

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NUMBER 1000160596	<b>PAGE 1 OF 42</b>
2. CONTRACT NO.	3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER	5. SOLICITATION NUMBER SPE604-23-R-0401	6. SOLICITATION ISSUE DATE 2023 FEB 01	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME Jacob Sigler DJS0058		b. TELEPHONE NUMBER (No Collect calls) Phone: 703-767-9365	8. OFFER DUE DATE/ LOCAL TIME 2023 MAR 02 10:00 AM
		9. ISSUED BY  DLA ENERGY INSTALLATION ENERGY 8725 JOHN J. KINGMAN ROAD FORT BELVOIR VA 22060 USA	CODE SPE604	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: _____ % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB NAICS: 221112 <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A) SIZE STANDARD:	
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>	
15. DELIVER TO  SEE SCHEDULE		CODE	16. ADMINISTERED BY  CODE		
17a. CONTRACTOR/OFFEROR  TELEPHONE NO.		CODE	18a. PAYMENT WILL BE MADE BY  CODE		
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT
	See Schedule				
	<i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>				
25. ACCOUNTING AND APPROPRIATION DATA				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 <u>1</u> 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			<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ 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

## **Part I – The Schedule**

### **SECTION A – SOLICITATION / CONTRACT FORM**

QUESTIONS REGARDING THIS SOLICITATION MUST BE SUBMITTED IN WRITING VIA EMAIL TO [DLAENERGY.ETEAM@DLA.MIL](mailto:DLAENERGY.ETEAM@DLA.MIL) AND [JACOB.SIGLER@DLA.MIL](mailto:JACOB.SIGLER@DLA.MIL) NO LATER THAN FEBRUARY 20, 2023.

#### **Continuation of SF 1449, Block 8 Offer Due Date**

This date refers to only to the non-price proposal requirements of this Request for Proposal (RFP). Offerors shall submit all Non-Price Proposal elements and all other required documents pursuant to Section L of this RFP. Offerors are encouraged to submit their proposals early as pricing is not required prior to the date/time defined in SF 1449, Block 8.

Prices shall be submitted via a reverse auction on a date and time to be determined. The reverse auction shall be conducted in accordance with DLAD Note L09 REVERSE AUCTION (OCT 2016).

**Note:** Prospective offeror's are encouraged to review Federal Acquisition Regulation 15.208 regarding timely submission of offers. Specifically, please be aware that it is the offeror's responsibility to ensure that their offer is actually received at the designated Government office prior to the solicitation closing. Submission of offers by electronic commerce (e.g. e-mail or fax) is governed by FAR 15.208(b)(1)(i). If an offeror electronically submits its offer on the day the solicitation closes, then timeliness will be determined based on whether or not the offer was actually received prior to closing. In that situation, the offeror will bear the risk of any delay in the transmission of their offer (e.g. offeror clicked "send" prior to the closing of the solicitation, but the e-mail did not arrive until after the time for closing), and offers not actually received prior to closing will be late. However, pursuant to FAR 15.208(b)(1)(i), if an offeror utilizes a means of electronic commerce to send their offer and transmits it not later than 5:00 p.m. *ONE DAY PRIOR* to the time for closing (and can prove that they have done so), then the offeror will be protected from such unexpected transmission delays and its offer will be considered timely.

**Note 2:** E-mails being sent to DLA Energy by non-DoD entities during the weekdays from 0800 to 1700 may be delayed up to several hours. To minimize potential issues as a result of any e-mail delays, DLA Energy requests that any correspondence from Non-DoD Entities allow at least 24 hours to be received.

**Note 3:** A date for the submission of prices will be established via an amendment to be issued after the Offer Due Date.

**Note 4:** The Government reserves the right not to consider any exceptions to the stated solicitation requirements received after the due date for technical offers.

### **SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS**

#### **B1.08 SUPPLIES TO BE FURNISHED (ELECTRICITY) (DLA ENERGY JAN 2012)**

(a) The contract quantities shown below are best estimates based on historical data only of the Government's requirements for the contract period. The Contractor shall supply and deliver retail electricity and any ancillary services required in the STATEMENT OF WORK/SPECIFICATIONS (ELECTRICITY) contract text. Contract performance shall be accomplished in accordance with the terms and conditions of this contract.

(b) As used throughout this solicitation/contract, **kW** means kilowatt; **kWh** means kilowatt-hour; and **UDC** means Utility Distribution Company. Below are the acronyms and full names of each

utility service area, public utility commission, the applicable NERC region, and those NERC Regions that border the applicable NERC Region.

**Applicable NERC Region:** Illinois Midcontinent Independent System Operator  
**Applicable Independent System Operator (ISO)/Regional Transmission Organization (RTO):**  
MISO  
**Public Utility Commission (PUC):** Illinois Commerce Commission (ICC)  
**Utility Service Region:** Ameren Electric Utility Company (Ameren Illinois)

(c) The Government is soliciting offers for supply and transmission of electricity and ancillary services for the following locations:

Contract Line Item Number (CLIN)	Location/Installation Name	Number of Accounts	Estimated Quantity (kWh)	Spreadsheet Name
0001	US Army Corps of Engineers (USACE)	3	9,275,998	Attachment I – Installation Data Sheet
0002	Scott Air Force Base (SAFB)	4	215,052,896	
0003	US Department of Agriculture (USDA)	1	19,766,112	
0004	Air National Guard (ANG)	4	9,622,762	
<b>TOTAL</b>		<b>12</b>	<b>253,717,768</b>	

(d) The Government is soliciting offers for a 24-month delivery period (from the meter read date occurring in the month of May 2023 through the meter read date occurring in the month of May 2025). Specifics for each line item are provided with each individual Installation Data Sheet. The information includes: (1) Line Item Number, (2) Location, (3) Local Electric Utility, (4) Current Tariff Rate, (5) Utility Account Number; (6) Contract Performance Period, (7) Monthly Consumption and Demand Data; and (8) Interval Data. Please use the following link to access the information: <https://beta.sam.gov/>

(e) The Government is soliciting offers for Firm Fixed Price, Requirements Type basis for electricity. Prices shall include the following charges: energy, ~~transmission~~, ancillary services, FERC Order 745, MISO transmission losses, UDC losses, and independent system operator/regional transmission organization fees (all retail supply costs) to the service point as specified in this solicitation.

The cost to purchase capacity (Zonal Resource Credits) through the Planning Resource Auction (PRA) process to comply with MISO’s resource adequacy requirements shall be passed through to the Government. The daily capacity charge to the Government for each service point (account) shall not exceed the product of (1) the Peak Load Contribution (PLC), in MW, assigned by the UDC (Ameren Illinois) to the service point for the applicable **season of the applicable** Planning Year; and (2) the PRA Auction Clearing Price (ACP) **for the applicable season of the applicable Planning Year, in \$/MW-day**, less any Zonal Deliverability Benefit credits (ZDB), plus any Local Clearing Requirement charges (LCR), in dollars per MW per day (\$/MW-day), for Zone 4, the Local Resource Zone (LRZ) in which Ameren Illinois is located. Daily Capacity Charge = PLC \* (ACP – ZDB + LCR)

(f) Offerors may submit prices on all, some or none of the line items contained in the solicitation.

(g) The Government is soliciting unit prices consistent with and reflecting the structure

established in the applicable tariffs. The following symbols have been established for the applicable line items: **Not applicable.**

**NOTE 1:** CLIN 0001 USACE has a new temporary structure that has not yet been designated a building number. Account 2467170076 is simply distinguished as the “robotics tent.” Although this is a temporary structure, there is no definite time that the structure will be decommissioned. This will likely be used for years to come, as the research project requires.

**NOTE 2:** CLIN 0002 SAFB began a \$140M renovation project, affecting Account 22493377933. Personnel relocated into existing onsite facilities and/or temporary onsite facilities until renovation completion, which is projected as December 2025. The Government does not anticipate personnel reallocation to affect other SAFB accounts on this solicitation. During the time of the renovation project, account 22493377933 will not be closed and there will be no temporary construction meters. Account 22493377933 will be used to power the renovation project. The anticipated usage impact is a potential reduction of up to 4%. SAFB is also exploring the possibility of participating in Energy Savings Performance Contracts (ESPC), but a decision has not yet been made. Information will be provided as needed

**NOTE 3:** Executive Order (EO) 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, was issued on December 8, 2021. The EO requires the Government transition to 100% Carbon Pollution-Free Electricity (CFE) by 2030. During the term of the contract, if the CFE market develops to a point that it is viable for the contractor to deliver CFE; contractor must be willing to discuss and, if commercially possible for a reasonable price, deliver an agreed amount of CFE to the Government.

## SECTION C – STATEMENT OF WORK/SPECIFICATIONS

### C800 STATEMENT OF WORK/SPECIFICATIONS (ELECTRICITY) (DLA ENERGY JAN 2012)

(a) **STATEMENT OF WORK.** The Contractor shall supply electricity, and any ancillary services required to deliver electricity to the point of delivery and for the scheduling and coordination of the delivery of electricity to the service point for each account under the contract. All quantities ordered by the Government shall be considered firm and guaranteed for delivery by the Contractor to the delivery point, and for scheduling and coordinating, for ultimate delivery to the service point for each account. Charges incurred as a result of the Contractor's failure to abide by the terms of the applicable Retail Access rules and/or the UDC Service Agreement shall be the responsibility of the Contractor. With the exception of any and all transmission and distribution related charges payable by the Government to the UDC under the applicable tariff for each account (unless said charges are the result of the Contractor's failure to perform in accordance with the contract), the Contractor is responsible for all costs associated with deliveries to the delivery point and the scheduling and coordination for delivery of electricity to the service point for each account under the contract. The Contractor shall be liable for any and all penalties and/or additional costs assessed to the Government for the nondelivery of the firm requirements in accordance with paragraphs (f) and (m) of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS clause.

(b) **INVOICE AND PAYMENT.** FAR 52.212-4 (g) is incorporated by reference as it is a mandatory commercial clause. However, although the purchase of electricity is entirely commercial, the billing of electricity does not squarely fall into the reasonable requirements the Government mandates for other commercial products to be invoiced. Under the authority of FAR 52.215-8 Order of Precedence, the Government’s explicit invoice and payment instructions in C800 supersedes FAR 52.212-4(g).

The Government will utilize/allow **Consolidated UDC Billing (also known as Single Bill Option in Ameren) Supplier Consolidated Billing for CLIN 0001.** The contractor must submit all invoice information to the appropriate UDC under the terms of the applicable Retail Access Rule, in accordance with terms of its UDC Service Agreement. All invoicing shall be based on metered quantities

at the service point for each account. The contractor may only invoice for charges allowed under the terms and conditions of the contract. Any costs associated with Consolidated UDC Billing shall be the responsibility of the Contractor and shall be included as part of the offered price.

The Government will utilize/allow **Dual Billing for CLINs 0002, 0003, and 0004**. All invoicing shall be based on meter quantities at the service point for each account. The Contractor may only invoice for charges allowed under the terms and conditions of the contract. Any costs associated with billing shall be the responsibility of the Contractor and shall be included as part of the offered price. Each invoice shall be prepared in a manner consistent with and shall conform to the applicable PUC requirements for Dual Billing. In addition to the requirements set forth in FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS Paragraph (g), each contractor invoice shall include the following information for Dual Billed accounts, if available from the UDC:

- (1) Installation name, Line Item, and individual account information (Account Number, Meter Number, and Service Address).
- (2) Supplier's information such as logo, address, point of contact (name and phone number), and wiring information.
- (3) Billing period for each account.
- (4) Total consumption for each account (broken down by Peak, Off-Peak, Semi-Peak, if available).
- (5) Total Energy Charge (broken down by energy charges and demand charges, if available).
- (6) Demand information for each account (broken down by Peak, Off-Peak, Semi-Peak, if available).
- (7) Charges for services broken out in detail for each account in a manner consistent with the terms and conditions of the contract and the applicable PUC requirements.
- (8) All information required by the applicable PUC to be included on customer invoice.
- (9) If customer questions information on an invoice, supporting documentation is required before payment will be made.

Supplier coordination with the local utility will be necessary to ensure that these customers receive identical billing data from both the supplier and the local utility (i.e. commodity and wire charges must be based on the utility's billing cycle).

If a Contractor is unable to issue a bill based on actual meter reading due to the failure of the UDC to obtain or transmit a meter reading to the Contractor, the Contractor may issue a bill based on an estimated reading fifteen (15) calendar days following the meter read date for the affected account. The Contractor must inform the customer of the reason for the issuance of the estimated bill, and the Government reserves the right to obtain documentation relating to the efforts taken by the Contractor to obtain the meter read data. For estimated billing purposes, the estimate of usage provided by the UDC shall be used first. If no such UDC estimate is available, the Contractor shall use the relevant monthly consumption data (as the estimate) included in the applicable Installation Data Sheet, adjusted for the number of days. All estimated bills shall be trued up on the next billing cycle.

**NOTE:** The paying offices for each installation will be provided to awardee(s) in the resultant contract.

(c) **METERING AND METER READING SERVICES.** Will be provided by the incumbent UDC for each account.

(d) **SCHEDULING AND SUPPLY MANAGEMENT.** It shall be the Contractor's responsibility to schedule deliveries for all accounts awarded for the time period specified herein. The Contractor shall be responsible for supply management and overall coordination of production, transmission, and distribution of electrical power to the service point of each account identified in the contract. As such, the Contractor shall be knowledgeable of and responsible for imbalance policies, transmission grid losses, transmission congestion charges and UDC line losses for the delivery of electricity to the service point of each account under the contract. The Contractor must meet all applicable

State and Federal requirements necessary to successfully complete any contract. The Government will not pay any costs associated with the Contractor's failure to deliver electrical power at the delivery point sufficient to meet the demand at the service point of each account under the contract or to schedule and coordinate for the delivery of electricity to each service point.

(e) **RECORD KEEPING.** The Contractor shall keep records of data required to bill in accordance with the utility tariff of each account (demand and consumption data) in an electronic database format compatible with Microsoft Access or a spreadsheet format compatible with Microsoft Excel. These records shall be made available to DLA Energy or to any party designated by DLA Energy as authorized to request this data. In the event that the Contractor maintains records on demand and consumption data in addition to that required to bill in accordance with the utility tariff, said data shall also be made available to DLA Energy or to any party designated by DLA Energy as authorized to request this data. The Contractor shall provide (or make available) to DLA Energy or to any party designated by DLA Energy, interval data (for those accounts with an interval meter) in Microsoft Excel format, on a monthly basis throughout the entire delivery term of any resultant contract.

(f) **ORDERING.** Orders shall be made in accordance with the ELECTRICITY ORDERING PROCEDURES contract text.

(g) **POINT OF DELIVERY.** For this solicitation and any resulting contract, the delivery point for each account is defined as an interconnect with the UDC owned or controlled transmission or distribution system and where applicable, Contractor will schedule to the Residual Aggregate point of delivery.

(h) **SERVICE POINT.** For this solicitation and any resulting contract, the service point is defined as the meter(s) indicated for each account awarded as described in Attachment I.

(i) **SPECIFICATIONS.** The electricity provided under this contract shall conform to the tariff of the transmitting and/or distributing utility at the delivery point(s) specified in the Schedule.

## SECTION D – PACKAGING AND MARKING

Not Applicable

## SECTION E – INSPECTION AND ACCEPTANCE

The Offeror shall comply with FAR 52.212-4 Contract Terms and Conditions – Commercial Items, Paragraph (a) Inspection/Acceptance.

## SECTION F – DELIVERIES OR PERFORMANCE

Not Applicable

## SECTION G – CONTRACT ADMINISTRATION DATA

Not Applicable

## SECTION H – SPECIAL CONTRACT REQUIREMENTS

### H800 NOTIFICATION OF TARIFF/RATE CHANGES (ELECTRICITY) (DLA ENERGY FEB 2013)

The Contractor shall use commercially reasonable efforts to provide the Contracting Officer with written notice received by the Contractor of any relevant changes to the transportation tariff/rate or the scheduling of a tariff/rate hearing that would reasonably be expected to have impact on the

installations within a commercially reasonable time frame. Failure of the Contractor to comply with this contract text shall not be grounds for termination for cause.

## **Part II – Contract Clauses**

### **SECTION I – CONTRACT CLAUSES**

#### **FAR 52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2021) (TAILORED)**

**NOTE:** INSTRUCTIONS HAVE BEEN TAILORED TO BE MORE CONSISTENT WITH COMMERCIAL PRACTICE UNDER FAR PART 52.212-4. ALL OTHER INSTRUCTIONS INCLUDED IN FAR 52.212-4 ARE HEREBY INCORPORATED BY REFERENCE (SEE BLOCK 27A OF STANDARD FORM 1449).

(f) **EXCUSABLE DELAYS (Tailored).** 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, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, civil disturbance, hostile forces, terrorist acts or transmission failure. An excusable delay or similar event suffered by an independent service operator (ISO) (or an equivalent of an ISO) or a utility distribution company (or electric distribution company or transmission distribution services provider) shall constitute an excusable delay hereunder. 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 provide notice to the Contracting Officer of the cessation of such occurrence. Upon delivery of notice of the occurrence of an excusable delay, the obligations of the Contractor shall be suspended to the extent affected by such excusable delay.

(k) **TAXES (Tailored).**

(1) The contract price includes all applicable Federal, State, and local taxes and duties in effect at contract signing.

(2) After-imposed Federal, State, or local tax, as used in this DLA Energy FAR Tailored clause, means any new or increased Federal, State, or local excise tax or duty, or tax that was exempted or excluded on the contract award date but whose exemption was later revoked or reduced, or whose computation was later changed during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax, income tax, or other employment taxes. The contract price shall be increased by the amount of any after-imposed Federal, State or local tax, provided the Contractor warrants, in writing, that no amount for such newly imposed Federal, State, or local excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(3) After-relieved Federal, State, or local tax, as used in this DLA Energy FAR Tailored clause, means any amount of Federal, State, or local excise tax or duty that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax, income tax, or other employment taxes. The contract price shall be decreased by the amount of any after-relieved Federal, State, or local tax.

(l) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE (Tailored).**

(1) In accordance with all applicable state and local distribution company regulations, the Government reserves the right to terminate this contract with respect to any or all contract quantities, for its sole convenience. In the event of such termination, the Contractor shall cease deliveries hereunder with respect to such terminated contract quantities on the first allowable date subsequent to such termination according to the applicable tariff sheets of the local distribution company. The Contractor shall cause any and all of its suppliers and subcontractors to cease work related to this contract prior to the date and time specified by the Government for the termination. Subject to the terms and conditions of this contract, the Contractor shall be paid for electricity delivered under the contract prior to the date and time specified by the Government for the termination of any or all contract quantities plus any additional energy the Contractor is required to deliver for the Government's account under applicable location distribution company tariff sheets.

(2) In the event of a termination for convenience, the Government shall pay the Contractor the termination value, if positive, calculated by the following formula:

(i) Firm Fixed Price:

$$A = \Sigma (B - C) * D$$

Where--

A = Termination value.

B = Award price for each usage period for each season.

C = Forward market bid price, defined herein.

D = Contract quantity for each usage period for each season (based on data listed in the Installation Data Sheet).

(A) If the termination value on the date of termination is negative, the Contractor shall not be entitled to any payment.

(B) The forward market bid price shall be defined as sum of (i) the average of on and off-peak prices at the Ameren Illinois Hub through which the account is served; and (ii) a reasonable estimate of market charges forming the basis between the Hub and applicable Load Zone; for a term equal to the remaining term of the contract. The forward market price will be determined by the Contractor in a commercially reasonable manner, which may include polling energy brokers on the date of termination. The Government shall have the right to reasonably audit forward market price data obtained by the Contractor.

(C) In the event that the Government elects to terminate on a date other than the end of a month or at the end of the summer/non-summer season, as defined by applicable local distribution company and tariff, the estimated remaining contract quantity will be calculated by prorating the partial month or partial season of service.

(D) In the event of a termination for convenience, the Government's liability shall be limited to the termination value calculated in accordance with the provisions of this tailored clause.

(m) **TERMINATION FOR CAUSE (Tailored).** 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 (Tailored).** Title to the electricity supplied by the Contractor under this contract shall pass to the Government upon delivery at the delivery point specified in the Schedule. The Contractor warrants that the electricity delivered to the Government under this contract will be free and clear of any liens, claims and encumbrances arising prior to delivery at the delivery point specified in the Schedule.

(o) **WARRANTY (Tailored).** The Contractor warrants and implies that the electricity delivered hereunder conforms to the tariff of the transmitting and/or distributing utility at the delivery point specified in the Schedule.

(p) **LIMITATION OF LIABILITY (Tailored).** Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for any consequential, special, incidental, punitive, exemplary, or indirect damages or other business interruption damages except to the extent caused by a Contractor's or its agent's gross negligence or willful misconduct.

#### **FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (OCT 2022)**

(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 products and commercial services:

(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 products and commercial services:

[Contracting Officer check as appropriate.]

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jun 2020), with Alternate I (Nov 2021) (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) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Jun 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

— (5) [Reserved].

— (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) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Oct 2022) (15 U.S.C. 657a).

X (12) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

— (13) [Reserved]

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

— (ii) Alternate I (Mar 2020) of 52.219-6.

— (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 2022) (15 U.S.C. 637(d)(2) and (3)).

X (17) (i) 52.219-9, Small Business Subcontracting Plan (Oct 2022) (15 U.S.C. 637(d)(4)).

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

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

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

— (v) Alternate IV (Sep 2021) of 52.219-9.

— (18) (i) 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.

— (19) 52.219-14, Limitations on Subcontracting (Oct 2022) (15 U.S.C. 637s).

X (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 (Oct 2022) (15 U.S.C. 657f).

X (22) (i) 52.219-28, Post Award Small Business Program Representation (Oct 2022) (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 (Oct 2022) (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 (Oct 2022) (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)).

— (26) 52.219-33, Nonmanufacturer 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 products or commercial services as prescribed in FAR 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 (Jun 2016) (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 (Jun2014) 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 (Jun2016) (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.
- \_\_\_ (48) (i) 52.225-1, Buy American-Supplies (Oct 2022) (41 U.S.C. chapter 83).
- \_\_\_ (ii) Alternate I (Oct 2022) of 52.225-1.
- \_\_\_ (49) (i) 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act (Oct 2022) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, 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.

- \_\_\_ (v) Alternate IV (Oct 2022) of 52.225-3.  
X (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).  
\_\_\_ (55) 52.229-12, Tax on Certain Foreign Procurements (Feb 2021).  
\_\_\_ (56) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (Nov 2021) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).  
\_\_\_ (57) 52.232-30, Installment Payments for Commercial Products and Commercial Services (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).  
\_\_\_ (61) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).  
X (62) 52.242-5, Payments to Small Business Subcontractors (Jan 2017) (15 U.S.C. 637(d)(13)).  
\_\_\_ (63) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Nov 2021) (46 U.S.C. 55305 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 products and commercial services:

[Contracting Officer check as appropriate.]

- \_\_\_ (1) 52.222-41, Service Contract Labor Standards (Aug 2018) (41 U.S.C. chapter 67).  
\_\_\_ (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).  
\_\_\_ (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 products or commercial services. 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 2022) (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).

(viii) 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 (May 2022) (E.O. 12989).

(xvii) 52.222-55, Minimum Wages for Contractor Workers Under Executive Order 14026 (Jan 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. 55305 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 products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

#### **FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984)**

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

#### **DFARS 252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (DEC 2018) APPLICABLE ONLY TO CLIN 0002**

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

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity, or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

“Payment request” and “receiving report” are defined in the clause at 252.232-7003 , Electronic Submission of Payment Requests and Receiving Reports.

(b) *Electronic invoicing.* The WAWF system provides the method to electronically process vendor payment requests and receiving reports, as authorized by Defense Federal Acquisition Regulation

Supplement (DFARS) 252.232-7003 , Electronic Submission of Payment Requests and Receiving Reports.

(c) *WAWF access*. To access WAWF, the Contractor shall—

(1) Have a designated electronic business point of contact in the System for Award Management at <https://www.sam.gov>; and

(2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site.

(d) *WAWF training*. The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>

(e) *WAWF methods of document submission*. Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) *WAWF payment instructions*. The Contractor shall use the following information when submitting payment requests and receiving reports in WAWF for this contract or task or delivery order:

(1) *Document type*. The Contractor shall submit payment requests using the following document type(s):

(i) For cost-type line items, including labor-hour or time-and-materials, submit a cost voucher.

(ii) For fixed price line items—

(A) That require shipment of a deliverable, submit the invoice and receiving report specified by the Contracting Officer.

(Contracting Officer: Insert applicable invoice and receiving report document type(s) for fixed price line items that require shipment of a deliverable.)

(B) For services that do not require shipment of a deliverable, submit either the Invoice 2in1, which meets the requirements for the invoice and receiving report, or the applicable invoice and receiving report, as specified by the Contracting Officer.

(Contracting Officer: Insert either “Invoice 2in1” or the applicable invoice and receiving report document type(s) for fixed price line items for services.)

(iii) For customary progress payments based on costs incurred, submit a progress payment request.

(iv) For performance-based payments, submit a performance based payment request.

(v) For commercial item financing, submit a commercial item financing request.

(2) Fast Pay requests are only permitted when Federal Acquisition Regulation (FAR) 52.213-1 is included in the contract.

[Note: The Contractor may use a WAWF “combo” document type to create some combinations of invoice and receiving report in one step.]

(3) *Document routing*. The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table\*

Field Name in WAWF	Data to be entered in WAWF
Pay Official DoDAAC	
Issue By DoDAAC	
Admin DoDAAC**	
Inspect By DoDAAC	
Ship To Code	
Ship From Code	
Mark For Code	

Service Approver (DoDAAC)	
Service Acceptor (DoDAAC)	
Accept at Other DoDAAC	
LPO DoDAAC	
DCAA Auditor DoDAAC	
Other DoDAAC(s)	

(\*Contracting Officer: Insert applicable DoDAAC information. If multiple ship to/acceptance locations apply, insert “See Schedule” or “Not applicable.”)

(\*\*Contracting Officer: If the contract provides for progress payments or performance-based payments, insert the DoDAAC for the contract administration office assigned the functions under FAR 42.302(a)(13).)

(4) *Payment request.* The Contractor shall ensure a payment request includes documentation appropriate to the type of payment request in accordance with the payment clause, contract financing clause, or Federal Acquisition Regulation 52.216-7, Allowable Cost and Payment, as applicable.

(5) *Receiving report.* The Contractor shall ensure a receiving report meets the requirements of DFARS Appendix F.

(g) *WAWF point of contact.*

(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity’s WAWF point of contact.

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(Contracting Officer: Insert applicable information or “Not applicable.”)

(2) Contact the WAWF helpdesk at 866-618-5988, if assistance is needed.

## 11.20-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DLA ENERGY APR 2021)

(a) This contract text incorporates contract clauses and 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.

(b) The full text of any FAR, DFARS, or DLAD solicitation clause or provision may be accessed electronically at these addresses:

### FAR/DFARS/DLAD:

<https://www.acquisition.gov/content/regulations>

(c) All DLA ENERGY contract texts are contained in full text in this document.

(d) *Solicitation Provisions Only.* The offeror is cautioned that the solicitation provisions listed in (e)(1) below may include blocks that must be completed by the offeror and submitted with its quotation or offer. As long as the offeror identifies the solicitation provision by number, the offeror may simply complete those paragraphs requiring fill-in information to submit with its quotation or offer. In addition to the solicitation provisions listed in (e)(1) below, the contract clauses listed in (e)(2) below shall apply to any resultant contract but do not require the submission of additional offer information.

(e) The following FAR/DFARS/DLAD contract clauses and solicitation provisions are hereby incorporated by reference in addition to those listed in the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS and the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS clauses:

(1)

Regulatory Number	Provision Title
FAR 52.204-7	System for Award Management (Oct 2018)

FAR 52.204-16	Commercial and Government Entity Code Reporting (AUG 2020)
FAR 52.229-11	Tax on Certain Foreign Procurements – Notice and Representation (Jun 2020)
DFARS 252.203-7005	Representation Relating to Compensation of Former DoD Officials (Sep 2022)
DFARS 252.204-7008	Compliance with Safeguarding Covered Defense Information Controls (Oct 2016)
DFARS 252.204-7019	Notice of NIST SP 800-171 DoD Assessment Requirements (Mar 2022)
DFARS 252.215-7008	Only One Offer (Jul 2019)
DFARS 252.219-7000	Advancing Small Business Growth (Sep 2016)
DLAD 5452.233-9001	Disputes – Agreement to Use Alternative Dispute Resolution (ADR) (June 2020)

(2)

Regulatory Number	Clause Title
FAR 52.203-3	Gratuities (Apr 1984)
FAR 52.204-13	System for Award Management Maintenance (Oct 2018)
FAR 52.204-18	Commercial and Government Entity Code Maintenance (Aug 2020)
FAR 52.204-19	Incorporation by Reference of Representations and Certifications (Dec 2014)
FAR 52.204-21	Basic Safeguarding of Covered Contractor Information Systems (Nov 2021)
FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors (Nov 2021)
FAR 52.24213	Bankruptcy (Jul 1995)
FAR 52.242-15	Stop-Work Order (Aug 1989)
DFARS 252.203-7000	Requirements Relating to Compensation of Former DoD Officials (Sep 2011)
DFARS 252.203-7003	Agency Office of the Inspector General (Aug 2019)
DFARS 252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support (May 2016)
DFARS 252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (Jan 2021)
DFARS 252.204-7020	NIST SP80-171 DoD Assessment Requirements (Mar 2022)
DFARS 252.205-7000	Provision of Information to Cooperative Agreement Holders (Dec 1991)
DFARS 252.219-7003	Small Business Subcontracting Plan (DoD Contracts) – Basic (Dec 2019)
DFARS 252.223-7008	Prohibition of Hexavalent Chromium (Jun 2013)
DFARS 252.225-7012	Preference for Certain Domestic Commodities (Apr 2022)
DFARS 252.225-7021	Trade Agreements – Basic (Mar 2022)
DFARS 252.225-7052	Restriction on the Acquisition of Certain Magnets and Tungsten (Aug 2022)

DFARS 252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (Apr 2019)
DFARS 252.232-7003	Electronic Submission of Payment Requests and Receiving Reports (Dec 2018)
DFARS 252.232-7010	Levies on Contract Payments (Dec 2006)
DFARS 252.232-7017	Accelerating Payments to Small Business Subcontractors – Prohibition on Fees and Consideration (Apr 2020)
DFARS 252.243-7002	Requests for Equitable Adjustment (Dec 2012)
DFARS 252.244-7000	Subcontracts for Commercial Items (Jan 2021)
DFARS 252.247-7023	Transportation of Supplies by Sea – Basic (Feb 2019)

(3)

Regulatory Number	DLAD Procurement Note Title
DLAD 33.103(d)(4)	L06 Agency Protests (Dec 2016)
DLAD 15.407-90(c)	L09 Reverse Auction (Oct 2016)

#### **I84.02 REQUIREMENTS (ELECTRICITY) (DLA ENERGY JAN 2012)**

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ELECTRICITY ORDERING PROCEDURES contract text.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) The Contractor shall not be required to make any deliveries under this contract after May 2023.

#### **I800 ELECTRICITY ORDERING PROCEDURES (DLA ENERGY FEB 2002)**

For the purposes of this contract, the instantaneous load at the service point, as described in the individual Installation Data Sheet, shall constitute an order for electricity to be furnished under this contract.

#### **I820 ELECTRICITY REGULATORY CHANGES (DLA ENERGY DECEMBER 2014)**

(a) The contract price includes all applicable independent system operator/regional transmission organization (ISO/RTO/PUC) charges expected to be in effect and applicable to this contract at Government price acceptance.

(b) "After-imposed (ISO/RTO/PUC) charges," as used in this contract text, means any new or modified regulatory (ISO/RTO/PUC) charges not in effect or not applicable to transactions under this contract on the date the Government accepts pricing, but which are now in effect or applicable as the result of legislative, judicial, or administrative action, with the result that the Contractor is now required to pay or bear the charges. The contract price shall be increased by the amount of any after-imposed (ISO/RTO/PUC) charge (with no markup), provided the Contractor warrants in writing within 60 calendar days of the regulation change, that no amount for such after-imposed (ISO/RTO/PUC) charge was

included in the contract price, as a contingency reserve or otherwise. The contractor shall provide such evidence as the Government may require in support of a request for adjustment resulting from any after-imposed (ISO/RTO/PUC) charge.

(c) "After-relieved (ISO/RTO/PUC) charges," as used in this contract text, means any amount of regulatory (ISO/RTO/PUC) charges that would otherwise have been payable on the transactions or property covered by this contract but which as the result of legislative, judicial or administrative action taking effect after the contract date the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback. The contract price shall be decreased by the amount of any after-relieved (ISO/RTO/PUC) charges.

(d) "Modified" means an unforeseeable change in law (or equivalent regulatory restructure) which occurs after contract award and results in increased regulatory (ISO/RTO/PUC) charges, the effects of which could not have reasonably been anticipated by the contractor prior to award.

(e) The Contractor shall notify the contracting officer of any after-imposed or after-relieved (ISO/RTO/PUC) charge within 60 days of the change and if seeking a price increase, simultaneously submit a proper claim for equitable adjustment. Price adjustments shall be accomplished via written modification to the contract.

**NOTE:** PUC is defined as Public Utility Commission.

**NOTE 1:** PUC covers governmental entities with the authority to impose charges that directly affect this clause. Entities may include DPU or other utility commissions.

### **Part III – List of Documents, Exhibits, and Other Attachments**

#### **SECTION J – LIST OF ATTACHMENTS**

- Attachment I – Installation Data Sheet
- Attachment II – Experience with End Users
- Attachment III – Small Business Subcontracting Plan Requirements

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

#### **SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS, OR RESPONDENTS**

##### **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.

**FAR 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS (AUG 2020)**

(a)

(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have  have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation);

(C) Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) *Examples.*

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has  has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

#### **FAR 52.209-7 Information Regarding Responsibility Matters (Oct 2018)**

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

*Administrative proceeding* means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

*Federal contracts and grants with total value greater than \$10,000,000* means—

(1) The total value of all current, active contracts and grants, including all priced options;  
and

(2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

*Principal* means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror  has  does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management, which can be accessed via <https://www.sam.gov> (see 52.204-7).

#### **FAR 52.209-12 CERTIFICATION REGARDING TAX MATTERS (OCT 2020)**

(a) This provision implements section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts.

(b) If the Offeror is proposing a total contract price that will exceed \$5.5 million (including options), the Offeror shall certify that, to the best of its knowledge and belief, it

(1) Has  filed all Federal tax returns required during the three years preceding the certification;

(2) Has not  been convicted of a criminal offense under the Internal Revenue Code of 1986; and

(3) Has not , more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

#### **FAR 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS (OCT 2022)**

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically in the System for Award Management (SAM) accessed through <https://www.sam.gov>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (v) of this provision.

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

"*Covered telecommunications equipment or services*" has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

*Economically disadvantaged women-owned small business (EDWOSB) concern* means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

*Forced or indentured child labor* means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

*Highest-level owner* means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

*Immediate owner* means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

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

*Manufactured end product* means any end product in product and service codes (PSCs) 1000-9999, except—

- (1) PSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or Service Group (PSG) 87, Agricultural Supplies;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) PSC 9610, Ores;
- (9) PSC 9620, Minerals, Natural and Synthetic; and
- (10) PSC 9630, Additive Metal Materials.

*Place of manufacture* means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

*Predecessor* means an entity that is replaced by a successor and includes any predecessors of the predecessor.

*Reasonable inquiry* has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

*Restricted business operations* means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

- or
- (5) Consist of providing goods or services that are used only to promote health or education;
  - (6) Have been voluntarily suspended. “Sensitive technology”—

*Sensitive technology—*

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—
  - (i) To restrict the free flow of unbiased information in Iran; or
  - (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

*Service-disabled veteran-owned small business concern—*

- (1) Means a small business concern—
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service connected, as defined in 38 U.S.C. 101(16).

*Small business concern—*

- (1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.
- (2) Affiliates, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

*Small disadvantaged business concern*, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

- (1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—
  - (i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
  - (ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

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

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation

*Successor* means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term "successor" does not include new offices/divisions of the same company or a company that only changes its name.

The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

*Veteran-owned small business concern* means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

*Women-owned business concern* means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women

*Women-owned small business concern* means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

*Women-owned small business (WOSB) concern* eligible under the WOSB Program (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

(b) (1) Annual Representations and Certifications. Any changes provided by the Offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications in SAM.

(2) The offeror has completed the annual representations and certifications electronically in SAM accessed through <http://www.sam.gov>. After reviewing SAM information, the Offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications-Commercial Products and Commercial Services, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard(s) applicable to the NAICS code(s) referenced for this solicitation), at the time this offer is submitted and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs \_\_\_\_\_.

[Offeror to identify the applicable paragraphs at (c) through (v) of this provision that the offeror has completed for the purposes of this solicitation only, if any.

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]

(c) Offerors must complete the following representations when the resulting contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii). Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that—

(i) It  is,  is not a small business concern; or  
(ii) It  is,  is not a small business joint venture that complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b). [ The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.]

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [ Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that—

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, that it  is,  is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is,  is not a women-owned small business concern.

(6) WOSB joint venture eligible under the WOSB Program. The offeror represents that it  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [ The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.]

(7) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The offeror represents that it  is,  is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [ The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.]

(8) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is a women-owned business concern.

(9) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(10) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, as having been certified by SBA as a HUBZone small business concern in the Dynamic Small Business Search and SAM, and will attempt to maintain an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract (see 13 CFR 126.200(e)(1)); and

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [ The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall provide representation of its HUBZone status.

(d) Representations required to implement provisions of Executive Order 12466- (1) Previous contracts and compliance. The offeror represents that-

(i) It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It  has,  has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that-

(i) It  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It  has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 <http://uscode.house.gov/> U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) Buy American Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American-Supplies, is included in this solicitation.)

(1) (i) The Offeror certifies that each end product and that each domestic end product listed in paragraph (f)(3) of this provision contains a critical component, except those listed in paragraph (f)(2) of this provision, is a domestic end product.

(ii) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select "no".

(iii) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component (see FAR 25.105).

(iv) The terms "commercially available off-the-shelf (COTS) item," "critical component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American-Supplies."

(2) Foreign End Products:

Line Item No.	Country of Origin	Exceeds 55% domestic content (yes/no)

[List as necessary]

(3) Domestic end products containing a critical component:

Line Item No. \_\_\_\_

[List as necessary]

(4) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(g) (1) Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act, is included in this solicitation.)

(i) (A) The Offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (iii) of this provision, is a domestic end product and that each domestic end product listed in paragraph (g)(1)(iv) of this provision contains a critical component.

(B) The terms "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product," "commercially available off-the-shelf (COTS) item," "critical component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin

[List as necessary]

(iii) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act." The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select "no".

Other Foreign End Products:

Line Item No.	Country of Origin	Exceeds 55% domestic content (yes/no)

[List as necessary]

(iv) The Offeror shall list the line item numbers of domestic end products that contain a critical component (see FAR 25.105).

Line Item No. \_\_\_\_\_  
[List as necessary]

(v) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(2) Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate I. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Canadian End Products:

Line Item No.

[List as necessary]

(3) Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Canadian or Israeli End Products:

Line Item No.	Country of Origin

[List as necessary]

(4) Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate III. If Alternate III to the clause at 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin

[List as necessary]

(5) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line Item No.	Country of Origin

--	--

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Responsibility Matters (Executive Order 12689). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1)  Are,  are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2)  Have,  have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4)  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) Examples. (A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

Listed End Product	Listed Countries of Origin

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) Place of manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly-

(1)  In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2)  Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Labor Standards (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror  does  does not certify that-

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1). The offeror  does  does not certify that-

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) Taxpayer Identification Number (TIN) ( 26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to the SAM to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ( 31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

- TIN: \_\_\_\_\_.
- TIN has been applied for.
- TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR1.6049-4;
- Other \_\_\_\_\_.

(5) Common parent.

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:  
Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(m) Restricted business operations in Sudan. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) Prohibition on Contracting with Inverted Domestic Corporations. (1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(2) Representation. The Offeror represents that–

(i) It  is,  is not an inverted domestic corporation; and

(ii) It  is,  is not a subsidiary of an inverted domestic corporation.

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran. (1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(2) Representation and Certifications. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror–

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds the threshold at FAR 25.703-2(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if–

(i) This solicitation includes a trade agreements certification (e.g., 52.212-3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(p) Ownership or Control of Offeror. (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation).

(1) The Offeror represents that it  has or  does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates "has" in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code: \_\_\_\_\_.

Immediate owner legal name: \_\_\_\_\_.

(Do not use a "doing business as" name)

Is the immediate owner owned or controlled by another entity:  Yes or  No.

(3) If the Offeror indicates "yes" in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code: \_\_\_\_\_.

Highest-level owner legal name: \_\_\_\_\_.

(Do not use a "doing business as" name)

(q) Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

(1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that—

(i) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(ii) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(r) Predecessor of Offeror. (Applies in all solicitations that include the provision at 52.204-16, Commercial and Government Entity Code Reporting.)

(1) The Offeror represents that it  is or  is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(2) If the Offeror has indicated "is" in paragraph (r)(1) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code: (or mark "Unknown").

Predecessor legal name: \_\_\_\_\_.

(Do not use a "doing business as" name).

(s) [Reserved].

(t) Public Disclosure of Greenhouse Gas Emissions and Reduction Goals. Applies in all solicitations that require offerors to register in SAM (12.301(d)(1)).

(1) This representation shall be completed if the Offeror received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) Representation. [Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)]. (i) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The Offeror (itself or through its immediate owner or highest-level owner)  does,  does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible website includes the Offeror's own website or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the Offeror checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported. \_\_\_\_\_.

(u) (1) In accordance with 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), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) Representation. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(v) Covered Telecommunications Equipment or Services-Representation. Section 889(a)(1)(A) and section 889 (a)(1)(B) of Public Law 115-232.

(1) 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".

(2) The Offeror represents that—

(i) It  does,  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.

(ii) After conducting a reasonable inquiry for purposes of this representation, that it  does,  does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

#### **DFARS 252.204-7016 COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES—REPRESENTATION (DEC 2019)**

(a) *Definitions.* As used in this provision, “covered defense telecommunications equipment or services” has the meaning provided in the clause 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

(b) *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 defense telecommunications equipment or services”.

(c) *Representation.* The Offeror represents that it  does,  does not provide covered defense 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.

#### **DFARS 252.204-7017 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES—REPRESENTATION (MAY 2021)**

The Offeror is not required to complete the representation in this provision if the Offeror has represented in the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services—Representation, that it “does not provide covered defense 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.”

(a) *Definitions.* “Covered defense telecommunications equipment or services,” “covered mission,” “critical technology,” and “substantial or essential component,” as used in this provision, have the meanings given in the 252.204-7018 clause, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, of this solicitation.

(b) *Prohibition.* Section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits agencies from procuring or obtaining or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) at <https://www.sam.gov> for entities that are excluded when providing any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) *Representation.* If in its annual representations and certifications in SAM the Offeror has represented in paragraph (c) of the provision at 252.204-7016 , Covered Defense Telecommunications Equipment or Services—Representation, that it “does” provide covered defense 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, then the Offeror shall complete the following additional representation:

The Offeror represents that it [ ] will [ ] will not provide covered defense telecommunications equipment or services as a part of its offered products or services to DoD in the performance of any award resulting from this solicitation.

(e) *Disclosures.* If the Offeror has represented in paragraph (d) of this provision that it “will provide covered defense telecommunications equipment or services,” the Offeror shall provide the following information as part of the offer:

(1) A description of all covered defense telecommunications equipment and services offered (include brand or manufacturer; product, such as model number, original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable).

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

(3) For services, the entity providing the covered defense telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known).

(4) For equipment, the entity that produced or provided the covered defense telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

### **K33.01 AUTHORIZED NEGOTIATORS (DLA ENERGY APR 2007)**

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations.

<b>Name</b>	<b>Title</b>	<b>Phone Number</b>	<b>E-Mail Address</b>

## SECTION L – INSTRUCTIONS, CONDITIONS & NOTICES TO OFFERORS

### FAR 52.212-1 INSTRUCTIONS TO OFFERORS – COMMERCIAL ITEMS (NOV 2021) (TAILORED)

**Note:** Paragraph below tailored to be more consistent with commercial practice. All other instructions included in FAR 52.212-1 are hereby incorporated by reference (See Block 27A of Standard Form 1449).

(c) **PERIOD FOR ACCEPTANCE OF OFFERS.** The offeror agrees to hold the prices in its offer firm for **4 hours** from the date specified for receipt of offers unless another time period is specified in an addendum to the solicitation.

### FAR 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm-fixed-price, requirements type contract resulting from this solicitation

### L2.07-02 EVIDENCE OF RESPONSIBILITY (ELECTRICITY) (DLA ENERGY OCT 2021)

(a) The following are responsibility criteria which must be satisfied to be eligible for award:

(1) The offeror must possess, at a minimum, 12 months of experience providing supply and transportation (firm and/or interruptible) of electricity to wholesale or retail customers. These 12 months of experience must have been obtained no more than two years before the date of Technical Proposal submission.

(2) The offeror must possess, or demonstrate the ability to obtain, transmission service agreements in the company's name for the points of receipt specified in the Schedule.

(3) The offeror must be authorized to conduct business by each state's regulatory body having jurisdiction over the state's electric industry prior to award of any contract for solicited requirements. Submitted evidence to support this criteria must include the date such authorization was granted.

(4) The offeror shall submit a commercial or individual Subcontracting Plan that satisfies the requirements listed in Federal Acquisition Regulation (FAR) 19.704; unless no Subcontracting opportunities exist. In accordance with FAR 19.705-2(c) Subcontracting Plans will not be required if no subcontracting possibilities exist. A statement as to why no subcontracting possibilities exist should be submitted with the proposal to allow the Contracting Officer to make a determination.

(b) The responsibility criteria listed in this provision are in addition to the general responsibility criteria set forth in FAR 9.104.

(c) The offeror shall submit sufficient evidence to demonstrate that all responsibility criteria from both this provision and FAR 9.104 have been satisfied. Failure to provide such documentation shall render the offeror non-responsible and ineligible for award.

(d) In addition to evidence submitted by the offeror, the Government may obtain and consider additional information concerning the offeror's ability to satisfy all responsibility criteria, including conducting preaward surveys in accordance with FAR 9.106.

### L2.11-4 E-MAIL PROPOSALS (DLA ENERGY OCT 2010)

(a) Offerors may submit proposals via e-mail. E-mail proposals are subject to the same rules as paper proposals.

(b) E-mail receiving data and compatibility characteristics are as follows:

(1) E-mail address: [dlaenergy.eteam@dla.mil](mailto:dlaenergy.eteam@dla.mil)

(2) The DLA Energy accepts attachments in—

(i) Adobe Acrobat;

(ii) Microsoft Excel;

(iii) Microsoft Word; and

(iv) Microsoft PowerPoint.

(c) Initial proposals, modifications and proposal revisions submitted via e-mail must contain offeror's signature included in the attachment to the e-mail communication.

(d) Attachments that are not in .pdf file format must be sent password protected for "read only" to ensure the integrity of the data submitted.

(e) Proposals submitted electronically through a single e-mail must be no more than 10 MB. DLA Energy's mail server will reject messages larger than 10 MB.

(f) The DLA Energy e-mail filter will scan the incoming e-mail and attachments for viruses and key words. Abbreviations for terms such as "Analysts" or using "3Xs" as placeholders in a document are found in the filter's adult content library and may result in the e-mail delivery being delayed. Offerors are encouraged to verify receipt of e-mail offers by contacting the Contracting Officer prior to the solicitation closing time.

(g) If any portion of an e-mail proposal received by the Contracting Officer is unreadable, the Contracting Officer will immediately notify the offeror and permit the offeror to resubmit the proposal. The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror and the resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complied with the e-mail submissions instructions provided in this paragraph and with the time and format requirements for resubmission prescribed by the Contracting Officer.

(h) The Government reserves the right to make award solely on the e-mail proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete signed original proposal.

#### **L800 INSTRUCTIONS TO OFFERORS (ELECTRICITY) (DLA ENERGY JUL 2014)**

**Note:** An offeror must propose to supply the total line item quantity for the line items identified in the Schedule. Failure to offer the total line item quantity will preclude Government evaluation and award to the offeror for the line items. If an offeror chooses to submit more than one offer, it may do so by submitting a separate price submittal for each. Offers based on other pricing mechanisms or alternate methods of supplying electricity may be considered.

(a) **SUBMISSION OF DOCUMENTS.** The offeror shall submit all documents required by the terms and conditions of the Request for Proposal (RFP). An offeror's proposal must be complete with regard to this provision as well as all other requirements of the solicitation. Offerors are advised to submit proposals that are fully and clearly acceptable without additional information or explanation. Failure to provide a complete proposal submission may make an offer unacceptable and ineligible for award.

(b) **OFFEROR'S PROPOSAL.** In addition to the requirements set forth in FAR 52.212-1, the following documentation shall be submitted:

(1) **PAST PERFORMANCE - Attachment II.** Information collected in the Experience with End Users form (Attachment II) will be used to contact offeror's customers and inquire about the offeror's past performance. By submitting this form, the offeror agrees to permit the Government's representatives to contact the customers listed and inquire about the past performance of the offeror. Offerors are advised that the Government may use information gained from any source to evaluate past performance. However, the Government reserves the right to only consider the Contractor's performance under Federal Government or DLA Energy contracts.

#### **(2) COMBINED TECHNICAL CAPABILITY/RISK**

##### **(i) Management Capability**

Submit a **4-page (maximum)** narrative describing the company's management capabilities. The narrative shall include, but is not limited to, a description of the following:

- Personnel assigned to work this solicitation/contract, to include contact information, description of customer service efforts in resolving issues, such as billing and enrolling accounts, etc.;

- Contingency plan in the absence of personnel assigned to the solicitation/contract; and
- Any internal account-management capabilities, resources, or procedures relevant to successfully performing the requirements of the contract/solicitation.

### (3) SMALL BUSINESS PARTICIPATION.

**Note:** This requirement shall be separate from the subcontracting plan submitted pursuant to the clause at FAR 52.219-9 and must be provided by all offerors regardless of business size.

The offeror shall identify its commitment to small business (i.e. small businesses to include service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged concerns, and women-owned small business) concerns in the performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(i) Provide a description of the efforts your company will make to assure that the small businesses identified above will have equal opportunity to compete for subcontracts under the resultant contract.

(ii) To the extent known, identify the small businesses that will have a subcontract under the resulting contract and describe the work that will be performed.

(iii) Identify the proportion of your proposal, as a percentage of dollars, that will be subcontracted to small businesses.

## SECTION M – EVALUATION FACTORS FOR AWARD

### FAR 52.212-2 EVALUATION – COMMERCIAL ITEMS (ELECTRICITY) (TAILORED) (DLA ENERGY) (OCT 2014)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

(i) **PAST PERFORMANCE.** Offerors must submit three past performance references which the Government will evaluate for recency and relevancy in order to determine the Government's level of confidence in each offeror's ability to meet solicitation requirements. This evaluation will include any aspect of past performance that is relevant to the work to be performed under this contract. **Recency** is defined as performance on Government or commercial contracts where there has been at least 12 continuous months of performance within the last three years as of the closing date of the solicitation. Each offeror will be assessed on recent efforts accomplished by the offeror, focusing on performance that is relevant to the contract requirements. **Relevancy** is defined as a present/past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.

The Government will utilize the submissions provided by the Offeror on **Attachment II**. If an offeror submits past performance that is found to be Not Recent or Not Relevant, or if references do not answer or participate, additional references will be requested to reach the three references required under this solicitation. If there are past performance documents on file that have been determined to be Recent and Relevant, the Government reserves the right to include these documents as part of the past performance evaluation process. In addition, the Government may use any data the Contracting Officer determines recent and relevant. This includes, but is not limited to:

1. Contract Performance Assessment Reporting System (CPARS) Reports
2. Past Performance Questionnaires
3. Customer Feedback
4. Offeror's past performance on DLA Energy Contracts

5. Federal Awardee Performance and Integrity Information System (FAPIS)
6. Electronic Subcontract Reporting System (eSRS)
7. Contracting Officer
8. General Services Administration

This past performance information will be reviewed to determine the quality of the offeror's performance, general trends, and usefulness of the information. The Government's level of confidence in each offeror's ability to meet solicitation requirements will be based on the offeror's overall record of recency, relevancy, and quality of performance.

Offerors are advised that the Government may use information gained from any source to evaluate past performance and reserves the right to only consider the Contractor's performance under Federal Government or DLA Energy contracts. In the case of an offeror for whom information regarding the quality of past performance is not available, the offeror will not be evaluated favorably or unfavorably on past performance pursuant to FAR 15.305(a)(2)(iv).

(ii) **COMBINED TECHNICAL CAPABILITY / RISK.** The Government will use a combined technical capability/risk rating to assess the offeror's proposed approach to satisfying the Government's requirements. The offeror shall be evaluated on whether their Technical Capability/Risk Proposal (as defined in L800(b)(2)) clearly and precisely describes its approach and demonstrates an understanding of the requirement and its ability to successfully perform the requirements of provisions B1.08 Supplies to be Furnished and C800 Statement of Work. The Government's evaluation will focus on any weaknesses and/or deficiencies associated with an offeror's proposed approach and include an assessment of the potential for disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance.

(iii) **SMALL BUSINESS PARTICIPATION.** The Small Business Participation factor will be evaluated based on the information submitted by offerors regarding whether their proposals demonstrate a commitment to small businesses. Offerors will also be evaluated on their history in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small Business Concerns, and 52.219-9, Small Business Subcontracting Plan approved by DLA Energy.

(iv) **PRICE.** Price evaluations will be conducted by comparing each proposed price received in response to the solicitation. Each offeror's price, in conjunction with the non-price related factors (Past Performance, Combined Technical Capability/Risk, and Small Business Participation), will be the basis for the Government's overall best value award decision. Each offered price will be evaluated to determine if it is fair and reasonable in accordance with Far Part 15, to include evaluating price reasonableness and price realism.

Past Performance is the most important non-price evaluation factor and Small Business Participation is the least important non-price evaluation factor. Combined Technical Capability/Risk is not as important as Past Performance but is significantly more important than Small Business Participation. When combined, all three non-price evaluation factors are weighted approximately equal to Price. If two offers are equal in merit, lowest price will be the determining factor.

(b) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror 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.

**End of RFP SPE60423R0401**