

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER NR-MJ1000-22-00744		PAGE 1 OF 40	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER 1305M322QNRMJ0052	
						6. SOLICITATION ISSUE DATE 24 June 2022	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME JEREMY MORRIS JEREMY.MORRIS@NOAA.GOV				b. TELEPHONE NUMBER (No collect calls) 303-578-8693	
						8. OFFER DUE DATE/ LOCAL TIME July 11, 2022 05:00PM MST	
9. ISSUED BY WESTERN ACQUISITION DIVISION 325 BROADWAY, SOU6 BOULDER CO 80305		CODE AJ730004		10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: <u>100</u> % FOR: <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: 332312 <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A) SIZE STANDARD: 500 Emp.			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING	
						14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
15. DELIVER TO US DOC NOAA OAR GLOBAL MONITORING LABORATORY 325 BROADWAY R/GML BOULDER CO 80305-3328		CODE MJ100004		16. ADMINISTERED BY CODE			
17a. CONTRACTOR/ OFFER		CODE		FACILITY CODE		18a. PAYMENT WILL BE MADE BY CODE	
TELEPHONE NO.				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER							
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	30 Meter Sampling Tower						
(Use Reverse and/or Attach Additional Sheets as Necessary)							
25. ACCOUNTING AND APPROPRIATION DATA See Schedule						26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA						<input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA						<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED				29. AWARD OF CONTRACT: REF. <u>1</u> OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (Type or print)				30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or print)	
						31c. DATE SIGNED	

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED
 ☐ INSPECTED
 ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT	37. CHECK NUMBER
<input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL			<input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	

38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (Print)
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	42b. RECEIVED AT (Location)
41c. DATE	42c. DATE REC'D (YY/MM/DD)
	42d. TOTAL CONTAINERS

SCHEDULE Continued

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	<p>30-m Tower Procurement for Mauna Loa Atmospheric Baseline Observatory (MLO) in accordance with Attachment - 1 Statement of Need and Attachment - 4 Building Drawings.</p> <p>Pricing will be inclusive of all shipping charges to delivery site.</p> <p>Delivery shall be within 180 days from contract award.</p>	1.00	EA		
1001	<p>(Optional)</p> <p>10-m of Tower Procurement Option for Mauna Loa Atmospheric Baseline Observatory (MLO) in accordance with Attachment - 1 Statement of Need and Attachment - 4 Building Drawings.</p> <p>Price will be inclusive of all shipping charges to delivery site.</p> <p>Delivery shall be within 180 days of exercise.</p>	1.00	EA		

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C SECTION C - Clauses and Contract Language

C.1 FAR 52.212-4 Contract Terms and Conditions -- Commercial Items (NOV 2021) (DEVIATION 2017-02) (AUG 2017)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such

occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include-

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice;

and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C.3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.- (1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C.3903) and prompt payment regulations at 5 CFR Part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest. (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if-

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give

the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.

(9) The specification.

(t) [Reserved]

(u) Unauthorized Obligations. (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

C.2 FAR 52.212-4 Contract Terms and Conditions -- Commercial Items (OCT 2018) (DEVIATION 2017-02) (AUG 2017)

(deviation below)

(a) * * * * *

* * * * *

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

* * * * *

C.3 Addendum to FAR 52.212-4 Contract Terms and Conditions-Commercial Items, (MAY 2022) (DEVIATION 2017-02) (AUG 2017)

The following clauses are incorporated into this order as an addendum to FAR 52.212-4:

C.3.1 FAR 52.252-2 Clauses Incorporated by Reference (FEB 1998)

This contract incorporates one or more clauses, provisions, or contract language 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 Regulations (FAR) Clauses/Provisions:
<https://www.acquisition.gov/browse/index/far>
- Department of Commerce Acquisition Regulations (CAR) Clauses/Provisions:
<https://www.acquisition.gov/car>

The following clauses are hereby incorporated by reference:

C.3.2 FAR 52.203-3 Gratuities (APR 1984)

C.3.3 FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 2020)

C.3.4 FAR 52.204-13 System for Award Management Maintenance (OCT 2018)

C.3.5 FAR 52.204-18 Commercial and Government Entity Code Maintenance (JUL 2016)

C.3.6 FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (JUN 2016)

C.3.7 FAR 52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013)

C.3.8 FAR 52.247-34 F.o.b. Destination (NOV 1991)

C.3.9 CAR 1352.201-70 Contracting Officer's Authority (MAR 2010)

C.3.10 CAR 1352.208-70 Restrictions on Printing And Duplicating (APR 2010)

C.3.11 CAR 1352.209-73 Compliance with the Laws (APR 2010)

C.3.12 CAR 1352.209-74 Organizational Conflict of Interest (APR 2010)

The following clauses and/or contract language are hereby incorporated by full text:

C.3.13 FAR 52.217-7 Option for Increased Quantity – Separated Priced Line Item (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within 365 days from the date of award. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

C.3.14 FAR 52.252-6 Authorized Deviations in Clauses (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Commerce Acquisition Regulation (CAR) (48 CFR 13) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

C.3.15 CAR 1352.201-72 Contracting Officer's Representative (COR) (APR 2010)

- (a) **(To Be Designated by Letter Upon Award)** is hereby designated as the Contracting Officer's Representative (COR). The COR may be changed at any time by the Government without prior notice to the contractor by a unilateral modification to the contract. The COR is located at:

(To Be Designated by Letter Upon Award)

- (b) The responsibilities and limitations of the COR are as follows:
 - (1) The COR is responsible for the technical aspects of the contract and serves as technical liaison with the contractor. The COR is also responsible for the final inspection and acceptance of all deliverables and such other responsibilities as may be specified in the contract.
 - (2) The COR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the contract price, terms or conditions. Any contractor request for changes shall be referred to the Contracting Officer directly or through the COR. No such changes shall be made without the express written prior authorization of the Contracting Officer. The Contracting Officer may designate assistant or alternate COR(s) to act for the COR by naming such assistant/alternate(s) in writing and transmitting a copy of such designation to the contractor.

C.3.16 CAR 1352.246-70 Place of Acceptance (APR 2010)

- (a) The Contracting Officer or the duly authorized representative will accept supplies and services to be provided under this contract.
- (b) The place of acceptance will be:

Mauna Loa Observatory

1437 Kilauea Avenue #102
Hilo, HI 96720

C.3.17 NAM 1330-52.203-71 Notice of Post-Government Employment Restrictions (OCT 2015)

By submission of an offer in response to a NOAA solicitation or acceptance of a contract, the contractor acknowledges the restriction on current NOAA employees regarding contact with offerors regarding prospective employment and the corresponding obligations for contractors who engage them. The contractor further acknowledges that it has provided notice to former NOAA employees who will provide service to NOAA under the contract of post-Government employment restrictions that apply to them. Such restrictions include, but are not limited to, those set forth in:

- (a) 41 U.S.C. § 2103 regarding contacts between a Federal employee working on a procurement and an offeror about prospective employment;
- (b) 18 U.S.C. § 207 regarding the restrictions on former Federal employees having contact with a Federal agency on behalf of another person or entity concerning a specific party matter with which the former employee was involved as a Federal employee or for which the former Federal employee had official responsibility;
- (c) 18 U.S.C. § 207 regarding the restrictions on former senior employees and senior political employees from having contact with his former Federal agency on behalf of another person or entity concerning any official matter; and
- (d) 41 U.S.C. § 2104 regarding the restrictions on a former Federal employee involved in an acquisition over \$10,000,000 from accepting compensation from a contractor.

C.3.18 NAM 1330-52.215-70 Schedule of Deliverables (SEPT 2005)

Following is a schedule of all deliverables, including administrative deliverables, required during the period of performance of this contract:

Deliverable	Frequency	# of Copies	Medium/Format	Submit to
Warranty	Once	1	Email/PDF	COR & CO
Shipping Manifest	Once	1	Email/PDF	COR & CO

C.3.19 NAM 1330-52.237-72 Contractor Access to NOAA Facilities (SEPT 2017)

(a)

1. The performance of this contract requires employees of the prime contractor or its subcontractors, affiliates, consultants, or team members (“contractor employees”) to have access to and to the extent authorized, mobility within, a NOAA facility.
2. NOAA may close and or otherwise deny contractor employees access to a NOAA facility for a portion of a business day or longer for various reasons including, but not limited, to the following events:
 - i. Federal public holidays for Federal employees in accordance with 5 U.S.C. 6103;
 - ii. Fires, floods, earthquakes, and unusually severe weather, including but not limited to snow storms, tornadoes, and hurricanes;
 - iii. Occupational safety or health hazards;
 - iv. Lapse in Appropriations; or
 - v. Federal Statute, Executive Order, Presidential Proclamation, or any other unforeseen reason.
3. In such events, the contractor employees may be denied access to a NOAA facility that is ordinarily available for the contractor to perform work or make delivery, as required by the contract.

(b) In all instances where contractors are denied access or required to vacate a NOAA facility, in part or in whole, the contractor shall be responsible to ensure contractor personnel working under the contract comply. If the circumstances permit, the contracting officer will provide direction to the contractor, either directly or through the Contracting Officer’s Representative (COR), which could include continuing on-site performance during the NOAA facility closure period; however, if Government oversight is required and is not available, on-site performance shall not be allowed. In the absence of such direction, the contractor shall exercise sound judgment to minimize unnecessary contract costs and performance impacts, for example, performing required work off- site if possible or reassigning personnel to other activities if appropriate.

(c) The contractor shall be responsible for monitoring the Office of Personnel Management at opm.gov, the local radio, television stations, NOAA web sites, and other communication channels. Once the facility is accessible, the contractor shall resume contract performance as required by the contract.

(d) For the period that NOAA facilities were not accessible to contractors who required access in order to perform the services, the contracting officer may—

1. Adjust the contract performance or delivery schedule for a period equivalent to the period the NOAA facility was not accessible;
2. Forego the work; or
3. Reschedule the work by mutual agreement of the parties.

(e) Notification procedures of a NOAA facility closure, including contractor denial of access, are as follows:

1. The contractor shall be responsible for notification of its employees of the NOAA facility closure to include denial of access to the NOAA facility. The dismissal of NOAA employees in accordance with statute and regulations providing for such dismissals shall not, in itself, equate to a NOAA facility closure in which contractors are denied access. Moreover, the leave status of NOAA employees shall not be conveyed or imputed to contractor personnel. Accordingly, unless a NOAA facility is closed and the contractor is denied access to the facility, the contractor shall continue performance in accordance with the contract.
2. Access to Government facilities and resources, including equipment and systems, will be limited and personnel necessary to administer contract performance may not be available. Generally, supply and service contracts that are funded beyond the date of the lapse in appropriation and do not require access to Government facilities, active administration by Government personnel or the use of Government resources in a manner that would cause the Government to incur additional obligations during the lapse in appropriation may continue. If a delivery date for a contract falls during the period of a lapse in appropriations, Government personnel may not be available to receive delivery. Contractors are directed to consult with a contracting officer before attempting to make a delivery. Contracting officers will be available throughout the lapse in appropriation period to provide guidance.

Once OMB guidance is given, CORs, in consultation with the contracting officer, will notify those contractors that are deemed by the Program Office to be performing excepted work and identify the contractor personnel requiring access to NOAA facilities. CORs will also coordinate directly with facility management or physical security personnel at respective locations to ensure that the names of contractor personnel requiring access to Government facilities during the lapse in appropriations are provided to physical security personnel.

Contractors who are not designated as performing excepted work are not allowed access to Government facilities or to utilize Government resources in a manner that would incur any additional obligation of funding on behalf of the Government during the lapse in appropriation.

3. Unless otherwise specified within the contract award, contractors requiring access to NOAA facilities outside normal business hours or outside the normal workweek shall submit a written request in writing through the COR to the contracting officer. The written request shall provide justification supporting the required access and be submitted _____ hours/days (contracting officer insert number of days. If blank, 72 hours applies) before access to the NOAA facility is needed.

C.3.20 NAM 1330-52.242-70 Submittal of Invoices (FEB 2011)

The contractor shall prepare and submit an invoice to the COR for approval [with a copy to the contracting officer for information]. Invoice shall be submitted upon successful completion of delivery and Government acceptance.

To constitute a proper invoice, the contractor's invoice shall be prepared in accordance with, and contain all elements specified in, the paragraph titled, "Contractor's Invoice," of the applicable prompt payment provision of the contract (e.g., FAR 52.232-25, Prompt Payment; FAR 52.232-26, Prompt Payment for Fixed-Price Architect Engineer Contracts; or FAR 52.232-27, Prompt Payment for Construction Contracts). For contracts and orders for commercial items and services, paragraph (g) of FAR 52.212-4, titled, "Invoices," applies.

If the invoice does not comply with the applicable prompt payment provision of the contract, the COR will return it to the contractor within seven days after the date the designated office received the invoice along with a statement as to the reasons why it is not a proper invoice.

C.3.21 NAM 1330-52.243-70 Requests for Equitable Adjustment (OCT 2017)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the contractor believes the Government is liable. The request shall include only costs for performing the change. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) Any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including:

1. Certified cost or pricing data, if required, in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and
2. Data other than certified cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if certified cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to:

1. Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or
2. Final adjustments under an incentive provision of the contract.

C.3.22 NAM 1330-52.270-304 NOAA Acquisition and Grants Office Ombudsman (OCT 2016)

(a) The NOAA Acquisition and Grants Office (AGO) Ombudsman is available to organizations to promote responsible and meaningful exchanges of information. Generally, the purpose of these exchanges will be to:

1. Allow contractors to better prepare for and propose on business opportunities.
2. Advise as to technologies and solutions within the marketplace that the Government may not be aware of, or is not fully benefiting
3. Identify constraints in transparency

(b) The AGO Ombudsman will objectively, reasonably, and responsibly collaborate with parties and recommend fair, impartial, and constructive solutions to the matters presented to him/her. Further, the AGO Ombudsman will maintain the reasonable and responsible confidentiality of the source of a concern, when such a request has been formally made by an authorized officer of an organization seeking to do business with, or already doing business with NOAA.

(c) Before consulting with the AGO Ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations with the respective contracting officer for resolution. However, direct access to the AGO Ombudsman may be sought when an interested party questions the objectivity or equity of a contracting officer's decision, or when there is a bona fide reason to believe that reasonable, responsible, and objective consideration will not be received from an assigned contracting officer.

(d) There are several constraints to the scope of the AGO Ombudsman's authority, for instance:

1. Consulting with the AGO Ombudsman does not alter or postpone the timelines of any formal process (e.g., protests, claims, debriefings, employee employer actions, activities involving A76 competition performance decisions, judicial or congressional hearings, or proposal, amendment, modification or deliverable due dates).
2. The AGO Ombudsman cannot participate in the evaluation of proposals, source selection processes, or the adjudication of protests or formal contract disputes.
3. The AGO Ombudsman is not authorized to generate or alter laws, judicial decisions, rules, policies, or formal guidance.
4. The AGO Ombudsman is not authorized to develop or alter opportunity announcements, solicitations, contracts, or their terms or conditions.
5. The AGO Ombudsman cannot overrule the authorized decisions or determinations of the contracting officer.
6. The AGO Ombudsman has no authority to render a decision that binds AGO, NOAA, the Department of Commerce, or the U.S. Government.
7. The AGO Ombudsman is not NOAA's agent relative to the service of magistrate or judicial process and cannot be used to extend service of process to another party (whether federal, public, or a private entity).

(e) After review and analysis of a filed concern or recommendation, the AGO Ombudsman may refer the interested party to another more suitable Federal official for consideration. Moreover, concerns, disagreements, and/or recommendations that cannot be resolved by the AGO Ombudsman will need to be pursued through more formal venues.

(f) The AGO Ombudsman is not to be contacted to request copies of forms and/or documents under the purview of a contracting officer. Such documents include Requests for Information, solicitations, amendments, contracts, modifications, or conference materials.

(g) Questions regarding items (a) through (f) within this language shall be directed to Rafael Roman, NOAA AGO Ombudsman, at Rafael.Roman@noaa.gov.

C.4 FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (MAY 2022) (DEVIATION 2017-02) (DEVIATION APR 2020)(DEVIATION 2020-11)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing

Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

X_____ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jun 2020), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

_____ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509)).

_____ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

X_____ (4) 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (April 2014) (41 U.S.C. 4712) relating to whistleblower protections).

X_____ (5) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

_____ (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

_____ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

X_____ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Nov 2021) (31 U.S.C. 6101 note).

X_____ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) (41 U.S.C. 2313).

_____ (10) [Reserved].

_____ (11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Sep 2021) (15 U.S.C.657a).

_____ (ii) Alternate I (Mar 2020) of 52.219-3.

_____ (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Mar 2020) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

_____ (ii) Alternate I (Mar 2020) of 52.219-4.

_____ (13) [Reserved]

X_____ (14) (i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2020) (15 U.S.C.644).

_____ (ii) Alternate I (Mar 2020).

_____ (15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (Nov 2020) (15 U.S.C. 644).

_____ (ii) Alternate I (Mar 2020) of 52.219-7.

X_____ (16) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)).

_____ (17) (i) 52.219-9, Small Business Subcontracting Plan (Nov 2021) (15 U.S.C. 637(d)(4))

_____ (ii) Alternate I (Nov 2016) of 52.219-9.

_____ (iii) Alternate II (Nov 2016) of 52.219-9.

_____ (iv) Alternate III (Jun 2020) of 52.219-9.

_____ (v) Alternate IV (Jun 2020) of 52.219-9

_____ (18) 52.219-13, Notice of Set-Aside of Orders (Mar 2020) (15 U.S.C. 644(r)).

_____ (ii) Alternate I (Mar 2020) of 52.219-13.

**X_____ (19) 52.219-14, Limitations on Subcontracting (Sep 2021) (15 U.S.C.637(a)(14)).
(DEVIATION 2021-06)**

(i) The following services may be excluded from the 50 percent limitation:

(A) Other direct costs, to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service. Examples include airline travel, work performed by a transportation or disposal entity under a contract assigned the environmental remediation NAICS code (562910), cloud computing services, or mass media purchases.

(B) Work performed outside the United States on awards made pursuant to the Foreign Assistance Act of 1961, or work performed outside the United States required to be performed by a local contractor.

_____ (20) 52.219-16, Liquidated Damages-Subcontracting Plan (Sep 2021) (15 U.S.C. 637(d)(4)(F)(i)).

_____ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Sep 2021) (15 U.S.C. 657f).

X_____ (22) (i) 52.219-28, Post Award Small Business Program Rerepresentation (Sep 2021) (15 U.S.C. 632(a)(2)).

_____ (ii) Alternate I (Mar 2020) of 52.219-28.

_____ (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Sep 2021) (15 U.S.C. 637(m)).

____ (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Sep 2021) (15 U.S.C. 637(m)).

____ (25) 52.219-32, Orders Issued Directly Under Small Business Reserves (Mar 2020) (15 U.S.C. 644(r)).

X (26) 52.219-33, Non manufacturer Rule (Sep 2021) (15 U.S.C. 637(a)(17)).

X (27) 52.222-3, Convict Labor (Jun 2003) (E.O.11755).

X (28) 52.222-19, Child Labor-Cooperation with Authorities and Remedies (Jan 2022) (E.O.13126).

X (29) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

X (30) (i) 52.222-26, Equal Opportunity (Sep 2016) (E.O.11246).

____ (ii) Alternate I (Feb 1999) of 52.222-26.

X (31) (i) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C. 4212).

____ (ii) Alternate I (Jul 2014) of 52.222-35.

X (32) (i) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C.793).

____ (ii) Alternate I (Jul 2014) of 52.222-36.

X (33) 52.222-37, Employment Reports on Veterans (Jun 2020) (38 U.S.C. 4212).

X (34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

X (35) (i) 52.222-50, Combating Trafficking in Persons (Nov 2021) (22 U.S.C. chapter 78 and E.O. 13627).

____ (ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

X (36) 52.222-54, Employment Eligibility Verification (May 2022). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)

____ (37) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

____ (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

____ (38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).

____ (39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun2016) (E.O. 13693).

____ (40) (i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).

____ (ii) Alternate I (Oct 2015) of 52.223-13.

____ (41) (i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

____ (ii) Alternate I (Jun 2014) of 52.223-14.

____ (42) 52.223-15, Energy Efficiency in Energy-Consuming Products (May 2020) (42 U.S.C. 8259b).

____ (43) (i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

____ (ii) Alternate I (Jun 2014) of 52.223-16.

X (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Jun 2020) (E.O. 13513).

____ (45) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).

____ (46) 52.223-21, Foams (Jun 2016) (E.O. 13693).

____ (47) (i) 52.224-3 Privacy Training (Jan 2017) (5 U.S.C. 552 a).

____ (ii) Alternate I (Jan 2017) of 52.224-3.

X (48) 52.225-1, Buy American-Supplies (Nov 2021) (41 U.S.C. chapter 83).

____ (49)(i) 52.225-3, Buy American—Free Trade Agreements— Israeli Trade Act (Nov 2021)(19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 19 U.S.C. chapter 29 (sections 4501- 4732), Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112- 43.

____ (ii) Alternate I (Jan 2021) of 52.225-3.

____ (iii) Alternate II (Jan 2021) of 52.225-3.

____ (iv) Alternate III (Jan 2021) of 52.225-3.

____ (50) 52.225-5, Trade Agreements (Oct 2019) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

X (51) 52.225-13, Restrictions on Certain Foreign Purchases (Feb 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

____ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

____ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).

____ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).

X (55) 52.229-12, Tax on Certain Foreign Procurements (Feb 2021).

____ (56) 52.232-29, Terms for Financing of Purchases of Commercial Items (Nov 2021) (41 U.S.C.4505, 10 U.S.C.2307(f)).

____ (57) 52.232-30, Installment Payments for Commercial Items (Nov 2021) (41 U.S.C.4505, 10 U.S.C.2307(f)).

X (58) 52.232-33, Payment by Electronic Funds Transfer-System for Award Management (Oct 2018) (31 U.S.C. 3332).

____ (59) 52.232-34, Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) (31 U.S.C.3332).

____ (60) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C.3332).

X (61) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)(DEVIATION APR 2020) (31 U.S.C. 3903 and 10 U.S.C. 2307).

(a)(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 2307, upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract [in accordance with the accelerated payment date established], to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, with a goal of 15 days after receipt of a proper invoice and all other required documentation from the small business subcontractor if a specific payment date is not established by contract.

(2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

* * * * *

__ (62) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).

____ (63) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(13)).

X (64) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

____ (ii) Alternate I (Apr 2003) of 52.247-64.

____ (iii) Alternate II (Nov 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

___ (1) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

This contract meets the definition of “Service Contract” in accordance with FAR 22.001 and therefore is subject to the Service Contract Labor Standards. However, the overtime requirements of the Fair Labor Standards Act do not apply to employees who qualify as “seaman.”

___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

Section 5342 of Title 5, United States Code, provides that subchapter IV, except Section 5348, is not applicable to officers and members of crews of vessels excepted from chapter 51 of title 5 by Section 5102 (8) of that title. See OPM Handbook of Occupational Groups and Families, <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/occupationalhandbook.pdf>

___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (Aug 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

___ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

___ (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).

___ (7) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 2022).

___ (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).

___ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) (42 U.S.C. 1792).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor’s directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C.637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(vi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).

(vii) 52.222-26, Equal Opportunity (Sep 2015) (E.O.11246).

(vii) 52.222-35, Equal Opportunity for Veterans (Jun 2020) (38 U.S.C.4212).

(ix) 52.222-36, Equal Opportunity for Workers with Disabilities (Jun 2020) (29 U.S.C.793).

(x) 52.222-37, Employment Reports on Veterans (Jun 2020) (38 U.S.C.4212)

(xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xii) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).

(xiii) (A) 52.222-50, Combating Trafficking in Persons (Nov 2021) (22 U.S.C. chapter 78 and E.O 13627).

(B) Alternate I (Mar 2015) of 52.222-50(22 U.S.C. chapter 78 and E.O 13627).

(xiv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).

(xv) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).

(xvi) 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).

(xvii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (May 2022).

(xviii) 52.222-62, Paid Sick Leave Under Executive Order 13706 (Jan 2022) (E.O. 13706).

(xix) (A) 52.224-3, Privacy Training (Jan 2017) (5 U.S.C. 552a).

(B) Alternate I (Jan 2017) of 52.224-3.

(xx) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

(xxi) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(xxii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) (46 U.S.C. Appx.1241(b) and 10 U.S.C.2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

D **SECTION D - Attachments**

Attachment 1 Statement of Need (SON)

Attachment 2 Banned Construction Materials List

Attachment 3 Past Performance Questionnaire

E SECTION E – SOLICITATION PROVISIONS**E.1 FAR 52.212-1 Instructions to Offerors—Commercial Items (OCT 2018)
Addendum:****E.2 FAR 52.252-1 Solicitation Provisions Incorporated by Reference (FEB 1998)**

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

Federal Acquisition Regulations (FAR) Clauses/Provisions:

<https://www.acquisition.gov/browse/index/far>

Department of Commerce Acquisition Regulations (CAR) Clauses/Provisions:

<https://www.acquisition.gov/car>

The following provisions are hereby incorporated by reference:**E.2.1 FAR 52.204–7 System for Award Management (OCT 2018)****E.2.2 FAR 52.204-16 Commercial and Government Entity Code Reporting (AUG 2020)****E.2.3 FAR 52.212-3 Offeror Representations and Certificaitons-Commercial Items (MAY 2022)****FAR 52.229-11 Tax on Certain Foreign Procurements—Notice and Representation (JUN 2020)****The following provisions are hereby incorporated by full text:****E.2.4 FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)**

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at [52.204-26](#), Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at [52.212-3](#), Offeror Representations and Certifications-Commercial Products or Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses

covered telecommunications equipment or services" in paragraph (c)(2) of the provision at [52.204-26](#), or in paragraph (v)(2)(ii) of the provision at [52.212-3](#).

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

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) *Representation.* The Offeror represents that—

(1) It ☐ **will**, ☐ **will not** provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It ☐ **does**, ☐ **does not** use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) *Disclosures.*

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

E.2.5 Quote Preparation

The quoter shall submit documentation illustrating its approach for satisfying the requirements of this solicitation. Proposals must be clear, coherent, and prepared in sufficient detail for effective evaluation of the quoter proposal against the evaluation criteria.

All correspondence in conjunction with this solicitation shall be directed to the Contract Specialist and Contracting Officer identified below:

Name: Jeremy Morris
 Position: Contract Specialist
 E-mail address: Jeremy.Morris@noaa.gov

Name: Darrin Moore
 Position: Contracting Officer
 E-mail address: Darrin.Moore@NOAA.gov.

It is the quoters sole responsibility to ensure proposals reach the individual identified above prior to the solicitation closing date and time in accordance with Block 8 of the SF-1449.

E.2.6 Quote Format

All quotes submitted in response to this solicitation shall be arranged in the format described below.

Volume	Title	Page Limit
I.	Business Offer	20 page limit
II.	Technical Approach	20 page limit
III.	Price	20 page limit

E.2.7 Instructions

E.2.7.1 Volume I: Business Offer

Volume I, Business Offer, consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgements, if applicable; identification of technical data to be withheld; and any other required administrative information.

IAW FAR 52.212-1(b), Quoter is required to submit a completed SF1449, including the information requested in FAR 52.212-1(b):

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) Terms of any express warranty;
- (5) "Remit to" address, if different than mailing address;
- (6) A completed copy of the representations and certifications at FAR 52.212-3 (See FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically). Clause may be found at:

https://www.acquisition.gov/far/part-52#FAR_52_212_3;
(7) Acknowledgment of Solicitation Amendments;

In addition, Volume I shall include any other documentation identified above. This includes completed representations listed under E.2, if applicable.

E.2.7.2 Volume II: Technical Offer

Volume II, Technical Offer, consists of the quoter's offer delineating its capabilities and how it intends to deliver all elements associated with Attachment – 1 Statement of Need.

Each Technical Offer shall at a minimum contain the information necessary to address the Evaluation Factors listed below. Additional information may be provided beyond that which is indicated but will not be construed as a substitution of response for one or more of the Factors prescribed. The purpose of this assessment is to allow each quoter to quantify its technical abilities and convey to the Government that it has the appropriate capabilities to achieve the requirement objectives. Quoters are cautioned that failure to address any of the following evaluation Factors may result in an “Unacceptable” rating.

Factor 1 – Technical Approach

Factor 2 -- Past Performance

In order that the technical offer may be evaluated strictly on the merit of the material submitted, no contractual price information is to be included in Volume II.

The Technical Offer must be typed, double-spaced, with one-inch margins, using Times New Roman size 12 font and printed, unreduced in size, on 8 ½” by 11” page format\ not exceeding 20 pages. A 10 point font may be used for charts and tables. The following are excluded from the page count: (1) Cover Page (maximum one page); (2) Table of Contents; (3) List of Tables and Figures; and (4) Abbreviations and Acronyms. Any pages in excess of 20 will be disregarded, and will not be included in the offer evaluation.

(A) Evaluation Factor 1 – Technical Approach:

1. The Quoter shall provide a technical proposal that describes the ability to provide the 30 meter and 10 meter sampling tower(s) including detailed specifications to address all requirements in accordance with Attachment -1 Statement of Need.
2. The Quoter shall provide acknowledgement that the delivery schedule listed the SF-1449 (CLINs) will be met.

(B) Evaluation Factor 2 - Past Performance: The offer must include specific contract references and clearly address recently completed and related, relevant contracts (both Government and non-Government), subcontracts, and grants. The quoter should include the name of the customer, including contracting agency,

address, and phone number; contract number, type of contract, and dollar value; date of contract, period of performance, and place of performance; and a brief description of contract work scope and responsibilities. Past performance of proposed subcontractors will not be considered relevant for this solicitation.

Attachment 3 Past Performance Questionnaire, is included for your use. Provide questionnaires to all customers under similar or related contracts performed or currently being performed for at least the last three (3) years or a short statement explaining the lack thereof. Include any letters or reports of work performance completed provided by a contracting agency on quality of work performed prior to submitting Attachment 3 Past Performance Questionnaire to customer references. The Government expects to make use of past performance data from any available list of customers.

Quoters shall provide a listing of customers to which Attachment 3 Past Performance Questionnaire forms were distributed. The list must contain the firms' names, the representative to whom the form was provided, a telephone number of the contact and an email address. Your customers are requested to complete the Past Performance form and submit the form by email directly to darrin.moore@noaa.gov & Jeremy.morris@noaa.gov.

Please Note: Any Exceptional, Marginal or Unsatisfactory rating assessed by the customer on individual elements or overall rating assigned on the past performance questionnaire, shall include an explanatory narrative to be provided in the remarks block. These narratives need not be lengthy, just adequately detailed to support evidence of the specific ratings noted above. Failure to provide information supporting the assigned rating may result in a lower rating being designated than that assigned by the customer.

Questionnaires shall be received no later than the submission date stated in the solicitation for the proposal in order to be considered for evaluation of this factor. Questionnaires submitted directly by the quoter rather than by the customer may not be considered. If a quoter does not have a history of similar or relevant past performance, or if it is not available, it should be noted as such in the quotation.

E.2.7.3 Volume III: Price Quote

Quoters must utilize the SF1449 Pricing Schedule to submit their pricing. Unit prices are to be entered into the appropriate boxes.

The Government anticipates that this contract will be awarded based upon adequate price competition. Should this not be the case, the Contracting Officer reserves the right to require the

quoter to submit other than certified cost or pricing data in order to determine pricing to be fair and reasonable.

E.2.8 FAR 52.212-2 Evaluations-Commercial Products and Commercial Services (OCT 2014)

- (a) The Government intends to make award to the lowest priced offer that meets or exceeds the acceptability standards for non-price factors. The following factors shall be used to evaluate offers

Factor 1 – Technical Approach:

1. The Government will evaluate the technical proposal to determine if the supplies provided are technically acceptable according to the specifications listed in Attachment – 1 Statement of Need. Failure to meet or exceed any specification or requirements found in Attachment – 1 Statement of Need will result in an unacceptable rating.
2. The Government will evaluate the proposed delivery schedule to determine if it meets or exceeds to the requirements in the SF-1449 (CLINs).

Factor 2 – Past Performance

The Government will evaluate the responses from the customers in the example projects identified by the quoters from which Past Performance Questionnaires have been received. This evaluation will determine if the past performance is acceptable or unacceptable. The quoters past performance on related contracts will be evaluated to determine, as appropriate, successful performance of contract requirements, quality and timeliness of delivery of goods and services, effective management of subcontractor, cost management, level of communication between the contracting parties, proactive management, and customer satisfaction. In order to be determined acceptable, the past performance must show a preponderance of relevant contracts with a Satisfactory rating or higher.

The Government may contact and interview as many points of contact as possible to supplement the information received through the Past Performance Questionnaires received. The evaluation may also rely on sources other than those provided by the quoter to obtain information with respect to past performance evaluations such as the Contractor Performance Assessment and Reporting System (CPARS), telephone interviews, and personal knowledge of contractor performance capability obtained from Government personnel. The Government reserves the right to interview other individuals acting for the listed references, if the listed reference is not available.

Quoter with no past performance information, which includes no past performance questionnaires being received, will be rated neither favorably nor unfavorably and will receive a neutral rating.

If a teaming arrangement is proposed, the Government may consider the experience/past performance of one of the parties' as representative of the experience of the teaming arrangement itself.

Factor 3 – Price

The Government will evaluate price by reviewing the total aggregate pricing quoted for the contract (base and options).

(b) *Options*. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful quoter within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

E.2.9 FAR 52.216-1 Type of Contract (APR 1984)

The Government contemplates award of a firm-fixed price (FFP) contract resulting from this solicitation.

E.2.10 FAR 52.217-5 Evaluation of Options (July 1990)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

E.2.11 CAR 1352.215-72 Inquiries

Offerors must submit all questions concerning this solicitation in writing to:

Name: Jeremy Morris

Position: Contract Specialist

E-mail address: Jeremy.Morris@noaa.gov

Name: Darrin Moore

Position: Contracting Officer

E-mail address: Darrin.Moore@NOAA.gov.

Questions should be received no later than **four (4)** calendar days after the issuance date of this solicitation. Any responses to questions will be made in writing, without identification of the questioner, and will be included in an amendment to the solicitation.

Even if provided in other form, only the question responses included in the amendment to the solicitation will govern performance of the contract.

E.2.12 CAR 1352.233-70 Agency Protests (APR 2010)

(a) An agency protest may be filed with either: (1) The contracting officer, or (2) at a level above the contracting officer, with the appropriate agency Protest Decision Authority. See 64 FR 16,651 (April 6, 1999).

(b) Agency protests filed at a level above the Contracting Officer shall be sent to the following address:

Bianca H. Blau
Branch Chief, Western Acquisition Division
U.S. Department of Commerce/NOAA
325 Broadway, SOU6
Boulder, CO 80305

(c) Agency protests filed with the agency Protest Decision Authority shall be sent to the following address:

Joseph Greene
Deputy Director, Western Acquisition Division
U.S. Department of Commerce/NOAA
325 Broadway, DSRC
Boulder, CO 80305

(d) A complete copy of all agency protests, including all attachments, shall be served upon the Contract Law Division of the Office of the General Counsel within one day of filing a protest with either the Contracting Officer or the Protest Decision Authority.

(e) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. FAX: (202) 482-5858.

E.2.13 CAR 1352.233-71 GAO and Court of Federal Claims Protests (APR 2010)

(a) A protest may be filed with either the Government Accountability Office (GAO) or the Court of Federal Claims unless an agency protest has been filed.

(b) A complete copy of all GAO or Court of Federal Claims protests, including all attachments, shall be served upon (i) the Contracting Officer, and (ii) the Contract Law Division of the Office of the General Counsel, within one day of filing a protest with either GAO or the Court of Federal Claims.

(c) Service upon the Contract Law Division shall be made as follows: U.S. Department of Commerce, Office of the General Counsel, Chief, Contract Law Division, Room 5893, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, DC 20230. FAX: (202) 482-5858.

E.2.14 NAM 1330-52.270-304 NOAA Acquisition and Grants Office Ombudsman (OCT 2016)

(a) The NOAA Acquisition and Grants Office (AGO) Ombudsman is available to organizations to promote responsible and meaningful exchanges of information. Generally, the purpose of these exchanges will be to:

4. Allow contractors to better prepare for and propose on business opportunities.
5. Advise as to technologies and solutions within the marketplace that the Government may not be aware of, or is not fully benefiting
6. Identify constraints in transparency

(b) The AGO Ombudsman will objectively, reasonably, and responsibly collaborate with parties and recommend fair, impartial, and constructive solutions to the matters presented to him/her. Further, the AGO Ombudsman will maintain the reasonable and responsible confidentiality of the source of a concern, when such a request has been formally made by an authorized officer of an organization seeking to do business with, or already doing business with NOAA.

(c) Before consulting with the AGO Ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations with the respective contracting officer for resolution. However, direct access to the AGO Ombudsman may be sought when an interested party questions the objectivity or equity of a contracting officer's decision, or when there is a bona fide reason to believe that reasonable, responsible, and objective consideration will not be received from an assigned contracting officer.

(d) There are several constraints to the scope of the AGO Ombudsman's authority, for instance:

8. Consulting with the AGO Ombudsman does not alter or postpone the timelines of any formal process (e.g., protests, claims, debriefings, employee employer actions, activities involving A76 competition performance decisions, judicial or congressional hearings, or proposal, amendment, modification or deliverable due dates).
9. The AGO Ombudsman cannot participate in the evaluation of proposals, source selection processes, or the adjudication of protests or formal contract disputes.

10. The AGO Ombudsman is not authorized to generate or alter laws, judicial decisions, rules, policies, or formal guidance.
 11. The AGO Ombudsman is not authorized to develop or alter opportunity announcements, solicitations, contracts, or their terms or conditions.
 12. The AGO Ombudsman cannot overrule the authorized decisions or determinations of the contracting officer.
 13. The AGO Ombudsman has no authority to render a decision that binds AGO, NOAA, the Department of Commerce, or the U.S. Government.
 14. The AGO Ombudsman is not NOAA's agent relative to the service of magistrate or judicial process and cannot be used to extend service of process to another party (whether federal, public, or a private entity).
- (e) After review and analysis of a filed concern or recommendation, the AGO Ombudsman may refer the interested party to another more suitable Federal official for consideration. Moreover, concerns, disagreements, and/or recommendations that cannot be resolved by the AGO Ombudsman will need to be pursued through more formal venues.
- (f) The AGO Ombudsman is not to be contacted to request copies of forms and/or documents under the purview of a contracting officer. Such documents include Requests for Information, solicitations, amendments, contracts, modifications, or conference materials.
- (g) Questions regarding items (a) through (f) within this language shall be directed to Rafael Roman, NOAA AGO Ombudsman, at Rafael.Roman@noaa.gov.