnel which will be incorporated into the Master IDIQ Contract through Section H clause DOE-H-2070, *Key Personnel*. Only one individual may be proposed for each key personnel position.

It is recognized that the number and functions of key personnel will be dependent on the organizational structure of the individual Offeror and the manner in which the Offeror proposes to perform the work. The Offeror shall not provide the names or qualifications of any non-key personnel.

- (1) The Offeror shall provide the rationale for the selection of the proposed non-required key personnel positions regarding why they are essential to the successful performance of the entire Master IDIQ PWS and the optimal team for execution of the Master IDIQ PWS.
- (2) The Offeror shall describe the key personnel team (i.e., the collective of all key personnel positions that the Offeror proposes to use in contract performance) make-up that demonstrates the elements in paragraph (d) below.
- (3) The Offeror shall identify the organization that will employ each of the key personnel during performance of the contract, e.g., Offeror, Offeror affiliates, teaming partners, or Teaming Subcontractors.
- (4) The Offeror shall confirm the availability of the key personnel as being full-time assigned to the contract, and that their permanent duty stations are located as follows:
  - (i) For the Program Manager, either the Moab Site or Grand Junction, CO, or their local surrounding areas;
  - (ii) For the Moab Operations/Site Manager, the Moab Site;
  - (iii) For the Crescent Junction Operations/Site Manager, the Crescent Junction Site; and
  - (iv) For any other, non-required key personnel, there is no required location.

Failure of the Offeror to propose all required key personnel positions, or to confirm the availability of the key personnel as being full-time assigned to the contract and that their permanent duty stations are located in the required areas will adversely affect the Government's evaluation of the proposal and may make the proposal ineligible for award.

(b) Resume.

(1) The Offeror shall provide written resumes for all proposed key personnel in the format shown in Attachment L-2. The resume shall describe the key person's education, relevant experience, accomplishments, and other information supporting the individual's qualifications and suitability for the proposed position. The resume shall address the following:

- (i) Relevant DOE, commercial, and/or other Government experience in performing work similar to the work to be performed in their proposed position, including leadership and other accomplishments, with emphasis on closure project and completion-type contract work;
- (ii) Education, specialized training, certifications, and licenses that support the suitability for the proposed position; and
- (iii) Three references having direct knowledge of the qualifications of the proposed key person.

(2) By submission of each resume, the key person and Offeror authorize DOE to contact any references, previous employers, or clients to verify the accuracy of information provided in the resume and to further assess each individual's suitability for the proposed position. DOE may contact any or all of the references, and other sources of information not provided by the Offeror, as a part of its evaluation of the key personnel. Current DOE employees shall not be identified as key personnel references.

(c) Letter of commitment. A letter of commitment shall be submitted for each individual proposed as a key person. Each key person shall sign the letter stating that the information contained in the resume, submitted as part of the proposal, is true and correct; and the individual will unconditionally accept employment in the key position identified in the proposal beginning on effective date of the Transition Period for a period of time commensurate with the functional position as defined in DOE-H-2070, *Key Personnel – Alternate I*. The Letter of Commitment shall state as follows:

*“I hereby certify that the resume submitted as part of the proposal is true and correct, and \_\_\_\_\_ (insert name of individual proposed) will accept the proposed position of \_\_\_\_\_ (insert name of proposed position) if \_\_\_\_\_ (insert name of Offeror) receives the award and will perform in the proposed position for minimum of three years (consistent with DOE-H-2070) beginning on the effective date of the Transition Period of the contract. I also hereby certify that I will be assigned full-time to the contract and my permanent duty station will be located within \_\_\_\_\_ (insert one of the following for each required key personnel: for the Program Manager, ‘either the Moab Site or Grand Junction Colorado, or their local surrounding areas’; for the Moab Operations/Site Manager, ‘the Moab Site’; for the Crescent Junction Operations/Site Manager, ‘the Crescent Junction Site’’. For any key personnel not required by this solicitation, revise the sentence to simply state ‘I also hereby certify that I will be assigned full-time to the contract.’).”*

Failure to submit a signed letter of commitment for each proposed key person will adversely affect the Government's evaluation of the proposal.

(d) Key Personnel Team. The Offeror shall provide information for the key personnel team that demonstrates the following elements: (i) Experience in promoting and enabling change within an organization; (ii) Recent and relevant management experience in direct project execution in the field; (iii) Experience at partnering and good-faith negotiations with client(s) that achieved measurable performance improvements; and (iv) Experience in developing innovative technical approaches to implement a strategy for site closure. More recent experience in these elements may be given greater consideration. While it is not expected that each key person will possess all of these elements,

individual key persons may be evaluated more favorably to the extent they demonstrate these elements, and the key personnel team collectively should demonstrate each of them.

(e) Oral interviews of key personnel.

(1) Overview

- (i) DOE will conduct an oral interview with each Offeror's proposed Program Manager, Moab Operations/Site Manager, and Crescent Junction Operations/Site Manager. DOE may utilize virtual procedures to conduct the oral interviews with each Offeror's proposed Program Manager, Moab Operations/Site Manager, and Crescent Junction Operations/Site Manager.
- (ii) A question and answer, oral interview format will be used. A set of questions will be asked of each Offeror's Program Manager, Moab Operations/Site Manager, and Crescent Junction Operations/Site Manager. Questions will not be provided to Offerors in advance. Offerors may not present any formal presentation prepared in advance. The interviews will be conducted during a period of up to 60 minutes. Oral interviews shall not constitute discussions.

(2) Logistics.

- (i) The Offeror shall not bring into the presentation room any presentation or reference material including the written proposal or electronic equipment (e.g., computers/laptops, cell phones, cameras, and video or audio recording equipment), other than the computer required to host the web-based conference platform being utilized for oral interviews if conducted virtually. The key personnel shall not reach back, by phone/conference bridge, e-mail, or any other means, to any other personnel or persons for assistance during the oral interview.
- (ii) DOE will make a recording of the oral interviews. After award, a copy of the video recording may be provided to the Offeror upon request. Any type of recording of the oral interviews by Offerors is strictly prohibited.
- (iii) By participating in the oral interviews, the Offeror attests that it is in full compliance with all solicitation terms and conditions, in accordance with applicable laws and statutes.
- (iv) Unless conducted virtually, DOE will provide flip-charts, sketch or legal pads, and markers for the Offeror's key personnel to use during the oral interviews. All presentation materials used will be retained by DOE.
- (v) If conducted virtually, the Offeror's key personnel may utilize an 8 ½ x 11 sketch pad or legal pad and markers during oral interviews. All such supplies used virtually shall be the responsibility of the Offeror.
- (vi) The Offeror shall not utilize any computers (other than the ones required to host the web-based conference platform being utilized for the oral interview), tablets, smart phones, or separate conference lines/phones, while conducting the oral presentation, and shall not bring or distribute any written or electronic materials during the oral presentation. The Offeror participant may need a separate phone/conference bridge to connect to the oral interview; however, that phone shall only be used for that purpose and no other.

(3) Schedule and Rules of Engagement.

Each Offeror will be notified within 10 working days after the proposal submission deadline of the date, time, location, agenda, and other instructions related to its oral interviews. The oral interviews will commence within approximately 40 working days after the proposal submission deadline. DOE reserves the right to conduct the oral interviews outside of this approximate timeline or to reschedule an Offeror's oral interviews. DOE will not consider a request from an Offeror to reschedule its oral interviews, except under extenuating circumstances (e.g., personal illness or emergency). DOE will randomly select the order of the oral interviews.

If conducted virtually, the Government and each Offeror may agree to test the virtual platform connection at a convenient time prior to the oral interviews. Web links to the virtual platform shall be treated as source selection sensitive and shall not be shared with anyone other than the authorized Government participants and the Offeror's authorized key personnel participants. The Offeror may authorize one non-key person to provide IT technical support with the virtual platform connection and equipment. Additionally, persons and/or service animals required to assist any of the key personnel with disabilities may attend when accompanying that attendee. Further, Offerors shall provide the Contracting Officer with the name, employee/company, and email address of the Offeror's authorized participants for the oral interviews as part of its Volume I submission. In the event the selected technology platform or tool cannot be made functional at the time of the scheduled oral interviews, the oral interviews may proceed as a voice-only telephone call or may be rescheduled, at the Government's sole discretion.

- (4) Limitations of oral interviews. The oral interviews will not-
- (i) Constitute a part of the offer (Volume I of the proposal) or be incorporated into any contract resulting from this solicitation;
  - (ii) Constitute "negotiations" (or "discussions") as defined in paragraph (d) of FAR Section 15.306, *Exchanges with Offerors After Receipt of Proposals* or obligate the Government to conduct discussions; nor
  - (iii) Constitute a "proposal revision" as defined in FAR Section 15.001 or allow an Offeror to cure deficiencies or weaknesses in, or otherwise revise, the written proposal.

### **L.15 DOE-L-2010 Proposal Preparation Instructions, Volume II – Past Performance (Oct 2015) (Revised)**

**Factor 2: Past Performance** (*The Past Performance section shall be limited to the Attachment L-3, "Past Performance Reference Information Forms", which are limited to up to seven pages per contract; the Attachment L-5, "List of Contracts Terminated for Default, Cure Notices, and Conditional Payment of Fee/Profit/Other Incentive Action"s, the Attachment L-10, "List of DOE Contracts", and Past Performance Consent Statement(s), which have no page limits.*)

Offerors shall include the following information in the Volume II - Management Proposal, (Attachment L-3, "Past Performance Reference Information Form", Attachment L-5, "List of Contracts Terminated for Default, Cure Notices, and Conditional Payment of Fee/Profit/Other Incentive Actions", Attachment L-10, "List of DOE Contracts", and Past Performance Consent Statement(s), identified above) related to the Offeror's past performance:

- (a) Contracts information. The Offeror, to include all members of a teaming arrangement, as defined in FAR 9.601(1), shall provide past performance information on up to three (3) contracts per member, either currently being performed or completed by the Offeror/members, and up to two (2) contracts, either currently being performed or completed for each proposed Teaming Subcontractor. The Offeror shall only provide past performance information for contracts that are currently being performed or

have a period of performance end date within the last five (5) years from the original solicitation issuance date. Contracts may be, but are not limited to, contracts, task orders, delivery orders, or other legal agreements with federal, state, local, and foreign Governments and/or with commercial customers.

- (b) Offeror past performance. The Offeror, to include all members of a teaming arrangement, as defined by FAR 9.601(1), shall provide information on contracts that are most similar in terms of scope, size, and complexity to the portion of the Master IDIQ PWS that each entity is proposed to perform. Similar scope, size, and complexity are defined as follows based on the portion of work that each entity is proposed to perform: scope – type of work (e.g., work as identified in the Master IDIQ PWS, including similar work of a non-nuclear nature and/or similar non-DOE work); size – dollar value (approximate average annual value in relation to proposed work; annual contract value of approximately \$20M for evaluation purposes); and complexity – performance challenges (e.g., overcoming barriers for completion/closure-type projects to safely accelerate work scope, prior innovations, work performance improvements, subcontractor management, management of large complex contracts in highly regulated industries, cost efficiencies, and successful partnerships with the Government, Client, and Regulators).
- (c) Teaming Subcontractor past performance. In addition to the Offeror’s information on relevant past performance, the Offeror shall provide information on the relevant past performance for any proposed Teaming Subcontractors that are proposed to perform work under the contract. Teaming Subcontractors are defined in section L.11(a)(2). The Offeror’s other subcontractor(s), not meeting the Teaming Subcontractor definition, shall not submit past performance information and any submitted information will not be evaluated. The Offeror shall provide information on contracts that are most similar in scope, size, and complexity, as defined above in paragraph (b), to that portion of the work that the Teaming Subcontractor is proposed to perform under this solicitation.
- (d) Newly formed entity and predecessor companies. If the Offeror is a newly formed entity with no record of past performance for its team members as defined in FAR 9.601(1), the Offeror shall provide past performance information for its member organization(s). The Offeror, whether or not they are a newly formed entity, may provide past performance information for its parent organization(s), member organizations in a joint venture, LLC, or other similar or affiliated companies, provided the Offeror’s proposal demonstrates that the resources of the parent, member, or affiliated company will be provided or relied upon in contract performance such that the parent, member, or affiliate will have meaningful involvement in contract performance. Meaningful involvement means the parent, member, or affiliate will provide material supplies, equipment, personnel, or other tangible assets to contract performance; or how the common parent will utilize the expertise, best practices, lessons learned, or similar resources from the affiliate to affect the performance of the Offeror. If a common parent company is used to establish the nexus between the Offeror and an affiliated company, the Offeror must demonstrate how the affiliate and Offeror rely on, for example, similar assets, resources, policies, and procedures of the common parent company.

The Offeror or Teaming Subcontractors may also provide past performance information on predecessor companies that existed prior to any mergers or acquisitions, where the Offeror’s proposal demonstrates such performance reasonably can be predictive of the Offeror’s performance.

- (e) Work to be performed. The past performance information provided for the Offeror, to include all members of a teaming arrangement, as defined in FAR 9.601(1), and/or Teaming Subcontractors, shall describe its relevancy to the Master IDIQ PWS and to the work that is proposed to be performed by that individual entity. Specific cross references shall be made between the applicable sections of the Master IDIQ PWS, the work to be performed by each entity, and the past performance of that entity. Each discrete reference contract provided must be attributed to a specific entity, or members of a teaming arrangement as defined in FAR 9.601(1) and/or Teaming Subcontractors. All information

provided by the Offeror shall be described in sufficient detail to enable the Government to clearly identify and define the portion of work to be performed by each entity (Offeror, to include all members of a teaming arrangement, as defined in FAR 9.601(1), and Teaming Subcontractors) under the Offeror’s proposed approach.

- (f) Performance information. For the reference contract, the Offeror shall identify Occupational Safety and Health Administration (OSHA) safety statistics (e.g., Days Away, Restricted, or Transferred (DART) cases and Total Recordable Cases (TRC)), as well as any DOE enforcement actions and/or worker safety and health, nuclear safety, and/or classified information security incidents or notifications posted to the DOE Office of Enterprise Assessments website (<https://energy.gov/ea/information-center/enforcement-infocenter>) and any corrective actions taken to resolve those problems. The Offeror shall include this information within the Past Performance Reference Information Form.
- (g) Terminated contracts, cure notices, and conditional payment of fee/profit/other incentive actions. The Offeror shall provide a listing in Attachment L-5, “List of Contracts Terminated for Default, Cure Notices, and Conditional Payment of Fee/Profit/Other Incentive Actions”, of any contracts of the Offeror, to include all members of a teaming arrangement, as defined by FAR 9.601(1), and/or Teaming Subcontractors, that: (1) were terminated for default; (2) included a cure notice(s), in accordance with FAR 49 Termination of Contracts; and/or (3) included a conditional payment of fee/profit/other incentive action(s) as described in the DEAR within the past five (5) years from the original solicitation issuance date. This listing of terminated contracts, cure notices, or conditional payment of fee/profit/other incentive actions shall include the reasoning for the aforementioned actions, and is not limited to only those contracts contained in the Attachment L-3, “Past Performance Reference Information Forms”. If there are no terminated contracts for default, cure notices, and conditional payment of fee/profit/other incentive actions to report, Attachment L-5, “List of Contracts Terminated for Default, Cure Notices, and Conditional Payment of Fee/Profit/Other Incentive Actions”, shall be submitted with a blank table(s), as applicable, along with a note indicating that there are no aforementioned actions within the time period specified in the solicitation.
- (h) Past Performance Questionnaire. The Offeror shall provide the Past Performance Questionnaire contained in Attachment L-4, “Past Performance Cover Letter and Questionnaire”, to the appropriate contract client reference within the Program Office/Project Office and/or the Contracting Office for completion for those contracts described in paragraph (a) for which no contractor performance data is available in the Contractor Performance Assessment Reporting System (CPARS). The Offeror shall request that clients return the Past Performance Questionnaire directly to DOE by electronic means to the address identified below no later than the date for receipt of proposals.

- (1) DOE email address and contact information.

U S. Department of Energy  
Attention: Michael Forsgren, Contracting Officer  
E-mail addresses: [michael.forsgren@emcbc.doe.gov](mailto:michael.forsgren@emcbc.doe.gov); [MoabRAC@emcbc.doe.gov](mailto:MoabRAC@emcbc.doe.gov)  
Phone: 513-430-8536 (cell)

- (2) Offerors shall request the client mark the email as follows:

SOURCE SELECTION INFORMATION – SEE FAR 2.101 AND FAR 3.104  
In Reply To: Solicitation No. 89303320REM000066

- (3) The Offeror shall be responsible for following up with the client point of contact to ensure that the questionnaire has been completed and returned to the DOE Contracting Officer on time. However, receipt of the questionnaires is not subject to the Section L Provision FAR 52.215-1, *Instructions to Offerors – Competitive Acquisition* related to late proposals. Questionnaires not

received by the proposal due date may not be considered if consideration will unduly delay evaluations. The Offeror may contact the Contracting Officer at the e-mail provided in this solicitation to confirm the receipt of any questionnaires.

- (i) List of DOE contracts. The Offeror, to include all members of a teaming arrangement, as defined in FAR 9.601(1), and Teaming Subcontractor(s) shall provide a listing on Attachment L-10, “List of DOE Contracts”, of all DOE prime contracts (including National Nuclear Security Administration) currently being performed and/or for contracts with a period of performance end date within the last five (5) years from the original solicitation issuance date. This includes contracts for which the Offeror or Teaming Subcontractor was a member organization in a joint venture, LLC, or other similar entity as a prime contractor to DOE. This list shall only include DOE prime contracts performed by the proposing entity and any affiliate companies for which an L-3 form is submitted (including within LLC arrangements), and shall not include any contracts performed by other affiliates not otherwise performing any of the submitted L-3 reference contracts (if applicable). If the Offeror, to include all members of a teaming arrangement, as defined in FAR 9.601(1), or Teaming Subcontractor(s) provided past performance information on predecessor companies that existed prior to any mergers or acquisitions, the Offeror, to include all members of a teaming arrangement, as defined in FAR 9.601(1), or Teaming Subcontractor(s) shall also provide a list of DOE contracts for the predecessor companies.
- (j) Past Performance Consent Statement. As past performance information is proprietary source selection information, by default, the Government can only discuss past performance information directly with the prospective prime contractor, team member or Teaming Subcontractor that is being reviewed. If there is a problem with a proposed Teaming Subcontractor’s or team member’s past performance, the prospective prime contractor can be notified of a problem, but no details will be discussed without the team member’s/Teaming Subcontractor’s permission. Therefore, the Government is requesting the following consent statement be completed, as applicable, by all proposed members of a teaming arrangement as defined in FAR 9.601(1), and all Teaming Subcontractors, by checking the appropriate “provide consent” or “do not provide consent” box, as well as providing all other requested information.

Dear (Contracting Officer),

We are currently participating as a [teaming member/Teaming Subcontractor] with [name of Offeror providing proposal] in responding to the Department of Energy, RFP 89303320REM000066 for the Moab Remedial Action Contract.

In order to facilitate the performance confidence assessment process we hereby [ ] provide consent [ ] do not provide consent to allow you to discuss our past and present performance information with the [name of Offeror providing proposal] during the source selection process.

\_\_\_\_\_  
\_\_\_\_\_

(Signature and Title of individual who has the authority to sign for and legally bind the company)

Company Name:

Address:

Email:

Phone:

## **L.16 Proposal Preparation Instructions, Volume II – Management Approach**

**Factor 3: Management Approach** *(The Management Approach section shall not exceed 25 pages, exclusive of the schedule and the organizational charts. The schedule is limited to ten pages or five foldouts and the organizational charts are limited to four pages or two foldouts.)*

Offerors shall include the following information in the Volume II - Management Proposal, related to the Offeror's proposed management approach to the Master IDIQ:

- (a) The Offeror shall provide a Closure Strategy that describes how it will effectively and efficiently manage Sections C.04 and C.05 of the Master IDIQ PWS and achieve Project completion. The Closure Strategy shall describe how the Offeror will coordinate and sequence the Residual Radioactive Material (RRM – including debris), off-pile, and sub-pile excavation and placement while implementing all of PWS Sections C.01 through C.05 to minimize costs and schedule and meet all Project completion requirements. The Closure Strategy shall describe the details of the planned excavation methods, the excavation sequence based on optimizing placement of RRM/debris in the cell at Crescent Junction, mixing of slimes and sands, preparation and management of drying beds, size reduction or preparation of oversize debris, transportation and placement of RRM, and cell cover construction. The Offeror shall describe any proposed operational, technical, or administrative improvements and systems, including any graded approach to the PWS requirements, necessary to achieve the contract's scope or its purposes at PWS Section C.1.2. To support its Closure Strategy, the Offeror's management approach shall include, but not be limited to: an organizational structure chart including the number of staff occupying each position; a description of, and basis for, the number of daily and weekly work shifts; and a description of, and basis for, any seasonal changes in site operations.
- (b) The Offeror shall provide a schedule that illustrates a portion of its Closure Strategy. Within the schedule, the Offeror shall clearly identify the critical activities to complete the scope, activity durations, the sequence and timing of the work, and beginning and end dates. Activities on the schedule shall be limited to only the work scope described in PWS Sections C.4.2 (except C.4.2.3 and C.4.2.8), C.4.3, and C.05 paragraphs c through k. No cost or price information shall be included within the integrated schedule.
- (c) Contract Transition Approach. The Offeror shall fully describe its approach to achieve the Contract Transition Task Order requirements, including implementation of Contractor Human Resource Management (CHRM) requirements, for the safe, effective, and efficient transfer of responsibility for execution of the Master IDIQ Contract with little or no disruption to ongoing operations.

## **L.17 Proposal Preparation Instructions, Volume III – Cost and Fee/Profit Proposal**

The Offeror shall prepare its cost and fee/profit proposal in accordance with the following instructions:

- (a) Cost and Fee/Profit Information – All cost and fee/profit information shall be included in Volume III of the proposal, including a completed Attachment L-7 for the Contract Transition Task Order. None of the cost or price information contained in Volume III shall be included in the Volume II Proposal.
- (b) The Offeror will not be required to provide an overall estimated contract value for evaluation. The Offeror shall provide a cost and fee/profit proposal consisting of the elements identified within this provision:
  - (1) As part of the proposal submittal, the Offeror shall provide its cost/price worksheets in Attachment L-6. The Offeror shall use the format prescribed in Attachment(s) L-6.

- (2) **Cost-Plus-Incentive-Fee (CPIF) Task Orders.** The Offeror shall propose a target fee ceiling percentage that shall not exceed ten percent (10%) of the estimated cost for CPIF Task Orders.

**Firm-Fixed Price (FFP) Task Orders:** The Offeror shall propose a profit ceiling percentage for FFP Task Orders.

The estimated cost represents one year of operational budget for the Moab RAC scope of work. The Offeror shall use the following tabular format to represent the proposed fee / profit as part of the Volume III submission within the Attachment L-6d worksheet:

		(a)	(b)	(c)
<b>Government Fiscal Year</b>	<b>Task Order Type</b>	<b>Estimated Costs</b>	<b>Proposed Fee/Profit Percentage</b>	<b>Proposed Fee/Profit (a x b)</b>
FY 2022	Cost-Plus-Incentive-Fee (CPIF)	\$ 10,225,000		
FY 2022	Firm Fixed Price (FFP)	\$ 30,675,000		
<b>Total</b>		<b>\$ 40,900,000</b>		<b>\$ -</b>

The fee/profit percentage(s) proposed for each Task Order type will be incorporated into the master Section B of the contract at DOE-B-2015 *Task Order Fee/Profit Ceiling (Oct 2014) (Revised)* and will be considered ceiling fee/profit percentages for the duration of the 10-year contract ordering period.

- (3) **Transition.** The Transition period is estimated to be sixty (60) days in duration from the effective date of the transition task order. The Offeror shall assume the transition starts on August 1, 2021. Transition shall be proposed utilizing Attachment L-6a.
- (4) **Key Personnel Cost.** The Offeror shall propose the total annual compensation, exclusive of bonuses paid from fee, and the associated fringe benefits for proposed Key Personnel for a period of one year (FY 2022 – October 1, 2021 through September 30, 2022) utilizing Attachment L-6c. For the purpose of this requirement, the term “compensation” is defined by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. The proposed key personnel compensation shall include only costs which will be requested to be reimbursable under the Contract.

**Key Personnel Information.** For each proposed Key Personnel position, provide the following information: (a) Position Title; (b) Annual Base Salary; (c) Annual Fringe Benefit Rate and Costs; and (d) bonuses and other compensation offered to each named Key Personnel. Supporting documentation and computations shall be provided for all elements shown above. For base salary support, the Offeror shall provide current employee salary documentation, as well as compensation market survey data to support and justify the proposed salary. This may include, but is not limited to, mean and median salary data by industry, geographic area, company size, and management level comparator.

- (5) **Fully Burdened Labor Rates and Estimated Direct Productive Labor Hours (DPLH) for the first year (October 1, 2021 through September 30, 2022).** The Offeror shall compute the fully burdened labor rates as follows: ((Proposed Base Labor Rate(s) multiplied by (X) the proposed Fringe Benefit Rate) X applicable indirect rates, such as overhead and G&A) for the provided labor categories (excluding fee/profit). For proposal preparation purposes, the Offeror shall assume all labor hours provided, by labor category, will be self-performed; therefore, labor shall be priced using the Prime’s indirect rates only. The Offeror shall use its computed fully burdened labor rates multiplied by the DOE-provided estimated DPLH

to compute a total labor cost. The Offeror shall use the format provided in Attachment L-6b for its computations.

To assist in the preparation of fully burdened hourly rates, DOE is providing historical base labor rates (escalated to Fiscal Year 2022) located in Section L, Attachment L-6. Current Service Contract Labor Standard & Wage Rates can be found in the procurement website for consideration. The Offeror has the ability to propose its own direct labor rates, consistent with the terms and conditions of the solicitation, applicable law, including 4(c) of the Service Contractor Labor Standards statute codified at 41 USC Chapter 67 (formerly Service Contract Act), as applicable. Offerors are to consider the Contractor Human Resources Management (CHRM) clauses in Section H of the RFP (specifically entitled, *Workforce Transition and Employee Hiring Preferences Including through Period Of Performance*, and DOE-H-2001, *Employee Compensation: Pay and Benefits (TAILORED)*).

The proposed fringe benefit rate shall include projected labor related to indirect costs such as medical, dental, severance, Employee Assistance Program, life insurance, accident/sickness coverage, benefit administration, vision, pension, workers compensation, FICA, FUTA, SUTA, vacation, sick leave, and holidays. **For informational purposes, an anticipatory fringe rate of 45% has been provided to assist in the preparation of fully burdened hourly rates.** The Offeror has the ability to propose its own fringe benefit rate(s), consistent with the terms and conditions of the solicitation, applicable law, including 4 (c) of the Service Contract Labor Standards statute codified at 41 USC Chapter 67 (formerly Service Contract Act), as applicable. Offerors shall not propose a rate below the provided anticipatory fringe rate stated above. Offerors are to consider the Contractor Human Resources Management (CHRM) clauses in Section H of the RFP (specifically entitled, *Workforce Transition and Employee Hiring Preferences Including through Period Of Performance*, and DOE-H-2001, *Employee Compensation: Pay and Benefits (TAILORED)*).

**Other Indirect Rates.** Any additional indirect rates (i.e. Labor Overhead and G&A) applied to compute the proposed fully burdened labor rates shall be identified within Attachment L-6b. Supporting documentation, and a detailed explanation, shall be provided in order gain a full understanding of the proposed indirect rate(s) basis and applicability. Supporting documentation may be in the form of Forward Pricing Rate Agreement(s) or budgetary documentation.

The Offeror shall clearly indicate for the fully-burdened labor rate estimates the following information: (i) what data is existing and verifiable, (ii) judgmental factors applied in projection from known source data, (iii) key assumptions, and the basis of the proposed fully-burdened rates.

- (c) **Audits.** DOE, or its cognizant audit entity, may request additional supporting information for purposes of clarification in evaluating cost.
- (d) **Audit Information.** The Offeror shall provide the location (address and telephone number and point of contact) of where documentation supporting Volume III is located. The Offeror shall provide the name, address, and telephone number of the cognizant ACO and the cognizant Defense Contract Audit Agency (DCAA) office, if any. Additionally, the Offeror shall provide the name, address, and telephone number of person(s) authorized to provide any clarifying information regarding the Volume III Cost and Fee/Profit Proposal. If the Offeror is a joint venture, this data must be provided for each entity.
- (e) **Offeror's Proposed Accounting System Information.** The Offeror shall submit an explanation of how both direct and proposed indirect cost (fringe benefits, material handling, overhead, and G&A, as applicable) will be recorded and tracked in the proposed accounting system. If the Offeror's proposed accounting system will allocate costs through the use of an indirect costing rate, the indirect rate, and an

explanation is required to describe costs to be included in each of the indirect cost pools. The Offeror shall also provide a description of each allocation base. Additionally, the Offeror shall describe its accounting system and the adequacy of the system for reporting cost against Government cost-type contracts. The Offeror shall identify the cognizant Government audit agency, or any other Government agency that has formally approved the accounting system (if applicable). This data must also be provided for each member of the joint venture partners. The Government may use this information in making determinations of Offeror responsibility. The Offeror (including joint ventures) shall provide one or more of the following:

- (1) Provide a copy of the Government approval/determination stating the proposed accounting system is adequate for the identification, accumulation, and recording of cost under Government reimbursable type contracts/subcontracts if the determination was issued within the last three years. The Offeror shall also provide a copy of its most recent accounting system audit report, if performed within the last five years, and fully describe and explain any material changes made to the proposed accounting system since the time it was reviewed, audited or approved;
- (2) If the accounting system was deemed inadequate, provide the corrective actions that have or will have been taken to correct the cited issues, including the implementation time for each action; and
- (3) If the proposed accounting system has not been formally approved by the Government within the last three years and/or audited in the last five years, or an audit determined the accounting system to be inadequate, then the Offeror shall state this and provide responses to the following items:
  - (i) Is the proposed accounting system in accordance with generally accepted accounting principles?
  - (ii) Does the accounting system include a timekeeping system that ensure proper accounting for and classification of employee labor by project/task?
  - (iii) Does the accounting system provide for identification and accumulation of material costs by project/task and by contract?
  - (iv) Does the accounting system provide for exclusion of costs charged to government contracts that are not allowable in terms of FAR 31 or other contract provisions?
  - (v) Does the accounting system provide for segregation of direct costs from indirect costs?

(f) **Responsibility Determination and Financial Capability.** FAR 9.104-1(a), General Standards, requires that a prospective Offeror have adequate financial resources to perform the Contract, or the ability to obtain them, to be determined responsible. It is the Offeror's responsibility to demonstrate its financial capability to complete this Contract. Information provided by the Offeror shall include, but is not limited to the following:

- (1) Financial Statements (audited, if available) and notes to the financial statements for the last two fiscal years;
- (2) The information in subparagraph (1) above for each member of the Offeror team arrangement if a teaming arrangement is used;
- (3) The last annual report for the parent corporation(s). In order to consider financial or other resources of the parent corporation entity(ies) or other guarantors, each of these entities must be legally bound, jointly and severally if more than one, to provide the necessary resources to the prospective Offeror and assume all contractual obligations of the prospective Offeror; and
- (4) Any available lines of credit.

Using the above information, and other information, the Government will make a FAR Part 9, Contractor Qualifications responsibility determination, of the prospective awardee. The Government may request a financial capability review of each Offeror from DCAA, or another audit entity, as part of the Government's consideration in making the responsibility determination.

- (g) **Government Furnished Property.** The Offeror shall not propose any Government Furnished Property (GFP) for use during the performance of the Contract that is in addition to the GFP provided.
- (h) **Facilities Capital Cost of Money (FCCOM).** FCCOM is permitted as proposed as a separate cost element in accordance with FAR 31.205-10. The Offeror must provide calculations for the cost of money for facilities capital employed and disclose the Treasury rate used. Additionally, the Offeror shall show the application base. Pursuant to FAR 15.408 Table 15-2, Form CASB-CMF, which can be found at 48 CFR 9904.414-60, must be used to delineate the calculations of FCCOM. If the Offeror elects not to claim FCCOM, a statement shall be made to that effect.

### **L.18 DOE-L-2014 Date, Time, and Place Offers are Due (Oct 2015)**

All Offers required by this solicitation are due no later than March 29, 2021 at 1600 hrs (4:00 PM) Eastern Standard Time. Treatment of late submissions, modifications, and withdrawals are governed by the applicable provisions of the solicitation.

### **L.19 DOE-L-2016 Number of Awards (Oct 2015)**

It is anticipated that there will be one award resulting from this solicitation. However, the Government reserves the right to make no award, if it is considered to be in the Government's best interest to do so.

### **L.20 Contacts Regarding Future Employment**

Offerors may contact incumbent Contractor employees about future employment except where prohibited by law. These contacts must take place outside the normal working hours of the employees.

### **L.21 DOE-L-2026 Service of Protest (Oct 2015)**

- (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 CO (addressed as follows) by obtaining written and dated acknowledgment of receipt from:  
  
Michael Forsgren, Contracting Officer  
U.S. Department of Energy  
550 Main Street, Room 7-010  
Cincinnati, OH 45202
- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.
- (c) Another copy of a protest filed with the GAO shall be furnished to the following address within the time periods described in paragraph (b) of this provision:

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

### **L.22 DOE-L-2027 Notice of Protest File Availability (Oct 2015)**

- (a) If a protest of this procurement is filed with the GAO in accordance with 4 CFR part 21, any actual or prospective Offeror may request DOE to provide it with reasonable access to the protest file pursuant to 48 CFR 33.104(a)(3)(ii), implementing section 1605 of Public Law 103-355. Such request must be in writing and addressed to the CO 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 shall mark any documents as to which they would assert that an exemption applies. (See 10 CFR Part 1004.)

### **L.23 DOE-L-2028 Agency Protest Review (Oct 2015)**

Protests to the agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. DOE's agency protest procedures, set forth at 48 CFR 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the Department. The Department encourages potential protestors to discuss their concerns with the CO prior to filing a protest.

### **L.24 FAR 52.225-10 Notice of Buy American Requirement – Construction Materials (May 2014)**

- (a) Definitions. “Commercially available off-the-shelf (COTS) item,” “construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American—Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225-9).
- (b) Requests for determinations of inapplicability. An Offeror requesting a determination regarding the inapplicability of the Buy American statute should submit the request to the CO in time to allow a determination before submission of offers. The Offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an Offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the Offeror shall include the information and supporting data in the offer.
- (c) Evaluation of offers.
  - (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American statute, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR 52.225-9.
  - (2) If evaluation results in a tie between an Offeror that requested the substitution of foreign construction material based on unreasonable cost and an Offeror that did not request an

exception, the CO will award to the Offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers.

- (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the Offeror also may submit an alternate offer based on use of equivalent domestic construction material.
- (2) If an alternate offer is submitted, the Offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
- (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the Offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested:
  - (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
  - (ii) May be accepted if revised during negotiations.

**L.25 FAR 52.225-12 Notice of Buy American Requirement – Construction Materials Under Trade Agreements (DOE DEVIATION) (Feb 2008)**

- (a) Definitions. "Construction material," "designated country construction material," "domestic construction material," and "foreign construction material," as used in this provision, are defined in clause 52.225-11 of this solicitation entitled "Buy American -- Construction Materials Under Trade Agreements (DOE DEVIATION) (FEB 2008)".
- (b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.
- (c) Evaluation of offers.
  - (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of clause 52.225-11.
  - (2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.
- (d) Alternate offers.

- (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.
- (2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
- (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested--
  - (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
  - (ii) May be accepted if revised during negotiations.

**L.26 DEAR 952.204-73 Facility Clearance (Aug 2016) (DEVIATION) (Issued by DOE Policy Flash 2021-14)**

**Notices to Offerors and the Contract Requirements of the Successful Offeror (Contractor)**

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 information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

An offeror who has either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership, control and influence 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 that issued this solicitation.

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

- (1) The contract work to be performed by the successful offeror anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor's (that is, the successful offeror's) 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 the Standard Form 328, Certificate Pertaining to Foreign Interests, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. The Contractor must submit the FOCI Package in the format directed by DOE. After the FOCI Package is completed, the Contractor must print and sign one copy of the SF 328 and submit it to the Contracting Officer.

- (2) Information submitted by the Offeror in 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 successful offeror/Contractor shall immediately submit to the Contracting Officer written notification of any changes in the extent and nature of FOCI information it submitted that could affect its 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 information it submitted that could affect its answers to the questions in Standard Form 328. Notice of changes in FOCI information that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be reported 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 Subcontractors 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 who possess or are in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.
- (d) *Facility Clearance and Employees Requiring Access Authorizations Prior to DOE's Granting Facility Clearance.*
- (1) A Facility Clearance is required for this contract, although not necessarily prior to contract award. A favorable FOCI determination for this contract is required prior to contract award. It must be rendered by the responsible cognizant security office. The Contracting Officer may require the offeror to submit additional information as deemed pertinent to this determination.
    - (i) The DOE must determine that awarding this contract to the offeror 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 offeror to submit such additional information as deemed pertinent to this determination.
    - (ii) Before contract award, after obtaining a favorable FOCI determination the successful offeror/Contractor may be eligible to obtain a Facility Clearance.
    - (iii) If the successful offeror/Contractor does not obtain a Facility Clearance before contract award, after contract award the Contractor shall submit the necessary information to obtain a Facility Clearance and to obtain personnel Interim Access Authorizations in accordance with Departmental policies and procedures.
  - (2) The DOE may grant certain of the Contractor's Key Management Personnel and the Contractor's Facility Security Officer Interim Access Authorization. If granted Interim Access Authorization, the Contractor's Key Management Personnel and the Contractor's Facility Security Officer will have access to classified information or special nuclear material.
- (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 that 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, any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors (or vendors for purchase orders) 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.

**Notice to Offerors—Contents Review (Please Review Before Submitting)**

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the Offeror should review the FOCI submission to ensure that:

- (1) The Standard Form 328 has been signed and dated by an authorized official of the Offeror;

- (2) If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
- (5) A summary FOCI data sheet.

Note: A FOCI submission must be attached for each tier parent organization (i.e., ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

**L.27 List of Section L Attachments**

Attachment L-1	Performance Guarantee Agreement
Attachment L-2	Key Personnel Standard Resume Format
Attachment L-3	Past Performance Reference Information Form
Attachment L-4	Past Performance Cover Letter and Questionnaire
Attachment L-5	List of Contracts Terminated for Default, Cure Notices, and Conditional Payment of Fee/Profit/Other Incentive Actions
Attachment L-6	Cost and Fee/Profit Elements Workbook
Attachment L-7	Contract Transition Task Order
Attachment L-8	Project/Schedule Assumptions
Attachment L-9	Offeror's Proposed Accounting System Information
Attachment L-10	List of DOE Contracts