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**PART I - THE SCHEDULE**

**SECTION B - SUPPLIES OR SERVICES AND PRICE/COSTS**

**B.1 ITEMS BEING ACQUIRED/TOTAL PRICE**

The contractor shall provide energy savings performance contract (ESPC) conservation and renewable energy services for Federal facilities. The contractor shall furnish all personnel, facilities, equipment, materials, supplies, and services (except as may be expressly set forth in this master indefinite delivery/indefinite quantity (IDIQ) contract or any task order (TO) against this master IDIQ contract as furnished by the agency) and otherwise do all things necessary for, or incident to, performance of these requirements in accordance with the statement of work (SOW) provided in Section C of this master IDIQ contract and all TOs issued against this master IDIQ contract.

THE TOTAL MAXIMUM CONTRACT VALUE, defined as the sum of contractor payment streams associated with all task orders against this master IDIQ contract, shall not exceed \$5,000,000,000.00 (five billion dollars).

THE MINIMUM GUARANTEE ORDER(S) VALUE for this master IDIQ contract award is \$5,000.00, provided that the contractor can demonstrate it has exercised due diligence and made its best efforts to secure a TO.

**B.2 REQUIRED SERVICES**

The Government requires ESPC conservation and renewable energy services for Federal facilities and seeks to obtain these services using this master IDIQ contract. (See Section C)

[END OF SECTION]

## **SECTION C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK**

### **C.1 GENERAL REQUIREMENTS/PROJECT SCOPE**

**C.1.1** This contract is intended to promote the use of renewable energy technologies, acquire energy and water conservation services, reduce energy and water consumption and/or associated utility costs, and may reduce energy and water-related operations and maintenance costs, as specified in each task order (TO) issued against this master indefinite delivery/indefinite quantity (IDIQ) contract. The contractor shall be responsible for providing all labor, material, and capital to install energy and water conservation projects, renewable energy projects and provide operations and maintenance (O&M) as specified in each TO. The cost of an energy savings performance contract (ESPC) TO project (hereafter referred to as TO project) must be covered by the energy, water, and related cost savings incurred at the Federal facility. The TO project cost savings must be verified and documented annually.

**C.1.2** This master IDIQ contract may be used by Federal agencies for all Federal buildings and facilities in accordance with the procedures established in this master IDIQ contract.

**C.1.3** Unless otherwise stated, all provisions that follow throughout the remaining sections of this master IDIQ contract may be revised within the overall scope of the contract, as necessary (based on the needs and regulations of the agency), in an agency TO Request for Proposals (RFP).

### **C.2 ENERGY CONSERVATION MEASURE (ECM) TECHNOLOGY CATEGORIES (TCs)**

**C.2.1 ECM TCs** - This master IDIQ contract and its TOs require the contractor to possess the capability to implement ECMs that reduce energy and water consumption or costs, increase renewable energy use and may reduce energy and water-related O&M costs. ECMs include measures to increase energy efficiency of energy-consuming systems and to reduce water consumption. ECMs also include measures that improve the efficiency of energy production systems that generate electrical and/or thermal energy. A list of ECM TCs that shall be considered during the development of a TO project is provided in Attachment J-3. Particular emphasis should be placed on assessment of renewable energy opportunities. This master IDIQ contract may be modified in the future to add ECMs that are not currently authorized but are subsequently authorized.

**C.2.2 Restrictions on ECMs** - Restrictions on ECMs will be specified in TOs issued against this master IDIQ contract.

### **C.3 FACILITY PERFORMANCE REQUIREMENTS OF ECMs**

Installed ECMs shall comply with the standards of service required for facilities as specified in each TO. The standards of service may include acceptable temperature and humidity ranges, allowable setbacks, noise criteria, air quality parameters, lighting levels, and other related factors, as agreed to between the agency and the contractor. At a minimum, where automated controls of lighting or environmental conditions are to be installed, the agency must have the ability to, or direct the contractor to, respond within a specified time to temporarily override the heating, ventilating and air-conditioning (HVAC) and lighting systems.

### **C.4 MEASUREMENT AND VERIFICATION (M&V) OF ECM PERFORMANCE**

**C.4.1** Every TO awarded shall include a site-specific M&V plan that specifies the M&V requirements and procedures that shall apply to the TO based on various factors, such as type of ECMs, projected value of energy savings, certainty/uncertainty of savings being achieved, and the intended risk allocation between the agency and the contractor.

**C.4.2** The TO M&V plan is the primary vehicle that an agency uses to first document and then to periodically evaluate the performance expectations of the TO project. This document shall be thoroughly understood by the contractor and agency. It shall, in a clearly understandable format, state where and how energy, water and related cost savings are going to occur and how they are to be calculated and verified. If the scope of work does not include the entirety of a site, or all the systems or significant portions within a building, then that situation shall be stated clearly so that the agency and the contractor are aware of what the TO covers and what it does not. Each building and/or space within a building that will be affected shall be identified, and buildings or portions of buildings that will not be affected shall be identified. The ECMs that generate savings shall be identified, as well as the building systems that they affect. If there are significant energy- or water-using building systems or other energy or water uses within the buildings, which will not be affected by the TO, they shall be identified so that there is clear understanding of the extent to which total energy, water and related costs at the site will be affected. To the extent this information is provided in the investment grade audit (IGA), it will be repeated in the M&V plan.

**C.4.3** The description of facilities and systems affected by the ECMs serves as the context for determining risks associated with the performance of the ECMs and the likelihood of success in achieving projected savings. The first step in developing an M&V plan will be accomplished through the completion of a Risk, Responsibility and Performance Matrix (see Attachment J-7). The matrix indicates the responsibility and performance of actions agreed to by the contractor and the agency.

**C.4.4** The TO M&V plan shall specify the M&V options and methods that will be used for each ECM included in the TO. M&V options and methods proposed for each ECM shall comply with the latest version (in effect at the time of TO award) of the “DOE/ FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects”

and the “International Performance Measurement and Verification Protocol (IPMVP).” If there is a discrepancy between these two documents, the DOE/FEMP M&V Guideline takes precedence. The DOE/FEMP M&V Guideline includes a variety of guidelines and tools that will help in the development of a technically rigorous M&V plan, including both optional M&V methods for differing ECMs and tools for assessing the cost implications of these options.

(See [http://www1.eere.energy.gov/femp/financing/superespcs\\_mvresources.html](http://www1.eere.energy.gov/femp/financing/superespcs_mvresources.html), current as of contract award.)

**C.4.5 M&V Activities** - The contractor shall perform the following required M&V activities:

- A.** Define a site-specific M&V plan for the particular project being installed, once the project has been fully defined and the IGA is completed. This shall occur before the TO is awarded, and the M&V plan will be incorporated into the TO.
- B.** Define pre-installation baseline including (a) equipment/systems, (b) baseline energy use, (c) system performance factors (e.g., lighting levels, temperature setpoints, time clock settings, etc.), and/or (d) actions to determine baseline energy use, which may include site surveys, short-term or long-term metering, analysis of billing data, and/or engineering calculations. The pre-installation baseline should also identify factors beyond the contractor’s control that influence post-installation energy (e.g., building occupancy, weather, plug load creep, etc.). Where such factors beyond the contractor’s control potentially exist, the agency and contractor will agree on what measures should be taken to adjust the baseline, modify savings calculations or otherwise account for such factors. Where feasible, adjustments to the calculation methodology for savings are to be preferred over changes to the baseline. Such adjustments make it easier to present the actual savings. The Risk, Responsibility and Performance Matrix will guide the identification of factors on which such agreements may need to be reached. The definition of all elements of the pre-installation baseline will be agreed upon before the TO is awarded.
- C.** Define post-installation conditions including (a) equipment/systems, (b) post-installation energy use and/or (c) actions to determine post-installation energy use, which may include site surveys, short-term or long-term metering, analysis of billing data, and/or engineering calculations.
- D.** Conduct annual M&V activities to verify operation of the installed equipment/systems and calculate the previous year’s energy and water savings, and compare verified and guaranteed savings.

**C.4.6 M&V Submittals during TO Development and Post-Award**



- A.** The contractor shall prepare and submit a general M&V approach with its Preliminary Assessment (PA), identifying the M&V options and methods to determine a site-specific pre-installation baseline and post-installation ECM performance for each proposed ECM.
- B.** The contractor shall prepare and submit a site-specific M&V plan with its final proposal, per the requirements in Section H and Attachment J-8 of this master IDIQ contract. This site-specific M&V plan shall include a schedule indicating M&V activities and post-award M&V reporting milestones for each ECM. Prior to installation of ECMs, the agency should witness measurements and review calculations, records (e.g., utility bills) and other elements of the baseline, to confirm its accuracy and to confirm that methods are consistent with the approved M&V plan, as described in FEMP's "Guide to Government Witnessing and Review of Post-Installation and Annual M&V Activities."
- C.** The contractor shall prepare and submit a post-installation report to the agency (Attachment J-9), which should verify that installed ECMs will meet the required standards of service and the guaranteed annual energy, water, and related cost savings specified in the awarded TO. Inspections and measurements conducted by the contractor for this post-installation report should be witnessed by the agency, in accordance with FEMP's "Guide to Government Witnessing and Review of Post-Installation and Annual M&V Activities." The post-installation report should be reviewed as recommended in FEMP's "Reviewing Performance Reports for Federal ESPC Projects," and must be accepted in writing, by the agency.
- D.** The contractor shall prepare and submit an annual M&V report to the agency (Attachment J-10), including data and calculations that demonstrate that continued ECM performance achieves the guaranteed annual energy, water, and related cost savings as required by the TO. Inspections and measurements conducted by the contractor for this annual M&V report should be witnessed by the agency in accordance with FEMP's "Guide to Government Witnessing and Review of Post-Installation and Annual M&V Activities." The annual M&V report should be reviewed, as recommended in FEMP's "Reviewing Performance Reports for Federal ESPC Projects," and must be accepted, in writing, by the agency. Review and acceptance of the annual M&V report, in accordance with FEMP's "Guide to Government Witnessing and Review of Post-Installation and Annual M&V Activities" constitutes documentation to determine amount of contractor payment.

## **C.5 INSTALLATION REQUIREMENTS FOR ECMs**

### **C.5.1 Design and Construction Package**

- A.** The contractor shall prepare and submit a design and construction package to the Federal agency for review and approval prior to starting ECM installation in accordance with Attachment J-4, Sample Deliverables for Task Orders. The design and construction package shall be certified (stamped) by a licensed professional engineer in the state where the work is performed to assure compliance with applicable building codes and Federal agency design standards. The TO will specify site-specific requirements of the design and construction package. Acceptance of the design and construction package by the agency shall not relieve the contractor from responsibility for meeting facility standards of service and guaranteed cost savings.
- B.** The design and construction package due date will be negotiated between the contractor and the agency, and specified in the TO. Phased design and construction may be allowed and specified by the agency in the TO. Upon approval of the design and construction package, bonds will be required in accordance with Section H.8.
- C.** The design and construction package shall be prepared and shall include at least the following:
1. Manufacturer's Data - For all ECM equipment to be installed, the contractor shall provide the manufacturer's descriptive literature of equipment including drawings, diagrams, performance and characteristic curves, catalog cuts and installation guidelines and warranty considerations.
  2. Design and Construction Specifications - Unless otherwise specified by the agency, the contractor shall identify and reference design and construction specifications applicable to installed ECMs.
  3. Construction Drawings - Construction drawings shall be prepared by the contractor, subcontractor, or any lower-tier subcontractor.
  4. Planned Service Interruptions - If any utility services must be discontinued temporarily to perform work, such interruptions shall be described and indicated on the project installation schedule. The description shall include the length of the interruption, its time (date, day of week, time of day, etc.), and a justification. Required service interruptions shall be scheduled per C.5.6 of the master IDIQ contract.
  5. Site Plan and Compliance with Federal Site Exterior Architectural Plan - If an ECM involves the installation of facilities or exterior structures, the contractor shall provide a site plan showing its location, or show its location on the agency's existing site plan. The contractor shall also

provide plan and elevation drawings of the facility or exterior structure showing its size and exterior appearance.

6. Acquisition of Permits - For any ECM installation requiring permits from regulatory agencies, the contractor shall provide its plan and schedule for acquiring such permits in accordance with agency instructions and requirements.
7. Installation Schedules - The installation schedule shall show the order in which the contractor proposes to perform the work and the dates on which the contractor contemplates starting and completing all major milestones (including acquiring materials, equipment, permits, and inspections). The schedule shall be in the form of a progress chart of suitable scale to indicate the amount of work scheduled for completion by any given date during the installation period.

**D.** Design documents will require both a preliminary and final review by the agency. Each TO will specify the submittal requirements associated with each review.

#### **C.5.2 Design and Construction Standards**

**A.** A TO issued against this master IDIQ contract will specify design and construction standards applicable to site or agency specific facility requirements. At a minimum, all ECMs, work, equipment and materials required for ECM installation shall comply with the most recent issue of the design and construction standards indicated in the TO as applicable. The following list of standards is provided as a guideline for establishing these requirements.

- American National Standards Institute (ANSI)
- Code of Federal Regulations (CFR)
  - 29 CFR 1910, Occupational Safety and Health Standards
  - 10 CFR 435, Energy Conservation Voluntary Performance Standards for Commercial and Multi-Family High Rise Residential Buildings
  - 29 CFR 1926, Safety and Health Regulations for Construction
- National Electric Code (NEC)
- National Electrical Safety Code (NESC)
- National Fire Protection Association (NFPA) Standards including, but not limited to, NFPA 101 - Life Safety Code
- National Electrical Manufacturers Association (NEMA)
- Underwriters Laboratory (UL)
- Uniform Building Code (UBC)
- Uniform Plumbing Code (UPC)
- American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE)
  - ASHRAE 62

- ASHRAE 90.1
  - Army Corps of Engineers Safety Manual
  - National Historic Preservation Act, as applicable
  - Illuminating Engineering Society of North America (IESNA)
  - American Institute of Architects (AIA) Masterspec
  - Air-Conditioning and Refrigeration Institute (ARI)
  - Occupational Safety and Health Administration (OSHA) regulations
  - Other design standards required by the ordering agency
- B.** No requirement of this contract shall supersede applicable regulations, local codes and/or standards. Any violation of such regulations and standards shall be brought to the attention of the agency Contracting Officer (CO) for clarification or direction prior to proceeding with the work.
- C.** If conflicts between designated applicable codes and/or standards exist, the agency CO and applicable authority having jurisdiction shall determine the appropriate code to follow.

### **C.5.3 ECM Quality Control Inspection Program**

- A.** The contractor shall be responsible for quality control during installation of ECMs. The contractor shall inspect and test all work performed during ECM installation to ensure compliance with the TO's performance requirements. The contractor shall maintain records of inspections and tests, including inspections and tests conducted by or for any non-Federal organization, such as a utility or other regulatory agency. The contractor shall prepare an ECM Quality Control Inspection Plan for review and acceptance by the agency. Any changes to the ECM Quality Control Inspection Plan shall be submitted for review and acceptance to the agency. The ECM Quality Control Inspection Plan shall be prepared and submitted in accordance with the TO reporting requirements.
- B.** The ECM Quality Control Inspection Plan shall detail the procedures, instructions, and reports that ensure compliance with the TO and this master IDIQ contract. This plan shall include, as a minimum:
1. The quality control organization, in chart form, showing the relationship of the quality control organization to the contractor's organization.
  2. Names and qualifications of personnel in the quality control organization.
  3. Area of responsibility and authority of each individual in the quality control organization.

4. A listing of outside organizations, such as testing laboratories, architects, and consulting engineers that will be employed by the contractor, and a description of the services these firms will provide.
5. Procedures for reviewing all shop drawings, samples, certificates, or other submittals, including the names of the persons authorized to sign the submittals for the contractor.
6. An inspection schedule, keyed to the installation schedule, indicating necessary inspections and tests, the names of persons responsible for the inspections and tests, and the time schedule for each inspection and test.
7. The procedures for documenting quality control operations, inspection, and testing, with a copy of all forms and reports to be used for this purpose. The contractor shall include a status log listing all submittals required by the inspection plan and stating the action required by the contractor or the agency. The contractor shall also prepare and maintain a testing plan that shall contain a listing of all tests required by the TO and this master IDIQ contract.
8. The ECM Quality Control Inspection Plan shall be submitted to the agency for review and approval as a separate stand-alone document at the same time as the required Design and Construction Package, after award of the TO.
9. Final quality control records shall be consolidated and provided to the agency CO.

**C.5.4 ECM Commissioning** - The contractor shall assure the agency, through the ECM Commissioning, that the ECMs performance achieves facility and/or process performance requirements as set out in the TO. The ECM Commissioning shall be accomplished through a process of verification and documentation, in accordance with the “Commissioning Guidance for DOE Super ESPCs,” for which the link is located at [http://www1.eere.energy.gov/femp/financing/superespcs\\_esp basicsp4.html](http://www1.eere.energy.gov/femp/financing/superespcs_esp basicsp4.html).

- A. **ECM Commissioning Approach** - The contractor shall submit in its final proposal, a severable ECM Commissioning Approach document, that utilizes data and factors derived from the IGA, needed to achieve facility performance requirements in accordance with the TO.
- B. **ECM Commissioning Plan** - After the agency reviews and accepts the design and construction package, the contractor shall provide a Commissioning Plan to the agency for acceptance that finalizes the Commissioning Approach and addresses each ECM with specific steps that will be taken during the commissioning process.

- C. **ECM Commissioning Report** - The contractor shall submit to the agency a Commissioning Report documenting the ECM's affect upon facility performance requirements in accordance with the Commissioning Plan and agency requirements.

### **C.5.5 Environmental Protection**

- A. Impacts on air quality (pollutants, noise level, and odors or fumes) and potable water use are examples of potential areas of concern at the project site. Any ECM and related work shall comply with the National Environmental Policy Act (NEPA) and other applicable Federal, State and local environmental protection regulations. The TO will identify specific known hazardous waste handling and storage requirements (e.g., Polychlorinated Biphenyl (PCB) ballasts removed from lighting fixture retrofits).
- B. The contractor shall comply with applicable Federal, State and local laws and with the applicable regulations and standards regarding environmental protection. All environmental protection matters shall be coordinated with the agency CO. Authorized agency officials may inspect any of the contractor's work areas on a no-notice basis during normal working hours. The contractor shall indemnify and hold the Government (including the ordering agency, DOE, and/or any person acting on behalf of the Government) harmless for any and all liability, including attorneys' fees and legal costs, resulting from the contractor's noncompliance or violation of any applicable Federal, State or local law, regulation or standard regarding environmental protection. In the event that a regulatory agency assesses a monetary fine against the agency for violations caused by the contractor's actions or inaction, the contractor shall immediately reimburse the agency for the amount of any fine and other related costs. The contractor shall also clean up any oil spills, hazardous wastes, and hazardous materials resulting from the contractor's operations. The contractor shall comply with the instructions of the agency's designated safety and health personnel to avoid conditions that create a nuisance or which may be hazardous to the health of agency or civilian personnel.
- C. The contractor shall prepare all documentation necessary to support obtaining permits to comply with all applicable Federal, State and local requirements prior to implementing affected ECMs in the performance of a TO. The contractor shall not receive a notice to proceed with installation from the agency until all applicable environmental protection requirements contained in this master IDIQ contract and the TO have been satisfied.
- D. The contractor shall comply with all applicable regulations and with the requirements of the latest edition of the applicable Federal agency's Spill Prevention Control and Countermeasures Plan, or similar plan, and requirements of the TO.

### **C.5.6 Service Interruptions**

- A.** For any planned utility service interruptions, the contractor shall furnish a request to the agency CO's designated representative for approval as specified in the TO. The request shall identify the affected buildings, utility service, and duration of planned outage.
- B.** The agency will coordinate with affected tenants and customers as applicable.
- C.** Agencies may have additional requirements that apply to specific TOs, and if applicable, will be specified in the TO.

**C.5.7 As-Built Drawings (Record Drawings)** - After completion of installation and prior to Government acceptance of installed ECMs, the contractor shall submit as-built drawings to the agency in accordance with agency standards or specifications identified in the TO.

## **C.6 OPERATION OF ECMs**

**C.6.1** Operations work effort for installed ECMs shall include operations tasks at specific stations, continuous or periodic equipment monitoring, and minor on-line equipment adjustments required to achieve all facility and energy conservation performance requirements of the TO. Regardless of who performs the operations, the contractor shall be responsible for the operations of all installed ECMs.

**C.6.2** When the implementation of an installed ECM results in a change in an existing operations work procedure, the contractor shall prepare a revised written operations work procedure and checklist for written acceptance by the agency. The contractor shall train Government personnel in the operations work procedures.

**C.6.3** The performance of ECM operations may be assumed by the Government through mutual agreement of the contractor and the agency. In such cases the Government will operate the ECM in accordance with the contractor-provided operations work procedures. The contractor shall conduct periodic inspections with sufficient frequency to determine agency compliance with operations work procedures and notify the agency of any noncompliance and necessary corrective action.

**C.6.4** The contractor shall maintain adequate and necessary records from inspections, which will be made available during the annual M&V review. These records will contain at a minimum the ECM affected, initial date of incident, date repair and/or replacement implemented, and description of activities performed and shall be included in the as annual M&V report.

**C.6.5** When the Government assumes performance of ECM operations, the Government will maintain adequate and necessary records from inspections, which will be made available during the annual M&V review. These records will contain at a minimum the

ECM affected, date repair and/or replacement implemented, and description of activities performed and will be provided to the contractor to be included in the annual report on ECM Performance (also known as annual M&V report).

## **C.7 PREVENTIVE MAINTENANCE OF ECMs**

**C.7.1** Preventive maintenance work includes periodic equipment inspections, tests, calibrations, and preventive maintenance tasks and actions required to ensure that systems operate as intended. The contractor shall be responsible for preventive maintenance of all installed ECMs.

**C.7.2** The contractor shall prepare a written definition of preventive maintenance requirements and preventive maintenance work procedure and checklist for each installed ECM. The contractor shall train Government personnel in the revised preventive maintenance work procedures.

**C.7.3** The Government may assume performance of preventive maintenance through mutual agreement of the contractor and the agency. If the Government assumes preventive maintenance work, the equipment shall be maintained in accordance with the preventive maintenance work procedures and checklists provided by the contractor and accepted by the agency. The contractor shall conduct periodic inspections with sufficient frequency to determine agency compliance with preventive maintenance work procedures and notify the agency of any noncompliance and necessary corrective action.

**C.7.4** The contractor shall maintain adequate and necessary records from inspections, which will be made available during the annual M&V review. These records will contain at a minimum the ECM affected, date repair and/or replacement implemented, and description of activities performed and shall be included in the Annual Report on ECM Performance (also known as annual M&V report).

**C.7.5** When the Government assumes performance of preventive maintenance, the Government will maintain adequate and necessary records from inspections, which will be made available during the annual M&V review. These records will contain at a minimum the ECM affected, date repair and/or replacement implemented, and description of activities performed and will be provided to the contractor to be included in the Annual Report on ECM Performance (also known as annual M&V report).

## **C.8 REPAIR OF ECMs**

**C.8.1** The contractor shall be responsible for the repair of all installed ECMs. Performance of ECM repairs, however, may be assumed by the agency through mutual agreement of the contractor and the agency, as specified in the TO.



**C.8.2** Repair of ECMs includes all material and equipment associated with the replacement or repair of facilities, systems, or equipment that have failed or are in a condition of diminished ECM performance as determined by the contractor, and concurred to by the agency.

**C.8.3 Equipment Failure** - If equipment failure or damage is a result of the contractor's failure to perform or negligence in performing repairs, the contractor shall provide repair or replacement at its expense or, if repaired or replaced at agency expense, the contractor shall reimburse the agency for losses attributable to the contractor's failure or negligence.

## **C.9 CONTRACTOR MAINTENANCE AND REPAIR RESPONSE TIME**

**C.9.1** The contractor shall establish a point of contact (name and phone number) for use by the agency in providing response to contractor equipment failures. The point of contact shall be available as specified in the TO throughout the TO's term. Initial telephone response to repair call messages shall be within the timeframe specified in the TO. If a site visit is needed to repair equipment, repair personnel shall arrive on site within the timeframe specified in the TO for nonemergency repairs or within the timeframe specified within the TO for emergency repairs. Although normal contractor access is during the normal work hours specified for the specific site in the TO, the contractor may be granted 24-hour per day access to the buildings for emergency work at the discretion of the agency.

**C.9.2** Emergency maintenance and repair work is defined as maintenance or repair necessary to correct an existing or imminent failure to meet the Facility Performance Requirements of ECMs, Section C.3, or any action necessary to protect the safety or health of the facility occupants and prevent adverse impacts on property.

**C.9.3** In the event the contractor fails to respond as required in the TO and in the event of emergencies, the agency may incur expenses to perform emergency repairs to contractor-installed equipment as well as agency equipment for which the contractor assumed maintenance and repair responsibilities. The contractor shall indemnify and hold the agency harmless in such cases where the contractor fails to respond appropriately in emergencies. The contractor shall promptly reimburse the agency for any and all costs incurred in responding to such emergencies. Such reimbursement may include the agency adjusting the payment schedule, as necessary, to recover such costs.

## **C.10 OPERATIONS AND MAINTENANCE (O&M) MANUALS AND TRAINING FOR ECMs**

**C.10.1 Operations and Maintenance Manuals** - The contractor shall furnish O&M manuals and recommended spare parts lists for O&M of the contractor-installed ECMs and modified agency equipment. O&M plans and spare parts lists shall be submitted prior to agency acceptance of the project, as specified in the TO.

**C.10.2 Agency Personnel Training for ECMs** - The contractor shall provide a training program for agency personnel and/or agency contractors for each ECM in a project. The program shall provide instruction on operation, troubleshooting, maintenance, and repair of ECMs. Training shall include both a classroom phase and a field demonstration phase. The course material shall include the operation and maintenance plans and manuals. The program shall be conducted at the TO's specified site(s) in facilities provided by the agency or as otherwise directed by the agency.

- A. Thirty (30) days prior to the installation completion, the contractor shall train agency personnel and/or agency contractors, as required, to operate, maintain, and repair ECM equipment and systems in the event of emergencies, and/or as specified in the TO.
- B. The contractor shall train agency personnel and/or agency contractors to operate, maintain, and repair ECM equipment on an annual basis, unless otherwise specified in the TO.

## **C.11 GOVERNMENT PROJECTS**

The agency shall notify the contractor when agency projects are to be implemented that may impact the installation or operations of contractor-installed ECMs. If the agency project affects annual energy savings, then the agency will determine whether to adjust the savings calculation methodology in the M&V plan, or negotiate a baseline adjustment, or implement some other corrective methodology.

## **C.12 ENERGY EFFICIENCY AND RENEWABLE ENERGY AND WATER PROJECT FINANCIAL AND TAX INCENTIVES**

The contractor shall be responsible for determining the source, value, and availability of any applicable financial and tax incentives for the project and shall collaborate with the agency to consider incentive options to include:

### **C.12.1 Energy Efficiency and Renewable Energy and Water Financial Incentives -**

The contractor shall be responsible for considering the agency benefits of utilizing programs for applicable energy efficiency and renewable energy and water financial incentives offered by the local utility serving the facility and/or State or local Government in which the facility is located. The contractor's assessment should address whether the value of the incentives exceeds the administrative costs to be incurred by the contractor or the agency in acquiring such incentives.

The contractor shall be responsible for coordinating with the agency for preparation of any and all documentation required to apply for any applicable financial incentives and to effectively apply for such incentives to the project. The contractor shall provide the value of incentives and proposed timing of payments in Schedule TO-3 and describe how incentives affect post-acceptance performance period project cash flow, such as principal repayment or reducing financed amount.

**C.12.2 Energy Efficiency and Renewable Energy and Water Project Emission**

**Reduction Credits** - The contractor shall be responsible for considering the agency benefits of utilizing emission reduction credit programs offered by the Federal, State, regional, or local air quality organizations. The contractor's assessment should address whether the value of the incentives exceeds the administrative costs to be incurred by the contractor or the agency in acquiring such incentives.

The contractor shall be responsible for coordinating with the agency for preparation of any and all documentation required to apply for available emission reduction credits and to effectively address the alternatives for implementing and leveraging the financial benefits of emissions reduction credits for the project. The contractor shall provide the value of emissions reduction credits and proposed timing of payments in Schedule TO-3 and describe how the credits affect post-acceptance performance period project cash flow, such as principal repayment or reducing financed amount.

**C.12.3 Renewable Energy Credit (REC)** - The contractor shall be responsible for

considering the agency benefits of REC sales for renewable energy projects on Federal property. The contractor will identify available compulsory or voluntary markets and describe the renewable annual energy production and valuation alternatives of REC sales. The contractor's assessment should address if the value of RECs exceeds the administrative costs to be incurred by the contractor or the agency in acquiring, selling, or otherwise administering the RECs.

The contractor shall consider federal renewable energy requirement goals and other agency renewable energy purchase goals. The contractor shall discuss with the agency proposed approaches to achieving any double-counting provisions for renewable energy produced and used on-site at the Federal facility. Unless otherwise specified in the TO, interest in and ownership of all RECs resulting from renewable energy produced on-site at a Federal facility will remain with the Government.

The contractor shall be responsible for coordinating with the agency, as required, for preparation of any and all documentation required to acquire revenues for REC sales and to effectively address alternatives for implementing and leveraging the REC sales revenue financial benefits for the project. The contractor shall provide the value of RECs and proposed timing of payments in Schedule TO-3 and describe how REC payments affect post-acceptance performance period project cash flow, such as principal repayment or reducing financed amount.

**C.12.4 White Tags<sup>TM</sup> - also known as Energy Savings Certificates** - The contractor

shall be responsible for considering the agency benefits of applying for White Tags<sup>TM</sup>, as available, for TO energy efficiency measures on Federal property. The contractor will identify applicable ECMs and White Tags<sup>TM</sup> certification requirements. The contractor's assessment should address if the value of the White Tags<sup>TM</sup> exceeds the administrative costs to be incurred by the contractor or the agency in applying for, selling, or otherwise administering the White Tags<sup>TM</sup>. Unless otherwise specified in the TO, interest in and

ownership of all White Tags<sup>TM</sup> resulting from renewable energy produced on-site at a Federal facility will remain with the Government.

The contractor shall be responsible for coordinating with the agency, as required, for preparation of any and all documentation required to acquire revenues from White Tag certificates and to effectively address the alternatives for implementing and leveraging the White Tag sales revenue financial benefits for the project. The contractor shall provide the value of White Tags<sup>TM</sup> and proposed timing of payments in Schedule TO-3 and describe how White Tag<sup>TM</sup> payments affect post-acceptance performance period project cash flow, such as principal repayment or reducing financed amount.

**C.12.5 ENERGY EFFICIENCY AND RENEWABLE ENERGY AND WATER Project Tax Incentives** - The contractor shall be responsible for considering the agency benefits of leveraging any Federal, State or local tax incentives for energy efficiency or renewable energy projects. The agency recognizes that nongovernmental ownership of the affected energy efficiency and renewable energy and water asset may be required in order to capture the benefits of Investment and Production Tax Credits and Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation.

The contractor shall address, for agency consideration, IRS regulation compliance requirements and proposed energy efficiency and renewable energy and water ECM owner/agency transactions to fully support successful leveraging of energy efficiency and renewable energy and water tax incentive benefits in TOs. In its assessment, the contractor shall discuss the value of energy efficiency and renewable energy and water tax benefits and how the tax benefits affect the project's post-acceptance performance period project cash flow in schedule TO-3, such as reduced project interest rate or principal repayment.

### **C.13 AVAILABILITY OF UTILITIES**

The agency will furnish water and electric current at existing outlets, as may be required for the installation work to be performed under a TO, at a cost of the usage mutually agreed to by the contractor and the agency. The contractor shall, in a workmanlike manner satisfactory to the agency, install and maintain all necessary temporary connections and distribution lines for each utility and return the system to the original configuration. Information concerning the location of existing outlets may be obtained from the agency.

### **C.14 GOVERNMENT-FURNISHED PROPERTY AND CONTRACTOR FURNISHED MATERIAL**

The contractor shall provide all materials and supplies necessary to perform the work as specified in the TO. Materials and supplies provided shall be of the grade and quality as specified in the TO and be in compliance with any applicable standards. All such materials and supplies must be compatible, and operate safely within design parameters of existing systems equipment and be of current manufacture (not discontinued or obsolete).

Should Government-furnished property be required or considered appropriate for a TO award, it shall be designated and identified in the TO RFP.

### **C.15 CONTRACTOR EMPLOYEES**

**C.15.1** Upon issuance of a TO under this master IDIQ contract, the contractor shall provide the agency with the name(s) of the responsible supervisory person(s) authorized to act for the contractor.

**C.15.2** The contractor shall furnish sufficient personnel to perform all work specified within the TO.

**C.15.3** Contractor employees shall conduct themselves in a proper, efficient, courteous, and businesslike manner.

**C.15.4** The contractor shall remove from the site any individual whose continued employment is deemed by the agency to be contrary to the public interest or inconsistent with the best interests of agency business or national security.

**C.15.5** No employee or representative of the contractor will be admitted to the work site unless that employee furnishes satisfactory proof that he/she is a citizen of the United States or otherwise legally authorized to work at the facility.

### **C.16 FIRE PREVENTION**

The contractor shall ensure that its employees know how to activate agency site fire alarms. The contractor shall observe all site requirements for handling and storing combustible supplies, materials, waste and trash. Contractor employees operating critical equipment shall be trained to properly respond during a fire alarm and/or fire in accordance with the applicable agency's fire prevention procedures, rules or regulations as identified in the TO. The contractor shall obtain all required permits prior to performing any hot work (e.g., welding, cutting torch).

### **C.17 SALVAGE**

All Government material and equipment removed or disconnected during the implementation period of a TO issued under this master IDIQ contract shall remain the property of the agency and shall be included in the proposal for each ECM. All equipment to be stored shall be listed in the TO. Any material and equipment not to be stored, and all debris resulting from work under a TO, shall be removed from the site by the contractor at its expense, unless otherwise specified in the TO.

### **C.18 HAZARDOUS MATERIALS**

**C.18.1** As part of each proposed ECM project, the contractor shall identify the presence of and include the cost of removal of any known hazardous material for each ECM, unless the agency performs the removal.

**C.18.2** If hazardous material is identified after TO award, the contractor shall immediately stop work, take measures to reduce the contractor or building personnel contamination, and immediately notify the agency and the building manager of the hazardous material condition and location. The agency will then:

- A. Remove and dispose of the material; or
- B. Negotiate with the contractor for either (1) a TO modification for removing and disposing of the material at its expense, or (2) a separate award for the effort. The contractor shall be required to remove and dispose of the hazardous material in the manner agreed upon by the parties; or
- C. Make any equitable adjustment necessary due to the change to or elimination of the ECM involved.

**C.18.3** In addition, if the handling and disposal of hazardous material and Polychlorinated Biphenyl (PCB), is or becomes the responsibility of the contractor in a TO award, it shall be handled as follows:

- A. **Hazardous Material Handling and Disposal** - Hazardous wastes resulting from contractor-owned material and equipment must be disposed of in accordance with the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§6901, et seq.) and all applicable Federal, State and local regulations. The TO will provide additional site-specific requirements.
- B. **PCB Handling and Disposal** - If PCBs exist at a site covered by a TO, then the TO shall contain the necessary clause addressing PCB recycling and/or disposal requirements to comply with applicable Federal, State and local regulations. The TO will provide additional site-specific PCB handling and disposal requirements, if applicable.
- C. TOs will specify the requirements if different than the above.

## **C.19 DISPOSAL OF NONHAZARDOUS WASTE**

Nonhazardous debris, rubbish and unusable material resulting from the work shall be removed from agency property and properly disposed or recycled by the contractor.

## **C.20 SAFETY REQUIREMENTS**

All work shall be conducted in a safe manner and shall comply with the requirements in the Army Corps of Engineers Safety Manual and the Accident Prevention clause in Section I of this contract (FAR 52.236-13) or the agency's safety program requirements. Other specific requirements relative to safety are as follows:

**C.20.1** Prior to commencing work, the contractor shall meet with the agency to agree upon administration of the safety program.

**C.20.2** The contractor's workplace may be inspected periodically for OSHA compliance. Corrective actions for violations shall be the responsibility of the contractor and/or the Government, as determined by the agency. The contractor shall provide assistance to the agency representative and Federal or State OSHA inspector, if a complaint is filed. Any fines levied on the contractor by Federal or State OSHA offices due to safety/health violations will be paid promptly by the contractor.

**C.20.3** In accordance with the Accident Prevention clause, the contractor shall, within 24 hours of their occurrence, report to the agency all accidents and submit a full report of damage to agency property and equipment by contractor or subcontractor employees, at any tier.

**C.20.4** A safety and health plan and hazard analysis shall be prepared prior to the start of work on a construction site.

## **C.21 SECURITY REQUIREMENTS**

**C.21.1 Passes and Badges** - All contractor employees shall obtain employee and vehicle badges and passes, as required by the agency, for the specific TO project site prior to the start of on-site work. The agency will issue badges it requires, without charge, and the badges must be worn, clearly visible, by the employees at all times while on site. When an employee leaves the contractor's service, or when access is no longer required, the employee's pass and badge shall be returned in accordance with agency requirements.

**C.21.2 Contractor Vehicles** - Each contractor vehicle shall display the contractor's name such that it is clearly visible. The agency may issue vehicle passes as it determines, and these shall also be displayed so as to be clearly visible.

**C.21.3 Contractor Access to Buildings** - It shall be the contractor's responsibility, through the agency, to obtain access to buildings on the TO project site.

**C.21.4 Contractor Access to Secure Areas** - Certain areas of a project site may require that the contractor and its employees have an escort, and/or place limits on the days and times that the contractor and its employees may work in these areas. TOs will identify any such secure areas and the requirements for contractor access to them.

**C.21.5** TOs will specify the security requirements, if different than the above.

## **C.22 WORK SCHEDULE REQUIREMENTS**

The contractor shall arrange its on-site work so that it will minimize interference with normal agency business. At a minimum, the contractor shall submit a monthly work schedule for

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agency approval for all on-site work performed under the TO. In no event shall the contractor change approved work schedules without the prior consent of the agency.

[END OF SECTION]



## **SECTION D - PACKAGING AND MARKING**

### **D.1 PRESERVATION, PACKAGING AND PACKING**

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container or each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering agency and the contractor.

### **D.2 PACKING LIST**

A packing list or other suitable shipping document shall accompany each shipment and shall indicate:

1. Name and address of the contractor;
2. Name and address of the agency;
3. Government task order (TO) or requisition number;
4. Government bill of lading number covering the shipment (if any); and
5. Description of the material shipped, including item number, quantity, number of containers, package number (if any), and weight of each package

### **D.3 INITIAL PACKING, MARKING, AND STORAGE OF EQUIPMENT**

Unless otherwise specified in the TO, all initial packing, marking and storage incidental to shipping of equipment to be provided under this contract shall be made at the contractor's expense. Such packing, supervision marking and storage costs shall not be billed to the agency. Supervision of packing, and unpacking of initially acquired equipment shall be furnished by the contractor.

[END OF SECTION]

**SECTION E - INSPECTION AND ACCEPTANCE**

**E.1 CLAUSES INCORPORATED BY REFERENCE (FAR 52.252-2)(FEB 1998)**

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

**I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)**

CLAUSE NUMBER	DATE	TITLE
52.246-4	AUG 1996	INSPECTION OF SERVICES—FIXED PRICE
52.246-12	AUG 1996	INSPECTION OF CONSTRUCTION
52.246-13	AUG 1996	INSPECTION - DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS
52.246-14	APR 1984	INSPECTION OF TRANSPORTATION
52.246-15	APR 1984	CERTIFICATE OF CONFORMANCE
52.246-16	APR 1984	RESPONSIBILITY FOR SUPPLIES

**E.2 INSPECTION OF INSTALLED ECMs**

Each task order (TO) will include specific inspection criteria pertinent to the TO project. The following general inspection requirements shall apply to each TO, unless otherwise indicated in the TO:

**E.2.1** The agency and contractor shall jointly inspect ECMs. Inspections will be conducted simultaneously, when possible, by both the agency and contractor representatives to facilitate mutual agreement on satisfactory TO ECM performance.

**E.2.2** The contractor shall notify the agency Contracting Officer (CO) fifteen (15) working days in advance of ECM installation completion (or such other notification period as may be specified in a TO) by submitting a written request for inspection. The request shall identify the location, describe the ECMs installed, schedule testing of ECMs for verifying energy savings performance, and recommend dates for inspection (if any).

**E.2.3** The agency shall provide written notification to the contractor of scheduled date and time for agency inspection within ten (10) working days after receipt of inspection notification and request (or such other period as may be specified in TO).

**E.2.4** Each TO may include additional agency-specific or site-specific inspection and requirements. The contractor shall review each TO to determine the recommended applicable inspection requirements for that TO.

### **E.3 ACCEPTANCE**

**E.3.1 Partial Project Acceptance** - The agency may agree in writing to accept ECM(s) installed and operational prior to completion of the Implementation Period. If the agency accepts partial project installed ECM(s), it will pay the contractor, prior to full project acceptance, in amounts and frequency specified in Schedule TO-1 (final), column (c). ECM(s) inspection and testing to verify guaranteed cost savings during the remaining Implementation Period will be conducted and documented by the contractor, and submitted to the agency for acceptance, prior to implementation period contractor payments. Implementation Period contractor payments shall reduce the project Total Amount Financed (Principal) (Schedule TO-3) and related debt service payments during the TO post-acceptance performance period.

#### **E.3.2 Full Project Acceptance**

- A.** After installation of all ECMs the agency will notify the contractor in writing of full project acceptance which will constitute the start of the post-acceptance performance period and commencement of contractor payments. Agency acceptance, for purpose of payment, in accordance with Section G, occurs when the following are completed:
1. Acceptance by the agency CO of the contractor's post-installation report;
  2. Acceptance by the agency CO of contractor's ECM Commissioning Report;
  3. The project inspection is conducted pursuant to Section E.2; and
  4. Submission of additional TO requirements prior to acceptance:
    - a. Operations work procedures
    - b. Preventive maintenance work procedures
    - c. O&M manuals and spare parts lists
    - d. Training
    - e. As Built Drawings (Record Drawings)
- B.** The agency and contractor shall mutually agree on, and specify in the TO, the anticipated schedule for the contractor report submittals and the duration for agency review for acceptance.

[END OF SECTION]

## **SECTION F - DELIVERIES OR PERFORMANCE**

### **F.1 CLAUSES INCORPORATED BY REFERENCE (FAR 52.252-2)(FEB 1998)**

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

#### **I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)**

<b>CLAUSE NUMBER</b>	<b>DATE</b>	<b>TITLE</b>
52.211-11	SEP 2000	LIQUIDATED DAMAGES - SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT
52.211-12	SEP 2000	LIQUIDATED DAMAGES - CONSTRUCTION
52.242-15	AUG 1989	STOP-WORK ORDER
52.247-34	NOV 1991	F.O.B. DESTINATION

### **F.2 PERIOD OF PERFORMANCE**

The base period of performance of this master indefinite delivery/indefinite quantity (IDIQ) contract shall be for a period of five years and shall have two option periods of three years each.

It is anticipated that the actual period of performance will be as follows:

Base period of performance:	12/17/2008 - 12/16/2013
Option Period 1:	12/17/2013 - 12/16/2016
Option Period 2:	12/17/2016 - 12/16/2019 (Subject to renewed ESPC authority and CO determination to exercise this option.)

### **F.3 TASK ORDER PERIOD OF PERFORMANCE**

Task orders (TOs) issued by agencies under this master IDIQ contract during the authorized ordering period may be for a term up to and including twenty-five (25) years.

### **F.4 EXERCISE OF OPTIONS**

The DOE has included two (2) 3-year options to extend the term of this master IDIQ contract. In order to demonstrate the value it places on quality performance, the DOE has provided a mechanism for continuing a contractual relationship with the successful contractor that performs at a level which meets or exceeds quality performance expectations as communicated to the contractor, in writing by the DOE CO. When deciding whether to exercise the option, the DOE CO will consider the quality of the contractor's performance under this master IDIQ contract, as well as the requirements specified at FAR 17.207-Exercise of Options.

## **F.5. PLACE OF PERFORMANCE**

Performance shall take place at the agency's facility unless otherwise specified on the TO.

## **F.6 DELIVERABLES AND SUBMITTALS**

**F.6.1 Agency Requirements** - The agency deliverables requirements will be specified in each TO. Attachment J-4 to this master IDIQ contract provides a sample of deliverables for TOs.

**F.6.2 DOE Requirements** - Unless otherwise specified, all deliverables will be distributed to the DOE electronically and accompanied by a transmittal cover letter identifying the project and a description of the deliverable. The minimum deliverables to be submitted to the DOE are as follows:

**A.** To the DOE master IDIQ Contract Specialist (identified in Section G)

1. Signed TO with all attachments
2. TO modifications with all attachments

**B.** To the DOE master IDIQ COR (identified in Section G)

1. Preliminary Assessment Report
2. Investment Grade Audit
3. Final Proposal
4. Post-installation M&V Report
5. Commissioning Report
6. Annual M&V Reports

[END OF SECTION]

## **SECTION G - CONTRACT ADMINISTRATION DATA**

### **G.1 MASTER INDEFINITE DELIVERY/INDEFINITE QUANTITY (IDIQ) CONTRACT ADMINISTRATION**

**G.1.1 Administration of IDIQ Contract** - Administration of this master IDIQ contract shall be accomplished by the DOE Golden Field Office. The following individuals in this office are responsible for that administration as follows:

- A. DOE Master IDIQ Contracting Officer (CO)** - The Contracting Officer for this contract is Daryl Berg, telephone no.: 303-275-4920; fax no.: 303-275-4830; e-mail: daryl.berg@go.doe.gov. The contractor shall use the DOE CS/CO as the focal point for all matters regarding this master IDIQ contract, except technical matters.
- B. DOE Master IDIQ Contracting Specialist (CS)** - The Contracting Specialist for this contract is Julia Trautman, telephone no.: 303-275-4883; fax no.: 303-275-4830; e-mail: julia.trautman@go.doe.gov. The contractor shall use the DOE CS/CO as the focal point for all matters regarding this master IDIQ contract, except technical matters.
- C. DOE Master IDIQ Contracting Officer Representative (COR)** - The COR for this contract is Greg Moore, telephone no.: 303-275-4947; fax no.: 303-275-6036; e-mail: greg.moore@go.doe.gov. The agency and the contractor shall use the DOE COR as the focal point for all technical related matters regarding this master IDIQ contract.

### **G.2 TASK ORDER ADMINISTRATION**

**G.2.1** Administration of task orders (TOs) issued against this master IDIQ contract shall be accomplished by the agency identified in the TO.

**G.2.2** TOs awarded against this master IDIQ contract are firm fixed price.

**G.2.3** Changes to meet design or performance requirements of the TO shall be at no additional cost to the agency, unless agreed to in advance by the agency.

**G.2.4** Changes in contractor cost due to agency changes to the TO requirements will be negotiated by the agency.

### **G.3 INVOICING INSTRUCTIONS**

The contractor shall submit invoices in accordance with the specific instructions provided in each TO issued against this master IDIQ contract. These instructions will vary by ordering agency, and will include invoice format, invoice contents and any required attachments or enclosures, submission and addressing instructions, etc. required by the TO.

#### **G.4 INVOICE SUBMITTAL AND PAYMENT SCHEDULE**

**G.4.1** Payments to the contractor will commence when acceptance by the agency is obtained as required under Section E.

**G.4.2** The frequency of payments, including any partial payments, from the agency to the contractor will be as negotiated and specified in the TO. Options of payment frequency include but are not limited to monthly, quarterly, annual in advance (preferably with debt service only in advance and post-acceptance performance period payments in arrears), or annual in arrears.

#### **G.5 PAYMENT TO THE GOVERNMENT FOR GUARANTEED ANNUAL SAVINGS SHORTFALL**

**G.5.1** If the contractor fails to meet the guaranteed annual savings at TO-1 (final) column (e) and as verified by the M&V documents, the agency shall adjust the payment schedule, as necessary, to recover the agency's overpayments in the previous year and to reflect the lower performance level into the current year.

**G.5.2** When the ECM performance level is restored, the agency will adjust the contractor payment schedule accordingly.

#### **G.6 TECHNICAL DIRECTION (DEAR 952.242-70)(DEC 2000)**

**NOTE: This Department of Energy Acquisition Regulation (DEAR) clause is applicable to DOE projects only. Technical direction for TOs issued by other agencies will be at the discretion of that agency's CO and will be incorporated into each TO.**

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

(1) Providing direction to the contractor that redirects contract effort, shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details, or otherwise serves to accomplish the contractual Statement of Work.

(2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.

(b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.

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

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

(d) All technical direction shall be issued in writing by the COR.

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

- (1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
- (2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or
- (3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

(f) A failure of the contractor and agency Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

(End of clause)

[END OF SECTION]



## **SECTION H - SPECIAL CONTRACT REQUIREMENTS**

### **H.1 REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS**

The Representations, Certifications, and Other Statements of Offeror, completed by the contractor and certified in the Online Representation and Certifications Application (ORCA) System, are hereby incorporated by reference.

### **H.2 TITLE TO, AND RESPONSIBILITY FOR, CONTRACTOR-INSTALLED EQUIPMENT**

Title to all equipment installed by the contractor shall be vested in the Government after acceptance by the Government, and shall not relieve the contractor's responsibility for Energy Conservation Measure (ECM) performance. Title may, however, be vested in the contractor or third party, as determined by the agency. The agency should evaluate the use of financial incentives, such as renewable energy and energy efficiency tax credits and/or other incentives, when deciding whether to allow vesting of title to the contractor or a third party.

### **H.3 PROCEDURES FOR AWARDING TASK ORDERS**

If the Government has awarded more than one master indefinite delivery/indefinite quantity (IDIQ) contract for the work specified in the statement of work (SOW) of this contract, the agency Contracting Officer (agency CO), as defined in Attachment J-2, will periodically issue task orders (TO) pursuant to the procedures set forth in paragraphs H.3.1 A and B below. The ordering procedures identified below will be used to select a contractor.

**Contractor Selection Procedures** - The agency CO must provide each contractor a fair opportunity to be considered for any TO award. In making such a selection, the agency CO has broad discretion within the framework established below in developing appropriate order placement procedures. A Federal agency may select a contractor that represents the best value to the agency using any of the following methods:

#### **H.3.1 Fair Opportunity Consideration Award Methods**

##### **A. Contractor Initiated Method**

1. A TO project may be proposed by a contractor rather than by a Federal agency. The contractor may contact an agency CO and request authorization to submit a proposal for an ESPC project. Upon approval of the authorization request by the agency CO, the contractor shall provide written notification of such approval to the DOE Master IDIQ Contracting Officer's Representative (COR), as identified in G.1.1.C., prior to

proceeding with the preparation of any contractor-initiated project proposal.

2. Upon receipt of a contractor proposal, which should include information contained in a Preliminary Assessment (PA) as specified in H.4, the agency CO shall publish a notice stating that the agency has received an unsolicited proposal for a TO through an ESPC and invite other awardees under this master IDIQ to submit competing proposals. Any competing proposals should also include PA information required by H.4.
3. If there are no responses to the notice, the agency CO may consider awarding a TO to the contractor. As part of this process, the CO should determine that the technical and price proposals are adequate, and may require an investment grade audit (IGA), if appropriate, before awarding the TO.
4. If there are responses to the notice, the agency CO should review the responses and determine whether, based on those responses, a TO should be awarded to the contractor, or whether it is in the best interests of the Government to issue a notice in the manner set forth under “Government Initiated Method,” below, regarding the proposed work.

**B. Government Initiated Method**

1. The agency CO shall provide each IDIQ awardee with a notice of the agency’s anticipated requirements. The notice, which may be published on a website identified by the agency CO, shall contain a clear statement of the agency’s objectives, i.e., maximizing the use of renewable energy and energy efficient technologies, including (if known) references to specific ECMs, and a description of the significant factors the agency will use to evaluate the contractor’s submissions, including their relative importance. If the agency intends to conduct an interview of the contractor, the notice should contain a description of the manner in which the interview will be conducted (i.e., by telephone, videoconference, or in person). The agency CO has broad discretion developing solicitation procedures and in the level of information provided to the contractors in soliciting offers. Government provided information can range from arranging for walk-through surveys of the facilities to a full site data package (or other reasonable methodology). Agency COs are encouraged to use streamlined procedures, including but not limited to oral presentations.
2. Although formal evaluation plans and scoring are not required when selecting a contractor for a fair opportunity consideration award under this method, and although the agency CO has broad discretion in the information the Government provides to the contractors, the agency CO

may consider past performance, related experience, technical capabilities, use of renewable technologies and the use of small business concerns for subcontracting work in making its selection decision. The agency CO must consider the price proposed in the final TO schedules (TO-1 (final), TO-2, TO-3, TO-4, and TO-5) prior to issuance of the TO.

3. Prior to submitting a proposal in response to the notice, the contractor shall provide written notification to the DOE Master IDIQ Contracting Officer's Representative (COR), as identified in G.1.1.C., of its intent to submit a proposal.
4. To avoid the significant expenses incurred by contractors in conducting an IGA, an agency CO may provide for a two-step selection process, making an initial contractor selection based, in part, on information specified in a PA as described in H.4, with TO award conditioned on confirmation through an IGA that the Total Annual Contractor Payments contained in TO-1 (final) are within a certain percentage (specified in the notice) of the estimated amount contained in the PA. Consequently, the agency CO may make a downselection and establish a competitive range of a single proposal, based on the initial submissions. At the point where the agency downselects to a single proposal, the agency CO shall prepare a written statement documenting the basis for the downselection.

**H.3.2 Exceptions to Fair Opportunity** – The CO will provide each awardee fair opportunity as defined in Section H.3.1, Fair Opportunity Consideration Award Methods, unless one of the following exceptions applies:

- A. The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays;
- B. Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;
- C. The order must be issued on a sole source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original TO; or
- D. It is necessary to place an order to satisfy a minimum guarantee.

**H.3.3 Additional Information**

- A. Any TO award is conditioned upon the selected contractor meeting the pre-award requirements as specified by this master IDIQ contract and by the ordering agency.
- B. In the event that the Government and the contractor fail to reach agreement on the terms and conditions of a TO under any of the ordering methods identified in this section, the Government may elect to issue a TO to another contractor for an ESPC project at the site in accordance with the ordering procedures above. Unless otherwise agreed to, the Government will not have rights to the contractor's work products, such as survey, data, feasibility study reports, and design documentation, if a TO is not issued.
- C. The agency CO may alter the requirements of the Preliminary Assessment (PA) specified in H.4 to streamline the ESPC project development process, as appropriate.
- D. The agency CO may insert additional Federal Acquisition Regulation (FAR) or agency clauses into the TO and provisions into the TO Request for Proposal (RFP), as appropriate.
- E. The ordering agency will address and be responsible for any protests filed regarding the award of a TO under a master IDIQ contract.

#### **H.4 PRELIMINARY ASSESSMENT CONTENT REQUIREMENTS FOR TASK ORDERS**

**H.4.1 Preliminary Assessment (PA)** - The contractor shall submit a PA to the Government, which sets out the merits, technical feasibility, level of projected energy savings, economics, and price of the project. The contractor shall prepare the PA after the PA kick-off meeting. A DOE-approved project facilitator (PF) is required for the utilization of this master IDIQ contract. The PF must be actively engaged prior to the PA kick-off meeting. The PF requirement shall not be waived by the ordering agency. Renewable energy technologies shall be considered along with other ECMs. The agency CO will respond to the contractor, in writing, indicating whether or not the project will be pursued. If pursued, the agency CO will issue a Notice of Intent to Award (NOI) followed by a TO RFP, which identifies the agency's requirements. The agency will not be liable for any costs associated with PA audits or preparation of the PA unless the project addressed by the PA later becomes a TO award.

**H.4.2 Contents** - At a minimum, the contractor shall include its PA technical and price assessments, in a format in accordance with agency requirements. It is recommended that the PA be approximately 20 pages, except in instances where the ESCO, or agency guidance, requires more pages to adequately address each of the requirements of this section. The contractor shall submit completed Schedule TO-1 (PA), TO-2, TO-3, and

TO-4, as well as documentation to support the entries on the form. The technical and price assessments shall be in accordance with the following requirements:

**A. Project Overview**

1. Executive Summary - As a minimum, a narrative description of the project summarizing the ECMs; the energy, water, and related cost savings; implementation price; financial summary; and results from the renewable energy assessment required by this section.
2. Site Information [Not required unless requested by agency.]

**B. Technical Assessment**

1. ECM description - For each ECM proposed, the contractor shall submit narrative information for items as applicable, in the format specified below:
  - a. ECM Title
  - b. ECM No. \_\_\_\_ and narrative description
  - c. Location(s) affected
  - d. Energy Baseline
  - e. ECM projected energy use and cost
  - f. ECM interface with agency equipment and detailed description of existing energy consuming equipment and systems.
  - g. Proposed equipment identification, including manufacturer, model number and optional equipment proposed for each ECM component.
  - h. Physical changes – List major physical changes to equipment or facilities required to install the proposed ECM, such as relocation or removal of equipment. Include manufacturer’s literature and specifications for each ECM component proposed.
  - i. Utility interruptions – Specify the extent of any utility interruptions needed for the installation of the proposed ECM.
  - j. Agency support required – Specify any agency support required during implementation of the ECM.
  - k. Describe potential environment impacts and National Environmental Policy Act (NEPA) compliance actions resulting from the installed ECM.
  - l. Utility rebate or system benefit fund financial and tax incentive - If applicable, specify ECM financial incentive(s) available, source, estimated payment amount, how and when payment or financing reduction will be applied and impact on project cash flow (e.g., ancillary payment before acceptance, reducing implementation price (TO-2) and tax-based financing amount), and proposed percentage of estimated financial incentive payment or financing

- reduction the contractor guarantees as submitted in Schedule TO-3 schedule.
- m. ECM project schedule – Provide a summary project schedule to include the duration of the following key phases:
    - i. Investment Grade Audit
    - ii. Engineering/design
    - iii. Equipment procurement/lead time (i.e., date required to acquire equipment and delivery on-site)
    - iv. Installation, commissioning, and post-installation M&V report
    - v. Project acceptance
2. ECM Performance Measurement - Per C.4.6 A, provide a general description of the M&V plan proposed for this project, referenced to the latest version of the FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects, or the International Performance Measurement and Verification Protocol (IPMVP).
3. Management Approach
- a. Organization - Show the organization for implementing and managing the TO project through the use of an organizational chart. The proposed organization shall contain the responsibilities of each element shown on the organization chart. Identify primary personnel by name in each element. Show the lines of authority within the organization. If portions of the project are to be subcontracted (e.g., design of an energy conservation system), identify the subcontracted function, and which element of the contractor's organization will manage the subcontract(s).
  - b. Risk, Responsibility and Performance Matrix - The contractor shall complete and submit a proposed Risk, Responsibility and Performance Matrix describing its proposed approach or method to address each area in the matrix. The format and content for the Risk, Responsibility and Performance Matrix is provided at Attachment J-7.
  - c. ECM Training - Provide a general description of the training that will be provided to agency personnel for each ECM. Approach should be customized depending on the level of operations and maintenance responsibility to be assumed by agency personnel.

## H.5 INVESTMENT GRADE AUDIT FOR TASK ORDERS

**H.5.1** Following issuance by the agency of the NOI, the selected contractor shall conduct an Investment Grade Audit (IGA) of facilities and energy systems at the project site to substantiate the contractor's ability to achieve the estimated total cost savings submitted in Schedule TO-4 and Schedule TO-1 (final), column (a).

**H.5.2** The IGA shall identify the relevant existing conditions of applicable agency facilities, including but not limited to:

- A.** Proposed IGA scope to include: facilities, systems and proposed ECMs.
- B.** Building physical condition, i.e., assumptions on current and proposed facility or energy system operating conditions
- C.** Hours of use or occupancy
- D.** Area of conditioned space
- E.** Inventory of energy-consuming equipment or systems
- F.** Energy-consuming equipment operating conditions and loads
- G.** Baseline weather (i.e., Cooling and Heating Degree Days)
- H.** Proposed construction and M&V schedule
- I.** Energy savings calculations using formulae and procedures based on accepted engineering principles, including synergistic effects of other ECMs
- J.** Cite references used for data, assumptions or empirical formulas

**H.5.3** For each ECM identified, the contractor shall provide a detailed analysis documenting the proposed annual energy or water savings performance of the ECM after installation, startup and testing.

**H.5.4** The contractor shall document the results of the IGA and provide the documentation to the agency in a format agreed to by the agency. For Government initiated projects, the documentation shall identify any existing conditions that vary from the agency's provided data. The IGA must include documentation for the proposed energy baseline. The contractor, PF and agency will meet to review the results and findings of the IGA. The meeting will conclude with a comparison of the total annual energy (by type) and water reduction and cost savings to current total site annual energy (by type) and water use and costs.

## **H.6 REQUIREMENTS FOR FINAL PROPOSAL AND FINAL PROPOSAL REVIEW FOR TASK ORDERS**

**H.6.1** The contractor shall submit a final proposal (FP), consisting of technical and price components, as well as an individual small business subcontracting plan for each task order, in electronic format, or as required in the TO RFP. Particular emphasis should be placed on assessment of renewable energy opportunities. Based on the results of the IGA, the contractor shall submit completed Schedules TO-1 (final), TO-2, TO-3, TO-4 and TO-5 (all in Attachment J-6), with supporting documentation as identified by the agency CO.

**H.6.2** Final proposals will be reviewed in accordance with the instructions set forth in the TO RFP. The agency will not be responsible for any costs incurred, such as proposal preparation costs or the costs incurred in conducting the IGA, unless a TO is awarded or authorized by the agency CO.

**H.6.3** The format requirements are:

**A. Project Overview**

1. Executive Summary - As a minimum, a narrative description of the project summarizing the ECMs, the energy, water, and related cost savings, implementation price and financial summary.
2. Site Description and Utility Summary - For the site, the contractor shall submit narrative information for items, as applicable, in the format specified below:
  - a. Site Description
    - i. Overview, size, location, etc.
    - ii. Description of mission/commands/agencies on the site, general operations, occupancy.
    - iii. Brief history of site (if use or operations have changed significantly).
    - iv. Map of site showing major areas/designations.
    - v. Building/facility list, name/designator/number, type of facility, square footage, hours.
    - vi. Background/discussion regarding rationale or directive on which areas of site included in this TO, etc.
    - vii. Facility descriptions (for those buildings included in the ESPC and/or large consumers, etc. Not all buildings may be included, depending on the nature of the site and the ESPC TO.). General description of building condition and operations including overview of energy (mechanical/electrical) and water systems. Central Plants and what buildings served.
    - viii. Statement of coordination with the site's Ten Year Plan.
  - b. Utility Summary
    - i. Overview/description of current utility systems on site: electrical, natural gas, fuel oils, water, sewer, etc. Include site diagrams/maps, as available.
    - ii. Description of metering systems for each utility.
      - Utility/revenue meters.
      - Sub-meters, advanced metering systems, as applicable.



- iii. Summary of historical utility analysis
  - Summary tables and graphs for each utility for defined usage period (in text of report) with supporting detailed information and analysis included in an appendix to the final proposal. As applicable, show information regarding sub-meters.
  - Reference to J-8.1.2 Table 2, as applicable.
  - Rate discussion with reference to J-8.2.2, as applicable, for details.

**B. Volume I - Technical Proposal**

- 1. ECM description - For each ECM proposed, the contractor shall submit narrative information for items as applicable, in the format specified below:
  - a. ECM Title
  - b. ECM No. \_\_\_\_ and narrative description
  - c. Location affected
  - d. Energy baseline
  - e. ECM projected energy use and cost
  - f. ECM Interface with agency equipment and detailed description of existing energy consuming equipment and systems
  - g. Proposed equipment identification including manufacturer, model number and optional equipment proposed for each ECM component.
  - h. Physical changes – List major physical changes to equipment or facilities required to install the proposed ECM such as relocation or removal of equipment. Include manufacturer’s literature and specifications for each ECM component proposed.
  - i. Utility interruptions – Specify the extent of any utility interruptions needed for the installation of the proposed ECM.
  - j. Agency support required – Specify any agency support required during implementation of the ECM.
  - k. Describe potential environment impacts and National Environmental Policy Act (NEPA) compliance actions resulting from the installed ECM.
  - l. Utility rebate or system benefit fund financial and tax incentive – If applicable, specify ECM financial incentive(s) available, source, estimated payment amount, how and when payment or financing reduction will be applied and impact on project cash flow (e.g., ancillary payment before acceptance, reducing implementation price (TO-2) and tax-based financing amount), and proposed percentage of estimated financial incentive payment or financing reduction the contractor guarantees as submitted in TO-3 schedule.

- m. ECM project schedule – Provide a detailed project schedule to include the duration of the following key phases:
  - i. Engineering/design
  - ii. Equipment procurement/lead time (i.e., date required to acquire equipment and delivery on-site)
  - iii. Installation, commissioning, and post-installation M&V report
  - iv. Project acceptance

2. ECM Performance Measurement

- a. The contractor shall prepare a severable portion of Volume I that describes a complete M&V plan. The M&V plan shall be completed using the template and outline provided in Attachment J-8. The M&V plan shall include an electronic version of the methods for calculating the ECM energy savings for the agency's review and approval.
- b. ECM Commissioning Approach – The contractor shall prepare a severable portion that describes the ECM Commissioning Approach for each of the proposed ECMs. (See Commissioning Guidance for DOE Super ESPCs, [http://www1.eere.energy.gov/femp/operations\\_maintenance/om\\_cc\\_guide.html](http://www1.eere.energy.gov/femp/operations_maintenance/om_cc_guide.html)) (This URL is current as of date of award and is subject to change without notice.)

3. Management Approach:

- a. Organization - Show the organization for implementing and managing the TO project through the use of an organizational chart. The proposed organization shall contain the responsibilities of each element shown on the organization chart. Identify personnel integral to the performance of the ESPC project, by name within each element. Show the lines of authority within the organization. If portions of the project are to be subcontracted (e.g., design of an energy conservation system), identify the subcontracted function, and which element of the contractor's organization will manage the subcontract(s).
- b. Risk, Responsibility and Performance Matrix - The contractor shall complete and submit a final Risk, Responsibility and Performance Matrix detailing its proposed approach or method to address each area in the matrix. Final proposal submission of this Risk, Responsibility and Performance Matrix should reflect revisions based on results of agency discussions and agreements

with the contractor on the Risk, Responsibility and Performance Matrix it submitted in the PA. The format and content for the Risk, Responsibility and Performance Matrix is provided at Attachment J-7.

- c. Operations, Maintenance, Repair, and Replacement - Show the organizational structure and describe the approach for performance of the proposed ECM operations, maintenance, and repair and replacement requirements, including at a minimum the ECM-specific preventative maintenance requirements and their frequency of performance. For each ECM, identify the organization(s) (agency or contractor/subcontractor) performing the operations and maintenance of contractor-installed equipment. Detail how duties or actions are shared or reference where this information is located. Identify reporting requirements of agency or contractor during the performance period. Responsibilities, performance, and risks of operations shall be briefly defined in the Risk, Responsibility and Performance Matrix.
- d. ECM Training - Describe in detail how training for each ECM will be provided for agency personnel. Approach should be customized depending on the level of operations and maintenance responsibility to be assumed by agency personnel.

**C. Volume II - Price Proposal** - The selected contractor shall complete Schedules TO-1 (final), TO-2, TO-3, TO-4 and TO-5 and shall provide supporting documentation, organized as follows:

- 1. Project-level expenses from project development through TO award (no ECM breakout required).
- 2. Pricing of implementation and construction phases, allocated by ECM.
- 3. Post-acceptance performance period expenses aligned with proposed TO-3 line item expenses.
- 4. In addition to the submission of TO schedules and supporting documents, the contractor shall provide a summary of the finance offer being proposed. At a minimum, the finance summary shall include the Investor Deal Summary (IDS), selected financier's Standard Finance Offer (SFO) and Selection Memorandum.

**D. Individual Small Business Subcontracting Plan** - The selected contractor shall prepare and submit an individual small business subcontracting plan for each task order in accordance with FAR 52.219-9.

## **H.7 REQUIREMENTS FOR COMPETITIVE FINANCING ACQUISITION FOR TASK ORDERS**

**H.7.1 Investor Deal Summary (IDS)** - After completion of the IGA and prior to submission of the final proposal, the contractor shall submit the IDS (Attachment J-11), along with the contractor's point of contact, electronically in Microsoft Word format, to the agency CO for review, or as otherwise directed by the agency CO.

### **H.7.2 Competitive Financing Offers Based on Investor Deal Summary (IDS) and Standard Financing Offers (SFO)**

- A.** The contractor shall solicit and select financing offers through a competitive selection process. This process must incorporate the final IDS and require the financing offers to be in the form of the SFO as set out in Attachment J-12 to this master IDIQ contract. Once this process is completed and a selection is made, the contractor shall prepare a Selection Memorandum describing the selection process including the number of offers solicited and received, the rationale for selecting the financier, and the reasons why the selection is the best value for the Government. This process may be subject to audit by the agency.
- B.** The contractor shall certify to the agency that the contents of the Selection Memorandum are true and correct and in accord with best business practice.
- C.** The contractor shall submit the IDS, SFO, Selection Memorandum and certification with its final price proposal to the agency CO.

## **H.8 PAYMENT AND PERFORMANCE BOND REQUIREMENTS FOR TASK ORDERS**

**H.8.1** Unless otherwise specified by the agency, the selected contractor shall furnish acceptable evidence of a surety's commitment to provide performance and payment bonds to the agency prior to award of the TO.

**H.8.2** The contractor shall submit standard bond forms, SF25 and SF25A, or other agency-required documentation, as described below.

- A.** Within 30 days of award of the TO or acceptance of the Design and Construction Package, whichever is later, the contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the agency. Unless specified otherwise in the TO, the performance bond shall be in a penal sum equal to 100 percent of the total bonded amount for all ECMs cited in Schedule TO-2. The contractor shall furnish a payment bond (SF 25A) in duplicate. The payment bond shall be in a penal sum equal as follows:  
From Schedule TO-2 Payment Bond Penal Sum  
\$0 - \$999,999: 50% of Schedule TO-2 Bonded Amount

\$1 - \$5 million: 40% of Schedule TO-2 Bonded Amount  
>\$5 million: \$2.5 million of Schedule TO-2 Bonded Amount

- B.** Unless otherwise specified by the agency, the performance and payment bonds shall remain in effect during the total implementation period for all ECMs. The ECM implementation period shall include all time required for installation, testing, measuring initial performance, and agency acceptance of all installed ECMs. The performance bond shall be released upon agency acceptance of all contractor-installed ECMs. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full.
- C.** The contractor shall not file any mechanics liens against the agency for the TO projects and this requirement shall flow down to all subcontractors. Therefore, the payment bond shall secure the contractor's obligations for payment of laborers, suppliers, and all subcontractors.

## **H.9 PROTECTION OF FINANCIER'S INTEREST FOR TASK ORDERS**

The agency recognizes that project financing associated with contractor performance of TOs issued against this master IDIQ contract may be accomplished using third-party financing, and as such, will permit the financing source to establish a security interest in the installed ECM, subject to, and subordinate to, the rights of the agency. To provide protection of any financier's interest, the contractor may be required to assign to its lenders some or all of its rights under a TO. The agency will consider:

**H.9.1** Requests for assignments of monies due or to become due under a TO, provided the assignment complies with the Assignment of Claims Act.

**H.9.2** Requests for the agency to provide financiers copies of any cure or show-cause notice issued to the contractor.

**H.9.3** Requests by financier or secured interest holders for extension of response time to cure or show-cause notices.

## **H.10 REQUIRED INSURANCE FOR TASK ORDERS**

**H.10.1** The contractor shall procure, at its expense, and maintain during the entire period of performance under this master IDIQ contract, and the TOs awarded to the contractor against it, the following minimum insurance coverage:

- A.** Comprehensive general liability: \$500,000 per occurrence.
- B.** Automobile liability: \$200,000 per person, \$500,000 per occurrence, \$20,000 per occurrence for property damage.
- C.** Workman's compensation: as required by Federal and State workers' compensation and occupational disease statutes.

- D.** Employer's liability coverage: \$100,000, except in States where workers' compensation may not be written by private carriers.
- E.** Other insurance as required by State law.

**H.10.2** Specific TOs may require less, additional, or different insurance coverage, which will be specified in the TOs. If different insurance coverage is specified as required for a specific TO project, the contractor shall maintain, at its own expense for the TO term, the revised insurance coverage, in accordance with the following:

- A.** Prior to commencement of work, the contractor shall furnish to the agency CO, a copy of the insurance policy endorsement. The policies evidencing required insurance coverage shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the agency in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which the TO is to be performed, and in no event less than thirty (30) days after written notice thereof to the agency CO.
- B.** The contractor agrees to insert the substance of this clause in all subcontracts hereunder.
- C.** Nothing herein shall relieve or limit the contractor of liability for losses and damages to person or property as a result of its operations. The contractor shall indemnify and hold the Government (including the ordering agency, DOE, and any person acting on behalf of the Government) harmless from any and all liability, including attorneys' fees and legal costs, associated with or resulting from the contractor's operations under this master IDIQ contract or any TO issued hereunder.

[END OF SECTION]

## PART II - CONTRACT CLAUSES

### SECTION I - CONTRACT CLAUSES

#### I.1 CLAUSES INCORPORATED BY REFERENCE (FAR 52.252-2)(FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulation (FAR) (clauses starting with 52): <http://www.arnet.gov/far/>

Department of Energy Acquisition Regulation (DEAR) (clauses starting with 952):

<http://professionals.pr.doe.gov/>

#### I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

CLAUSE NUMBER	DATE	TITLE
52.202-1	JUL 2004	DEFINITIONS[(substitute: (a) <i>Head of Agency</i> means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy and (iv) the Chairman, Federal Energy Regulatory Commission.) (add: (h) The term <i>DOE</i> means the Department of Energy, <i>FERC</i> means the Federal Energy Regulatory Commission, and <i>NNSA</i> means the National Nuclear Security Administration. (i) The term <i>Senior Procurement Executive</i> means, for DOE: Department of Energy – Director, Office of Procurement and Assistance Management, DOE; National Nuclear Security Administration – Administrator for Nuclear Security, NNSA; and Federal Energy Regulatory Commission – Chairman, FERC.]
52.203-3	APR 1984	GRATUITIES
52.203-5	APR 1984	COVENANT AGAINST CONTINGENT FEES
52.203-6	SEP 2006	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	JUL 1995	ANTI-KICKBACK PROCEDURES
52.203-8	JAN 1997	CANCELLATION, RESCISSION AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-10	JAN 1997	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	SEP 2005	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
52.204-2	AUG 1996	SECURITY REQUIREMENTS
52.204-4	AUG 2000	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER
52.204-7	JUL 2006	CENTRAL CONTRACTOR REGISTRATION

52.204-9	NOV 2006	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL
52.209-6	SEP 2006	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.217-2	OCT 1997	CANCELLATION UNDER MULTI-YEAR CONTRACTS
52.217-8	NOV 1999	OPTION TO EXTEND SERVICES (insert 30 days)
52.217-9	MAR 2000	OPTION TO EXTEND THE TERM OF THE CONTRACT (insert 30 days, 60 days, 11 years and 6 months)
52.219-8	MAY 2004	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-9	APR 2008	SMALL BUSINESS SUBCONTRACTING PLAN
(ALTERNATE		
	II)(OCT 2001)	
52.219-16	JAN 1999	LIQUIDATED DAMAGES - SUBCONTRACTING PLAN
52.222-1	FEB 1997	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
52.222-3	JUN 2003	CONVICT LABOR
52.222-4	JUL 2005	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION
52.222-6	JUL 2005	DAVIS-BACON ACT
52.222-7	FEB 1988	WITHHOLDING OF FUNDS
52.222-8	FEB 1988	PAYROLLS AND BASIC RECORDS
52.222-9	JUL 2005	APPRENTICES AND TRAINEES
52.222-10	FEB 1988	COMPLIANCE WITH COPELAND ACT REQUIREMENTS
52.222-11	JUL 2005	SUBCONTRACTS (LABOR STANDARDS)
52.222-12	FEB 1988	CONTRACT TERMINATION - DEBARMENT
52.222-13	FEB 1988	COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS
52.222-14	FEB 1988	DISPUTES CONCERNING LABOR STANDARDS
52.222-15	FEB 1988	CERTIFICATION OF ELIGIBILITY
52.222-21	FEB 1999	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	MAR 2007	EQUAL OPPORTUNITY
52.222-27	FEB 1999	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION
52.222-35	SEP 2006	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-36	JUN 1998	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-37	SEP 2006	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-41	JUL 2005	SERVICE CONTRACT ACT OF 1965, AS AMENDED
52.222-43	NOV 2006	FAIR LABOR STANDARDS ACT AND SERVICE ACT -



		PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)
52.222-49	MAY 1989	SERVICE CONTRACT ACT – PLACE OF PERFORMANCE UNKNOWN
52.222-50	AUG 2007	COMBATING TRAFFICKING IN PERSONS
52.223-5	AUG 2003	POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (ALTERNATE II)(AUG 2003)
52.223-6	MAY 2001	DRUG-FREE WORKPLACE
52.223-10	AUG 2000	WASTE REDUCTION PROGRAM
52.223-14	AUG 2003	TOXIC CHEMICAL RELEASE REPORTING
52.225-1	JUN 2003	BUY AMERICAN ACT - SUPPLIES
52.225-5	AUG 2007	TRADE AGREEMENTS
52.225-13	FEB 2006	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.227-1	JUL 1995	AUTHORIZATION AND CONSENT
52.227-2	AUG 1996	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.227-3	APR 1984	PATENT INDEMNITY
52.227-4	APR 1984	PATENT INDEMNITY – CONSTRUCTION CONTRACTS
52.228-2	OCT 1997	ADDITIONAL BOND SECURITY
52.228-5	JAN 1997	INSURANCE – WORK ON A GOVERNMENT INSTALLATION
52.228-15	NOV 2006	PERFORMANCE AND PAYMENT BONDS - CONSTRUCTION
52.229-3	APR 2003	FEDERAL, STATE, AND LOCAL TAXES
52.232-1	APR 1984	PAYMENTS
52.232-8	FEB 2002	DISCOUNTS FOR PROMPT PAYMENT
52.232-11	APR 1984	EXTRAS
52.232-17	JUN 1996	INTEREST
52.232-18	APR 1984	AVAILABILITY OF FUNDS
52.232-23	JAN 1986	ASSIGNMENT OF CLAIMS
52.232-25	OCT 2003	PROMPT PAYMENT
52.232-33	OCT 2003	PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION
52.233-1	JUL 2002	DISPUTES (ALTERNATE I)(DEC 1991)
52.233-3	AUG 1996	PROTEST AFTER AWARD (ALTERNATE I)(JUN 1985)
52.233-4	OCT 2004	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM
52.236-2	APR 1984	DIFFERING SITE CONDITIONS
52.236-3	APR 1984	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK
52.236-5	APR 1984	MATERIAL AND WORKMANSHIP
52.236-6	APR 1984	SUPERINTENDENCE BY THE CONTRACTOR
52.236-7	NOV 1991	PERMITS AND RESPONSIBILITIES
52.236-8	APR 1984	OTHER CONTRACTS
52.236-9	APR 1984	PROTECTION OF GOVERNMENT BUILDINGS,

		EQUIPMENT AND VEGETATION
52.236-10	APR 1984	OPERATIONS AND STORAGE AREAS
52.236-11	APR 1984	USE AND POSSESSION PRIOR TO COMPLETION
52.236-12	APR 1984	CLEANING UP
52.236-13	NOV 1991	ACCIDENT PREVENTION
52.236-14	APR 1984	AVAILABILITY AND USE OF UTILITY SERVICES
52.236-15	APR 1984	SCHEDULES FOR CONSTRUCTION CONTRACTS
52.236-21	FEB 1997	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION
52.242-13	JUL 1995	BANKRUPTCY
52.243-1	AUG 1987	CHANGES-FIXED PRICE (ALTERNATE II)(APR 1984)
52.244-5	DEC 1996	COMPETITION IN SUBCONTRACTING
52.245-1	JUN 2007	GOVERNMENT PROPERTY
52.245-2	JUN 2007	GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (as modified by DEAR 952.245- 2, add: "and the DOE Acquisition Regulation Subpart 945.5," after the reference to FAR Subpart 45.5 in the first sentence of paragraphs (e)(1) and (e)(2) of the clause)
52.245-9	JUN 2007	USE AND CHARGES
52.246-17	JUN 2003	WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE
52.246-19	MAY 2001	WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA
52.246-20	MAY 2001	WARRANTY OF SERVICES
52.246-21	MAR 1994	WARRANTY OF CONSTRUCTION
52.246-23	FEB 1997	LIMITATION OF LIABILITY
52.246-24	FEB 1997	LIMITATION OF LIABILITY - HIGH-VALUE ITEMS (ALTERNATE I)(APR 1984) **NOTE: to be incorporated in task order.
52.246-25	FEB 1997	LIMITATION OF LIABILITY - SERVICES
52.249-2	MAY 2004	TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)
52.249-8	APR 1984	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)
52.249-10	APR 1984	DEFAULT (FIXED-PRICE CONSTRUCTION)
52.251-1	APR 1984	GOVERNMENT SUPPLY SOURCES
52.253-1	JAN 1991	COMPUTER GENERATED FORMS

## II. DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR)

CLAUSE NUMBER	DATE	TITLE
952.203-70	DEC 2000	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES
952.204-2	MAY 2002	SECURITY
952.204-70	SEP 1997	CLASSIFICATION/DECLASSIFICATION
952.204-75	DEC 2000	PUBLIC AFFAIRS
970.5223-1	DEC 2000	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION

**I.2 ORDERING (FAR 52.216-18)(OCT 1995)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by authorized individuals of Federal agencies. Such orders may be issued from December 17, 2008 through December 16, 2019.

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

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

**I.3 ORDERING LIMITATIONS (FAR 52.216-19)(OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$30,000, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

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

(1) Any order for a single item in excess of \$200,000,000 ;

(2) Any order for a combination of items in excess of \$200,000,000 ; or

(3) A series of orders from the same ordering office within 90 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not

required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 30 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

#### **I.4 INDEFINITE QUANTITY (FAR 52.216-22)(OCT 1995)**

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

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

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

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract in excess of 25 years after award of the task order.

(End of clause)

#### **I.5 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (FAR 52.222-39)(DEC 2004)**

(a) *Definition.* As used in this clause—

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

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily

posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

### Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board  
Division of Information  
1099 14th Street, N.W.  
Washington, DC 20570  
1-866-667-6572  
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>.

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to—

- (1) Contractors and subcontractors that employ fewer than 15 persons;
- (2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that—

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall—

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

## **I.6 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (FAR 52.222-42)(MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to

each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: It is not a Wage Determination

Employee Class	Monetary Wage--Fringe Benefits
General Clerk II	GS-2 \$11.27
General Clerk III	GS-3 \$12.71
Secretary I	GS-4 \$14.26
Computer Operator I	GS-4 \$14.26
Computer Operator II	GS-5 \$15.96
Engineering Technician I	GS-3 \$12.71
Engineering Technician II	GS-4 \$14.26
Engineering Technician III	GS-5 \$15.96
Engineering Technician IV	GS-7 \$19.77

(End of clause)

**I.7 BUY AMERICAN ACT—CONSTRUCTION MATERIALS (FAR 52.225-9)  
(JAN 2005)**

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

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

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

(b) Domestic preference.

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

[none]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.



(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
 <i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[Include other applicable supporting information.]*

*[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

(End of clause)

**I.8 BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FAR 52.225-11)(AUG 2007)**

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

“Caribbean Basin country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However,

emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

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

“WTO GPA country construction material” means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements the Buy American Act ([41 U.S.C. 10a-10d](#)) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

none

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

<b>Construction Material Description</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Price (Dollars)*</b>
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

(End of clause)

**I.9 RIGHTS IN DATA--GENERAL (FAR 52.227-14)(JUN 1987)(AS MODIFIED BY DEAR 952.227-14 - DOE coverage-alternates VI and VII)**

(a) *Definitions*. “Computer software,” as used in this clause, means computer programs, computer data bases, and documentation thereof.

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

“Form, fit, and function data,” as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

“Limited rights,” as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(2) if included in this clause.

“Limited rights data,” as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

“Restricted computer software,” as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

“Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data,” as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

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

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

- (i) Data first produced in the performance of this contract;
- (ii) Form, fit, and function data delivered under this contract;
- (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause.

(c) Copyright—

(1) *Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than

computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; *provided*, however, that if such data are computer software the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

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

(d) Release, publication and use of data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

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

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider

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

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

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

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

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

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

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

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

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

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a



condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) [Reserved]

(3) [Reserved]

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

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

(End of clause)

Alternate VI (Feb 1998)

As prescribed at 48 CFR 927.404(l) insert Alternate VI to require the contractor to license data regarded as limited rights data or restricted computer software to the Government and third parties at reasonable royalties upon request by the Department of Energy.

(k) Contractor Licensing. Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted computer software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(End of alternate)

Alternate VII (Feb 1998)

As prescribed in 48 CFR 927.404(m) make the change described in Alternate VII to limit the contractor's use of DOE restricted data.

Insert the parenthetical phrase " (except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)." after the phrase "data first produced or specifically used by the Contractor in the performance of this contract" in paragraph (b)(2)(i) of the clause at FAR 52.227-14.

(End of alternate)

(End of clause)

**L10 ENERGY POLICY ACT SUBCONTRACTING GOALS AND REPORTING REQUIREMENTS (DEAR 952.226-72) (JUN 1996)**

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

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

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

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

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

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

(b) Goals. The contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities:

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: 20 percent;

(2) Historically Black colleges and universities: 20 percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: 20 percent.

[These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

(c) Reporting requirements. (1) The contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those

payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the contracting officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Subcontracting Plan, the contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

[END OF SECTION]

**PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS****SECTION J - LIST OF ATTACHMENTS**

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## ATTACHMENT J-1

### ACRONYM LIST

AFV	Alternative Fueled Vehicle
AIA	American Institute of Architects
ANSI	American National Standards Institute
ARI	Air Conditioning and Refrigeration Institute
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
BAS	Building Automation System
CFM	Cubic feet per minute
CFR	Code of Federal Regulations
CO	Contracting Officer
COR	Contracting Officer's Representative
DEAR	Department of Energy Acquisition Regulation
DOE	Department of Energy
ECM	Energy Conservation Measure
EMCS	Energy Monitoring/Management Control System
ESCO	Energy Services Company
ESPC	Energy Savings Performance Contract
FAR	Federal Acquisition Regulation
FEMP	Federal Energy Management Program
FOCI	Foreign Ownership, Control and Influence
FP	Final Proposal
FPP	Financing Procurement Price
HVAC	Heating, Ventilating and Air-conditioning
IDIQ	Indefinite Delivery/Indefinite Quantity
IDS	Investor Deal Summary
IESNA	Illuminating Engineering Society of North America
IGA	Investment Grade Audit
IPMVP	International Performance Measurement and Verification Protocol
M&V	Measurement and Verification
MACRS	Modified Accelerated Cost Recovery System
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NOI	Notice of Intent (to award task order)
O&M	Operations and Maintenance
ORCA	Online Representations and Certifications Application
OSHA	Occupational Safety and Health Administration
PA	Preliminary Assessment
PCB	Poly-chlorinated Biphenyl

PE	Professional Engineer
PF	Project Facilitator
REC	Renewable Energy Credit
RFP	Request for Proposals
SF	Standard Form
SFO	Standard Financing Offer
SOW	Statement of Work
TC	Technology Category
TO	Task Order
TRC	Tradable Renewable Certificates
UBC	Uniform Building Code
UL	Underwriters Laboratory
UPC	Uniform Plumbing Code

## ATTACHMENT J-2

### DEFINITIONS OF APPLICABLE TERMS

**Added Premium** - The added premium is the number of basis points (basis point=1/100 of a percentage point) that, when added to the index rate for a task order project, equals the total Project Interest Rate (a fixed annual percentage). The entity providing the capital to finance a project, which may be the contractor or a third party, can recover financing expenses either in the added premium or as a separate Financing Procurement Price. In most cases, contractors use project financing capital from third party financiers, and the added premium is a pass-through expense from the third party financier. In such cases, the contractor may recover the cost of arranging third-party financing through the Financing Procurement Price in Schedule TO-3.

**Adjusted Energy Baseline** - An energy baseline that has been adjusted to compensate for factors that would have changed energy consumption in the absence of any energy conservation measures (i.e., factors affecting baseline energy use beyond the contractor's control). Examples of such factors include increases or decreases in conditioned or illuminated space, changes in occupancy or building use, facility renovation, or extremes in weather.

**Annual Energy Audit** - The term annual energy audit means a procedure including, but not limited to, verification of the achievement of guaranteed energy, water, and related cost savings and energy unit savings, resulting from implementation of energy conservation measures and a determination of whether an adjustment to the energy baseline is justified by conditions beyond the contractor's control. (Also known as Annual Measurement and Verification.)

**Annual Measurement and Verification (M&V)** - See Annual Energy Audit and Section C.4

**Applicable Financial Index** - The financial index upon which the index rate, the first component of the project interest rate, is based. This term, as used in the contract, applies to any financial index that is available and usable as a basis or floor. This index may be any acceptable market index in effect at the time of a task order award for which it is proposed, to include U.S. Government Treasury, Swap Rate, etc.

**Commissioning** – Procedures undertaken, generally by the contractor, to assure that energy conservation measures and building systems perform interactively in accordance with design documentation and intent. See “FEMPs Commissioning Guide for ESPCs” at [http://www1.eere.energy.gov/femp/pdfs/comm\\_guide\\_espc.pdf](http://www1.eere.energy.gov/femp/pdfs/comm_guide_espc.pdf).

**Construction Finance Charges** - The contractor's costs of financing the price of construction or energy conservation measure installation. A contractor may not require construction financing for a specific task order. If a contractor does not require construction financing for a specific task order, this cost element would be zero. This cost element should be included in Financing Procurement Price on Schedule TO-3 (not as a direct cost or implementation expense).

**Contracting Officer (CO) and Contracting Officer's Representative (COR)** - The following four definitions are provided to distinguish among the DOE and agency CO and COR:

**Agency Contracting Officer** refers to the ordering agency CO, responsible for award and administration of task orders (TOs) against the master indefinite delivery/indefinite quantity (IDIQ) contracts.

**Agency Contracting Officer's Representative** refers to the ordering agency COR, responsible for technical direction and administration of the TOs issued against the IDIQ contracts.

**DOE Contracting Officer** refers to the DOE CO responsible for the administration of the master IDIQ contracts.

**DOE Contracting Officer's Representative** refers to the DOE COR, responsible for providing technical direction and administration of the master IDIQ contracts.

**Direct Costs** - Any allowable cost that can be specifically identified to a particular final cost objective.

**Energy Baseline** - The amount of energy that would have been consumed annually without implementation of energy conservation measures based on historical metered data, engineering calculations, sub-metering of buildings or energy consuming systems, building load simulation models, statistical regression analysis, or some combination of these methods.

**Energy Conservation Measure (ECM)** - A measure applied to a Federal building or facility that improves energy efficiency, is life cycle cost effective under 10 CFR Part 436, Subpart A, and involves energy conservation, cogeneration facilities, renewable energy sources, improvements in operation and maintenance efficiencies, or retrofit activities. The term ECM includes renewable energy systems and other measures that result in energy, water, or related cost savings. For purposes of this definition, "improves energy efficiency" is not limited to a more efficient conversion of energy; rather when renewable energy is substituted for conventional energy fuels, resulting in the Government's reduced usage of conventional energy sources, such a substitution constitutes "improved energy efficiency."

**Energy Cost Savings** - A reduction in the cost of energy, water, and related operation and maintenance expenses from a base cost established through a methodology set forth in an energy savings performance contract (ESPC), utilized in Federal buildings or facilities as a result of: (1) installation of energy conservation measure(s); (2) the lease or purchase of operating equipment, improvements, altered operations and maintenance, or technical services; or (3) the increased efficient use of existing energy sources by cogeneration or heat recovery. Energy cost savings are generally recurring savings - savings that occur year after year; however, one-time energy cost savings may come from energy savings in excess of guaranteed savings, either during the post-acceptance performance period or during the implementation period.



**Energy-Related Cost Savings** - Energy-related cost savings are generally recurring reductions in expenses (other than energy costs) related to energy-consuming equipment, generally affecting operations, maintenance, renewal, or repair expenses of equipment. One-time energy-related cost savings can result from avoided expenditures of operations and maintenance, repair and replacement, or capital expenditures funds for projects (e.g., equipment replacement) that, because of the energy savings performance contract project, will not be necessary.

**Escalation Rate** - The escalation rate is the rate of change in price for a particular good or service (as contrasted with the inflation rate, which is for all goods and services).

**Estimated Energy Cost Savings** - Estimated energy cost savings are the contractor-estimated energy cost savings in dollars per year for each energy conservation measure (ECM), and equal the estimated energy savings multiplied by the established energy prices in appropriate units. For ECMs with multiple energy type impacts, energy cost savings equals the sum of the products of the energy savings by energy type and established energy prices. The established energy prices are based on the energy tariffs or rate schedules in affect at the time the project is being developed. Since energy cost savings occur each year after ECMs are implemented, they are a recurring cost savings. Estimated energy cost savings by ECM are entered into Schedule TO-4, column (e).

**Final Proposal** - The final proposal is the response to a request for proposals that includes a project overview, technical and price components.

**Financing Procurement Price** - The financing procurement price is the price offered by the contractor for the service of arranging the project financing, obtaining any required payment and performance bonds, and providing construction phase financing.

**Government-Initiated Project** - A project initiated by a Federal agency's release of a task order request for proposals to the master indefinite delivery/indefinite quantity contractor awardee(s) and accepted by the Department of Energy and the applicable agency.

**Guaranteed Annual Cost Savings** - The guaranteed annual cost savings are the levels of annual cost savings the contractor is willing to guarantee for a task order (TO) project. The proposed values for these savings appear in Schedule TO-1 (PA), column (b). After the IGA, the contractor revises the preliminary assessment and offers the final values in Schedule TO-1 (final), column (b). The guaranteed annual cost savings must exceed the annual contractor payments (Schedule TO-1 (final), column (c)) in each year of the TO post-acceptance performance period. For the first interval (generally 12 months) after Government acceptance of construction, the contractor is paid as if the savings guarantee is being met. The annual energy audit establishes actual savings. If actual savings fall short of the guarantee, the contractor will pay back the shortfall over the next interval by accepting lower payments.

**Implementation Expense** - Implementation expenses are the sum of the direct and indirect costs of all tasks required to install energy conservation measures. Implementation expenses shall not include financing costs, profit or any expenses incurred during the performance period.

**Implementation Period** - The implementation period is the period between the date of task order (TO) award to the date that all energy conservation measures (ECMs) are operational and accepted by the Government. If additional ECMs are added to the TO by modification, the implementation period for such additional ECMs shall be from date of TO modification incorporating the additional ECMs to the date all additional ECMs are operational and accepted by the Government.

**Implementation Profit** - Implementation profit is applied to total direct and indirect expenses for project development and all energy conservation measures in Schedule TO-2.

**Implementation Price** - Implementation price submitted in Schedule TO-2 is comprised of: the sum of project development and all proposed energy conservation measures direct expenses; indirect expense applied to sum of direct expenses, and profit applied to the sum of total project direct and indirect expenses.

**Indefinite Delivery/Indefinite Quantity (IDIQ) Contract** - A contract for property or services that does not procure or specify a firm quantity of property or services (other than a minimum and possibly a maximum quantity) and that provides for the issuance of task orders for the delivery of the property and services during the specified ordering period of the contract.

**Index Rate** - The index rate is the interest rate for the financing period of a specific task order (TO) project, based on the contractor's proposed applicable financial index. The added premium negotiated for a TO project is added to this figure.

**Indirect Cost** - Any allowable cost not directly identified with a single, final cost objective, but can be identified to two or more cost objectives or the company as a whole

**Investment Grade Audit (IGA)** - A procedure which may include, but is not limited to, a detailed analysis of the energy cost savings and energy unit savings potential, building conditions, energy consumption, and hours of use or occupancy for a facility, for the purpose of preparing final technical and price proposals.

**Measurement and Verification (M&V)** - The process of measuring and verifying energy, water and related cost savings.

**Notice of Intent to Award (NOI)** - A written notice issued by the agency to notify the contractor that the agency intends to award a task order for an energy savings performance contract project.

**Post-Acceptance Performance Period** - The period (typically in years) from the date a task order (TO) project is operational and accepted by the Government, to the end of the TO's contract term. The post-acceptance performance period may also be referred to herein as the service period.

**Post-Acceptance Performance Period Annual (or Regular Interval) M&V** - At least annually, the contractor and the Federal agency shall verify that the installed equipment/systems

have been properly maintained, continue to operate correctly, and continue to have the potential to generate the predicted savings. This ensures that the M&V monitoring and reporting systems are working properly, and it allows fine-tuning of measures throughout the year based on operational feedback.

**Post-Acceptance Performance Period Expenses** - Direct costs (without contractor mark-ups) of all tasks required to maintain energy savings performance after Government acceptance of installed energy conservation measures shall be shown on Schedule TO-3, and shall not include any indirect costs, financing costs, profit nor any expenses incurred during the implementation period.

**Post-Acceptance Performance Period Indirect Cost Applied** - Includes overhead, general and administrative expenses, other indirect cost elements associated with tasks required to manage and maintain energy savings performance after Government acceptance of installed energy conservation measures. This shall not include any costs incurred during the implementation period.

**Post-Acceptance Performance Period Profit** – The means by which the contractor obtains profit during the post-acceptance performance period. The post-acceptance performance period profit shall not include any direct or indirect costs or financing costs. The profit amount is negotiable for task orders.

**Post-Installation Measurement and Verification Activities** - Post-installation measurement and verification is to ensure that the proper equipment/systems have been installed, are operating correctly and have the potential to generate the predicted savings. Verification methods may include surveys, inspections, and spot or short-term metering. Commissioning of installed equipment and systems is expected. Commissioning assures that the building systems perform interactively in accordance with the design documentation and intent. Commissioning is generally completed by the contractor. In some cases, however, it is contracted out by the Federal agency.

**Preliminary Assessment (PA)** - A procedure which may include, but is not limited to, an evaluation of energy cost savings and energy unit savings potential, building conditions, energy consuming equipment, and hours of use or occupancy, for the purpose of developing preliminary technical and price proposals prior to issuance of a notice of intent to award a task order project in accordance with the master indefinite delivery/indefinite quantity contract procedures.

**Project Development** - Includes all work activities that occur after the agency issues a notice of intent to award task order. Work activities may include all direct costs associated with the development of an IGA, including but not limited to site visits and inspections, meetings, calculations, project costing, baselines and measurement and verification development.

**Project Square Footage** - Project square footage is the total square footage of a building in which ECMs are installed by a contractor, or of buildings where energy usage and sources are affected by installed ECMs. Project square footage for affected buildings shall be submitted in Schedule TO-4.

**Project Interest Rate** - The project interest rate is the sum of the index rate and added premium for a specific task order project.

**Recurring Energy-Related Cost Savings** - Recurring energy-related cost savings are ongoing or annually recurring reductions in energy-related expenses that are budgeted and allocated annually, such as lowered costs for ongoing maintenance, operations and repair. These must be actual savings, i.e., there must be an associated reduction in money that the Government was currently spending or planning to spend. Operations, maintenance, and repair costs for tasks currently being performed by the Government or by a contractor hired by the Government are energy-related cost savings if the energy savings performance contract (ESPC) contractor assumes the task, reduces the task, or eliminates the task. The Government will determine whether an ESPC contractor-proposed task assumption, reduction, or elimination will be considered recurring energy-related cost savings.

**Renewable Energy Credits (RECs) - also known as Tradable Renewable Certificates (TRCs) or Green Tags<sup>TM</sup>** - A market mechanism that represents the environmental benefits associated with generating electricity from renewable energy sources. Rather than functioning as a tax on pollution-causing electricity generators, as traditional carbon emissions trading programs do, RECs function as a nongovernmental subsidy on pollution-free electricity generators.

**Responsible Prospective Contractor** - A contractor that meets the standards in FAR 9.104. An award can only be made to contractors that are determined to be responsible.

**Service Period** – See Post-Acceptance Performance Period.

**Task Order (TO)** - The obligating document that provides the details and requirements for the order of an energy savings performance contract project, placed against an established master indefinite delivery/indefinite quantity contract.

**Task Order Project** - The complete package of energy conservation measures (ECMs) included in a task order for a building, facility or agency. Investment and project financing is provided by the contractor to implement an ECM Project, which includes aggregation or bundling of individual ECMs, resulting in energy, water, and related cost savings to the facility.

**Task Order Request for Proposal (TO RFP)** - A document prepared by the ordering agency to communicate the agency's requirements to the contractor and to solicit proposals. The document will incorporate all agency, site, and project specific standards procedures, functional requirements, terms, and conditions (not already addressed in the master indefinite delivery/indefinite quantity contract).

**Task Order Term** - The term of a task order (TO) contract issued against this master indefinite delivery/indefinite quantity contract is defined as the sum of the implementation and performance periods negotiated and identified in Schedule TO-1 (final). The maximum TO term is 25 years from TO award.

**Technology Category (TC)** - Energy conservation measures (ECMs) shall be categorized based on the type of system and equipment involved in the project. The TCs are indicated in Attachment J-3. The miscellaneous category shall be used for applications where the ECMs are not identified by the other categories.

**Total Post-Acceptance Performance Period Expenses** - The sum of all expenses incurred during the post-acceptance performance period. Total post-acceptance performance period expenses are entered in Schedule TO-3 for each year of the post-acceptance performance period.

**Walk-Through Survey** - A brief inspection of a facility to evaluate the potential for energy, water and related cost savings measures as well as gather information to determine the need for a more detailed audit. The findings of the walk-through survey are documented in the preliminary assessment.

**White Tags<sup>TM</sup> – Also known as Energy Efficiency Certificates** – Tradable attributes similar to Renewable Energy Credits or Green Tags<sup>TM</sup> that represent the value of energy not used (conserved) at facilities. White Tags<sup>TM</sup> represent the contractual right to claim the environmental and other attributes associated with electricity generated from a renewable energy facility. They may be traded independently of the energy.

**ATTACHMENT J-3****ENERGY SAVINGS PERFORMANCE CONTRACT TECHNOLOGY CATEGORIES AND ASSOCIATED ENERGY CONSERVATION MEASURES**

This attachment lists the technology categories (TCs) authorized under this master indefinite delivery/indefinite quantity (IDIQ) contract, and provides energy conservation measure (ECM) examples for each TC. This list is not intended to be inclusive of all potential ECMs authorized under each TC.

**TC.1 Boiler Plant Improvements - ECMs such as, but not limited to:**

- Boiler control, including new controls and retrofits to existing controls
- Replacement of existing boilers with high efficiency boilers
- Boiler decentralization

**TC.2 Chiller Plant Improvements - ECMs such as, but not limited to:**

- Chiller retrofits or replacements
- Chiller plant pumping, piping, and controls retrofits and replacements

**TC.3 Building Automation Systems (BAS)/Energy Management Control Systems (EMCS) - ECMs such as, but not limited to:**

- Heating, Ventilating, and Air Conditioning (HVAC) upgrade from pneumatics to Direct Digital Control
- Upgrade or replacement of existing EMCS systems

**TC.4 Heating, Ventilating, and Air Conditioning (HVAC, not including boilers, chillers, and Building Automation System/Energy Monitoring/Management Control System (EMCS)) - ECMs such as, but not limited to:**

- Packaged air conditioning unit replacements
- HVAC damper and controller repair or replacement
- Window air conditioning replacement with high efficiency units
- Cooling tower retrofits or replacements
- Economizer installation
- Fans and pump replacement or impeller trimming
- Thermal energy storage
- Variable air volume retrofit

**TC.5 Lighting Improvements - ECMs such as, but not limited to:**

- Interior and exterior lighting retrofits and replacements
- Intelligent lighting controls
- Occupancy sensors
- Light Emitting Diode technologies
- Daylighting

- Spectrally enhanced lighting
- Fiber optic lighting technologies

**TC.6 Building Envelope Modifications** - ECMs such as, but not limited to:

- Insulation installation
- Weatherization
- Window replacement
- Reflective solar window tinting

**TC.7 Chilled Water, Hot Water, and Steam Distribution Systems** - ECMs such as, but not limited to:

- Piping insulation installation
- Hot water heater repair and replacement
- Steam trap repair and replacement
- Repair or replacement of existing condensate return systems and installation of new condensate return systems

**TC.8 Electric Motors and Drives** - ECMs such as, but not limited to:

- Motor replacement with high efficiency motors
- Variable speed motors or drives

**TC.9 Refrigeration** - ECMs such as, but not limited to:

- Replacement of ice/refrigeration equipment with high efficiency units

**TC.10 Distributed Generation** - ECMs such as, but not limited to:

- Cogeneration systems installation
- Microturbines installation
- Fuel cells installation

**TC.11 Renewable Energy Systems** - ECMs such as, but not limited to:

- Photovoltaic system installation
- Solar hot water system installation
- Solar ventilation preheating system installation
- Wind energy system installation
- Passive solar heating installation
- Landfill gas, waste water treatment plant digester gas, and coalbed methane power plant installation
- Wood waste and other organic waste stream heating or power plant installation
- Replacement of air conditioning and heating units with ground coupled heat pump systems

**TC.12 Energy/Utility Distribution Systems** - ECMs such as, but not limited to:

- Transformers installation

- Power quality upgrades
- Power factor correction
- Gas distribution systems installation

**TC.13 Water and Sewer Conservation Systems** - ECMs such as, but not limited to:

- Low-flow faucets and showerheads
- Low-flow plumbing equipment
- Water efficient irrigation
- On-site sewer treatment systems

**TC.14 Electrical Peak Shaving/Load Shifting** - ECMs such as, but not limited to:

- Thermal energy storage
- Gas cooling

**TC.15 Energy Cost Reduction Through Rate Adjustments** - ECMs such as, but not limited to:

- Change to more favorable rate schedule
- Lower energy cost supplier(s) (where applicable)
- Energy service billing and meter auditing recommendations

**TC.16 Energy Related Process Improvements** - ECMs such as, but not limited to:

- Production and/or manufacturing improvements
- Recycling and other waste stream reductions
- Industrial process improvement

**TC.17 Commissioning** - ECMs such as but not limited to:

- Retro-commissioning services
- Continuous commissioning services

**TC.18 Advanced Metering Systems**

**TC.19 Appliance/Plug-load reductions** - ECMs such as but not limited to:

- Replace air-cooled ice/refrigeration equipment
- Replace refrigerators
- De-lamp vending machines
- Plug timers
- Energy Star® products

**TC.20 Future ECMs** - (not currently authorized):

- Non-Building Applications



**ATTACHMENT J-4****SAMPLE DELIVERABLES FOR TASK ORDERS**Pre-award Deliverables Sample:

Item	Deliverable	Frequency	Due	<sup>a</sup> Copies	<sup>a</sup> Recipient
1	Preliminary Assessment	One time	Per contractor schedule	6 (2/4)	<ul style="list-style-type: none"> <li>• Agency Contracting Officer (CO) (1/0)</li> <li>• Agency COR (1/1)</li> <li>• DOE COR (0/1)</li> <li>• DOE CO (0/1) <ul style="list-style-type: none"> <li>▪ PF (0/1)</li> </ul> </li> </ul>
2	Draft IGA	One time	Per contractor schedule	5 (2/3)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> <li>• DOE COR (0/1)</li> <li>▪ PF (0/1)</li> </ul>
3	Draft Final Proposal	One time	Per contractor schedule	5 (2/3)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> <li>• DOE COR (0/1)</li> <li>▪ PF (0/1)</li> </ul>
4	Final IGA/Final Proposal	One time	Per contractor schedule	5 (2/3)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> <li>• DOE COR(0/1)</li> <li>• DOE CO (0/1)</li> </ul>
5	Evidence of surety commitment	One time	Per contractor schedule	1	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> </ul>

<sup>a</sup>Required formats for and numbers of submittals are indicated in parentheses (hard copy/electronic pdf on CD-ROM)

Post-award Deliverables Sample:

Item	Deliverable	Frequency	Due	<sup>a</sup> Copies	<sup>a</sup> Recipient
1	Signed Task Order	One time	Upon Receipt from agency	2 (1/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• DOE CO (0/1)</li> </ul>
2	Certificate of Insurance	One time	15 days after TO award	1 (1/0)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> </ul>
3	Performance Bond	One time	30 days after TO award	1 (1/0)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> </ul>
4	Payment Bond	One time	30 days after TO award	1 (1/0)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> </ul>
5	Work Schedule	Monthly	10 days before work start	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>
6	Work Outside Normal Hours	Per occurrence	5 days before work start	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>
7	Design and Construction Package	One time	Due date based on final proposal and negotiations days after TO award	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>
8	ECM Installation Quality control Inspection Program	One time	With Item 7 above	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>
9	Commissioning Plan	One time	After Approval of item 7 above	4 (2/2)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> <li>• DOE COR (0/1)</li> </ul>
10	Safety and Health Plan	One time	With Item 7 above	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>
11	Notification of Utility Interruption	Per occurrence	15 working days prior to outage	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>
12	Operation Work Procedure	One time	With training class	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>
13	<ul style="list-style-type: none"> <li>• Maintenance Work Procedure</li> <li>• Maintenance Work</li> </ul>	One time	With training class	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>

	Requirements and Checklist				
14	O&M Manuals and Spare Parts Lists	One time	Prior to agency acceptance of project	3 (2/1)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> </ul>
15	Commissioning Report	One time	Upon ECM installation and commissioning	4 (2/2)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> <li>• DOE COR (0/1)</li> </ul>
16	Post-Installation Report	One time	Prior to Government's acceptance	4 (2/2)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> <li>• DOE COR (0/1)</li> </ul>
17	As-built Drawings	Per ECM	Prior to Government's acceptance	3 (3/0)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (2/0)</li> </ul>
18	Annual Report on ECM Performance	Annual	30 days after each year during performance period	4 (2/2)	<ul style="list-style-type: none"> <li>• Agency CO (1/0)</li> <li>• Agency COR (1/1)</li> <li>• DOE COR (0/1)</li> </ul>
19	TO Modifications	Per modification	Upon receipt of signed modification	2 (0/2)	<ul style="list-style-type: none"> <li>• DOE COR (0/1)</li> <li>• DOE CO (0/1)</li> </ul>

<sup>a</sup>Required formats for, and numbers of submittals, are indicated in parentheses (hard copy/electronic .pdf on CD-ROM)

## ATTACHMENT J-5

### DESCRIPTIONS OF TASK ORDER SCHEDULES AND PLACEMENT OF PRICING INFORMATION

#### J-5.1 DESCRIPTIONS OF TASK ORDER (TO) SCHEDULES (SCHEDULE TEMPLATES ARE PROVIDED IN ATTACHMENT J-6)

**J-5.1.1 Schedule TO-1 (Preliminary Assessment - PA) - Proposed Guaranteed Cost Savings and Contractor Payments** - Schedule TO-1 (PA) shall be submitted to present the contractor's estimated cost savings, proposed guaranteed cost savings, and contractor payments. TO-1 (PA) values submitted may be in estimated ranges. Based on the preliminary survey and agency discussions, the contractor shall submit a completed Schedule TO-1 (PA) containing:

- A. **Column (a)** - Contractor submits proposed estimated cost savings during the implementation period, prior to full project acceptance (see most recent version of "DOE-FEMP Guidelines Regarding One-Time Payments And One-Time Savings In Energy Savings Performance Contracts"). The DOE-FEMP Guidance allows such energy cost savings as avoided repair or replacement expenses with one-time payment from appropriations available for repair or replacement by contractor; or energy, water, and related cost savings and related payments from selected ECMs accepted by agency prior to full project acceptance.
- B. **Column (b)** - Contractor submits proposed guaranteed cost savings for savings submitted in column (a).
- C. **Column (c)** - Contractor submits proposed contractor payments for proposed guaranteed cost savings during the implementation period.
- D. **Column (d)** - Contractor shall submit in post-acceptance performance period year one, estimated annual cost savings, which reflects the total of estimated annual cost savings in Schedule TO-4. Contractor submits values for column (d) post-acceptance performance period years two through proposed performance period term. Contractor applies escalation rates, per note (7) on Schedule TO-1 (PA).
- E. **Column (e)** - Contractor submits proposed guaranteed annual cost savings for estimated annual cost savings submitted in column (d).
- F. **Column (f)** - Contractor submits proposed annual contractor payments for proposed guaranteed annual cost savings for each year of the proposed performance period.

NOTE: Guaranteed cost savings must exceed contractor payment during the implementation period and each year of the post-acceptance performance period.

**J-5.1.2 Schedule TO-1 (final) - Guaranteed Cost Savings and Contractor Payments -** Schedule TO-1 (final) shall be submitted to present the contractor's estimated annual cost savings, guaranteed annual cost savings, and annual contractor payments. Based on the IGA results, the contractor shall submit a completed Schedule TO-1 (final). The contractor shall submit a copy of the IGA findings, data, and calculations used to support Schedule TO-1 (final) with the TO-1 (final) submission.

The contractor shall submit a completed Schedule TO-1 (final) with:

- A. **Column (a)** - Contractor submits proposed Estimated Cost Savings during the Implementation Period, prior to full project acceptance from one-time pre-acceptance payments (See most recent version of "DOE-FEMP Guidelines Regarding One-Time Payments And One-Time Savings In Energy Savings Performance Contracts"). This DOE-FEMP guidance allows such energy cost savings as avoided repair or replacement expenses with one-time payment from appropriations available for repair or replacement by contractor; or energy cost savings and related payments from selected ECMs accepted by agency prior to full project acceptance.
- B. **Column (b)** - Contractor submits Guaranteed Cost Savings for savings submitted in Column (a).
- C. **Column (c)** - Contractor submits Contractor Payments for proposed Guaranteed Cost Savings during the Implementation Period.
- D. **Column (d)** - Contractor shall submit in post-acceptance performance period year one, Estimated Annual Cost Savings, which reflects the total of estimated annual cost savings in Schedule TO-4. Contractor submits values for column (d) post-acceptance performance period years two through proposed performance period term, and if applicable, apply escalation rates, per note (6) on Schedule TO-1 (final), accepted by the agency Contracting Officer.
- E. **Column (e)** - Contractor submits Guaranteed Annual Cost Savings for Estimated Annual Cost Savings submitted in Column (d).
- F. **Column (f)** - Contractor submits annual contractor payments for guaranteed annual cost savings for each year of the proposed performance period.  
NOTE: Guaranteed annual cost savings must exceed contractor payment during implementation period and each year of the post-acceptance performance period.

**J-5.1.3 Schedule TO-2 - Implementation Price by ECM -** Schedule TO-2 presents the offeror's total implementation price investment for project development for each ECM included in a specific TO project. It reflects the capacity and M&V expense for equipment proposed for installation of each ECM indicated along with its direct

implementation expense. The sum of project development and ECM direct expenses are then marked up by indirect expenses and profit to calculate the total implementation price, or investment for all proposed ECMs for the TO project. This information is required as a trace to the information provided in Schedule TO-3.

- A.** The contractor shall submit a completed Schedule TO-2 for ECMs as follows:
1. TC for ECMs using Attachment J-3 numbering
  2. ECM numbering (contractor numbering matching technical proposal ECM numbering)
  3. ECM description
  4. ECM equipment capacity/size (e.g., chillers/packed units – tons, variable frequency drives (VFDs) – hp, etc.)
  5. ECM M&V expense
  6. Implementation Expense Column (a) – direct implementation expenses
  7. Implementation Expense Column (b) – indirect expenses applied to total of project development and ECM direct implementation expenses
  8. Column (c) – profit applied to total direct and indirect expenses
  9. Column (d) – total implementation price for the project (sum of columns (a) + (b) + (c))

The total bonded amount on bottom of Schedule TO-2 shall be submitted and will be used to establish performance and payment bond requirements for the ECM implementation period, if applicable, in accordance with Section H.

**J-5.1.4 Schedule TO-3 - Post-Acceptance Performance Period Cash Flow** - Schedule TO-3 presents the offeror's proposed project cash flow for a specific TO project. The schedule is divided into two sections.

- A.** The implementation period section pertains to the total implementation price (which should trace back to the Schedule TO-2, column (d) Total Implementation Price) less any one-time savings and/or ECM cost savings during the implementation period, plus the debt service stream on that investment, less any financial or tax incentives or revenues reducing principal repayment or interest.
- B.** The post-acceptance performance period section pertains to the total expenses associated with the services the contractor supplies to manage the project, maintain and verify ECM performance during the post-acceptance performance period of the TO term, and any other applicable expenses. The contractor shall submit a Schedule TO-3 that includes annual or one-time post-acceptance performance period expenses, as applicable to the specific project. The offeror shall propose the TO cash flows for each year of the proposed TO term. Profit will be applied to the sum of post-acceptance performance period expenses, which include direct and indirect expenses.

As required by Schedule TO-3, the offeror shall specify the applicable financial index used with its source and date, the financing term of the project (in years), the index rate (derived for the project's term from the financial index), the added premium being applied to amortize the investment, and the resultant project interest rate. The effective period of the proposed project interest rate is also required to be identified on the Schedule TO-3.

**J-5.1.5 Schedule TO-4 - Task Order Performance Period First Year Estimated Annual Cost Savings, by Energy Conservation Measure and Technology Category -**

Schedule TO-4 shall be submitted for all TO project proposals. Schedule TO-4 presents a summary of the proposed estimated first year cost savings that will be achieved following the installation of the ECM's included in the TO proposal. Both the ECM number and TC, per Attachment J-3 numbering, shall be provided. The ECM numbers indicated in this schedule shall be consistent throughout the offeror's proposal. The annual cost savings shown for each ECM shall be broken down into energy, demand, water and O&M cost savings. The energy savings shall be presented in the energy type consumed by the equipment and also converted to MBTUs (10<sup>6</sup> BTUs) for a project summary. Energy and water cost savings shall be derived from the utility rates provided in the TO RFP.

Contractors shall provide adequate supporting documentation for the estimated annual cost savings submitted in Schedule TO-4, to include whatever detail is pertinent to the specific project.

**J-5.1.6 Schedule TO-5 - Annual Cancellation Ceiling Schedule -** Schedule TO-5 is a presentation of annual cancellation ceilings to establish the maximum termination liability in the event of contract cancellation or termination. Actual termination charges will be negotiated as part of any cancellation or termination settlement, per established FAR requirements.

**J-5.2 PLACEMENT OF PRICING INFORMATION**

Pricing Element	Implementation expenses (TO-2)	Post-acceptance performance period expenses (TO-3)	Financing procurement price (TO-3)
<b>Pre-Award Project Development Expenses Prior to Notice of Intent to Award Contractor-defined project ONLY</b>			
Develop and submit the Preliminary Assessment proposal	X		
<b>Pre-Award Project Development Expenses Prior to Notice of Intent to Award Government-initiated Project ONLY</b>			
Obtain and read the TO RFP and site	X		

Pricing Element	Implementation expenses (TO-2)	Post-acceptance performance period expenses (TO-3)	Financing procurement price (TO-3)
data package			
Attend the pre-proposal conference and/or site walk-through survey	X		
Submit written questions, read questions and answers submitted by all	X		
Develop and submit the proposal (oral or written, as per TO RFP)	X		
<b>Implementation Period</b> <b>These pricing elements apply to the selected contractor only after receiving notice of intent to award a TO from the Contracting Officer.</b>			
Pre-award requirement: perform the IGA	X		
Pre-award requirement: submit revised IGA	X		
Pre-award requirement: negotiate acceptance of report establishing mutual agreement on feasible ECMs, baseline and M&V plan	X		
Pre-award requirement: develop revised final proposal including Schedules TO-1 (final), TO-5 and revised TO-2 through TO-4	X		
Pre-award requirement: arrange financing			X
Pre-award requirement: secure payment and performance bonds			X
Preliminary design submittal and review	X		
Final design submittal and backcheck	X		
Request agency approval of equipment schedules, order equipment, pay for it	X		
Direct construction expense including all subcontracts, permits, insurance, construction management and quality control, waste removal, commissioning, training, documentation as per M&V plan and TO, etc.	X		
Construction financing expenses			X



Pricing Element	Implementation expenses (TO-2)	Post-acceptance performance period expenses (TO-3)	Financing procurement price (TO-3)
Request agency inspection, agency acceptance	X		
Contractor indirect labor, i.e., any labor that cannot be directly attributed to a specific task and therefore must be distributed across several tasks or projects as overhead	X		
Overhead costs other than indirect labor -- sales, general and administrative, regional overheads	X		
Contractor profit	X		
<b>Post-Acceptance Performance Period</b>			
Project management and administration		X	
ECM operation and maintenance		X	
ECM repair and replacement		X	
Measurement and Verification		X	
Permits and licenses		X	
Insurance		X	
Property taxes		X	
Contractor indirect labor, i.e., any labor that cannot be directly attributed to a specific task and therefore must be distributed across several tasks or projects as overhead		X	
Overhead costs other than indirect labor (e.g., sales, general and administrative, regional overheads)		X	
Contractor profit		X	

**ATTACHMENT J-6**

**TASK ORDER (TO) SCHEDULES**

- TO-1 (PA) (Preliminary Assessment (PA)) Proposed Guaranteed Cost Savings and Contractor Payments
- TO-1 (final) Guaranteed Cost Savings and Contractor Payments
- TO-2 Implementation Price by Energy Conservation Measure
- TO-3 Post-Acceptance Performance Period Cash Flow
- TO-4 Task Order Performance Period First Year Estimated Annual Cost Savings, by Energy Conservation Measure and Technology Category
- TO-5 Annual Cancellation Ceiling Schedule

**SCHEDULE TO-1 (Preliminary Assessment – PA)**

**PROPOSED GUARANTEED COST SAVINGS AND CONTRACTOR PAYMENTS**

**IMPORTANT INFORMATION**

- (1) This schedule is not to be altered or changed in any way. Please note any clarifications in the comments/explanations area below.
- (2) [Reserved]
- (3) The guaranteed annual cost savings are based on the site-specific M&V plan.
- (4) The total of annual contractor payments represents the TO price and should be supported by information submitted.
- (5) If applicable, prior to the post-acceptance performance period, implementation period allowable payments and energy savings are one-time amounts only.
- (6) The proposed guaranteed cost savings during the implementation period and post-acceptance performance period must exceed the contractor payments.
- (7) If applicable, submit escalation rates applied to initial estimated annual cost savings in column (a) as follows: a) energy rates: \_\_\_\_\_% per year (specify for each energy type); b) energy-related O&M savings (including water and sewer): \_\_\_\_\_% per year.
- (8) If selected, the contractor shall complete the installation of all proposed ECMs not later than \_\_\_\_\_ months after task award.

Task Order No.:	Contractor Name:		Project Site:
	<b>(a)</b> <b>Estimated Cost Savings (\$)</b>	<b>(b)</b> <b>Proposed Guaranteed Cost Savings (\$)</b>	<b>(c)</b> <b>Contractor Payments (\$)</b>
Implementation Period			
<b>Post-Acceptance Performance Period Year</b>	<b>(d)</b> <b>Estimated Annual Cost Savings (\$)</b>	<b>(e)</b> <b>Proposed Guaranteed Annual Cost Savings (\$)</b>	<b>(f)</b> <b>Annual Contractor Payments (\$)</b>
One			
Two			
Three			
Four			
Five			
Six			
Seven			
Eight			
Nine			
Ten			
Eleven			
Twelve			
Fourteen			
Fifteen			
Sixteen			
Seventeen			
Eighteen			
Nineteen			
Twenty			
Twenty-one			

DE-AM36-09GO290XX

Twenty-two			
Twenty-three			
Twenty-four			
Totals	\$	\$	\$

Explanations/Comments:

**SCHEDULE TO-1 (final)**  
**GUARANTEED COST SAVINGS AND CONTRACTOR PAYMENTS**

**IMPORTANT INFORMATION**

- (1) This schedule is not to be altered or changed in any way. Please note any clarifications in the comments/explanations area below.
- (2) The first year post-acceptance performance period estimated annual cost savings reflect technical proposal and engineering estimates as presented in TO-4.
- (3) The guaranteed annual cost savings are based on the site-specific M&V plan.
- (4) The total of contractor payments (columns c and f) represents the TO price and should be supported by information submitted in and provided with Schedules TO-2 and TO-3.
- (5) If applicable, prior to post-acceptance performance period, implementation period allowable payments and energy savings are one-time amounts only.
- (6) If applicable, provide a separate table showing proposed energy rates (i.e., \$/kWh, \$/kW, \$/MBtu) for each post-acceptance performance period year, derived using the National Institute of Standards and Technology Handbook 135 and Annual Supplement. Also, submit escalation rates applied to energy-related O&M savings (including water and sewer): \_\_\_\_% per year.
- (7) [Reserved]
- (8) [Reserved]
- (9) [Reserved]
- (10) If selected, the contractor shall complete the installation of all proposed ECMs not later than \_\_\_\_\_ months after TO award.

Task Order No.:	Contractor Name:	Project Site:	
	(a) Estimated Cost Savings (\$)	(b) Guaranteed Cost Savings (\$)	(c) Contractor Payment (\$)
Implementation Period			
Post-Acceptance Performance Period Year	(d) Estimated Annual Cost Savings (\$)	(e) Guaranteed Annual Cost Savings (\$)	(f) Annual Contractor Payments (\$)
One			
Two			
Three			
Four			
Five			
Six			
Seven			
Eight			
Nine			
Ten			
Eleven			
Twelve			
Fourteen			
Fifteen			
Sixteen			
Seventeen			
Eighteen			
Nineteen			
Twenty			
Twenty-one			
Twenty-two			

Twenty-three			
Twenty-four			
Totals			

Explanations/Comments:

**SCHEDULE TO-2  
IMPLEMENTATION PRICE BY ENERGY CONSERVATION MEASURE**

**IMPORTANT INFORMATION:**

- 1) This schedule is not to be altered or changed in any way. Please note any clarifications in the comments/explanations area below.
- 2) Implementation expense shall include only direct costs for each ECM and no post-acceptance performance period expenses. Indirect expenses and profit will be applied to the sum of direct expenses for all ECMs and project development to calculate total implementation price (d) for the project.
- 3) Contractor shall attach adequate supporting information detailing total implementation expenses.
- 4) Contractor shall propose bonded amount representing the basis of establishing performance and payment bonds per Section H of the contract, as required.
- 5) Attached supporting information shall be presented to identify portions of ECM or project expenses included in proposed bonded amount.
- 6) Proposed bonded amount is assumed to include indirect expenses and profit applied to implementation expenses above, unless otherwise specified by contractor.
- 7) For the following ECMs, enter the *total installed capacity of new equipment* in the units specified (e.g., chillers-150); chillers and packaged units in tons, VFDs in hp, boilers and furnaces in input Btu/hr, BAS/EMCS in number of points, transformers in kVA, generators in kW. For lighting ECMs, specify baseline kW treated.
- 8) M&V expense shall not include any performance-period expenses.

Project Site: \_\_\_\_\_ Task Order No.: \_\_\_\_\_ Contractor Name: \_\_\_\_\_

Tech Category (TC)	ECM No.	Equipment Description — Title	ECM Size	M&V Expense	Implementation Expense		(c) Profit \$	(d) Implementation Price: Totals (a)+(b)+(c) = (d)
					(a) Direct	(b) Indirect		
n/a	n/a	Project Development	n/a	\$	\$			
					\$			
					\$			
					\$			
					\$			
					\$			
					\$			
					\$			
					\$			
					\$			
					\$			
					\$			
					\$			
<b>TOTALS</b>					\$	\$	\$	\$
<b>Bonded Amount (\$)</b>								

Explanations/Comments: \_\_\_\_\_

**SCHEDULE TO-3 — POST-ACCEPTANCE PERFORMANCE PERIOD CASH FLOW**

<b>Project Site:</b>		<b>Task Order No:</b>		<b>Contractor Name:</b>	
<b>Project Capitalization</b>		Applicable Financial Index:		Issue Date:	
Total Implementation Price (from TO-2 Total)		Term (Years):		Source:	
Plus Financing Procurement Price (\$)		Index Rate:		Effective Through:	
Less Implementation Period Payments (from TO-1 (final) (c))(If proposed, must be fully documented)		Added Premium (adjusted for tax incentives):			
Total Amount Financed (Principal)		Project Interest Rate:			

Term	1	2	3	4	5	6
Annual Cash Flow (Post-Acceptance Performance Period)						
Debt Service						
Principal Repayment (\$)						
Less incentives (i.e., REC, White Tag, etc.)						
Net principal repayment before interest						
Interest (\$)						
Total Debt Service (a)						
<b>Post-Acceptance Performance Period Expenses</b>						
Management/Administration						
Operation						
Maintenance						
Repair and Replacement						
Measurement and Verification						
Permits and Licenses						
Insurance						
Property Taxes						
Other – Describe and Explain						
Other – Describe and Explain						
SUBTOTAL Before Application of Indirect Rates						
Indirect Cost Rate (%)						
Indirect Cost Applied (\$)						
SUBTOTAL Post-Acceptance Performance Period Exp						
Post-Acceptance Performance Period Profit (%)						
Post-Acceptance Performance Period Profit (\$)						
Total Post-Acceptance Performance Period Expenses (b)						



TOTAL - ANNUAL CONTRACTOR PAYMENTS (a)+(b)						
Term	7	8	9	10	11	12
Annual Cash Flow (Post-Acceptance Performance Period)						
Debt Service						
Principal Repayment (\$)						
Less incentives (i.e., REC, White Tag, etc.)						
Net principal repayment before interest						
Interest (\$)						
Total Debt Service (a)						
<b>Post-Acceptance Performance Period Expenses</b>						
Management/Administration						
Operation						
Maintenance						
Repair and Replacement						
Measurement and Verification						
Permits and Licenses						
Insurance						
Property Taxes						
Other – Describe and Explain						
Other – Describe and Explain						
SUBTOTAL Before Application of Indirect Rates						
Indirect Cost Rate (%)						
Indirect Cost Applied (\$)						
SUBTOTAL Post-Acceptance Performance Period Exp						
Post-Acceptance Performance Period Profit (%)						
Post-Acceptance Performance Period Profit (\$)						
Total Post-Acceptance Performance Period Expenses (b)						
TOTAL - ANNUAL CONTRACTOR PAYMENTS (a)+(b)						

Term	13	14	15	16	17	18
Annual Cash Flow (Post-Acceptance Performance Period)						
Debt Service						
Principal Repayment (\$)						
Less incentives (i.e., REC, White Tag, etc.)						
Net principal repayment before interest						
Interest (\$)						
Total Debt Service (a)						
<b>Post-Acceptance Performance Period Expenses</b>						
Management/Administration						
Operation						
Maintenance						
Repair and Replacement						
Measurement and Verification						
Permits and Licenses						
Insurance						
Property Taxes						
Other – Describe and Explain						
Other – Describe and Explain						
SUBTOTAL Before Application of Indirect Rates						
Indirect Cost Rate (%)						
Indirect Cost Applied (\$)						
SUBTOTAL Post-Acceptance Performance Period Exp						
Post-Acceptance Performance Period Profit (%)						
Post-Acceptance Performance Period Profit (\$)						
Total Post-Acceptance Performance Period Expenses (b)						
<b>TOTAL - ANNUAL CONTRACTOR PAYMENTS (a)+(b)</b>						

Term	19	20	21	22	23	24
Annual Cash Flow (Post-Acceptance Performance Period)						
Debt Service						
Principal Repayment (\$)						
Less incentives (i.e., REC, White Tag, etc.)						
Net principal repayment before interest						
Interest (\$)						
Total Debt Service (a)						
<b>Post-Acceptance Performance Period Expenses</b>						
Management/Administration						
Operation						
Maintenance						
Repair and Replacement						
Measurement and Verification						
Permits and Licenses						
Insurance						
Property Taxes						
Other – Describe and Explain						
Other – Describe and Explain						
SUBTOTAL Before Application of Indirect Rates						
Indirect Cost Rate (%)						
Indirect Cost Applied (\$)						
SUBTOTAL Post-Acceptance Performance Period Exp						
Post-Acceptance Performance Period Profit (%)						
Post-Acceptance Performance Period Profit (\$)						
Total Post-Acceptance Performance Period Expenses (b)						
<b>TOTAL - ANNUAL CONTRACTOR PAYMENTS (a)+(b)</b>						

Explanations/Comments:

**SCHEDULE TO-4**

**Task Order Performance Period First Year Estimated Annual Cost Savings, by Energy Conservation Measure and Technology Category**

**IMPORTANT INFORMATION:**

- 1) Project Square Footage (in 1000 SF) - Include only building square footage affected by installed ECMs in project.
- 2) For column (a) insert estimated energy baseline by ECM and total project in MBtu based on IGA, and proposal data.
- 3) For column (c1), annual electric demand savings (kW/yr) is the sum of the monthly demand savings
- 4) Energy conversion factors for MBtu: MBtu=10<sup>6</sup> Btu; Electricity — 0.003413 MBtu/kWh; Natural Gas — 0.1 MBtu/therm ; #2 Oil — 0.128 MBtu/gal.
- 5) Specify "Other" energy savings in (e)(1) and (e)(2) as applicable. Include energy type \_\_\_\_; energy units \_\_\_\_; and MBtu conversion factor \_\_\_\_ MBtu/ \_\_\_\_ (unit)
- 6) This schedule is not to be altered or adapted in any way. Please note any clarifications in the comments/explanations area below.

Project Site:

Task Order#:

Contractor Name:

Project Square Footage (KSF):

TC No. Att 2	ECM No.	a. ECM energy baseline (MBtu/yr)	b1. Electric energy savings (kWh/yr)	b2. Electric energy savings (\$/yr)	c1. Electric demand savings (kW/yr)	c2. Electric demand savings (\$/yr)	d1. Natural gas savings (MBtu/yr)	d2. Natural gas savings (\$/yr)	e1. Other savings (MBtu/yr)	e2. Other savings (\$/yr)	f. b1+d1+e1 Total energy savings (MBtu/yr)	g.=b2+c2+d2+e2 Total energy cost savings (\$/yr)	h. Other energy-related and O&M cost savings (\$/yr)	i. Water savings (1000 gal/yr)	j. Water savings (\$/yr)	k=g+h+j Estimated annual cost savings (\$/yr)	l. Implementation price (\$)	m=l/k Simple Payback (yrs.)
<b>TOTALS</b>																		

Explanations/Comments:

<b>SCHEDULE TO-5</b>		
<b>ANNUAL CANCELLATION CEILING SCHEDULE</b>		
<b>IMPORTANT INFORMATION:</b>		
(1) Cancellation Ceilings for each time period specified below establish the maximum termination liability for that time period, and includes the remaining unamortized principal on total amount financed for each time period specified above plus any prepayment charges. Actual total termination costs will be negotiated.		
(2) The contractor may attach a monthly Financing Termination Liability Schedule.		
(3) In the event of TO cancellation or termination for convenience, FAR 52.217-2 or 52.249.2 will apply.		
Project Site:	Task Order No:	Contractor Name:

Time Period	Cancellation Ceiling
Installation Acceptance	
End of Year One	
End of Year Two	
End of Year Three	
End of Year Four	
End of Year Five	
End of Year Six	
End of Year Seven	
End of Year Eight	
End of Year Nine	
End of Year Ten	
End of Year Eleven	
End of Year Twelve	
End of Year Thirteen	
End of Year Fourteen	
End of Year Fifteen	
End of Year Sixteen	
End of Year Seventeen	
End of Year Eighteen	
End of Year Nineteen	
End of Year Twenty	
End of Year Twenty-one	
End of Year Twenty-two	
End of Year Twenty-three	
End of Year Twenty-four	
End of Year Twenty-five	

ATTACHMENT J-7

ENERGY SAVINGS PERFORMANCE CONTRACT RISK, RESPONSIBILITY AND PERFORMANCE MATRIX

RESPONSIBILITY/DESCRIPTION	CONTRACTOR PROPOSED APPROACH
<b>1. Financial</b>	
<p><b>a. Interest rates:</b> Neither the contractor nor the agency has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the TO signing may impact the available interest rate and project cost.</p>	
<p><b>b. Construction costs:</b> The contractor is responsible for determining construction costs and defining a budget. In a fixed-price design/build contract, the agency assumes little responsibility for cost overruns. However, if construction estimates are significantly greater than originally assumed, the contractor may find that the project or measure is no longer viable and drop it before TO award. In any design/build contract, the agency loses some design control. <b>Clarify design standards and the design approval process (including changes) and how costs will be reviewed.</b></p>	
<p><b>c. M&amp;V confidence:</b> The agency assumes the responsibility to determine the confidence that it desires to have in the M&amp;V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&amp;V program, and the ESCO must consider the requirement prior to submittal of the final proposal. <b>Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&amp;V costs.</b></p>	
<p><b>d. Energy Related Cost Savings:</b> The agency and the contractor may agree that the project will include savings from <i>recurring</i> and/or <i>one-time</i> costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Including one-time cost savings before the money has been appropriated may involve some risk to the agency. Recurring savings generally result from reduced O&amp;M expenses or reduced water consumption. These O&amp;M and water savings must be based on actual spending reductions. <b>Clarify sources of nonenergy cost savings and how they will be verified.</b></p>	
<p><b>e. Delays:</b> Both the contractor and the agency can cause delays. Failure to implement a viable project in a timely manner costs the agency in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization). <b>Clarify schedule and how delays will be handled.</b></p>	

<p><b>f. Major changes in facility:</b> The agency (or Congress) controls major changes in facility use, including closure. <b>Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.</b></p>	
<p><b>2. Operational</b></p>	
<p><b>a. Operating hours:</b> The agency generally has control over operating hours. Increases and decreases in operating hours can show up as increases or decreases in “savings” depending on the M&amp;V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole-building/utility bill analysis). <b>Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change.</b> If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	
<p><b>b. Load:</b> Equipment loads can change over time. The agency generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can show up as increases or decreases in “savings” depending on the M&amp;V method. <b>Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change.</b> If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	
<p><b>c. Weather:</b> A number of energy efficiency measures are affected by weather. Neither the contractor nor the agency has control over the weather. Should the agency agree to accept risk for weather fluctuations, it shall be contingent upon aggregate payments not exceeding aggregate savings. <b>Clearly specify how weather corrections will be performed.</b></p>	
<p><b>d. User participation:</b> Many energy conservation measures require user participation to generate savings (e.g., control settings). The savings can be variable and the contractor may be unwilling to invest in these measures. <b>Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk.</b> If performance is stipulated, document and review assumptions carefully and consider M&amp;V to confirm the capacity to save (e.g., confirm that the controls are functioning properly).</p>	
<p><b>3. Performance</b></p>	
<p><b>a. Equipment performance:</b> The contractor has control over the selection of equipment and is responsible for its proper installation, commissioning, and performance. The contractor has responsibility to demonstrate that the new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency. <b>Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.</b></p>	

<p><b>b. Operations:</b> Performance of the day-to-day operations activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify which party will perform equipment operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.</b></p>	
<p><b>c. Preventive Maintenance:</b> Performance of day-to-day maintenance activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify how long-term preventive maintenance will be assured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., contractor provides maintenance checklist and reporting frequency). Clarify who is responsible for performing long-term preventive maintenance to maintain operational performance throughout the contract term. Clarify what will be done if inadequate preventive maintenance impacts performance.</b></p>	
<p><b>d. Equipment Repair and Replacement:</b> Performance of day-to-day repair and replacement of contractor-installed equipment is negotiable, however it is often tied to project performance. The contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify who is responsible for performing replacement of failed components or equipment replacement throughout the term of the contract.</b> Specifically address potential impacts on performance due to equipment failure. Specify expected equipment life and warranties for all installed equipment. Discuss replacement responsibility when equipment life is shorter than the term of the contract.</p>	

NOTE: The column entitled “Contractor Proposed Approach” should be negotiated between the agency and the contractor for each task order and then the word “Proposed” removed from the title.



**ATTACHMENT J-8**

**MEASUREMENT AND VERIFICATION PLAN AND SAVINGS CALCULATION METHODS OUTLINE**

**J-8.1 EXECUTIVE SUMMARY/M&V OVERVIEW AND PROPOSED SAVINGS CALCULATIONS**

Fill in the following tables or provide equivalent information.

**J-8.1.1 Table 1 - Proposed Annual Savings Overview**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
<b>Total savings</b>									
<b>First Year Guaranteed Cost Savings: \$</b>									

Notes  
 \*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
 MBtu=10<sup>6</sup> Btu.  
 \*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**J-8.1.2 Table 2 - Site Use and Savings Overview**

	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**
Total proposed project savings						

Usage for entire site**						
% Total site usage saved						
Project square footage (KSF)						
Total site square footage (KSF)						
% Total site area affected						
<p><u>Notes</u>                      MBtu=10<sup>6</sup> Btu                      *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.                      **If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).                      ***Define usage period.                      KSF = 10<sup>3</sup> square feet.</p>						

**J-8.1.3 Table 3 - M&V Plan Summary**

ECM No.	ECM Description	M&V Option Used*	Summary of M&V Plan

\*M&V options include A, B, C, and D of the M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 2.2; and the current version of the International Performance Measurement and Verification Protocol (IPMVP).

**J-8.2 WHOLE PROJECT DATA/GLOBAL ASSUMPTIONS**

**J-8.2.1 Risk, Responsibility and Performance** - Summarize allocation of responsibility for key items related to M&V

- A. Reference location of Risk, Responsibility and Performance Matrix.

- B.** Note: The Risk, Responsibility and Performance Matrix is Attachment J-7 of the master IDIQ contract and is also available on FEMP’s web site at [http://www1.eere.energy.gov/femp/financing/superespcs\\_espcbasicsp2.html](http://www1.eere.energy.gov/femp/financing/superespcs_espcbasicsp2.html).

**J-8.2.2 Energy, Water, and O&M Rate Data**

- A.** Detail baseline energy and water rates.
- B.** Provide post-acceptance performance period rate adjustment factors for energy, water, and O&M cost savings, if used.

**J-8.2.3 Schedule and Reporting for Verification Activities**

- A.** Define requirements for witnessing of measurements during:
1. Baseline development
  2. Post-installation verification activities
  3. Post-acceptance performance period

**B. Table 4 - Schedule of Verification Reporting Activities**

Item	<sup>a</sup> Recommended time of submission	<sup>a</sup> Owner’s review and acceptance period
Post-Installation Report	30 to 60 days after acceptance	30 days
Annual Report	30 to 60 days after annual performance period	30 days

<sup>a</sup>Times are recommended based on industry practice; modify as needed.

**C. Define content and format of reports:**

1. Post-installation report. Use of Post-Installation Report Outline is recommended (available on FEMP’s web site at [http://www1.eere.energy.gov/femp/financing/superespcs\\_mvresources.html](http://www1.eere.energy.gov/femp/financing/superespcs_mvresources.html)).
2. Annual M&V reports. Use of Annual Report Outline is recommended (available on FEMP’s web site at [http://www1.eere.energy.gov/femp/financing/superespcs\\_mvresources.html](http://www1.eere.energy.gov/femp/financing/superespcs_mvresources.html)).
3. Interval M&V reports.

**J-8.2.4 O&M Reporting Requirements**

Define Government and ESCO reporting requirements:

- A. Summarize key verification activities and reporting responsibilities of Government and contractor on operations and maintenance items from details in ECM specific M&V Plans.
- B. Define content of reports and reporting schedule.

#### **J-8.2.5 Construction Period Savings**

Provide overview of how construction period savings will be calculated, if applicable.

#### **J-8.2.6 Status of Rebates - Include if applicable.**

- A. Provide a summary of the source of any third-party rebates or incentives provided on this project.
- B. Provide status of any third-party rebates or incentives.

**J-8.2.7 Dispute Resolution** - Describe plan for resolving disputes regarding issues such as baseline, baseline adjustment, energy savings calculation, and the use of periodic measurements.

### **J-8.3. ECM-Specific M&V Plan and Savings Calculation Methods**

Develop section for each ECM.

#### **J-8.3.1 Overview of ECM, M&V plan, and Savings Calculation for ECM**

- A. Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
- B. Specify the M&V guideline and option used from the M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 2.2; and the current version of the International Performance Measurement and Verification Protocol (IPMVP).
- C. Provide an overview of M&V Activities for ECM. Explain intent of M&V plan, including what is being verified.
- D. Provide an overview of savings calculations methods for ECM. Provide a general description of analysis methods used for savings calculations.

**J-8.3.2 Energy and Water Baseline Development** - Describe in general terms how the baseline for this ECM is defined.

- A. Describe variables affecting baseline energy or water use.

1. Include variables such as weather, operating hours, set point changes, etc.
  2. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- B.** Define key system performance factors characterizing the baseline conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- C.** Define requirements for Government witnessing of measurements if different than whole project data requirements included in Section J-8.2.3.
- D.** Provide details of baseline data collected, including:
1. Parameters monitored
  2. Details of equipment monitored, i.e., location, type, model, quantity, etc.
  3. Sampling plan, including details of usage groups and sample sizes
  4. Duration, frequency, interval, and seasonal or other requirements of measurements
  5. Personnel, dates, and times of measurements
  6. Proof of Government witnessing of measurements (if required)
  7. Monitoring equipment used
  8. Installation requirements for monitoring equipments (test plug for temperature sensors, straight pipe for flow measurement etc.)
  9. Certification of calibration/calibration procedures followed
  10. Expected accuracy of measurements/monitoring equipment
  11. Quality control procedures used
  12. Form of data (.xls, .csv, etc.)
  13. Results of measurements (attach appendix and electronic forma as necessary)
  14. Completed data collection forms, if used
- E.** Provide details of baseline data analysis performed, including:
1. Analysis using results of measurements
  2. Weather normalized regressions
  3. Weather data used and source of data

### **J-8.3.3 Proposed Energy and Water Savings Calculations and Methodology**

- A.** Provide detail description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- B.** Detail all assumptions and sources of data, including all stipulated values used in calculations.

- C.** Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- D.** Details of any savings or baseline adjustments that may be required.
- E.** Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors, if different from those identified Section J-8.2.2.B.
- F.** Detail proposed savings for this energy conservation measure for post-acceptance performance period. Include J-8.3.6, Table 5 - Proposed Annual Savings for Each ECM.

#### **J-8.3.4 Operations and Maintenance Cost Savings**

- A.** Provide justification for O&M cost savings.
  - 1. Describe how savings are generated
  - 2. Detail cost savings calculations.
- B.** Provide post-acceptance performance period other cost savings adjustment factors, if different from those identified in Section J-8.2.2.B.

#### **J-8.3.5 Details of other savings (if applicable)**

- A.** Provide justification for cost savings.
  - 1. Describe how savings are generated.
  - 2. Detail cost savings calculations.
- B.** Provide post-acceptance performance period other cost savings adjustment factors, if different from those identified in Section J-8.2.2.B.

**J-8.3.6 Table 5 - Proposed Annual Savings for Each ECM**

[Include all applicable fuels/commodities for project, such as: electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year 1 (\$/yr)	Electric demand* (kW/yr)	Electric demand cost, Year 1 (\$/yr)	Natural gas use (MBtu/yr)**	Natural gas cost, Year 1 (\$/yr)	Water use (gallons/yr)	Water cost, Year 1 (\$/yr)	Other energy use (MBtu/yr)**	Other energy cost, Year 1 (\$/yr)	Other energy-related O&M costs, Year 1 (\$/yr)	Total costs, Year 1 (\$/yr)
Baseline use													
Post-installation use													
Savings													

Notes

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

MBtu = 10<sup>6</sup> Btu.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**J-8.3.7 Post-Installation M&V Activities** - Describe the intent of post-installation verification activities, including what will be verified.

- A.** Describe variables affecting post-installation energy or water use.
  - 1. Include variables such as weather, operating hours, set point changes, etc.
  - 2. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
  
- B.** Define key system performance factors characterizing the post-installation conditions such as lighting intensities, temperature set points, etc.
  
- C.** Define requirements for Government witnessing of measurements if different than whole project data requirements identified in Section J-8.2.3.
  
- D.** Provide details of post-installation data to be collected, including:
  - 1. Parameters to be monitored
  - 2. Details of equipment to be monitored (location, type, model, quantity, etc.)

3. Sampling plan, including details of usage groups and sample sizes
4. Duration, frequency, interval, and seasonal or other requirements of measurements
5. Monitoring equipment to be used
6. Installation requirements for monitoring equipment
7. Calibration requirements/procedures
8. Expected accuracy of measurements/monitoring equipment
9. Quality control procedures to be used
10. Form of data to be collected (.xls, .csv, etc.)
11. Sample data collection forms (optional)

**E.** Detail data analysis to be performed.

### **J-8.3.8 Post-Acceptance Performance Period Verification Activities**

- A.** Describe variables affecting post-acceptance performance period energy or water use.
1. Include variables such as weather, operating hours, set point changes, etc.
  2. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- B.** Define key system performance factors characterizing the post-acceptance performance period conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- C.** Describe the intent of post-acceptance performance period verification activities – what will be verified.
- D.** Provide detailed schedule of post-acceptance performance period verification activities and inspections.
- E.** Define requirements for Government witnessing of measurements if different than whole project data requirements included in Section J-8.2.3.
- F.** Provide details of post-acceptance performance period data to be collected, including:
1. Parameters to be monitored
  2. Details of equipment to be monitored (location, type, model, quantity, etc.)
  3. Sampling plan, including details of usage groups and sample sizes
  4. Duration, frequency, interval, and seasonal or other requirements of measurements
  5. Monitoring equipment to be used



6. Installation requirements for monitoring equipment
7. Calibration requirements/procedures
8. Expected accuracy of measurements/monitoring equipment
9. Quality control procedures to be used
10. Form of data to be collected (.xls, .cvs, etc.)
11. Sample data collection forms (optional)

**G.** Detail data analysis to be performed.

**H.** Define O&M and repair reporting requirements.

1. Detail verification activities and reporting responsibilities of agency and contractor on operations and maintenance items.
2. Define reporting schedule, if different than in global Section J-8.2.4.

## ATTACHMENT J-9

### POST-INSTALLATION REPORT OUTLINE

**Contract #/Task Order#/Task #/Modification #:** (include as appropriate)

**Post-Acceptance Performance Period Dates Covered:** \_\_\_\_\_ to \_\_\_\_\_

#### J-9.1 EXECUTIVE SUMMARY

**J-9.1.1 Project Background** - Provide an overview of project background, including:

- A. Contract #/Task Order #/Task #/Modification # (as appropriate)
- B. Dates of relevant contract modifications
- C. Post-acceptance performance period dates covered
- D. Project acceptance date (actual or expected)

#### J-9.1.2 Brief Project and ECM Descriptions

- A. Provide an overview what was done and how savings are generated.
- B. Note any changes in project scope between the final proposal (including any relevant contract modifications) and as-built conditions.

**J-9.1.3** Proposed and expected energy and cost savings for Year 1 of the post-acceptance performance period

- A. Include Section J-9.1.3 C, Table 1 - Proposed Annual Savings Overview.
- B. Compare expected savings for first performance year to first year guaranteed cost savings. State whether guarantee is expected to be fulfilled for first year.

Note: Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in annual report. The proposed savings for each ECM are included in TO-4 of the contract.

**C. Table 1 - Proposed Annual Savings Overview**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)* *	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Total savings									

Notes  
 MBtu=10<sup>6</sup> Btu.  
 \*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
 \*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**D. Table 2 - Expected Savings Overview for 1st Performance Year**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)* *	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Total savings									

Notes  
 MBtu=10<sup>6</sup> Btu.  
 \*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
 \*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**E. Table 3 - Guaranteed Cost Savings for First Performance Year**

[Note: Guaranteed cost savings are defined in schedule TO-1 (final)]

First Year Guaranteed Cost Savings: \$
--

**J-9.1.4 Energy, Water, and O&M Rate Data**

- A. Detail energy and water rates used to calculate cost savings for this period.
- B. Provide post-acceptance performance period rate adjustment factors for energy, water, and O&M cost savings, if used.
- C. Report actual energy and water rates at site for same period (optional).

**J-9.1.5 Savings Adjustments**

- A. Provide summary of any energy and/or cost savings adjustments required between final proposal (including any relevant contract modifications) and as-built conditions.
- B. Describe the impact in changes between the final proposal (including any relevant contract modifications) and as-built conditions based on post-installation M&V results.

**J-9.1.6 Construction Period Savings**

- A. Provide a summary of construction period savings, if applicable.
- B. Provide overview of how construction period savings are calculated.

**J-9.1.7 Status of Rebates - Include if applicable.**

- A. Provide a summary of the source of any third-party rebates or incentives provided on this project.
- B. Provide status of any third-party rebates or incentives.

**J-9.2 ECM-SPECIFIC M&V ACTIVITIES AND EXPECTED FIRST YEAR SAVINGS**

Develop section for each ECM.

**J-9.2.1 Overview of ECM, M&V Plan, and Savings Calculation for ECM**

- A. Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).

- B.** Provide an overview of M&V activities for ECM. Explain the intent of M&V plan, including what is being verified.
- C.** Provide an overview of Savings Calculation Methods for ECM. Provide a general description of analysis methods used for savings calculations.

**J-9.2.2 Installation Verification**

- A.** Detail any changes between final proposal (including any relevant contract modifications) and as-built conditions.
- B.** Provide details of energy and cost savings impact from changes between final proposal (including any relevant contract modifications) and as-built conditions based on post-installation M&V results. Include Section J-9.2.2.C, Table 4 - Impact to Energy and Cost Savings from Changes between Final Proposal and As-built Conditions for each ECM.

**C. Table 4 - Impact to Energy and Cost Savings from Changes between Final Proposal and As-built Conditions for Each ECM**

	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric energy cost savings, Year 1 (\$/yr)	Electric demand savings* (kW/yr)	Electric demand cost savings, Year 1 (\$/yr)	Natural gas savings (MBtu/yr)**	Natural gas cost savings, Year 1 (\$/yr)	Water savings (gallons/yr)	Water cost savings, Year 1 (\$/yr)	Other energy savings (MBtu/yr)**	Other energy cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Proposed													
Expected													
Variance													

Notes  
 MBtu = 10<sup>6</sup> Btu.  
 \*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
 \*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Note: Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in the annual M&V report. The proposed savings for each ECM are included in TO-4 of the contract.

- D. Describe construction period savings (if applicable). Include date ECM was in effect, and reference acceptance documentation.
- E. Detail savings calculations for construction period savings.

**J-9.2.3 Post-Installation M&V Activities Conducted** - Detail measurements, monitoring, and inspections conducted in accordance with M&V plan (include all that apply for each one):

- A. Measurement equipment used.
- B. Equipment calibration documentation.
- C. Dates/times of data collection or inspections, names of personnel, and documentation of Government witnessing.
- D. Details to confirm adherence to sampling plan.
- E. Include all post-installation measured values. Include periods of monitoring and durations and frequency of measurements. (Use appendix and electronic format as necessary). Include description of data format (headings, units, etc.).
- F. Describe how performance criteria have been met.
- G. Detail any performance deficiencies that need to be addressed by ESCO or agency.
- H. Note impact of performance deficiencies or enhancements on generation of savings.

**J-9.2.4 Expected Savings Calculations and Methodology**

- A. Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- B. Detail all assumptions and sources of data, including all stipulated values used in calculations.
- C. Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- D. Details of any baseline or savings adjustments made.
- E. Detail energy and water rates used to calculate cost savings.

1. Provide post-acceptance performance period energy and water rate adjustment factors, if used.
  2. Report actual energy and water rates at site for same period (optional).
- F.** Detail expected savings for this energy conservation measure for first year. Include J-9.2.6.D, Table 5 - Expected Year 1 Savings for ECM.

**J-9.2.5 Details of O&M Savings (if applicable)**

- A.** Describe source of savings.
- B.** Describe verification activities.
- C.** Provide post-acceptance performance period O&M cost savings adjustment factors, if applicable.

**J-9.2.6 Details of other savings (if applicable)**

- A.** Describe source of savings.
- B.** Describe verification activities.
- C.** Provide post-acceptance performance period adjustment factors, if applicable.

Note: Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in the annual report. The proposed savings for each ECM are included in Schedule TO-4 of the contract.



**D. Table 5 - Expected Year 1 Savings for ECM**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost (\$/yr)	Electric demand* (kW/yr)	Electric demand cost (\$/yr)	Natural gas use (MBtu/yr)**	Natural gas cost (\$/yr)	Water use (gallons/yr)	Water cost (\$/yr)	Other energy use (MBtu/yr)**	Other energy cost (\$/yr)	Other energy-related O&M costs (\$/yr)	Total costs (\$/yr)
Baseline use													
Post-installation use													
Savings													

Notes  
 MBtu = 10<sup>6</sup> Btu.  
 \*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
 \*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

## ATTACHMENT J-10

### ANNUAL MEASUREMENT AND VERIFICATION REPORT OUTLINE

**Contract #/Task Order #/Task #** (include as appropriate):

**Post-Acceptance Performance Period Dates Covered:** \_\_\_\_\_ to \_\_\_\_\_

**Contract year #:** \_\_\_\_\_

#### J-10.1 EXECUTIVE SUMMARY

**J-10.1.1 Project Background** - Provide an overview of project background, including:

- A. Contract #/Task Order #/Task #/Modification # (as appropriate)
- B. Dates of relevant contract modifications
- C. Post-acceptance performance period dates covered
- D. Project acceptance date (actual or expected)

**J-10.1.2 Brief Project and ECM Descriptions** - Provide an overview including what was done and how savings are generated.

**J-10.1.3 Summary of proposed and verified energy and cost savings.** Compare verified savings for Performance Year # to Guaranteed Cost Savings for Year #. State whether guarantee is fulfilled for year. If not, provide detailed explanation.

- A. Define post-acceptance performance period.
- B. Include J-10.1.3 C, Table 1 - Proposed Annual Savings Overview.

**C. Table 1 - Proposed Annual Savings Overview**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # (\$/yr)	Other energy-related O&M cost savings, Year # (\$/yr)	Total cost savings, Year # (\$/yr)
<b>Total Savings</b>									

Notes

MBtu = 10<sup>6</sup> Btu.

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

Note: The proposed savings for each ECM are included in Schedule TO-4 of the contract.

Guaranteed cost savings for project are defined in Schedule TO-1 (final) of the contract.

**D. Table 2 - Verified Savings for Performance Year #**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # (\$/yr)	Other energy-related O&M cost savings, Year # (\$/yr)	Total cost savings, Year # (\$/yr)
<b>Total savings</b>									

Notes

MBtu = 10<sup>6</sup> Btu.

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

**J-10.1.4 Savings Adjustments** - Provide summary of any energy and/or cost savings adjustments required.

**J-10.1.5 Performance and O&M Issues**

- A. Note impact of operating deficiencies or enhancements on generation of savings.
- B. Note impact of maintenance deficiencies on generation of savings.
- C. Detail any deficiencies needed to be addressed by contractor or agency.

**J-10.1.6 Energy, Water, and O&M Rate Data**

- A. Detail energy and water rates used to calculate cost savings for this period.
- B. Provide post-acceptance performance period rate adjustment factors for energy, water and O&M, if used.
- C. Report actual energy and water rates at site for same period (optional).

**J-10.1.7 Verified Savings To Date** - Include Table 3.

**Table 3. Verified Savings for Post-Acceptance Performance Period to Date**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

Year #	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)	Total energy and water cost savings, Year # (\$/yr)	Other energy-related O&M cost savings, Year # (\$/yr)	Total cost savings, Year # (\$/yr)	Guaranteed cost savings for year
<b>Total savings</b>										

Notes  
 MBtu = 10<sup>6</sup> Btu.  
 \*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.  
 \*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

## **J-10.2 DETAILS FOR EACH ECM**

Develop section for each ECM.

### **J-10.2.1 Overview of ECM, M&V Plan, and Savings Calculation for ECM**

- A.** Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
- B.** Provide an overview of M&V Activities for ECM. Explain the intent of M&V plan, including what is being verified.
- C.** Provide an overview of savings calculation methods for ECM. Provide a general description of analysis methods used for savings calculations.

**J-10.2.2 M&V Activities Conducted This Period** - Detail measurements, monitoring and inspections conducted this reporting period in accordance with M&V plan (include all that apply for each one):

- A.** Measurement equipment used.
- B.** Equipment calibration documentation.
- C.** Dates/times of data collection or inspections, names of personnel, and documentation of Government witnessing.
- D.** Details to confirm adherence to sampling plan.
- E.** Include all measured values for this period. Include periods of monitoring and durations and frequency of measurements. (Use appendix and electronic format as necessary). Include description of data format (headings, units, etc.).
- F.** Describe how performance criteria have been met.
- G.** Detail any performance deficiencies that need to be addressed by ESCO or agency.
- H.** Note impact of performance deficiencies or enhancements on generation of savings.

### **J-10.2.3 Verified Savings Calculations and Methodology**

- A.** Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- B.** Detail all assumptions and sources of data, including all stipulated values used in calculations.
- C.** Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- D.** Details of any baseline or savings adjustments made.
- E.** Detail energy and water rates used to calculate cost savings.
  - 1. Provide post-acceptance performance period energy and water rate adjustment factors, if used.
  - 2. Report actual energy and water rates at site for same period (optional).
- F.** Detail verified savings for this energy conservation measure for performance year. Include Table 4.

**J-10.2.4 Details of O&M Savings (if applicable)**

- A.** Describe source of savings.
- B.** Describe verification activities.
- C.** Provide post-acceptance performance period O&M cost savings adjustment factors, if applicable.

**J-10.2.5 Details of other savings (if applicable)**

- A.** Describe source of savings.
- B.** Describe verification activities.
- C.** Provide post-acceptance performance period adjustment factors, if applicable.

**D. Table 4 - Verified Annual Savings For ECM for Performance Year #**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year # (\$/yr)	Electric demand* (kW/yr)	Electric demand cost, Year # (\$/yr)	Natural gas (MBtu/yr)**	Natural gas cost, Year # (\$/yr)	Water use (gallons/yr)	Water cost, Year # (\$/yr)	Other energy use (MBtu/yr)	Other energy cost, Year # (\$/yr)	Other energy-related O&M costs, Year # (\$/yr)	Total costs, Year # (\$/yr)
Baseline use													
Performance Year # use													
Savings													
<p><u>Notes</u>                      MBtu = 10<sup>6</sup> Btu.                      *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.                      **If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).</p>													

**J-10.2.6 O&M Activities**

**A. Operating requirements**

1. State organization(s) responsible for equipment operations. If appropriate, detail how responsibilities are shared.
2. Detail any deficiencies needed to be addressed by contractor or Government.
3. Note impact of operating deficiencies or enhancements on generation of savings.

**B. Preventive Maintenance requirements - State organization(s) responsible for performing maintenance. If appropriate, detail how responsibilities are shared.**

**C. Verification of scheduled maintenance items completed by ESCO or agency**

1. Detail any deficiencies needed to be addressed by contractor or agency.
2. Note impact of maintenance deficiencies on generation of savings.

**D. Repair and replacement requirements**

1. State organization(s) responsible for performing maintenance. If appropriate, detail how responsibilities are shared.
2. Summary of activities conducted this period by contractor or agency.
3. Detail any deficiencies needed to be addressed by contractor or agency.
4. Note impact of maintenance deficiencies on generation of savings.



**ATTACHMENT J-11**

**INVESTOR DEAL SUMMARY TEMPLATE**

**Project:** *[Insert Project Title here]*

**Date:** *[Insert date here]*

**ESCO:** *[Insert ESCO Name]*

<b>1. Project Investment</b>					
<i>Note: Data to be taken from Schedule TO-2</i>					
ECM description	Direct Expense (\$)	Percentage of total direct expense (%)	Indirect Expense (\$)	Profit (\$)	Implementation price (\$)
Totals		100			

<b>2. Key Project Dates</b>	
<i>Note: Provide anticipated dates for the milestones listed</i>	
Key event	Date
a. Period over which to hold firm: (i) offered premium over index interest rate (ii) financier's component of financing procurement price	
b. Anticipated TO award	
c. Anticipated financial closing	
d. Index rate lock	
e. Notice to proceed w/construction <sup>a</sup>	
f. Construction progress milestones <sup>a</sup>	
25% completion	
50% completion	
75% completion	
100% completion	
g. Agency acceptance	

<sup>a</sup>The ECM Progress Schedule, which is required in the final proposal, may be substituted for these items.

**3. Payment to Reduce Total Financed Amount**

*Note: For payments such as those listed below, provide dollar amounts and anticipated dates in which payment is expected to be made*

Type of payment	Amount (\$)	Anticipated date
a. One-time pre-acceptance payments		
b. Utility rebate		
c. Other ECM financial incentive (i.e., state system benefit fund)		

**4. ESCO’s Portion of Financing Procurement Price**

*Note: Provide estimate of the ESCO’s portion of the finance procurement price.*

	Amount (\$)
ESCO's portion of financing procurement price (FPP), (e.g., payment and performance bonds, contractor costs for arranging financing, etc)	

**5. Summary Risk Analysis on Guaranteed Cost Savings (Payment Stream)**

*Note: In this section, the guaranteed cost savings for Years 1, 2 and 3 shall be “sorted” based upon its level of M&V. The first category of savings would be those savings subject to verification by ongoing measurements such as M&V Options B, C, and D. The second category of savings would be guaranteed savings subject to annual verification that ECM is in place and functioning, and savings from ECMs verified by M&V Option A. The third category of savings would be guaranteed savings from energy-related O&M. The sum of all categories is equal to the total level of guaranteed annual savings specified in TO-1 (final). In addition the percentage of each listing relative to the total shall be calculated and reported in the space provided.*

	Year 1		Year 2		Year 3	
	\$	%	\$	%	\$	%
<b>Guaranteed annual cost savings</b>						
Subject to verification by ongoing measurements						
Subject to annual verification that ECM is in place and functioning						
Guaranteed savings are from energy-related O&M						
Total guaranteed savings						

## 6. Comparison of estimated and guaranteed cost savings

*Note: For the total project savings and the level of savings associated that fall into the “Subject to verification by ongoing measurements” category, specify amount by which annual estimated cost savings exceed guaranteed cost savings (values for Year 0, no escalation applied). In addition, calculate the percentage by which the estimated savings exceeds the guaranteed savings.*

<b>Total project</b>	\$	%
Total estimated savings		
Total guaranteed savings		
Amount total estimated savings exceeds total guaranteed savings		
<b>Savings in subject to verification by ongoing measurements category</b>		
Estimated savings subject to verification by ongoing measurements		
Guaranteed savings subject to verification by ongoing measurements		
Amount estimated savings subject to verification by ongoing measurements exceeds guaranteed savings subject to verification by ongoing measurements		

## 7. Payments for Post-Acceptance Performance Period Services

*Note: Specify level of payment for post-acceptance performance period services and the date in which payments are expected to commence*

	Year One Annual Amount (\$)	Anticipated payment start date
Total post-acceptance performance period services payment		

## 8. Savings Shortfall Required Before Exceeding Payment for ESCO Post-Acceptance Performance Period Services

*Note: Section 8 presents a savings risk analysis to the financiers. For Years 1, 2 and 3, in the spaces provided, list the level of “guaranteed savings subject to verification by ongoing measurements” and the total payment for post-acceptance performance period services. Calculate the percent difference between the two values and show that percentage in space for “Percent shortfall in savings subject to verification by ongoing measurements.” Since the financier is in a position superior to the ESCO, the Trustee has the ability to redirect the post-acceptance performance period payments to the financier should a shortfall exist. This percentage reflects the upper shortfall limit in guaranteed savings that could be “covered” through the redirection of post-acceptance performance period payments.*

	Year 1	Year 2	Year 3
Guaranteed savings subject to verification by ongoing measurements (\$)			
Post-acceptance performance period services payment (\$)			

Percent shortfall in savings subject to verification by ongoing measurements before post-acceptance performance period services payment is exceeded			
---	--	--	--

**9. Events Required to Trigger Agency Withholding of Payments and Likelihood of Occurrence**

*Note: Brief narrative describing post-acceptance events required to trigger agency withholding of payments and likelihood of occurrence of those events.*

**10. Applicable Financial Index (i.e., U.S. Treasury, Swap Rate, etc)**

*Note: Specify the financial index that the financier shall based their offers upon. The intent is for all offerors to base their proposed project interest rates upon the same financial index to better enable the ESCO to perform a selection.*

**11. Risk Assignment Summary: Refer to Completed Risk, Responsibility and Performance Matrix**

*Note: Attach completed Risk, Responsibility and Performance Matrix.*

**12. Frequency of Government Payments**

*Note: Specify the frequency (monthly, quarterly, or annually).*

**ATTACHMENT J-12**

**STANDARD FINANCE OFFER TEMPLATE**

**Project:** *[Insert Project Title here]*

**Date:** *[Insert date here]*

**ESCO:** *[Insert ESCO Name]*

**Narrative description of finance package:**

*Financier Note: This section is intended to communicate full understanding of the finance offer, addressing issues such as:*

1. *Third party or internal financing of capitalized construction-period interest costs*
2. *Establishment of escrow or trust accounts for construction draws, performance-period administration, or other purposes*
3. *Timing of project financing closing and date certain for initiation of repayments (if applicable)*
4. *Timing of agency payments (monthly, quarterly, annually in advance, monthly in arrears, etc.)*

**Implementation Price (IP) (value from IDS):**

**Itemized Financing Procurement Price (FPP):**

*Financier Note: Itemize all up-front charges that flow to Financing Procurement Price (FPP) in Schedule TO-3 of the contractor's final proposal, such as:*

1. *All fees, professional services, etc. (itemize individually)*
2. *Capitalized construction-period interest (state all interest rate and other assumptions not specified in IDS)*
3. *Hedge costs (only applicable if IDS indicates agency desires the index portion of total project interest rate to be held firm along with premium over index and FPP)*
4. *Plug figure for contractor's portion of FPP (price to arrange financing, pass-through of payment and performance bond cost, etc.; value from IDS)*

**One-time pre-acceptance payments (value from IDS):**

**Total Amount Financed (IP + FPP – one-time savings):**

**Financial Summary:**

**Date to which all aspects of the offer are held firm (from IDS):**

**Premium over index interest rate (annual):**

Attachment 10 – SFO

*Financier Note: If agency desires the index to be held firm, then specify project interest rate (annual).*

**Financier portion of FPP:**

*Financier Note: Total FPP, less plug figure for contractor's portion*

**Post-Acceptance Performance Period (i.e., financing repayment) term (months):**

*Financier Note:*

1. *Schedule of agency debt service payments, electronically in Excel format, including all supporting calculations shall be provided with SFO.*
2. *Backup for the value of capitalized construction period interest, electronically in Excel format, including all supporting calculations, shall be provided with SFO.*
3. *All financing offers shall be based upon the applicable financial index specified in the IDS. The maturity of the index rate shall be equal to the post-acceptance performance period term (i.e., 17-year post-acceptance performance period = 17-year index). If the post-acceptance performance period is not exactly equal to the maturity of a specific index, then it is recommended that a smoothed cubic spline fit be used to approximate the rate curve. This method allows the interpolation of interest rates for given maturities even when no paper was sold at those maturities. For a discussion of econometric techniques for fitting the term structure of interest rates, including bibliographic information, see, for example, Mark Fisher, Douglas Nychka, and David Zervos, "Fitting the Term Structure of Interest Rates with Smoothing Splines," Finance and Economics Discussion Series 95-1 (Board of Governors of the Federal Reserve System, January 1995).*

## ATTACHMENT J-13

### SUBCONTRACTING PLAN

**NOTE:** Each ESPC IDIQ contract includes an approved Master Small Business Subcontracting Plan in accordance with Federal Acquisition Regulation 52.219-9. Each task order issued against this master contract will contain an Individual Small Business Subcontracting Plan, negotiated and approved by the ordering agency Contracting Officer.

#### **1. DEFINITIONS**

- a. Master Small Business Subcontracting Plan “Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.
- b. Individual Small Business Subcontracting Plan “Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.