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**U.S. Department of Energy**

**Energy Savings Performance Contract**

**Task Order (TO) Request for Proposal (RFP)**

**Template with a Photovoltaic (PV) Energy Sales Agreement (ESA) Energy Conservation Measure (ECM)**

**For DOE’s Indefinite Delivery, Indefinite Quantity Contracts**

**Awarded in April 2017**

Revision Date: October 24, 2019

ESA Version 1, December 4, 2019

**DISCLAIMER**

This template is intended as a resource only. ***It is the responsibility of agency staff to ensure that all procurements – including energy savings performance contract energy sales agreement (ESPC ESA) procurements – follow all applicable federal requirements and agency-specific policies and procedures***. The use of the ESPC ESA contracting model should be understood by agency decision-makers early in the process. All documents comprising an ESPC ESA must be thoroughly reviewed by agency contracting and legal staff, and should be modified to address each agency's unique acquisition process, agency-specific authorities, and project-specific characteristics.

**INSTRUCTIONS FOR USING THIS TEMPLATE**

The Task Order Request for Proposal (TO RFP) is used by an ordering agency to communicate agency-, site-, and project-specific terms and conditions for its Energy Savings Performance Contract (ESPC) project to the Contractor (a.k.a – Energy Services Company (ESCO)). The Department of Energy’s (DOE) ESPC indefinite delivery, indefinite quantity (IDIQ) contract permits an ordering agency to tailor the terms and conditions, per section C.1, *General Requirements / Project Scope*, paragraph C:

“The terms and conditions that follow throughout the remaining sections of this IDIQ contract may be tailored, as appropriate (based on the needs and regulations of the ordering agency), in an ordering agency’s TO Request For Proposals (RFP). However, any tailored items must still comply with the statutory requirements for ESPCs and remain within the general scope of this IDIQ contract.”

The tailored terms and conditions of the TO RFP become a part of the final ESPC project task order, along with the unchanged terms of the DOE ESPC IDIQ contract and the ESCO’s final proposal. The terms and conditions of the TO RFP take precedence over those of the DOE ESPC IDIQ contract, as long as they remain within the IDIQ scope, period of performance, and contract ceiling.

This template includes sections of the DOE ESPC IDIQ in which changes or specific instructions may be required or are usually appropriate. This template is specifically tailored for projects that intend to incorporate a photovoltaic (PV) energy sales agreement (ESA) as one of the energy conservation measures (ECMs)[[1]](#footnote-1) in an ESPC project. This template assumes the ESA will be bundled with other ECMs*.* Edit the document accordingly if the PV ESA will be the only ECM. Contact your [federal project executive](https://www.energy.gov/eere/femp/energy-savings-performance-contract-federal-project-executives-0) (FPE) for TO RFP edit recommendations if the project will be PV ESA-only.

The establishment of a limited liability company (LLC) or other type of special purpose entity (SPE) may be required to secure financing for the ESA (see Section H.2.1.1). Either a (1) task order novation agreement between the agency CO and prime Contractor, or (2) a tri-party agreement among the agency, Contractor and SPE may be required to effectuate the desired financing. The agency CO shall contact the DOE Golden Field Office DOE ESPC IDIQ CO if task order novation is required or a tri-party agreement will be established, so that the agency CO can ensure that all agency actions comply with the DOE ESPC IDIQ, as well as the associated protocols, tracking systems, and applicable procurement requirements.

Partial novation of a task order is not allowed, so two separate task orders may be required - one for the ESA ECM and one for the other ECMs. Savings cannot be shared between task orders. Tax incentive eligibility due diligence is the responsibility of the Contractor, not the Agency.

Execution of a task order novation or use of a tri-party agreement requires consideration of numerous factors such as ensuring the integrity of the applicable DOE ESPC IDIQ contract and tracking of task orders towards the DOE ESPC IDIQ ceiling.

The numbering of the sections in the TO RFP correspond to the numbering in the DOE ESPC IDIQ contract. Sections that are not in the template may be added to the TO RFP and revised as needed.

FEMP provides complementary technical specification resources on [solar photovoltaic](https://www.energy.gov/eere/femp/technical-specifications-site-solar-photovoltaic-systems), [battery storage](https://www.energy.gov/eere/femp/articles/lithium-ion-battery-storage-technical-specifications), and [wind](https://www.energy.gov/eere/femp/articles/technical-specifications-site-wind-turbine-installations) systems that can be included in the TO RFP.

The contract sections in the template are formatted in black Times New Roman font. All instructions and notes within the template are formatted in *blue italics*.

*PV ESA ECM-specific information is indicated with “For PV ESA ECM:”. PV ESA ECM notes are in red italics and fill-in-the-blank areas are indicated with the symbols <red italics>.*

**IMPORTANT:** The following items must be deleted from the final TO RFP before issuing to the ESCO:

* This title page and instructions for using this template;
* Any contract sections that are not tailored; and
* All instructions and notes within the template in *blue italics*, as well as any brackets around instructions.

**TO RFP**

**TABLE OF CONTENTS**

[**Section B - Supplies or Services/Prices** 3](#_Toc483922672)

[**Section C - Description/Specifications** 3](#_Toc483922673)

[**C.2** **Energy Conservation Measures (ECMs)** 3](#_Toc483922674)

[**C.3** **Facility Performance Requirements of ECMs** 5](#_Toc483922675)

[**C.4** **Measurement and Verification (M&V) of ECM Performance** 6](#_Toc483922676)

[**C.5** **Installation Requirements for ECMs** 9](#_Toc483922677)

[**C.6** **Operation of ECMs** 16](#_Toc483922678)

[**C.7** **Preventive Maintenance of ECMs** 17](#_Toc483922679)

[**C.8** **Repair of ECMs** 18](#_Toc483922680)

[**C.9** **Contractor Maintenance and Repair Response Time** 19](#_Toc483922681)

[**C.10** **Operations and Maintenance (O&M) Manuals and Training for ECMs** 21](#_Toc483922682)

[**C.11** **Government Projects** 23](#_Toc483922683)

[**C.12** **Financial, Tax, or Other Incentives for Energy Efficiency and Renewable Energy and Water Projects** 23](#_Toc483922684)

[**C.13** **Availability of Utilities** 25](#_Toc483922685)

[**C.14** **Work Schedule Requirements** 26](#_Toc483922686)

[**Section D - Packaging and Marking** 29](#_Toc483922687)

[**D.1** **Preservation, Packaging and Packing** 29](#_Toc483922688)

[**D.2** **Packing List** 29](#_Toc483922689)

[**D.3** **Initial Packing, Marking, and Storage of Equipment** 31](#_Toc483922690)

[**Section E - Inspection and Acceptance** 32](#_Toc483922691)

[**E.1** **Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)** 32](#_Toc483922692)

[**E.2** **Inspection of Installed ECMs** 32](#_Toc483922693)

[**E.3** **Acceptance** 33](#_Toc483922694)

[**Section F - Deliveries or Performance** 35](#_Toc483922695)

[**F.1** **Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)** 35](#_Toc483922696)

[**F.3** **Task Order Period of Performance** 35](#_Toc483922697)

[**F.5** **Place of Performance** 35](#_Toc483922698)

[**F.6** **Deliverables and Submittals** 36](#_Toc483922699)

[**Section G - IDIQ Contract and Task Order Administration** 37](#_Toc483922700)

[**G.2** **Task Order (TO) Administration** 37](#_Toc483922701)

[**G.3** **Invoicing Instructions** 38](#_Toc483922702)

[**G.4** **Invoice Submittal and Payment Schedule** 38](#_Toc483922703)

[**G.5** **Payment to the Government for Guaranteed Annual Savings Shortfall** 39](#_Toc483922704)

[**G.6** **Technical Direction (DEAR 952.242-70)(DEC 2000)** 41](#_Toc483922705)

[**G.7** **Contractor Performance Assessment Reporting** 42](#_Toc483922706)

[**Section H - Special Contract Requirements** 44](#_Toc483922707)

[**H.1** **Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)** 44](#_Toc483922708)

[**H.2** **Title To, and Responsibility For, Contractor-Installed Equipment** 44](#_Toc483922709)

[**H.4** **Preliminary Assessment Content Requirements for Task Orders** 47](#_Toc483922710)

[**H.5** **Requirements for Task Order Proposals and Proposal Reviews** 49](#_Toc483922711)

[**H.6** **Requirements for Competitive Financing Acquisition for Task Orders** 54](#_Toc483922712)

[**H.7** **Payment and Performance Bond Requirements for Task Orders** 55](#_Toc483922713)

[**H.8** **Protection of Financier’s Interest for Task Orders** 56](#_Toc483922714)

[**H.9** **Required Insurance for Task Orders** 57](#_Toc483922715)

[**H.10** **Safety Requirements** 59](#_Toc483922716)

[**H.11** **Fire Prevention** 59](#_Toc483922717)

[**H.12** **Government-Furnished and Contractor-Furnished Equipment, Materials and Supplies** 60](#_Toc483922718)

[**H.13** **Salvage** 60](#_Toc483922719)

[**H.14** **Disposal of Nonhazardous Waste** 62](#_Toc483922720)

[**H.15** **Hazardous Materials** 62](#_Toc483922721)

[**H.16** **Contractor Employees** 63](#_Toc483922722)

[**H.17** **Security Requirements** 64](#_Toc483922723)

[**H.18** **Contractor Interface with Other Contractors and/or Government Employees** 64](#_Toc483922724)

[**H.20** **Incorporation of Small Business Subcontracting Plan** 65](#_Toc483922725)

[**H.21** **Reporting of Fraud, Waste, Abuse, Corruption, or Mismanagement** 65](#_Toc483922726)

[**H.22** **Lobbying Restriction** 66](#_Toc483922727)

[**H.24** **Department of Energy *[or Ordering Agency-Specific]* Directives** 67](#_Toc483922728)

[**H.25** **Public Affairs – Contractor Releases of Information Regarding DOE ESPC Projects** 68](#_Toc483922729)

[**PART II - CONTRACT CLAUSES** 72](#_Toc483922730)

[**Section I - Contract Clauses** 72](#_Toc483922731)

[**I.1** **FAR Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)** 72](#_Toc483922732)

[**I.2** **DEAR *[or Ordering Agency-Specific]* Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)** 75](#_Toc483922733)

[**I.10** **52.223-9 - Estimate of Percentage of Recovered Material Content for EPA-Designated Items. (MAY 2008)** 76](#_Toc483922734)

[**PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS** 78](#_Toc483922735)

[**Section J - List of Documents, Exhibits and Other Attachments** 78](#_Toc483922736)

**DOE ESPC**

**Task Order Request for Proposal with PV ESA ECM**

***Template***

|  |  |
| --- | --- |
| **Ordering Agency TO RFP Number:** |  |

*Disclaimer: This template is intended to be used as a resource. Agency staff should adhere to their agency’s policies and requirements, and should use their agency’s templates and forms, as appropriate. The RFP should be carefully reviewed by agency counsel, agency contracting staff and other appropriate agency staff.*

# **Section B - Supplies or Services/Prices**

*There are no tailorable terms from the IDIQ contract in this section.*

# **Section C - Description/Specifications**

## **C.2 Energy Conservation Measures (ECMs)**

*The ordering agency may add the following to specify that all ECM technology categories should be considered.*

*[ ]* All IDIQ ECM technology categories, including PV ESA ECM, shall be considered during the development of this task order.

*For PV ESA ECM:*

1. The TO will also include a photovoltaic (PV) energy sales agreement (ESA) ECM. An ESPC ESA is a contractual arrangement entered into pursuant to the authority under 42 U.S.C. §8287, et seq., in which the selected Contractor installs a PV ESA ECM on federal buildings and/or land and owns the equipment until the end of the contract term, and in which the *<agency name>* purchases the electricity from the PV ESA ECM for the life of the contract. The selected Contractor is responsible for all operation and maintenance (O&M) and repair and replacement (R&R) for the PV ESA ECM. PV ESA ECMs have unique considerations - see Section C.3.6 for more details.

*[Agency should specify PV ESA ECM size limitations. For example, the estimated generation should not exceed the customer’s load unless net metering is allowed for the proposed project and the agency concurs with use of net metering.]*

**B.** Restrictions on ECMs – The ordering agency is responsible for identifying restrictions on ECMs prior to and during the project development process and prior to award of a TO.

*Sample Default Language:*

ECMs installed by the Contractor shall not do the following:

1. Jeopardize the operation or environmental conditions of existing systems or areas such as dedicated computers or computer rooms;

2. Increase water consumption; e.g., once-through fresh water cooling systems (note: evaporative cooling technologies may be considered where environmentally appropriate); (*For PV ESA ECM:* Water required for panel cleaning is allowed).

3. Result in a cogeneration or electrical generating project that produces electrical power exceeding that required by the delivery order federal site;

4. Result in an adverse effect upon the quality of the human environment (e.g., uncomfortable temperature or inadequate lighting) ) or violates any Federal, State, or local environmental protection regulations;

5. Degrade performance or reliability of existing Government equipment; or

6. Reduce extra capacity that was intentionally included for future growth, mobilization needs, safety, or emergency backup.

1. Generate waste or material left for agency clean-up.
2. Leave the work area in a cleanliness condition less than when started. For interior spaces, this includes construction waste, debris and dust. For exterior spaces, this includes landscaped and grass areas.
3. Result in unplanned utility or roadway outages without approval from the Contracting Officer’s Representative (COR) at least 5 business days in advance.

*[ ] Default language is acceptable; additional requirements follow:*

*[ ] Default language is unacceptable; replace with the following:*

## **C.3 Facility Performance Requirements of ECMs**

*Specify the agency-, site-, and project-specific facility performance requirements for ECMs in this section. Some areas for consideration in terms of standards for occupied space conditions are listed below as C.3.1 through C.3.6.*

*[ ] IDIQ language is acceptable, with the noted additional site-specific facility performance requirements.*

*[ ] Replace the IDIQ language as noted below.*

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

**C.3.1 Lighting –** *(lighting levels for various spaces/surfaces, control conditions)*

**C.3.2 Heating, Ventilation and Air Conditioning (HVAC) –** *(temperature and humidity zones, setbacks, control conditions)*

**C.3.3 Energy management control system (EMCS) –** *(compatibility with existing direct digital controls, site terminal)*

**C.3.4 Environmental –** *(noise, air quality, other)*

**C.3.5 Major Energy Using Systems –** *(power quality)*

**C.3.6 Other –**

*For PV ESA ECM:*

The Contractor, at its own expense, shall furnish all engineering, design, construction, personnel, supervision, facilities, permitting, materials, equipment, transportation, supplies, interconnection impact studies, and services necessary to install, interconnect, operate and maintain the PV ESA ECM to meet the requirements of this TO RFP and all other TO contract terms and conditions.

The TO, including the PV ESA ECM, must meet all ESPC legal requirements (see, *e.g.*, 42 U.S.C. § 8287, *et seq.*), including the requirement that the agency pay for the cost of the TO from energy savings generated each year over the life of the contract.

In order for the ESPC ESA contract to be scored annually, it must be consistent with the requirements under the Office of Management and Budget (OMB) “[Addendum to OMB Memorandum M-98-13 on Federal Use of Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs)](https://www.gsa.gov/cdnstatic/Environmental_Programs_Addendum_to_OMB_Memo_m-12-21.pdf)” (M-12-21, dated September 28, 2012)[[2]](#footnote-2), including the requirement that the federal Government retain title to the onsite renewable energy generation system by the end of the contract. The PV ESA ECM will be Contractor-owned initially. Title of the ESA ECM will be transferred to the Government by the end of the contract term at fair market value (FMV), as appraised at the time of the title transfer. The Contractor will transfer a portion of the payments it receives from the agency each year into a reserve account held by the Contractor. See Section H.3 for details regarding the FMV title transfer.

The Contractor awarded this TO may be eligible for tax incentives such as the federal Investment Tax Credit (ITC) and the Modified Accelerated Cost Recovery System (MACRS). Internal Revenue Service (IRS) Revenue Procedure 2017-19[[3]](#footnote-3) provides a safe harbor (related to ITC eligibility) under which the IRS will not challenge the treatment of an ESPC ESA as a service contract under 26 U.S.C. § 7701(e)(3). Tax incentive eligibility due diligence is the responsibility of the Contractor, not the Government.

*[Agency may add other PV ESA ECM standards of service requirements, such as production requirements beyond what are required to meet the annual cost savings guarantee.]*

## **C.4 Measurement and Verification (M&V) of ECM Performance**

*The contract requires compliance with the current version of the FEMP M&V Guidelines. Specify any preferred or restricted M&V options or methods for the proposed project.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise the IDIQ language as noted below.*

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

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

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

**D.** The TO M&V plan shall specify the M&V options and methods that will be used for each ECM included in the TO. M&V options and methods proposed for each ECM shall comply with the latest version (in effect at the time of TO award) of the DOE FEMP “M&V Guidelines: Measurement and Verification for Performance- Based Contracts” (See Attachment J-17 for specific website address) and the “International Performance Measurement and Verification Protocol” (IPMVP). If there is a discrepancy between these two documents, the DOE FEMP M&V Guidelines takes precedence. The DOE FEMP M&V Guidelines include a variety of guidelines and tools that will help in the development of a technically rigorous M&V plan, including both optional M&V methods for differing ECMs, and tools for assessing the cost implications of these options. If operation and maintenance savings are included in the TO, then the Contractor shall comply with the latest version (in effect at the time of TO award) of “How to Determine and Verify Operating and Maintenance (O&M) Savings in Energy Savings Performance Contracts”. (See Attachment J-17 for specific website address.)

 *For PV ESA ECM:*

**E.**The PV ESA ECM shall use M&V Option B as described in the DOE FEMP M&V Guidelines.

**C.4.1 M&V Activities –** The Contractor shall perform the following required M&V activities:

**A.** Define a site-specific M&V plan for the particular project being installed, once the project has been fully defined and the Investment Grade Audit (IGA) is completed. This shall occur before the TO is awarded, and the M&V plan will be incorporated into the TO.

**B.** Define pre‑installation baseline including (a) equipment/systems, (b) baseline energy use, (c) system performance factors (e.g., lighting levels, temperature set-points, time clock settings, etc.), and/or (d) actions to determine baseline energy use, which may include site surveys, short-term or long-term metering, analysis of billing data, and/or engineering calculations. The pre‑installation baseline shall also identify factors beyond the Contractor’s control that influence post-installation energy (e.g., building occupancy, weather, plug load creep, etc.). Where such factors beyond the Contractor’s control potentially exist, the ordering agency and Contractor will agree on the formal change control process to adjust the baseline, modify savings calculations or otherwise account for such factors. Where feasible, adjustments to the calculation methodology for savings are preferred over changes to the baseline. Such adjustments make it easier to present the actual savings. The Risk, Responsibility and Performance Matrix will guide the identification of factors on which such agreements may need to be reached. The definition of all elements of the pre-installation baseline will be agreed upon before the TO is awarded.

**C.** Define post-installation conditions including (a) equipment/systems, (b) post-installation energy use and/or (c) actions to determine post-installation energy use, which may include site surveys, short-term or long-term metering, analysis of billing data, and/or engineering calculations.

**D.** Conduct annual M&V activities to verify operation of the installed equipment/systems and calculate the previous year’s energy and water savings. Compare verified and guaranteed savings.

**C.4.2 M&V Submittals during TO Development and Post-Award**

**A.** The Contractor shall prepare and submit a general M&V approach with its Preliminary Assessment (PA), identifying the M&V options and methods to determine a site-specific pre-installation baseline and post-installation ECM performance for each proposed ECM.

**B.** The Contractor shall prepare and submit a site-specific M&V plan with its proposal, per the requirements in Section H, the M&V Plan outline in Attachment J-8 of this IDIQ contract, and the current standards in the latest version of the DOE FEMP M&V Guidelines. This site-specific M&V plan shall include a schedule indicating M&V activities, recommended level of Government witnessing for each ECM per the latest version of DOE FEMP’s "Guide to Government Witnessing and Review of Measurement and Verification Activities" (See Attachment J-17 for specific website address), and post-award M&V reporting milestones for each ECM. Prior to installation of ECMs, the ordering agency shall witness measurements and review calculations, records (e.g., utility bills) and other elements of the baseline, to confirm its accuracy and to confirm that methods are consistent with the approved M&V plan, as described in the latest version of FEMP’s "Guide to Government Witnessing and Review of Measurement and Verification Activities."

**C.** The Contractor shall prepare and submit a post-installation report to the ordering agency, per the report outline in Attachment J-9 of this IDIQ contract, and the current standards in the latest version of the DOE FEMP M&V Guidelines. The post-installation report shall include results of eProject Builder (ePB) output (see Attachment J-15 for instructions), and M&V data and calculations. This report shall verify that installed ECMs will meet the required standards of service and the guaranteed annual energy, water, and related cost savings specified in the awarded TO. Inspections and measurements conducted by the Contractor for this post-installation report shall be witnessed by the ordering agency, in accordance with FEMP’s "Guide to Government Witnessing and Review of Measurement and Verification Activities." The post-installation report shall be reviewed as recommended in the latest version of DOE FEMP’s “Reviewing Post-Installation and Annual Reports for Federal ESPC Projects” (See Attachment J-17 for specific website address), and must be accepted in writing, by the authorized ordering agency official(s).

**D.** The Contractor shall prepare and submit an annual M&V report to the ordering agency, per the annual M&V report outline in Attachment J-10 of this IDIQ contract, and the current standards in the latest version of the DOE FEMP M&V Guidelines. The annual M&V report shall include results of ePB output (Attachment J-15), and data and calculations that demonstrate that continued ECM performance achieves the guaranteed annual energy, water, and related cost savings as required by the TO. Inspections and measurements conducted by the Contractor for this annual M&V report shall be witnessed by the ordering agency in accordance with FEMP’s "Guide to Government Witnessing and Review of Measurement and Verification Activities.” The annual M&V report shall be reviewed, as recommended in the latest version of DOE FEMP’s “Reviewing Post-Installation and Annual Reports for Federal ESPC Projects,” and must be accepted, in writing, by the authorized ordering agency official(s). Review and acceptance of the annual M&V report, in accordance with FEMP’s "Guide to Government Witnessing and Review of Measurement and Verification Activities" constitutes documentation to determine amount of Contractor payment.

**E.** Each annual M&V report shall include a section that documents, on a continuous, annual basis, the changes or impacts that have affected the ability of the project to generate energy savings. This “running log of impacts”, with associated impact on energy savings, is included so that when these become significant, a TO adjustment can be investigated. The ordering agency will adjust the TO when it is in the economic best interest of the Government to make the necessary changes.

**F.** Each annual M&V report shall include a copy of each year’s previous comments and responses in the appendix to the report. This brings consistency to the M&V evaluation process.

## **C.5 Installation Requirements for ECMs**

*Specify site and project-specific requirements for the Design and Construction Package, such as:*

*● The due date for design and construction package, which may be phased (C.5.1.B)*

*● Any additions, deletions, or changes to required minimum contents (C.5.1.C)*

*● Instructions or requirements for acquisition of permits (C.5.1.C.6)*

*● Submittal requirements for preliminary and final reviews (C.5.1.D)*

*[ ] IDIQ language is acceptable, with the noted additional site/agency-specific requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

Unless otherwise specified by the ordering agency in its TO RFP, the Contractor shall comply with the following installation requirements for ECMs.

**C.5.1 Design and Construction Package**

**A.** The Contractor shall prepare and submit a design and construction package to the ordering agency for review and approval prior to starting ECM installation in accordance with Attachment J-4, Sample Deliverables for TOs. The design and construction package shall be certified (stamped) by a licensed professional engineer in the State where the work is performed to assure compliance with applicable building codes and the ordering agency’s design standards. The TO will specify site-specific requirements of the design and construction package. Acceptance of the design and construction package by the ordering agency shall not relieve the Contractor from responsibility for meeting facility standards of service and guaranteed cost savings.

**B.** The design and construction package due date will be negotiated between the Contractor and the ordering agency and specified in the TO. Phased design and construction may be allowed and specified by the ordering agency in the TO. Upon approval of the design and construction package, bonds will be required in accordance with Section H.7.

**C.** The design and construction package shall be prepared and shall include at least the following:

1. *Manufacturer's Data* – For all ECM equipment to be installed, the Contractor shall provide the manufacturer's descriptive literature of equipment including drawings, diagrams, performance and characteristic curves, catalog cuts and installation guidelines and warranty considerations.

2. *Design and Construction Specifications* – Unless otherwise specified by the ordering agency, the Contractor shall identify and reference design and construction specifications applicable to installed ECMs.

3. *Construction Drawings* – Construction drawings shall be prepared by the Contractor, subcontractor, or any lower-tier subcontractor.

4. *Planned Service Interruptions* – If any utility services must be discontinued temporarily to perform work, such interruptions shall be described and indicated on the project installation schedule. The description shall include the length of the interruption, its time (date, day of week, time of day, etc.), and a justification. Required service interruptions shall be scheduled per Section C.5.6 of the IDIQ contract.

5. *Site Plan and Compliance with Federal Site Exterior Architectural Plan* **–** If an ECM involves the installation of facilities or exterior structures, the Contractor shall provide a site plan showing its location, or show its location on the ordering agency's existing site plan. The Contractor shall also provide plan and elevation drawings of the facility or exterior structure showing its size and exterior appearance.

6. *Acquisition of Permits* – For any ECM installation requiring permits from regulatory agencies, the Contractor shall provide its plan and schedule for acquiring such permits in accordance with ordering agency instructions and requirements.

7. *Installation Schedules* – The installation schedule shall show the order in which the Contractor proposes to perform the work and the dates on which the Contractor contemplates starting and completing all major milestones (including acquiring materials, equipment, permits, and inspections). The schedule shall be in the form of a progress chart of suitable scale to indicate the amount of work scheduled for completion by any given date during the installation period.

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

 *For PV ESA ECM:*

**E.** Design and construction plans shall demonstrate compliance with all applicable codes and standards.The agency shall review and approve all design and construction plans, engineering evaluations of the impact of PV ESA ECM on the site electrical distribution system and upgrade plans based on utility interconnection requirements. The agency may involve others in the review, including but not limited to code officials and representatives of the utility company.

**C.5.2 Design and Construction Standards**

*Specify any site- or agency-specific design and construction standards that are additional to or different from those at C.5.2. (Recommend adding a note when deleting any standards not applicable to the agency or site.)*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** A TO issued against this IDIQ contract will specify design and construction standards applicable to site or ordering agency specific facility requirements. At a minimum, all ECMs, work, equipment and materials required for ECM installation shall comply with the most recent issue of the design and construction standards indicated in the TO, as applicable. If a publication required by an individual ECM is not listed below, the Contractor shall utilize one that has national/ international application. The following list of standards is provided as a guideline for establishing these requirements.

* American National Standards Institute (ANSI)
* Code of Federal Regulations (CFR)
	+ 29 CFR 1910, Occupational Safety and Health Standards
	+ 10 CFR 435, Energy Conservation Voluntary Performance Standards for Commercial and Multi-Family High Rise Residential Buildings
	+ 29 CFR 1926, Safety and Health Regulations for Construction
* National Electric Code (NEC)
* National Electrical Safety Code (NESC)
* National Fire Protection Association (NFPA) Standards including, but not limited to, NFPA 101 - Life Safety Code
* National Electrical Manufacturers Association (NEMA)
* Underwriters Laboratory (UL)
* International Building Code (IBC)
* International Plumbing Code (IPC)
* International Mechanical Code (IMC)
* American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE)
	+ ASHRAE 62
	+ ASHRAE 90.1
* Army Corps of Engineers Safety Manual
* National Historic Preservation Act, as applicable
* Illuminating Engineering Society of North America (IESNA)
* American Institute of Architects (AIA) Master Specification
* Air-Conditioning and Refrigeration Institute (ARI)
* Occupational Safety and Health Administration (OSHA) regulations
* Other design standards required by the ordering agency

*In addition, for a PV ESA ECM:*

The PV ESA ECM shall adhere to the NEC NFPA 70, work shall be conducted according to the safety requirements of the applicable code (NFPA 70E), and all equipment shall be UL-listed for the system design voltage. See Section C.18 for structural analysis and design requirements.

[Include all codes required by the authority having jurisdiction and the serving utility. Consult the FEMP [Solar Photovoltaic Technical Specifications](https://www.energy.gov/eere/femp/technical-specifications-site-solar-photovoltaic-systems) for codes that the agency may want to consider for the PV ESA ECM]

**B.** No requirement of this IDIQ contract shall supersede applicable regulations, local codes and/or standards. Any violation of such regulations and standards shall be brought to the attention of the authorized ordering agency official(s) for clarification or direction prior to proceeding with the work.

**C.** If conflicts between designated applicable codes and/or standards exist, the ordering agency CO and applicable authority having jurisdiction over said codes and/or standards shall determine the appropriate code to follow.

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

*Specify any site- or agency-specific requirements that are additional to or different from those at C.5.3. Include submittal requirements in the reporting requirements checklist. Consider local process if applicable.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** The Contractor shall be responsible for quality control during installation of ECMs. The Contractor shall inspect and test all work performed during ECM installation to ensure compliance with the TO's performance requirements. The Contractor shall maintain records of inspections and tests, including inspections and tests conducted by or for any non-federal organization, such as a utility or other regulatory agency. The Contractor shall prepare an ECM Quality Control Inspection Plan for review and acceptance by the ordering agency. Any changes to the ECM Quality Control Inspection Plan shall be submitted for review and acceptance to the ordering agency. The ECM Quality Control Inspection Plan shall be prepared and submitted in accordance with the TO reporting requirements.

**B.** The ECM Quality Control Inspection Plan shall detail the procedures, instructions, and reports that ensure compliance with the TO and this IDIQ contract. This plan shall include, as a minimum:

1. The quality control organization, in chart form, showing the relationship of the quality control organization to the Contractor's organization.

2. Names and qualifications of personnel in the quality control organization.

3. Area of responsibility and authority of each individual in the quality control organization.

4. A listing of outside organizations, such as testing laboratories, architects, and consulting engineers that will be employed by the Contractor, and a description of the services these firms will provide.

5. Procedures for reviewing all shop drawings, samples, certificates, or other submittals, including the names of the persons authorized to sign the submittals for the Contractor.

6. An inspection schedule, keyed to the installation schedule, indicating necessary inspections and tests, the names of persons responsible for the inspections and tests, and the time schedule for each inspection and test.

7. The procedures for documenting quality control operations, inspection, and testing, with a copy of all forms and reports to be used for this purpose. The Contractor shall include a status log listing all submittals required by the inspection plan and stating the action required by the Contractor or the ordering agency. The Contractor shall also prepare and maintain a testing plan that shall contain a listing of all tests required by the TO and this IDIQ contract.

8. The ECM Quality Control Inspection Plan shall be submitted to the ordering agency for review and approval as a separate stand-alone document at the same time as the required Design and Construction Package, after award of the TO.

9. Final quality control records shall be consolidated and provided to the authorized ordering agency official(s).

**C.5.4 ECM Commissioning** **–** The Contractor shall assure the ordering agency, through the ECM Commissioning, that the ECMs performance achieves facility and/or process performance requirements as set out in the TO. The ECM Commissioning shall be accomplished through a process of verification and documentation, in accordance with the “Commissioning Guidance for ESPCs,” provided on the DOE FEMP website. (See Attachment J-17 for specific website address.)

*Specify any site- or agency-specific requirements that are additional to or different from those at C.5.4. Include submittal requirements in the reporting requirements checklist.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** ECM Commissioning Approach – The Contractor shall submit in its TO proposal a severable ECM Commissioning Approach document, that utilizes site specific data and factors needed to achieve facility performance requirements in accordance with the TO.

**B.** ECM Commissioning Plan – After the ordering agency reviews and accepts the design and construction package, the Contractor shall provide a Commissioning Plan to the ordering agency for acceptance that finalizes the Commissioning Approach and addresses each ECM with specific steps that will be taken during the commissioning process.

**C.** ECM Commissioning Report – The Contractor shall submit to the ordering agency a Commissioning Report documenting the ECM’s affect upon facility performance requirements in accordance with the Commissioning Plan and ordering agency requirements.

*For PV ESA ECM:*

**D.** *[Specify any additional inspection and commissioning requirements, here or in Section E Inspection and*

*Acceptance, including the use of the “IEC 62446 Grid Connected Photovoltaic Systems Minimum Requirements for System Documentation, Commissioning Tests and Inspection” standard. The PV ESA ECM monitoring system and all related cyber security measures should be included in the inspection. Roof-top systems shall be inspected to ensure that applicable roof warranty and all other related requirements including mounting system structural requirements are met.]*

**C.5.5 Environmental Protection**

*Specify any known potential environmental impacts and/or known hazardous waste handling and storage requirements relative to the site, agency, or proposed ECM's. This could include information on indoor air and water quality, fragile ecosystems, or endangered species; the need to use low-emission paints and solvents; preference for recycling; historical preservation considerations; etc. Specify whether 40 CFR Section 311 applies (Hazardous Waste Operations and Emergency Response). Local environmental standards and requirements should be considered.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** Impacts on air quality (pollutants, noise level, and odors or fumes) and potable water use are examples of potential areas of concern at the project site. Any ECM and related work shall comply with the National Environmental Policy Act (NEPA) and other applicable federal, State and local environmental protection regulations. The TO will identify specific known hazardous waste handling and storage requirements (e.g., Polychlorinated Biphenyl (PCB) ballasts removed from lighting fixture retrofits).

**B.** The Contractor shall comply with applicable federal, State and local laws and with the applicable regulations and standards regarding environmental protection. All environmental protection matters shall be coordinated with the ordering agency CO. Authorized ordering agency officials may inspect any of the Contractor's work areas on a no-notice basis during normal working hours. The Contractor shall indemnify and hold the Government (including the ordering agency, DOE, and/or any person acting on behalf of the Government) harmless for any and all liability, including attorneys’ fees and legal costs, resulting from the Contractor’s noncompliance or violation of any applicable federal, State or local law, regulation or standard regarding environmental protection. In the event that a regulatory agency assesses a monetary fine against the ordering agency for violations caused by the Contractor’s actions or inaction, the Contractor shall immediately reimburse the ordering agency for the amount of any fine and other related costs paid. The Contractor shall also clean up any oil spills, hazardous wastes, and hazardous materials resulting from the Contractor's operations. The Contractor shall comply with the instructions of the ordering agency’s designated safety and health personnel to avoid conditions that create a nuisance or which may be hazardous to the health of federal or civilian personnel.

**C.** The Contractor shall prepare all documentation necessary to support obtaining permits to comply with all applicable federal, State and local requirements prior to implementing affected ECMs in the performance of a TO. The Contractor shall not receive a notice to proceed with installation from the ordering agency until all applicable environmental protection requirements contained in this IDIQ contract and the TO have been satisfied.

**D.** The Contractor shall comply with all applicable regulations and with the requirements of the latest edition of the applicable ordering agency's Spill Prevention Control and Countermeasures Plan, or similar plan, and specific requirements of the TO.

 *For PV ESA ECM:*

 **E**. The Contractor shall assist the Government in meeting NEPA, the National Historic Preservation Act and other applicable compliance requirements.

**C.5.6 Service Interruptions**

*Specify any additional or different procedures for the Contractor to follow when there are utility service interruptions. For example, a laboratory or hospital facility may require provision for auxiliary power during interruptions. Requirements may vary depending on anticipated duration of service interruption.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** For any planned utility service interruptions, the Contractor shall furnish a request to the authorized ordering agency official(s) for approval as specified in the TO. The request shall identify the affected buildings, utility service, and duration of planned outage.

**B.** The ordering agency will coordinate with affected tenants and customers as applicable.

**C.** Ordering agencies may have additional requirements that apply to specific TOs and, if applicable, such additional requirements shall be specified in the TO.

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

*Specify agency and/or site standards, specifications, and requirements for content, format, quantity, etc.*

 *[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted above/below.*

## **C.6 Operation of ECMs**

*Specify site- or agency-specific requirements in addition to or different from C.6. Consider Risk, Responsibility, and Performance Matrix positions.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

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

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

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

**E.** When the ordering agency assumes performance of ECM operations, the ordering agency will maintain adequate and necessary records from inspections, which will be made available during the annual M&V review. These records will contain at a minimum the ECM affected, date repair and/or replacement implemented, and description of activities performed and will be provided to the Contractor to be included in the annual M&V report.

*For PV ESA ECM:*

 **F.** Operation of the PV ESA ECM is the responsibility of and shall be performed by the Contractor (see Section C.8.2).

## **C.7 Preventive Maintenance of ECMs**

*Specify site- or agency-specific requirements in addition to or different from C.7. Consider Risk, Responsibility, and Performance Matrix positions.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** Preventive maintenance work includes periodic equipment inspections, tests, calibrations, and preventive maintenance tasks and actions required to ensure that systems operate as intended. Regardless of who performs the preventive maintenance, the Contractor shall be responsible for preventive maintenance of all installed ECMs.

**B.** The Contractor shall prepare a written definition of preventive maintenance requirements and preventive maintenance work procedure and checklist for each installed ECM. The Contractor shall train designated personnel in the revised preventive maintenance work procedures.

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

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

**E.** When the ordering agency assumes performance of preventive maintenance, the ordering agency will maintain adequate and necessary records from inspections, which will be made available during the annual M&V review. These records will contain at a minimum the ECM affected, date the repair and/or replacement was implemented, and description of activities performed and will be provided to the Contractor to be included in the annual M&V report.

*For PV ESA ECM:*

 **F.** Preventative maintenance of the PV ESA ECM is the responsibility of and shall be performed by the Contractor (see also Section C.8.2).

## **C.8 Repair of ECMs**

*Specify site- or agency-specific requirements in addition to or different from C.8. The Government can elect to assume repair and replacement responsibilities. By assuming this responsibility, the Government acknowledges that at any time during the course of the contract term, given an equipment failure, they will pay for the repair or replacement. Consider this to be a “pay as it fails” scenario. On the other end of the spectrum, the Contractor can be responsible for this. Consider this to be an “extended warranty.” Should a piece of equipment fail at any time during the contract term, the Government simply notifies the Contractor and they will have the equipment repaired or replaced. Obviously, the cost of this feature will be included in the ESPC price. Specify which route you would prefer. Consider Risk, Responsibility, and Performance Matrix positions.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** The Contractor shall be responsible for the repair of all installed ECMs. However, performance of ECM repairs may be assumed by the ordering agency through mutual agreement with the Contractor, as specified in the TO. Regardless of who performs the repair of installed ECMs, the Contractor shall be responsible for repair of all installed ECMs.

**B.** Repair of ECMs includes all labor, equipment, and materials associated with the replacement or repair of facilities, systems, or equipment that has failed or in a condition of diminished ECM performance, as determined by the Contractor or ordering agency, and concurred to by both parties.

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

**D.** When the ordering agency assumes performance of ECM repairs, the ordering agency will maintain adequate and necessary records of such ECM repairs, which will be made available during the annual M&V review. These records will contain at a minimum the ECM affected, date the repair and/or replacement was implemented, and description of activities performed and will be provided to the Contractor to be included in the annual M&V report.

**C.8.1 Equipment Failure** – If equipment failure or damage is a result of the Contractor’s failure to perform or negligence in performing repairs, the Contractor shall provide repair or replacement at its expense or, if repaired or replaced at ordering agency expense, the Contractor shall reimburse the ordering agency for any and all costs and losses attributable to the Contractor’s failure or negligence.

*For PV ESA ECM:*

**C.8.2 PV ESA ECM O&M and R&R**

O&M and repair and replacement of the PV ESA ECM is the responsibility of the Contractor. Contractor shall provide O&M required to keep the system operating at its optimal performance and to ensure on-going safety of the system. The Contractor shall provide the Government with all applicable O&M manuals at the beginning of the contract, at the end of the contract when title is transferred to the Government and during the performance period if there are any major equipment changes. The Contractor shall be responsible for warranty administration during the warranty period and will pass on all remaining warranties to the Government upon PV ESA ECM title transfer.

The Contractor bears all financial risk for non-performance of the PV ESA ECM, except to the extent such non-performance is attributable to a temporary shut-down of the Government’s facilities for repairs, maintenance, or capital improvements. The contract price for electricity will not be reduced if Contractor operating costs should diminish.

If Government-owned equipment fails or is damaged as a result of the Contractor’s failure to perform or negligence in performing repairs, the Contractor shall provide repair or replacement at its expense or, if repaired or replaced at ordering agency expense, the Contractor shall reimburse the ordering agency for any and all costs and losses attributable to the Contractor’s failure or negligence.

## **C.9 Contractor Maintenance and Repair Response Time**

*Specify:*

*● Availability (times) of Contractor contact for equipment failures,*

*● Time allowed for Contractor telephone response and arrival on site in response to emergency and nonemergency repair calls from agency,*

*● Hours of access granted to the Contractor for emergency work,*

*● Consider local requirements and critical systems.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** The Contractor shall establish a point of contact (name, phone number, and email address) for use by the ordering agency in notifying the Contractor of necessary equipment maintenance or repair. The point of contact shall be available as specified in the TO throughout the TO's term. Initial telephone response to maintenance or repair calls shall be within the timeframe specified in the TO. If a site visit is needed to maintain or repair equipment, Contractor personnel shall arrive on site within the timeframes specified in the TO for emergency and nonemergency maintenance and repair.

**B.** Emergency maintenance and repair work is defined as maintenance or repair necessary to correct an existing or imminent failure to meet the Facility Performance Requirements of ECMs, Section C.3, or any action necessary to protect the safety or health of the facility occupants and prevent adverse impacts on property. The required Contractor response time for maintenance and repair will be indicated within each ECM.

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

*For PV ESA ECM:*

**C.9.1 PV ESA ECM Contractor Maintenance, Repair and/or Replacement Response Time**

**A.** The Contractor shall establish a point of contact (name, phone number, and email address) for use by the ordering agency in notifying the Contractor of the PV ESA ECM maintenance or repair. The point of contact shall be available as specified in the TO throughout the TO's term. Initial telephone response to maintenance or repair calls shall be within the timeframe specified in the TO. If a site visit is needed to maintain or repair equipment, Contractor personnel shall arrive on site within the timeframes specified in the TO for emergency and nonemergency maintenance and repair.

*[Agency may want to specify some/all of the following:*

* *Availability (times) of Contractor contact for equipment failures,*
* *Time allowed for Contractor telephone response and arrival on site in response to emergency and nonemergency repair calls from agency,*
* *Hours of access granted to the Contractor for emergency work,*
* *Consideration of local requirements and critical systems, etc.]*

## **C.10 Operations and Maintenance (O&M) Manuals and Training for** **ECMs**

**C.10.1 Operations and Maintenance Manuals –**

*Specify requirements for submission of O&M plans and spare parts lists. Recommend including training plan deliverable here or in technical proposal section H.4.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

The Contractor shall furnish O&M manuals and recommended spare parts lists for O&M of the Contractor installed ECMs and modified ordering agency equipment. O&M plans and spare parts lists shall be submitted prior to ordering agency acceptance of the project, as specified in the TO.

*For PV ESA ECM:* See Section C.8.2

**C.10.2 Ordering Agency Personnel Training for ECMs –**

*Specify site- and agency-specific requirements for ECM O&M training of Government personnel. The agency may want to require a training plan, periodic retraining, a DVD of the training session, etc. Recommend including training plan deliverable here or in technical proposal section H.6.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

**A.** Thirty days prior to the installation completion, the Contractor shall train ordering agency personnel and/or ordering agency Contractors to operate, maintain, and repair ECM equipment and systems in the event of emergencies, unless otherwise specified in the TO.

**B.** The Contractor shall train ordering agency personnel and/or ordering agency Contractors to operate, maintain, and repair ECM equipment on an annual basis, unless otherwise specified in the TO.

*For PV ESA ECM:*

Contractor shall provide training to include: what is to be expected under normal operation of the system; locations and operations of agency-accessible components such as safety shut-off switchgear; O&M of the PV ESA ECM; fire protection (see Section H.11); and shut-down, re-start and other procedures in the event of an emergency. Training shall include any federal agency requirements related to site access. A high-quality digital audio/video recording of the training session(s) shall be provided to the agency. PV ESA ECM training shall also be provided at the end of the contract term when title is transferred to the Government and during the performance period if there are any major equipment changes.

## **C.11 Government Projects**

*Specify any known Government projects which may affect installation or operation of ECMs.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

## **C.12 Financial, Tax, or Other Incentives for Energy Efficiency and Renewable Energy and Water Projects**

*Identify any site- or agency-specific requirements that may be different from those outlined below.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

The Contractor shall be responsible for determining the source, value, and availability of any applicable financial, tax, or other incentives for the project and shall collaborate with the ordering agency to consider all available incentive options, including but not limited to those described in this Section C.12. The Contractor shall evaluate and obtain all available incentives and shall apply such incentives to offset the project cost to the ordering agency, unless otherwise directed by the ordering agency. Unless otherwise specified in the TO, interest in and ownership of all financial, tax, or other incentives resulting from renewable energy produced on-site at a Federal facility will remain with the ordering agency.

**C.12.1 Energy Efficiency and Renewable Energy and Water Financial Incentives –** The Contractor shall be responsible for evaluating the benefits available to the ordering agency by utilizing a variety of programs. This includes, but is not limited to, applicable energy efficiency and renewable energy and water financial incentives, including rebates, offered by the local utility serving the facility and/or State and local government incentives. The Contractor’s assessment shall address whether the value of the incentives exceeds the administrative costs to be incurred by the Contractor or the ordering agency in acquiring such incentives.

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

**C.12.2 Energy Efficiency and Renewable Energy and Water Project Emission Reduction Credits –** The Contractor shall be responsible for considering the ordering agency benefits of utilizing emission reduction credit programs offered by the federal, State, regional, or local air quality organizations. The Contractor’s assessment shall address whether the value of the incentives exceeds the administrative costs to be incurred by the Contractor or the ordering agency in acquiring such incentives.

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

**C.12.3 Renewable Energy Credit (REC) -** The Contractor shall be responsible for considering the ordering agency benefits of REC sales for renewable energy projects on federal property. The Contractor will identify available compulsory or voluntary markets and describe the renewable annual energy production and valuation alternatives of REC sales. The Contractor’s assessment shall address whether the value of RECs exceeds the administrative costs to be incurred by the Contractor or the ordering agency in acquiring, selling, or otherwise administering the RECs.

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

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

**C.12.4 White TagsTM, also known as Energy Savings Certificates –** The Contractor shall be responsible for considering the ordering agency benefits of applying for White TagsTM, as available, for TO energy efficiency measures on federal property. The Contractor will identify applicable ECMs and White TagsTM certification requirements. The Contractor’s assessment shall address whether the value of the White TagsTM exceeds the administrative costs to be incurred by the Contractor or the ordering agency in applying for, selling, or otherwise administering the White TagsTM. Unless otherwise specified in the TO, interest in and ownership of all White TagsTM resulting from energy efficiency projects on-site at a federal facility will remain with the ordering agency.

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

**C.12.5 Energy Efficiency and Renewable Energy and Water Project Tax Incentives –** The Contractor shall be responsible for considering the ordering agency benefits of leveraging any federal, State or local tax incentives for energy efficiency or renewable energy projects. The ordering agency recognizes that nongovernmental ownership of the affected energy efficiency and renewable energy and water asset may be required in order to capture the benefits of Investment and Production Tax Credits and Modified Accelerated Cost Recovery System (MACRS) accelerated depreciation.

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

*For PV ESA ECM:*

**C.12.6** All applicable incentives for the PV ESA ECM shall be accounted for and reflected in the PV ESA ECM price. The Contractor is responsible for determining the applicability of all incentives and for applying for and monetizing any incentives. Tax incentive eligibility due diligence is the responsibility of the Contractor, not the Government. The ESPC ESA price will not be modified if the IRS determines that the Contractor is not eligible for the tax incentives or any other incentives offered by others and the Contractor has no other recourse against the Government.

## **Disposition of Solar Renewable Energy Certificate (SRECs)**

*[Agency should decide whether they want to purchase the project SRECs based on the applicable SREC market price/conditions. The Contractor could be required to purchase replacement RECs or the agency should plan to purchase replacement RECs, if needed for compliance with the current renewable energy goal and related guidance. It may be beneficial for an agency to purchase the SRECs in the latter years of the contract when the SREC value will likely be low or zero. Contact your FPE for assistance in developing appropriate TO RFP language.]*

*[Use the following language if the agency would like the Contractor to sell the SRECs and reduce the PV ESA ECM price:]*

The Government’s purchase of energy from the PV ESA ECM excludes the associated SRECs. The Contractor is free to sell the SRECs *[select from one of the following if the agency would like replacement RECs: “and shall purchase replacement RECs on behalf of the agency” or “and agency will purchase replacement RECs”]*. The Contractor is responsible for fulfilling all requirements necessary for the SREC sale. It is anticipated that SREC proceeds may allow the Contractor to propose a lower PV ESA ECM price.

*[Use the following language if the agency would like to purchase the SRECs with the electricity:]*

The SRECs shall be transferred to the agency or retired on the agency’s behalf in one of the REC tracking systems[[4]](#footnote-4).

*[Please insert any additional information related to financial/tax incentives and SRECs in this section.]*

## **C.13 Availability of Utilities**

*If the terms and conditions in C.13 are not acceptable, specify revised terms and conditions. Consider local processes and requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

## **C.14 Work Schedule Requirements**

*Specify any different or additional site- or agency-specific work schedule requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

The Contractor shall arrange its on-site work so that it will minimize interference with normal ordering agency business. At a minimum, the Contractor shall submit a monthly work schedule for ordering agency approval for all on-site work performed under the TO. In no event shall the Contractor change approved work schedules without the prior consent of the authorized ordering agency official.

*For PV ESA ECM (Sections C.15-C.19):*

## **C.15 Interconnection**

**C.15.1 Interconnection to Site and/or Building Electrical Distribution Systems**

The Contractor shall provide interconnection of the PV ESA ECM with the site electrical distribution system and take actions to ensure that the PV ESA ECM is compatible with the site electrical distribution system. The Contractor shall propose the electrical design, point of interconnection to the site electrical distribution system, and the voltage and phase configuration, for approval by the Government and other involved parties such as the electric utility and fire marshal.

Modifications or upgrades to the site electrical system required to interconnect the PV ESA ECMs are the responsibility of the Contractor. Contractor to propose needed upgrades or modifications to meet federal agency, utility and other requirements; that will be subject to a review and approval process *[specify agency requirements and/or review and approval process details, as applicable]*.The Contractor is responsible for the proper circuit sizing, overcurrent protection, and coordination of the circuit(s) beyond the point of connection, including modifications to the federal site’s electrical equipment and circuits; all at the Contractor’s expense. Any modifications to the approved PV ESA ECM design that would affect the site electrical distribution system shall require written approval of the Government.

**C.15.2 Local Utility Interconnection Requirements**

The Contractor is responsible for complying with all electric utility interconnection requirements, providing all necessary PV ESA ECM details for the interconnection applications, and funding any required interconnection studies to be performed by or on behalf of the electric utility. The Contractor shall provide any needed repairs and upgrades to site and/or utility electrical distribution equipment to meet interconnection requirements, as well as any O&M that may be required on the site and/or utility upgraded electrical equipment over the term of the contract (unless the O&M is provided by the utility or another party). The Contractor shall provide to the local utility if required: single line diagrams, engineering power flow studies, estimated energy production data estimates, and other specifications and data with respect to the PV ESA ECM. *[Agency could request that the Contractor provide interconnection study and upgrade cost estimates used in their ESA price calculations since actual study costs and/or upgrade costs could be different, resulting in Contractor requested ESA price change.]*

The Contractor is responsible for gaining approval from the electric utility for interconnection and any electric utility-required upgrades. The Government will assist in facilitating communications with the utility for this purpose. The electric utility interconnection agreement for the PV ESA ECM will be signed by the *<specify Government and/or the Contractor>*.

The Contractor shall submit an electric utility interconnection process plan to the Government within 14 days of contract award. The plan shall include key steps, timeline, interconnection details, and assumptions necessary to complete the interconnection process.

Any local codes required by utility interconnection laws and regulations shall be followed. The Contractor will be responsible for all applicable fees, permits, and inspections.

**C.16 Array Glare Analysis (if applicable)**

*[The Federal Aviation Administration (FAA) requires that the Solar Glare Hazard Analysis Tool (SGHAT) tool be used to analyze potential glare for PV systems sited at federally obligated airports.[[5]](#footnote-5) Federal agency should insert applicable requirements based on current FAA and other guidelines and agency policy.]*

The Contractor shall conduct a glare analysis, as necessary, for Federal Aviation Administration (FAA) review and/or as required by the agency policy, using the SGHAT or similar acceptable tool. The SGHAT tool has been licensed and is now solely available through ForgeSolar.[[6]](#footnote-6) The glare analysis shall be conducted after the conceptual design is approved by the Government. The glare analysis may need to be repeated if changes are made to the size, shape, or orientation of the PV ESA ECM, as these changes could have an effect on glare. At a minimum, the information required for the analysis includes:

• Location (depicted on map; including address or latitude/ longitude)

• Array orientation and panel tilt

• Module surface material and whether anti-reflective coatings will be used on the PV modules

• PV module layout and size of the array

• *[For rooftop PV ESA ECMs]* Roof height, height of the modules above the roof (highest point)

• *[For ground-mount PV ESA ECMs]* Tracking or fixed configuration, height of the modules above the ground (highest point)

• The runway locations and incoming flight paths/patterns, the air traffic control tower (ATCT) location, and the eye-level height above ground of the ATCT workers.

If the glare analysis shows that the PV ESA ECM glare does not meet acceptable levels, the design shall be modified as much as practicable to minimize glare. If it is not possible to modify the PV ESA ECM design (or move the PV ESA ECM to a different location) to eliminate the glare hazard, the PV ESA ECM will not be included in the TO.

**C.17 Metering and Data Acquisition Specifications**

The electricity generated by the PV ESA ECM shall be measured by a revenue-grade meter to be furnished, installed, maintained, repaired, calibrated, read, and reported by the Contractor at its expense. The revenue-grade meter shall comply with the American National Standards Institute (ANSI) Standard C12.1-2014 and be approved by the Government. The meter shall be a solid-state advanced meter that has a non-volatile memory capable of storing measured data for 30 days using an Ethernet port and meets the ANSI C12.20 0.5% accuracy standard. The meter shall be installed with the manufacturer’s prescribed current transducers (CTs), in a separate and appropriately NEMA-rated cabinet (if needed).

The meter shall be tested for accuracy and certified in accordance with ANSI C12.20 at the Contractor’s expense. The Government may test the accuracy of the meter at any time at the Government’s expense, and if the accuracy is found to be greater than the 0.5% tolerance standard, the meter shall be replaced or repaired at the Contractor’s expense.

The Contractor meter and site data acquisition systems (DAS) require the installation of Contractor owned and operated independent telemetry networks that shall comply with agency cyber-security requirements *[agency insert requirements]*. The Contractor is to establish independent wireless and or wired networks to form communications with the meter and DAS.

*[Agency can use the following language if they do not allow the use of wireless technology and a site network is not available.]* The Contractor shall use a hard-line communication or a phone line, a cellular connection, or other means that is 100% independent from the Government network. Any external communication connections must be located at the demarcation point to the public access or general work areas and must not interfere with other Government-used radio frequency networks. The recommended design and installation plans must be approved by the agency. Any required connections shall be made and kept operational over the term of the contract by the Contractor at its expense.

Electricity production and site weather data shall be collected by the Contractor and made available to the agency through a web portal at no additional cost to the Government over the life of the contract term. A minimum of 36 months of data shall be stored by the Contractor and be made available for agency download via the web portal. The data shall, at a minimum, comprise the following information and frequency of collection:

* Date, time.
* Apparent power (kVa)/phase, real power (kW) and Volts on each phase; recorded in 15-minute intervals.
* Plane-of-array irradiance either through onsite pyrometer or through satellite information at hourly intervals.
* Ambient temperature, hourly average at hourly intervals, either from on-site measurements or a reliable climate data service.
* Wind speed at the array, at hourly intervals (optional, not required for performance assessment).
* The web-based monitoring system shall report actual system performance and an estimate of expected performance (based on measured irradiance and temperature).

**C.18 Roof Mounted PV ESA ECM Structural Analysis and Design Requirements (if applicable)**

*[It is recommended that the structural analysis be completed during the IGA. Add additional roof structural analysis and/or design requirements based on the roof warranty here or elsewhere.]*

The Contractor shall conduct a structural analysis of each existing roof and design the PV ESA ECM to ensure that the existing roof has sufficient structural integrity to support the PV ESA ECM. Structural design and analysis for roof-top PV ESA ECM arrays shall comply with American Society of Civil Engineers (ASCE-07) and Structural Engineers Association of California - SEAOC [PV2-2017 “Wind Design for Solar Arrays.”](https://www.seaoc.org/store/ViewProduct.aspx?id=10228815) Any upgrades to existing roof structures required to support the new PV ESA ECM(s) shall be the responsibility of the Contractor.

The design and installation of the PV ESA ECMs shall not compromise any existing roof warranties. The Contractor shall design the PV ESA ECMs to keep building penetrations to a minimum. Where roof penetrations cannot be avoided, they shall be properly sealed.

**C.19 Vegetation Management**

The Contractor is responsible for maintaining (mowing, trimming, etc.) any vegetation adjacent to the PV ESA ECM in order to prevent shading on, or damage to, the PV ESA ECM. Vegetation shall be selected and maintained to minimize the risk and spread of fire. Ground-cover and water drainage shall be detailed in the design submittals. Ground-cover alternatives shall be appropriate for the site and climate; and shall be included as part of the Contractor’s Final Proposal.

*[Agency may consider adding language regarding bee/pollinator-friendly vegetation management.[[7]](#footnote-7) Contact your* [*FPE*](https://www.energy.gov/eere/femp/energy-savings-performance-contract-federal-project-executives-0) *for assistance.]*

# **Section D - Packaging and Marking**

## **D.1 Preservation, Packaging and Packing**

*Specify any different or additional site- or agency-specific preservation, packaging or packing requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

## **D.2 Packing List**

*Specify any different or additional site- or agency-specific packing list requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

Unless otherwise specified in the TO, a packing list or other suitable shipping document shall accompany each shipment and shall indicate:

**A.** Name and address of the Contractor;

**B.** Name and address of the ordering agency;

**C.** Government TO or requisition number;

**D.** Government bill of lading number covering the shipment (if any); and

**E.** Description of the material shipped, including item number, quantity, number of containers, package number (if any), and weight of each package

## **D.3 Initial Packing, Marking, and Storage of Equipment**

*Specify any different or additional site- or agency-specific initial packing, marking or storage of equipment requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

# **Section E - Inspection and Acceptance**

## **E.1 Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)**

*Specify any additional site- or agency-specific inspection and acceptance clauses by reference or in full text, as appropriate.*

*[ ] IDIQ clauses are acceptable.*

*[ ] IDIQ clauses are acceptable, with the noted additional clauses.*

**NOTICE:** The following contract clauses pertinent to this section are hereby incorporated by reference, with the same force and effect as if they were given in full text. For any fill-in clauses listed below, the ordering agency is responsible for incorporating and completing each clause in full text in the TO. Ordering agencies may incorporate additional agency specific clauses as required:

**52.246-2 Inspection of Supplies - Fixed-Price. (AUG 1996)**

**52.246-4 Inspection of Services - Fixed-Price. (AUG 1996)**

**52.246-12 Inspection of Construction. (AUG 1996)**

**52.246-13 Inspection - Dismantling, Demolition, or Removal of Improvements. (AUG 1996)**

**52.246-16 Responsibility for Supplies. (APR 1984)**

## **E.2 Inspection of Installed ECMs**

*Revise the criteria and notification requirements for inspection and acceptance as needed and include any additional site- or agency-specific requirements. Consider the scheduling expectations set by this contract section.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

Each TO may include additional agency-specific and/or site-specific inspection requirements. Unless otherwise indicated in the TO, the following general inspection requirements shall apply to each TO:

**A.** The Contractor shall notify the ordering agency CO no less than 15 working days in advance of ECM(s) installation completion (or such other notification period as may be specified in a TO) by submitting a written request for inspection. The request shall identify the location, describe the ECM(s) installed, schedule testing of the ECM(s) for verifying energy savings performance, and recommend dates for inspection.

**B.** The ordering agency shall provide a written response to the Contractor of the scheduled date and time for agency inspection within 10 working days after receipt of the Contractor notification of ECM installation completion and request for inspection (or such other period as may be specified in TO).

**C.** The ordering agency and Contractor shall jointly inspect ECMs to facilitate mutual agreement on satisfactory TO ECM performance. As a result of the inspection, and if necessary, the authorized ordering agency official will approve a punch list of items to be resolved before the ECM is accepted. The punch list will be provided to the Contractor or, if provided by the Contractor, it will be reviewed and, if approved, notice of acceptance provided by the ordering agency CO within 5 working days after the inspection (or such other period as may be specified in TO). The Contractor will complete the punch list items within 20 working days and notify the ordering agency CO upon completion. During the time after the punch list is finalized, any additional punch list items identified will be handled as a post-acceptance warranty issue.

## **E.3 Acceptance**

*Specify the anticipated schedule for Contractor report submittals and the duration for agency review for acceptance. Consider requiring a 30-day test period prior to acceptance.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**E.3.1 Partial Project Acceptance –** After the Contractor notifies the ordering agency CO that punch list items have been completed in accordance with Section E.2, the ordering agency CO will review the notification and, if approved, provide a notice of acceptance within 5 working days after the inspection (or such other period as may be specified in the TO). The ordering agency CO may agree to pay the Contractor for an accepted ECM(s), with verified implementation period cost savings, as specified in the TO documents. Testing of the ECM(s) for verifying energy savings performance shall be completed in accordance with the M&V plan prior to an implementation period Contractor payment. Implementation period Contractor payments shall reduce the project Total Amount Financed (Principal) and related debt service payments during the TO post-acceptance performance period, as specified in the TO.

**E.3.2 Full Project Acceptance**

**A.** After installation of all ECMs, the ordering agency CO will notify the Contractor in writing of full project acceptance, which will constitute the start of the post-acceptance performance period and commencement of post-acceptance Contractor payments. Ordering agency acceptance, for purposes of payment, and in accordance with Section G, occurs when the following are completed:

1. Acceptance by the ordering agency CO of the Contractor’s post-installation report;

2.Acceptance by the ordering agency CO of Contractor’s ECM Commissioning Report;

3. The project inspection is conducted pursuant to Section E.2; and

4.Submission of additional TO requirements prior to acceptance:

i. Operations work procedures

ii. Preventive maintenance work procedures

iii. O&M manuals and spare parts lists

iv. Training

v. As Built Drawings (Record Drawings)

**B.** Prior to the awarding of a TO, the ordering agency CO and Contractor shall mutually agree on the anticipated schedule for the Contractor report submittals and the duration for ordering agency review for acceptance. This schedule shall then be incorporated into the TO.

*For PV ESA ECM:*

**E.3.3 Thirty-Day Pre-Acceptance Test Period**

A 30-day test period is required where the PV ESA ECM must operate as proposed for a minimum of 30 consecutive days prior to project acceptance. During the 30-day pre-acceptance test period, the Contractor shall monitor actual production compared to expected production. The Contractor shall correct any deficiency in the performance and demonstrate at least 30 days of continuous acceptable performance prior to the agency’s acceptance of the PV ESA ECM.

*[Specify additional steps required before the agency accepts the PV ESA ECM, including interconnection agreement execution and utility permission to operate. Include whether the agency will pay for the electricity during the acceptance period.]*

# **Section F - Deliveries or Performance**

## **F.1 Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)**

*Specify any additional site- or agency-specific deliveries or performance-related clauses by reference or in full text, as appropriate.*

*[ ] IDIQ clauses are acceptable.*

*[ ] IDIQ clauses are acceptable, with the noted additional clauses.*

**NOTICE:** The following contract clauses pertinent to this section are hereby incorporated by reference, with the same force and effect as if they were given in full text. For any fill-in clauses listed below, the ordering agency is responsible for incorporating and completing each clause in full text in the TO. Ordering agencies may incorporate additional agency specific clauses as required:

**52.211-10 Commencement, Prosecution, and Completion of Work. (APR 1984)** *[Fill-In Clause]*

**52.211-16 Variation in Quantity. (APR 1984)** *[Fill-In Clause]*

**52.211-18 Variation in Estimated Quantity. (APR 1984)**

**52.242-14 Suspension of Work. (APR 1984)**

**52.242-15 Stop-Work Order. (AUG 1989)**

**52.242-17 Government Delay of Work. (APR 1984)**

**52.247-34 F.o.b. Destination. (NOV 1991)**

## **F.3 Task Order Period of Performance**

*The task order period of performance will be negotiated at time of award based on the combined payback schedule of all ECMs to be installed.* *Under 42 U.S.C. §8287, federal agencies are authorized to enter into ESPC multiyear TOs for a period not to exceed 25 years.*

*For PV ESA ECM:*

Consistent with the requirement under IRS Revenue Procedure 2017-19, Section 4.02(1), the term of the PV ESA ECM cannot exceed 20 years in length. If an ESCO is eligible for a federal tax incentive, the ESCO may decide to use a 25 year contract length for other ECMs, as allowed by the ESPC authority, if the ESCO determines that this would not jeopardize the federal tax incentive eligibility of the ESA ECM.

## **F.5 Place of Performance**

*Specify the place of performance for the ESPC, such as the ordering agency’s facility by official title and full address. If the project involves multiple sites, list each site individually.*

## **F.6 Deliverables and Submittals**

*Specify deliverables requirements using Attachment J-4 as an example. Provide any different or additional site- or agency-specific requirements. Note Section F.6.2 is a contract requirement that can’t be changed or removed.*

*[ ] IDIQ language is acceptable, with the noted additional requirements. Include a tailored Attachment J-4.*

*[ ] Revise / replace the IDIQ language in Section F.6.1as noted below.*

**F.6.1 Ordering Agency Requirements –** Specific ordering agency deliverables will be specified in each TO. Attachment J-4 of this IDIQ contract provides recommended deliverables for TOs.

**F.6.2 DOE Requirements –** Unless otherwise specified by the DOE IDIQ Contracting Officer, the Contractor shall distribute the required deliverables to the DOE via the EERE Project Management Center (PMC). Guidance on how to access and use the PMC can be referenced in the PMC Upload Instructions, Attachment J-14. As a reminder, the Contractor shall also upload the TO Schedules (for Preliminary Assessments and Proposals) and data for M&V Reports to ePB (Attachment J-15). The required deliverables are as follows:

|  |  |
| --- | --- |
| **Required Deliverable** | **Due By** |
| Preliminary Assessment (See Section H.4) | Within 10 calendar days of receiving a successful notification of intent to award by the ordering agency CO |
| Final Proposal with Investment Grade Audit – Pre-Award (See Section H.5) | Within 10 calendar days after submission to the ordering agency |
| Proposal – Accepted (See Section H.5) | Within 10 calendar days after award |
| Signed TO awards with all attachments (See Section H.3) | Within 10 calendar days after award |
| Final TO modification proposals – Pre-Award (except payment and other administrative modifications) | Within 10 calendar days after submission to the ordering agency |
| Signed TO modifications with all attachments (See Section H.5) | Within 10 calendar days after award of the modification |
| Commissioning Report – Accepted with comments and edits (See Section C.5.4) | Within 30 calendar days after acceptance of report by the ordering agency |
| Post Installation M&V Report – Accepted with comments and edits (See Section C.4.2) | Within 30 calendar days after acceptance of report by the ordering agency |
| Notice of Agency Project Acceptance (See Section E.3)  | Within 10 calendar days after receipt from ordering agency. |
| Annual M&V Reports – Accepted with comments and edits (See Section C.4.2, Paragraph D) | Within 30 calendar days after acceptance of each annual report by the ordering agency |
| Annual Small Business Subcontracting Report (Task Order-specific – see 13 C.F.R. § 125.3(h) and DOE FEMP ESPC IDIQ Ordering Guide, Section E.11)\* | The Annual Small Business Subcontracting Report shall be submitted within 30 days after September 30 each year of the Task Order. |

\* The Annual Small Business Subcontracting Report is in addition to the Individual Subcontracting Reports (ISR) and Summary Subcontracting Reports (SSR) required by other than small business Contractors under FAR clause 52.219-9.

# **Section G - IDIQ Contract and Task Order Administration**

## **G.2 Task Order (TO) Administration**

*Specify any different or additional site- or agency-specific requirements and fill in other site-specific information. The text below is recommended.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

Administration of TOs issued against this IDIQ contract shall be accomplished by the ordering agency identified in the TO.

**G.2.1 Ordering Agency Contracting Officer Authority –** The ordering agency Contracting Officer (CO) is responsible for administration of the ordering agency’s TO. The ordering agency CO may appoint a Contracting Officer’s Representative (COR) and/or Contracting Officer’s Technical Representative (COTR), in accordance with ordering agency procedures, to perform specifically delegated functions. The ordering agency CO is the only individual who has the authority on behalf of the Government to take the following actions under the TO. This list is not all-inclusive.

**A.** Assign additional work within the general scope of the TO;

**B.** Issue a change to the TO in accordance with the clause entitled Changes;

**C.** Change the cost or price of the TO, keeping in mind that –

1. TOs awarded against this IDIQ contract shall be firm fixed price;

2. Changes to meet design or performance requirements of the TO shall be at no additional cost to the ordering agency, unless agreed to in advance by the ordering agency; and

3. Changes in Contractor cost due to ordering agency changes to the TO requirements will be negotiated by the ordering agency;

**D.** Change any of the terms, conditions, specifications, or services required by the TO;

**E.** Accept non-conforming work under the TO; and

**F.** Waive any requirement of the TO.

**G.2.2 Ordering Agency COR/COTR** **–** In accordance with ordering agency procedures and when an appointment is determined necessary, the ordering agency CO may designate in writing a COR/COTR for the TO, and provide a copy of such designation to the Contractor, including the delegated responsibilities and functions. The ordering agency COR/COTR will have the authority to perform only those functions expressly set forth in the written designation from the ordering agency CO.

**G.2.3 Contractor’s Project Manager for the ESPC TO Project.**

**A.** The Contractor shall designate a Project Manager (or other appropriate official) who will be the Contractor's authorized supervisor for technical and administrative performance of all work under each ESPC TO project. The Project Manager shall be the primary point of contact between the Contractor and the ordering agency COR/COTR, as well as the ordering agency CO, under each TO.

**B.** The Project Manager shall receive and execute, on behalf of the Contractor, such technical directions as the ordering agency COR/COTR may issue within the terms and conditions of the TO.

**G.2.4 Administration of the Ordering Agency Task Order –** To promote timely and effective TO administration, correspondence delivered to the ordering agency under each ESPC TO project shall reference the contract number, task order number (when known), title, and subject matter, and shall be subject to the procedures specified by the ordering agency.

## **G.3 Invoicing Instructions**

*Specify all invoicing instructions, including format, contents, any attachments or enclosures, submission and addressing instructions, etc. Provide site specific Invoicing Instructions.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

The Contractor shall submit invoices in accordance with the specific ordering agency instructions provided in each TO awarded under this IDIQ contract. These instructions may vary by ordering agency and/or TO.

## **G.4 Invoice Submittal and Payment Schedule**

*Specify frequency of payments to the Contractor, including partial payments, pre-performance period payments, etc. Specify allowable payment option(s).*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** Payments to the Contractor will commence when acceptance by the ordering agency is obtained as required under Section E.

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

*For PV ESA ECM:*

1. The Contractor will invoice the Government on a monthly basis for the metered monthly PV ESA ECM Actual Annual Production at the Annual ESA Price shown on Schedule 1a (Attachment J-6).

**G.4.1 DOE TO Specific Invoicing and Payment Procedures –** For DOE TO projects, Contractor payments will be made by reimbursement through the Automated Clearing House (ACH) Vendor Invoicing Portal & Electronic Reporting System (VIPERS).

**A.** Method of Payment - Payment will be made by reimbursement through ACH. Contractors shall use Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, when requesting payment for work performed under a DOE TO.

**B.** Requesting Reimbursement – Contractors shall submit vouchers electronically through DOE’s Oak Ridge Financial Service Center (ORFSC) VIPERS. VIPERS allows vendors to submit vouchers, attach supporting documentation and check the payment status of any voucher submitted to the DOE. Instructions concerning Contractor enrollment and use of VIPERS can be found at <https://vipers.doe.gov>. A paper copy of a voucher that has been submitted electronically will not be accepted.

**C.** Payments – As specified in the DOE TO, the Contractor shall submit an electronic invoice for payment via the VIPERS website system. Invoices will be approved and paid upon the basis of correct and approved invoice submission and receipt of deliverables which will reflect timeliness of and conformance to tasks and deliverables as described in the TO.

The DOE approving official will approve the invoice as soon as practicable but not later than 30 days after the Contractor’s request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the DOE approving official, the ORFSC will disburse payment to the Contractor. The Contractor may check the status of its payments at the VIPERS website. All payments are made by electronic funds transfer to the bank account identified on the filed ACH Vendor banking data form.

## **G.5 Payment to the Government for Guaranteed Annual Savings Shortfall**

*Provide specific details, as necessary, to explain how the ordering agency plans to make adjustments to the payment schedule for annual savings shortfalls.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** If the Contractor fails to meet the guaranteed annual savings stated in the TO award and as verified by the M&V documents, the ordering agency shall adjust the payment schedule, as necessary, to recover the ordering agency’s overpayments in the previous year and to reflect the lower performance level into the current year.

**B.** When the ECM performance level is restored, the ordering agency will adjust the Contractor payment schedule accordingly.

*For PV ESA ECM (Sections G.5.1-G.5.4):*

**G.5.1 Guaranteed Annual Production.**

Contractor guarantees annual PV ESA ECM production as set forth in Schedule 1a (see Attachment J-6) herein. The first Production Year begins on the day after project acceptance and shall continue for 12 full calendar months thereafter, and each subsequent Production Year shall be for twelve calendar months thereafter. The last Production Year shall end at the end of the PV ESA ECM term. The Actual Annual Production shall be adjusted based on Excused Production (see Section G.5.3) as appropriate and subject to CO approval, to determine if the Guaranteed Annual Production level has been met. *[The agency and Contractor may consider normalizing the Actual Annual Production based on actual (vs. average) solar insolation.]*

The agency agrees to purchase one hundred percent (100%) of the PV ESA ECM production during the TO term, even if the electricity generated exceeds the Guaranteed Annual Production.

**G.5.2 Unforeseeable Events**

The Parties hereto acknowledge and agree that certain events and actions, foreseen and unforeseen, outside of the control of the Contractor can have an impact on the Actual Annual Production. Foreseeable events, such as normal wear and tear need to be factored into the Guaranteed Annual Production. Unforeseeable Events that are outside the control of the Contractor or the third-party PV ESA ECM owner (see Section H.2.1.1) shall be taken into consideration in calculating the Contractor shortfall payment in the event that the amount of the Actual Annual Production is less than the Guaranteed Annual Production. Unforeseeable Events include *[agency include all that apply and add other potential Unforeseeable Events]*:

(i) PV ESA ECM failure, damage or downtime attributable to entities other than the Contractor or third-party PV ESA ECM owner,

(ii) any electric utility outage *[add competitive energy supplier and/or other suppliers such as Western Area Power Administration as applicable]*,

(iii) agency requested PV ESA ECM outages due to agency activities or disturbances caused by the agency,

(iv) causes beyond the control and without the fault or negligence of the Contractor or the third-party PV ESA ECM owner that are “Force Majeure Events” (see Section H.28) and as determined by the CO,

(v) shading that is Government caused,

(vi) theft,

(vii) vandalism,

(viii) curtailment to prevent export *[include if applicable]*,

(ix) other (requires CO approval)

**G.5.3Excused Production**

Excused Production is the total amount of energy the PV ESA ECM did not generate due to Unforeseeable Events (during daylight hours only). Excused Production shall be calculated using the following methodology:

(i) Use the actual weather-related data available through the PV ESA ECM’s monitoring equipment. If this data is not available, then use satellite data, other available data or interpolated data from the nearest location with solar insolation data.

(ii) Calculate expected production assuming the PV ESA ECM is fully operational using the PV production monitoring equipment and a performance model such as the System Advisor Model (SAM), PV Watts (available at [www.nrel.gov/sam](http://www.nrel.gov/sam) and www.nrel.gov/pvwatts) or other; subject to approval by the Government (see Section C.17).

(iii) Reduce the expected production if part of the PV ECM is underperforming or not operable (not producing electricity under normal conditions). The remaining value is the Excused Production.

Excused Production is only used to determine if the Guaranteed Annual Production is met, the agency shall not be responsible for paying for energy that has not been produced.

The Contractor shall provide the proposed Unforeseeable Events and Excused Production in a table format with the date, hours when the PV ESA ECM was not operating (daylight hours only), the type of Unforeseeable Event, the Excused Production and the method for calculating the Excused Production. The information shall be provided on an annual basis concurrent with the Contractors’ annual M&V report, for CO approval. If the CO approves, the Excused Production shall be used in the Guaranteed Annual Savings Shortfall calculation (see Section G.5.4). If the CO does not approve, the Contractor shall work with the CO to develop revised Unforeseeable Event/Excused Production information that is acceptable to the CO.

## **G.5.4****Guaranteed Annual Savings Shortfall Calculation**

If the Adjusted Annual Production (Actual Annual Production adjusted for Excused Production and solar insolation as appropriate) is less than the Guaranteed Annual Production in any Production Year (an “annual shortfall”), then Contractor shall owe the Government an amount equal to the positive difference between the Guaranteed Annual Production minus the Actual Annual Production for such Production Year with the result multiplied by the positive difference, if any, between the Current Cost of Energy minus the Annual ESA Price, for such Production Year. Any amount(s) owed by the Contractor for an annual shortfall shall be applied as a credit against the immediate subsequent monthly invoice(s) to the Government until such credit is exhausted.

Adjusted Annual Production = Actual Annual Production – Excused Production - Solar Insolation Adjustment (if any)

Amount owed for annual shortfall (if any) = (Guaranteed Annual Production –Adjusted Annual

Production) x (Current Cost of Energy – Annual ESA Price).

## **G.6 Technical Direction (DEAR 952.242-70)(DEC 2000)**

*Consider including any agency-specific provisions for technical direction as needed, if non-DOE site.*

*[ ] IDIQ language is acceptable, if DOE site.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**NOTE: this DOE Acquisition Regulation (DEAR) clause is only applicable to the DOE IDIQ COR for technical direction under the IDIQ contract and to ordering agency COR/COTRs for technical direction under individual TO projects at DOE sites. Technical direction under TOs issued by other agencies will be at the discretion of the ordering agency’s CO and will be incorporated into each TO.**

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

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

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

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

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

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

(1) Constitutes an assignment of additional work outside the Performance Work Statement;

(2) Constitutes a change as defined in the contract clause entitled "Changes;"

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the Contractor's right to perform the terms and conditions of the contract.

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

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

(1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;

(2) Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or

(3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.

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

(End of clause)

## **G.7 Contractor Performance Assessment Reporting**

*Consider including any additional agency-specific provisions for performance assessment reporting, as needed.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

(a) The ordering agency CO will document the Contractor’s performance for each TO awarded under this IDIQ contract by using the Contractor Performance Assessment Reporting System (CPARS). CPARS information is handled as “Source Selection Information.” (Refer to FAR Part 2.101, Definitions.) Performance assessments entered into CPARS by the ordering agency CO are transmitted to the Past Performance Information Retrieval System (PPIRS) which is maintained by the Department of Defense (DoD). Information in PPIRS is available to authorized Government personnel seeking past performance information when evaluating proposals for award.

(b) Contractor performance will be evaluated at least annually at the TO level, as determined by the ordering agency CO. Evaluation categories may include the following at the Government’s discretion: (1) quality, (2) schedule, (3) cost control, (4) business relations, (5) business management/key personnel, (6) utilization of small business, and other important performance factors. PPIRS information is available at [https://www.ppirs.gov](https://www.ppirs.gov/), and CPARS information is available at <http://www.cpars.gov>. It is recommended that the Contractor take the overview training that can be found on the CPARS website. The Contractor shall acknowledge receipt of the Government’s request for comments on CPARS assessments at the time it is received and shall respond to such requests within 30 calendar days of the request.

(c) Joint Ventures. Performance assessments shall be prepared on TOs with joint ventures. When the joint venture has a unique Commercial and Government Entity (CAGE) code and Data Universal Numbering System (DUNS) number, a single assessment will be prepared for the joint venture using its CAGE code and DUNS number. If the joint venture does not have a unique CAGE code and DUNS number, separate assessments, containing identical narrative, will be prepared for each participating Contractor and will state that the evaluation is based on performance under a joint venture and will identify the Contractors that were part of the joint venture.

(d) In addition to the performance assessments addressed above, the Government will perform other performance assessments necessary for administration of this IDIQ contract and each awarded TO in accordance with other applicable clauses in this IDIQ contract.

(End of clause)

# **Section H - Special Contract Requirements**

## **H.1 Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)**

*Specify any additional site- or agency-specific clauses for special contract requirements by reference or in full text, as appropriate.*

*[ ] IDIQ clauses are acceptable.*

*[ ] IDIQ clauses are acceptable, with the noted additional clauses.*

**NOTICE:** The following contract clauses pertinent to this section are hereby incorporated by reference, with the same force and effect as if they were given in full text. For any fill-in clauses listed below, the ordering agency is responsible for incorporating and completing each clause in full text in the TO. Ordering agencies may incorporate additional agency specific clauses as required:

**52.236-1 Performance of Work by the Contractor. (APR 1984)** *[Fill-In Clause]*

**52.236-2 Differing Site Conditions. (APR 1984)**

**52.236-3 Site Investigation and Conditions Affecting the Work. (APR 1984)**

**52.236-5 Material and Workmanship. (APR 1984)**

**52.236-6 Superintendence by the Contractor. (APR 1984)**

**52.236-7 Permits and Responsibilities. (NOV 1991)**

**52.236-8 Other Contracts. (APR 1984)**

**52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. (APR 1984)**

**52.236-10 Operations and Storage Areas. (APR 1984)**

**52.236-11 Use and Possession Prior to Completion. (APR 1984)**

**52.236-12 Cleaning Up. (APR 1984)**

**52.236-13 Accident Prevention. (NOV 1991) and Alternate I (NOV 1991)**

**52.236-14 Availability and Use of Utility Services. (APR 1984)**

**52.236-15 Schedules for Construction Contracts. (APR 1984)**

## **H.2 Title To, and Responsibility For, Contractor-Installed Equipment**

*If title to ECMs is not to be vested in the Government after project acceptance, state alternate procedure for title disposition. If the project includes renewables, private ownership may be advantageous.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise the IDIQ language as noted below.*

As a general rule, title to all equipment installed by the Contractor shall be vested in the Government after acceptance by the Government, and shall not relieve the Contractor’s responsibility for ECM performance. However, during the term of the TO, title may be vested in the Contractor or a third party, as determined by the ordering agency and allowable by the terms and conditions of this contract and applicable statutes and regulations. The ordering agency must evaluate the use of financial incentives, such as renewable energy and energy efficiency tax credits and/or other incentives, when deciding whether to allow vesting of title to the Contractor or a third party.

Regardless of which party the title is vested in, neither the Contractor nor a third party shall have the unilateral right to remove any equipment, installed as part of the TO project, for the purposes of satisfying a lien or other type of security interest. If the removal of installed equipment for other purposes is determined necessary, the ordering agency shall negotiate the terms and conditions with the Contractor and modify the TO as needed.

*For PV ESA ECM (Sections H.2 and H.3):*

## **H.2.1 Novation and Equipment Title**

## **H.2.1.1 Special Purpose Entities, Novations, and Tri-Party Agreements**

*[The agency CO shall contact the DOE Golden Field Office DOE ESPC IDIQ CO if task order novation is required or a tri-party agreement will be established, so that the agency CO can ensure that all agency actions comply with the DOE ESPC IDIQ, as well as the associated protocols, tracking systems, and applicable procurement requirements. Partial novation of a task order is not allowed, so two separate task orders may be required - one for the ESA ECM and one for the other ECMs. Savings cannot be shared between task orders. Tax incentive eligibility due diligence is the responsibility of the Contractor, not the Agency.*

*Execution of a task order novation or use of a tri-party agreement requires consideration of numerous factors such as ensuring the integrity of the applicable DOE ESPC IDIQ contract and tracking of task orders towards the DOE ESPC IDIQ ceiling.]*

The agency recognizes that securing financing may involve the establishment of a limited liability company (LLC) or other type of special purpose entity (SPE). Either a (1) task order novation agreement between the agency CO and prime Contractor, or (2) a tri-party agreement among the agency, Contractor and SPE may be required to effectuate the desired financing.

The ESPC statutory authority provides that an agency may enter into an ESPC with an ESCO that is on a qualified list established pursuant to the requirements under 42 U.S.C. § 8287(b)(2)(A). The initial award of an ESPC ESA to a DOE ESPC IDIQ contract holder satisfies this requirement, even though the newly created SPE may not be on an established qualified list.

Any subsequent agreement that is executed to novate the contract to a SPE must be approved by the responsible agency CO and concurred on by the DOE Golden Field Office DOE ESPC IDIQ CO; and must be consistent with all applicable statutory and regulatory requirements, including but not limited to, all requirements at FAR 42.1204. Task order novation agreement approval is at the agency’s sole discretion (after obtaining concurrence from the DOE ESPC IDIQ CO) pending a determination by the agency CO that the SPE is capable of meeting all contract requirements and obtaining financing. Any tri-party agreement executed to address the establishment of an SPE and related financing issues must be approved by the responsible agency CO and concurred on by the DOE Golden Field Office DOE ESPC IDIQ CO.

The planned use of an LLC or other type of SPE shall be identified in the Final Proposal, along with details regarding whether a tri-party agreement will be used, or task order novation will be required.

*[If this TO is novated, a novation may also be required for the site access agreement. If there is a tri-party agreement for the ESA, consider a tri-party agreement for the site access agreement as well.]*

## **H.2.1.2 Title to the PV ESA ECM**

Until such time as the agency accepts title to the PV ESA ECM, the Contractor (or a third-party owner) shall be the owner of the PV ESA ECM. During this time, the system shall be the personal property of the Contractor as defined under Article 9 of the Uniform Commercial Code and shall not be deemed as part of, or fixture to, the site. The Contractor (or third-party owner) covenants that it will use reasonable efforts to place all parties having an interest in the Contractor’s (or third-party owner’s) property located on the site on notice of the ownership of the PV ESA ECM and the legal status or classification of the PV ESA ECM as personal property. The agency is the owner of the site and consents to the filing by the Contractor (or third-party owner) of a disclaimer of the PV ESA ECM as a fixture of the site in the office where real estate records are customarily filed in the jurisdiction of the site until such time that the agency accepts title to the PV ESA ECM.

As specified in Section H.3, the agency shall accept title to the equipment from the Contractor (or third-party owner) by the end of the contract term, after payments to the Contractor’s reserve account have reached FMV of the equipment.

Regardless of which party the title is vested in, neither the Contractor nor a third-party shall have the unilateral right to remove any equipment, installed as part of the project, for the purposes of satisfying a lien or other type of security interest, or for any other purpose, without approval from the CO.

## **H.3 Contractor’s Reserve Account, Fair Market Value (FMV) Determination, and Title Transfer of the PV ESA ECM**

*[This section should be carefully reviewed by agency legal, contracting and management staff,* ***keeping in mind the IRS Revenue Procedure 2017-19, available at*** [***https://www.irs.gov/pub/irs-drop/rp-17-19.pdf***](https://www.irs.gov/pub/irs-drop/rp-17-19.pdf)***.*** *Add details regarding requirements associated with the Contractor’s reserve account. During the IGA, the Contractor must obtain an appraisal or an estimate[[8]](#footnote-8) of what the PV ESA ECM FMV will be at the end of the contract. The FMV appraisal/estimate will be used to calculate the reserve account payment. Contact your* [*FPE*](https://www.energy.gov/eere/femp/energy-savings-performance-contract-federal-project-executives-0) *for assistance.]*

Title to the PV ESA ECM shall be transferred to the agency for FMV, determined by the methodology specified in Section H.3.2, by the end of the contract. Funds necessary for this title transfer must be generated from a specified portion of the scheduled payments that are transferred to a reserve account held by the Contractor.

**H.3.1 Contractor’s Reserve Account**

Each *<specify frequency – monthly, each year or other>* the Contractor will transfer a specified portion of the payments it receives from the *<agency>* into a reserve account held by the Contractor. The Contractor’s deposit into its reserve account shall be *<x>* $/kWh as specified in Schedule 1a.

##  *[Modify the following paragraph based on the desired FMV re-appraisal intervals, the selection criteria for the entity that will conduct the appraisals and the associated credentials, and who will be responsible for the appraisal costs (current language specifies the Contractor). Hiring one company to conduct all the appraisals may reduce costs, since subsequent appraisals should just involve an update to the initial appraisal.]*

An updated FMV appraisal/estimate shall be made at the following intervals *<list desired intervals such as years 5, 10 and 15>*. If needed, the contract length[[9]](#footnote-9) and/or agency’s payment to be allocated to the Contractor’s reserve account shall be increased or decreased, through a contract modification. This will ensure that the Contractor’s reserve account has sufficient funds to reach the FMV of the PV ESA ECM before title transfer to the agency. The agency may require additional FMV appraisals if the differential between the prior FMV appraisal and the current FMV appraisal is greater than 25%.

The methodology for the FMV appraisals/estimates shall be proposed by the Contractor, with approval by the Contracting Officer. The FMV appraisal or estimate costs shall be borne by the Contractor.

### **H.3.2 Determination of Final FMV**

At least six months prior to the end of the contract the final PV ESA ECM FMV appraisal shall be made. This value will be determined by selecting a mutually agreed upon, nationally recognized independent certified appraiser with experience and expertise in the PV industry. Such appraiser shall act reasonably and in good faith to determine the FMV and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The cost of the appraisal shall be borne by the Contractor.

The final FMV amount shall be compared to the Contractor’s reserve account balance. If there is a shortfall; the agency shall increase their reserve account payment or increase the contract length such that there will be sufficient funds by the end of the contract. Any funds in the Contractor reserve account in excess of the equipment FMV may, at the Contractor’s option, be applied by the Contractor to offset the final ESPC payment(s).

#### **H.3.3 Title Transfer of the PV ESA ECM for FMV**

By the end of the contract, the agency shall accept title to the PV ESA ECM from the Contractor (or third-party owner) at FMV, as determined per Section H.3.2, using the funds in the Contractor’s reserve account.

Upon title transfer, the Parties will promptly execute all documents necessary to (A) cause title to the PV ESA ECM to pass to the agency, free and clear of any encumbrances (e.g. liens), and (B) assign all warranties for the PV panels and other PV ESA ECM equipment to the agency.

## **H.4 Preliminary Assessment Content Requirements for Task Orders**

*Note that Section H.4 is not required if a PA has already been received and approved. Specify any different or additional requirements for PA content.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**H.4.1 Preliminary Assessment (PA)** – The Contractor shall submit a PA to the ordering agency, which sets out the merits, technical feasibility, range of projected energy savings, economics, and conceptual price range of the project. The Contractor shall ensure a qualified / DOE approved PF has been assigned to the project prior to starting efforts to develop the PA, per Section C.1, Paragraph D. Renewable energy technologies shall be considered along with other ECMs. The ordering agency CO will respond to the Contractor, in writing, indicating whether or not the project will be pursued. If pursued, the ordering agency CO will issue a NOITA followed by a TO RFP, which identifies the ordering agency’s requirements. The ordering agency will not be responsible for any costs associated with PA audits or preparation of the PA unless the project addressed by the PA later becomes a TO award.

**H.4.2 Contents –** Unless otherwise specified by the ordering agency CO in accordance with Section H.3.12, Paragraph C, **t**he Contractor’s PA shall include the following information and requirements:

**A.** The Contractor shall include technical and price assessments for developing recommended and potential ECMs. The PA shall include ECMs, *including the PV ESA ECM*, divided into two groups: Recommended and Potential.

1. Recommended ECMs are those ECMs the Contractor is confident will be included in the proposal. The PA shall include a range of expected implementation costs, cost savings, and energy savings based upon the Contractor’s experience with the Recommended ECMs at similar installations.

2. Potential ECMs are those ECMs the Contractor considers worthy of evaluation, but which require evaluation and verification of field conditions in the proposal development phase for the Contractor to complete a more accurate calculation to increase its confidence for inclusion in the proposal. For these ECMs, the Contractor shall provide a narrative description of each ECM, how they may save energy for the site, and a conceptual-level estimate range of potential implementation costs, cost savings, and energy savings.

**B.** The PA length shall be no more than 35 pages, plus one page per recommended ECM, using the template provided in Attachment J-13. The potential ECMs only require a short narrative (1-2 paragraphs) and shall be included within the 35-page limit. The PA shall include at a minimum the following sections:

1. Project Overview

*Executive Summary* – At a minimum, the Executive Summary shall include a narrative description of the project, summarizing the project management plan, the recommended and potential ECMs, the energy, water, and related cost saving ranges, and conceptual range of implementation price.

2. Technical Assessment

i. *Project Management Plan* – The Contractor shall submit a project management plan that provides for the efficient development of a proposal for a project that effectively addresses the Government’s objectives as set forth in the NOO.

ii. *ECM Description* – For each recommended ECM, the Contractor shall submit narrative information and estimated implementation price and savings ranges in the format specified in Attachment J-13. For each potential ECM, the Contractor shall provide a short narrative at a conceptual level.

iii. *ECM Performance Measurement* – Provide a general description for the M&V approach that will be proposed for the recommended ECMs in accordance with Section C.4.6, Paragraph A and the latest version of the FEMP M&V Guidelines: Measurement and Verification for Performance-Based Contracts. The M&V approach shall also include a general description of the recommended level of Government witnessing that complies with the latest version of DOE FEMP’s “Guide to Government Witnessing and Review of Measurement and Verification Activities.” (See Attachment J-17 for specific web link.)

If operation and maintenance savings are included in the PA, then the Contractor shall include a general description of the methods that comply with the latest version of “How to Determine and Verify Operating and Maintenance (O&M) Savings in Energy Savings performance Contracts”. In determining energy cost savings, the Contractor shall comply with the latest version of FEMPs “Guidance on Utility Rate Estimations and Weather Normalization in an ESPC”. (See Attachment J-17 for specific web links.)

iv. *TO Schedules* – The Contractor shall submit completed financial and energy savings TO Schedules, using ePB, for all recommended ECMs, as well as documentation to support the TO Schedules. Output from ePB shall be included in the PA documents provided to the agency. In completing the TO Schedules, the Contractor shall use numerical values (such as the average) agreed to or specified by the ordering agency to identify ECM costs and savings that are within the ranges provided in the ECM description. The ePB system instructions are provided in Attachment J-15.

## **H.5 Requirements for Task Order Proposals and Proposal Reviews**

*Specify any different or additional requirements for Final Proposal contents and review, including the IGA. Consider adding a Training Plan submittal under H.5.2.2, Paragraph C.5. Note: the use of eProject Builder is a requirement of the contract and cannot be removed.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**H.5.1 General** – The Contractor shall submit a proposal, consisting of technical and price components, in electronic format, or as required in the TO RFP. If the Contractor is a large business and the ordering agency requires it, the proposal shall also contain tailored small business subcontracting goals, in accordance with FAR 52.219-9 and the individual small business subcontracting plan included as Attachment J-16. The tailored goals shall at least match the subcontracting goals DOE / EERE is currently required to meet, or the subcontracting goals that the ordering agency is required to meet, whichever goals are greater.

**A.** The technical component of the proposal shall include an Investment Grade Audit (IGA) and conceptual design that documents the overall technical credibility of the energy baseline and provides the methodology and results used to determine the guaranteed savings. Particular emphasis should be placed on assessment of renewable energy opportunities.

**B.** The price component of the proposal shall include completed project financial and energy-savings TO Schedules, documentation to support the data in the TO Schedules, and any other supporting documentation required by the ordering agency.

**C.** Proposals will be reviewed in accordance with the FAR and ordering agency requirements. Additional guidance shall be provided by the ordering agency in the TO RFP.

**D.** The ordering agency will not be responsible for any costs incurred, such as proposal preparation costs or costs incurred in preparing the IGA, unless a TO is awarded or such costs are otherwise authorized for payment by the ordering agency CO.

**H.5.2 Task Order Proposal Content** – Unless otherwise provided by the ordering agency, the TO proposal shall include the following information and requirements:

**H.5.2.1 Project Overview**

**A.** Executive Summary – At a minimum, this shall include a narrative description of the project summarizing the ECMs, *including the PV ESA ECM*, the energy, water, and related cost savings, implementation price and financial summary.

**B.** Site Description and Utility Summary – For the site, the Contractor shall submit narrative information for items, as applicable, in the format specified below:

1. *Site Description*

i. Overview, size, location, etc.

ii. Map of site showing major areas/designations

iii. Building/facility list, name/designator/number, type of facility, square footage, and hours for those included in the proposal

iv. Background/discussion regarding rationale or directive on which areas of site included in this TO, etc.

v. Facility descriptions (For those buildings included in the ESPC and/or large consumers, etc. Not all buildings may be included, depending on the nature of the site and the ESPC TO.) Provide a general description of building condition and operations including overview of energy (mechanical/electrical) and water systems to include assessment of the system conditions, central plants and buildings served.

vi. Statement of coordination with the site’s Master Plan

2. *Utility Summary*

i. Overview/description of current utility systems on site: electrical, natural gas, fuel oils, water, sewer, etc. Include site diagrams/maps, as available.

ii. Description of metering systems for each utility.

* Utility/revenue meters.
* Sub-meters, advanced metering systems, as applicable.

iii. Summary of historical utility analysis

* Summary tables and graphs for each utility for defined usage period (in text of report) with supporting detailed information and analysis included in an appendix to the proposal. As applicable, show information regarding sub-meters.
* Reference to Attachment J-8, Section 8.1.2 Table 2, as applicable.
* Rate discussion with reference to Attachment J-8, Section 8.2.2, as applicable, for details.

**H.5.2.2 Volume I - Technical Proposal**

**A.** ECM description - For each ECM proposed, *including the PV ESA ECM*, the Contractor shall submit narrative information for items as applicable, in the format specified below:

1. ECM Title

2. ECM No. \_\_\_\_ and narrative description

3. Location affected

4. Energy baseline, detail on assumptions used to develop the baseline (e.g., hours of use or occupancy, weather baseline, etc.)

5. ECM implementation price, projected energy use, cost, guaranteed savings, and detail on assumptions

6. ECM Interface with ordering agency equipment and detailed description of existing energy consuming equipment and systems

7. Proposed equipment identification including manufacturer, model number and optional equipment proposed for each ECM component. *For PV ESA ECM:* include module and inverter efficiency*.*

8. Physical changes – List major physical changes to equipment or facilities required to install the proposed ECM such as relocation or removal of equipment. Include manufacturer’s literature and specifications for each ECM component proposed.

9. Utility interruptions – Specify the extent of any utility interruptions needed for the installation of the proposed ECM.

10. Ordering agency support required – Specify any ordering agency support required during implementation of the ECM.

11. Describe potential environment impacts and coordination that has occurred with the site National Environmental Policy Act (NEPA) Compliance Officer

12. Utility rebate or system benefit fund financial and tax incentive – If applicable, specify ECM financial incentive(s) available, source, estimated payment amount, how and when payment or financing reduction will be applied and impact on project cash flow (e.g., ancillary payment before acceptance, reducing implementation price (ePB TO Schedule 2) and tax-based financing amount), and proposed estimated financial incentive payment or financing reduction of the Contractor guarantees during the post-acceptance performance period (ePB TO Schedule 3).

13. Key parameters used to determine savings in M&V.

14. ECM project schedule – Provide a detailed logically linked, critical path methodology project schedule to include the duration of the following key phases:

i. Engineering/design

ii. Equipment procurement/lead time (i.e., date required to acquire equipment and delivery on-site)

iii. Installation, commissioning, and post-installation M&V report

iv. Project acceptance

*For PV ESA ECM:*

The Contractor shall submit a description (for each proposed PV ESA ECM) that includes but is not limited to:

* Estimated size (considering size restrictions specified in Section C.2)
* Rack configuration (tilt, orientation, fixed vs. tracking)
* PV array location (roof, ground or carport)
* Land or other required modifications (tree removal, replacement trees planned, other)
* PV module type and source (what country)
* Inverter configuration (micro-, string, central)
* Inverter type and source
* Inverter location(s)
* Estimated first year electricity production and how it was calculated (weather file and program such as PV Watts, PV Syst, other)
* Annual production degradation rate
* What site electrical circuits and meter(s) will be served
* Whether net metering will be required
* Interconnection plans (see Section C.15)
* Detailed design drawings including set-backs, pathways for fire protection, etc.
* Any unique considerations

**B.** ECM Performance Measurement

1. *Measurement & Verification Plan* – The Contractor shall prepare a severable portion of Volume I that describes a complete M&V plan. The M&V plan shall be completed using the template and outline provided in Attachment J-8 and the current standards in the latest version of the DOE FEMP M&V Guidelines. The M&V plan shall include an electronic version of the methods for calculating the ECM energy savings for the ordering agency’s review and approval. The M&V plan will include a description of the recommended level of Government witnessing that complies with the latest version of FEMP’s "Guide to Government Witnessing and Review of Review of Measurement and Verification Activities." (See Attachment J-17 for specific web link.) *For PV ESA ECM*: M&V Option B shall be used.

If operation and maintenance savings are included, then the Contractor shall include a description of the methods that comply with the latest version of “How to Determine and Verify Operating and Maintenance (O&M) Savings in Energy Savings performance Contracts”. In determining energy cost savings, the Contractor shall comply with the latest version of FEMPs “Guidance on Utility Rate Estimations and Weather Normalization in an ESPC”. (See Attachment J-17 for specific web links.)

2. *ECM Commissioning Plan* – The Contractor shall prepare a severable portion of Volume I that describes the ECM Commissioning Plan for each of the proposed ECMs. (See Commissioning Guidance for DOE ESPCs on the DOE FEMP website; the specific address is provided in Attachment J-17.)

**C.** Project Management Plan

1. *Communication Plan* – Provide a communication plan to include progress updates during the implementation and operation periods for promoting communication between the ordering agency, DOE, and the Contractor throughout the implementation and operations periods.

2. *Organization* – Show the organization for implementing and managing the TO project through the use of an organizational chart. The proposed organization shall contain the responsibilities of each element. Identify personnel integral to the performance of the ESPC project, by name within each element. Show the lines of authority within the organization. If portions of the project are to be subcontracted (e.g., design of an energy conservation system), identify the subcontracted function, and which element of the Contractor’s organization will manage the subcontract(s).

3. *Risk, Responsibility and Performance Matrix* – The Contractor shall complete and submit a Risk, Responsibility and Performance Matrix detailing its proposed approach or method to address each area in the matrix. The format and content for the Risk, Responsibility and Performance Matrix is provided at Attachment J-7.

4. *Operations, Maintenance, Repair, and Replacement* – Show the organizational structure and describe the approach for performance of the proposed ECM operations, maintenance, and repair and replacement requirements, including at a minimum the ECM-specific preventative maintenance requirements and their frequency of performance. For each ECM, identify the organization(s) (ordering agency or Contractor/subcontractor) performing the O&M of Contractor-installed equipment. Detail how duties or actions are shared or reference where this information is located. Identify reporting requirements of ordering agency or Contractor during the performance period. Responsibilities, performance, and risks of operations shall be briefly defined in the Risk, Responsibility and Performance Matrix.

5. *ECM Training* – Describe in detail how training for each ECM will be provided for ordering agency personnel. The approach shall be customized depending on the level of O&M responsibility to be assumed by ordering agency personnel.

**H.5.2.3 Volume II - Price Proposal** – The selected Contractor shall complete project financial and energy-savings TO Schedules using the eProject Builder System. These completed TO Schedules shall be provided in the price proposal submitted to the ordering agency, along with supporting documentation, organized as follows:

**A.** Project-level expenses from project development through TO award (no ECM breakout required).

**B**. Pricing of implementation and construction phases, allocated by ECM.

**C.** Post-acceptance performance period expenses aligned with proposed TO Schedule 3 line item expenses.

**D.** A summary of the finance offer being proposed. At a minimum, the finance summary shall include the Investor Deal Summary (IDS), selected financier’s Standard Finance Offer (SFO), all non-selected financiers’ SFOs, and Selection Memorandum as explained in more detail in Section H.6.

**E.** *For PV ESA ECM* – Provide a summary of the title transfer plan. At a minimum it should include:

a) The appraisal or estimate of what the PV ESA ECM FMV will be at the end of the contract, the methodology for determining the FMV (including assumptions), and the analysis performed to establish the reasonableness of the proposed FMV;

b) The proposed reserve account payment and how the reserve account payment was calculated (including all assumptions);

c) The plan for periodic FMV estimates and/or appraisals and the reserve account payment to ensure that the reserve account has the appropriate amount of funds for the future PV ESA ECM title transfer.

**H.5.2.4 eProject Builder System** – The TO Schedules shall be developed using the eProject Builder (ePB) System. See Attachment J-15 for instructions and use. The Contractor is responsible for validating that ePB-produced documents are correct.

*For PV ESA ECM:*

The Contractor shall complete Schedule 1a (see Attachment J.6), in addition to financial Schedules 1-5.

Recommendations for completing the financial schedules and using ePB with a PV ESA ECM:

The ePB calculating template does not currently accommodate an ESPC project with a PV ESA ECM. The ePB override template must be used to upload the data into the ePB database. The override template does not perform any calculations. *(FEMP is in the process of modifying ePB to accommodate ESA ECMs. These changes are expected in FY2020.)*

The Contractor may use non-ePB financial schedules, with CO concurrence, during the project development process prior to award. The financial data can be uploaded to ePB post award using the ePB override template.

Escalation schedule
The schedule rounds the escalation rate to two decimal places.

Schedule 1 Cost Savings and Payments

Recommend adding two columns and breaking out the Total Annual Payments into annual ESA payments” and "Annual Payments other ECM(s)".All values are entered manually. There are no ePB calculated values.

Schedule 2a & b – Implementation Price by ECM/Project Implementation Pricing Worksheet
Schedule 2a & b are not applicable for the PV ESA ECM. They may be populated by the Contractor if required by the Government.

Schedules 2a & b are applicable for all other ECMs in project scope.

Schedule 3 Performance Period Cash Flow
Add a line item for the annual ESA payments and include the ESA payments in the Total Annual Payments row.

Schedule 4 First Year Estimated Cost Savings by ECM
Select M&V option (B), and fill out columns b1, b2, l, m and n.

Schedule 5 Cancellation Ceilings
These values are all manual entry. No special guidance for the PV ESA ECM.

*[****If the PV ESA is the only ECM****:A number of the Summary Schedule fields are not necessarily applicable. Contact your FPE for assistance.]*

**H.5.2.5 Tailored Small Business Subcontracting Goals** – If required by the ordering agency, each selected large business Contractor shall provide tailored small business subcontracting goals in accordance with FAR 52.219-9 procedures and the Individual Small Business Subcontracting Plan included in this IDIQ contract as Attachment J-16. The tailored goals shall at least match the subcontracting goals DOE / EERE is currently required to meet, or the subcontracting goals that the ordering agency is required to meet, whichever goals are greater.

## **H.6 Requirements for Competitive Financing Acquisition for Task Orders**

*Specify any additional agency-specific requirements for competitive financing acquisition.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

**H.6.1 Investor Deal Summary (IDS) –** Concurrently with the submission of the proposal, the Contractor shall submit the IDS (Attachment J-11), along with the Contractor’s point of contact information, electronically in Microsoft Word format to the ordering agency CO for review unless otherwise directed by the ordering agency CO.

**H.6.2 Competitive Financing Offers Based on Investor Deal Summary (IDS) and Standard Financing Offers (SFO)**

**A.** The Contractor shall solicit and select financing offers through a documented competitive selection process. The Contractor shall:

1. Solicit offers from a minimum of three reputable finance companies. This process must incorporate the IDS and any other relevant information the Contractor believes will enhance the competitive offer.

2. Provide financing offerors with a reasonable period of time to respond in order to encourage more effective competition.

3. Require financing offers to be in the form of the SFO, as set out in Attachment J-12 to this IDIQ contract.

4. Perform an analysis of financing offers that, at a minimum, compares rates offered and total estimated finance costs (interest and other factors) to the TO. Analysis of other factors may include, but is not limited to, available terms and conditions.

5. Determine the most advantageous offer based on analysis, and establish the reasonableness of the proposed interest and other financing costs to be included in the proposal submitted to the ordering agency.

6. Once the Contractor completes this process and a selection is made, the Contractor shall prepare a Selection Memorandum describing the selection process including the number of offers solicited and received, the rationale for selecting the financier, and the reasons why the selection is the best value for the Government. The Selection Memorandum shall state whether any interest rate locks or hedge costs are included in the proposals, and the terms and costs of such. If the financier with the lowest total interest and other financing costs is not selected, the Selection Memorandum shall describe the Contractor’s reason for selection, and how price reasonableness was established. This process may be subject to audit by the ordering agency and/or by DOE as administrator of the IDIQ contract.

**B.** The Contractor shall certify to the ordering agency that the contents of the Selection Memorandum are true and correct and in accord with best business practice.

**C.** Rate update process – Because interest rates are subject to frequent and sometimes significant changes, the Contractor shall describe in the Selection Memorandum the process it will use after proposal submission to monitor interest rate changes, assess the impact of rate changes on the proposed TO project, update proposals immediately prior to award to reflect interest rate changes, and establish the reasonableness of any revised interest and financing costs.

**D.** The Contractor shall submit the IDS, SFO, Selection Memorandum and certification with its price proposal to the ordering agency.

**H.6.3 Debt Modifications/Refinancing** – During the term of the TO, the Contractor is encouraged to periodically (e.g., every 3 to 5 years after acceptance) consider and evaluate the potential for refinancing, restructuring, or modification of its TO project loan agreements (collectively “debt modification”). Because the Government is not a contractual party to such financing agreements, responsibility rests with the Contractor to initiate communication with its financier regarding possible debt modifications. The Contractor is encouraged to provide a debt modification evaluation plan to the ordering agency with its proposal or shortly after TO award, as requested by the ordering agency. The Contractor is also encouraged to provide a copy of each periodic evaluation for potential debt modification and the resulting determination to the ordering agency within a time frame to be specified by the ordering agency. When these documents are provided to an ordering agency, DOE requests that the Contractor also upload them to the EERE PMC database.

When determined to be reasonable, feasible, and/or advisable, the Contractor is encouraged to refinance and/or otherwise modify its TO debt obligations and consider applying some or all of the resulting financial proceeds to benefit the TO project. Consistent with applicable procurement rules and requirements, such benefits may potentially include, but are not limited to, restructuring of annual payments to shorten the overall payback period of the TO, and/or the incorporation of additional project ECMs, particularly ones that were removed from the original scope of the TO project due to cost limitations.

## **H.7 Payment and Performance Bond Requirements for Task Orders**

*Specify any different or additional agency-specific requirements for payment and performance bonds* *[including requirements that are specific to the PV ESA ECM.]*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** Unless otherwise specified by the ordering agency, the selected Contractor shall furnish acceptable evidence of a surety’s commitment to provide performance and payment bonds to the ordering agency prior to award of the TO.

**B.** The Contractor shall submit standard bond forms, federal Standard Forms (SF) 25 and SF 25A, found at [http://www.gsa.gov/portal/forms/type/SF,](http://www.gsa.gov/portal/forms/type/SF%2C) or other ordering agency–required documentation, as described below.

1. Within 30 days of award of the TO or acceptance of the Design and Construction Package, whichever is later, the Contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the ordering agency. Unless the ordering agency CO determines that a lesser amount is adequate for the protection of the Government, the performance bond shall be in a penal sum equal to 100 percent of the total bonded amount, defined as the cost of implementation for all ECMs, not including the project development, financing procurement interest, and construction interest costs.

2. The Contractor shall furnish a payment bond (SF 25A) in duplicate. Unless the ordering agency CO makes a written determination supported by specific findings that a payment bond in this amount is impractical, the payment bond shall be in a penal sum equal to 100 percent of the total bonded amount, as defined above for the performance bond. The payment bond penal sum shall be adequate to pay all laborers, suppliers and subcontractors.

3. Unless otherwise specified by the ordering agency, the performance and payment bonds shall remain in effect during the total implementation period for all ECMs. The ECM implementation period shall include all time required for installation, testing, measuring initial performance, and ordering agency acceptance of all installed ECMs. The performance bond shall be released upon ordering agency acceptance of all Contractor-installed ECMs. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full.

4. The Contractor shall not file any mechanics liens against the ordering agency for the TO projects and this requirement shall flow down to all subcontractors. Therefore, the payment bond shall secure the Contractor’s obligations for payment of laborers, suppliers, and all subcontractors.

## **H.8 Protection of Financier’s Interest for Task Orders**

*Specify any different or additional agency-specific requirements for the protection of financier’s interest.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

**A.** Requests for assignments of monies due or to become due under a TO, provided the assignment complies with the Assignment of Claims Act. Requests should be provided to and approved by the ordering agency before any assignment is made.

**B.** Requests for the ordering agency to provide financiers copies of any cure or show-cause notice issued to the ESCO.

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

## **H.9 Required Insurance for Task Orders**

*Specify any different or additional site- and agency-specific requirements for insurance, [including requirements that are specific to the PV ESA ECM.]*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** The Contractor shall procure, at its expense, and maintain during the entire period of performance under this IDIQ contract, and the TOs awarded to the Contractor against it, the following minimum insurance coverage, in accordance with FAR 28.306 – Insurance Under Fixed-Price Contracts and FAR 28.307-2 - Liability:

1. Comprehensive general liability: $500,000 per occurrence.

2. Automobile liability: $200,000 per person, $500,000 per occurrence, $20,000 per occurrence for property damage.

3. Worker’s compensation: as required by federal and State workers’ compensation and occupational disease statutes.

4. Employer’s liability coverage: $100,000, except in States where workers’ compensation may not be written by private carriers.

5. Property insurance requirements as specified in section C below.

6. Other insurance as required by State law.

**B.** Specific TOs may require different insurance coverage depending on the project requirements, which will be specified by the ordering agency CO in the TO. If different insurance coverage is specified as required for a specific TO project, the Contractor shall maintain, at its own expense for the TO term, the revised insurance coverage, in accordance with the following:

1. Prior to commencement of work, the ESCO shall furnish to the ordering agency CO a copy of the insurance policy endorsement. The policies evidencing required insurance coverage shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the ordering agency in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which the TO is to be performed, and in no event less than 30 days after written notice thereof to the ordering agency CO.

2. The Contractor agrees to insert the substance of this clause in all subcontracts hereunder.

3. Nothing herein shall relieve or limit the ESCO of liability for losses and damages to person or property as a result of its operations. The ESCO shall indemnify and hold the Government (including the ordering agency, DOE, and any person acting on behalf of the Government) harmless from any and all liability, including attorneys’ fees and legal costs, associated with or resulting from the Contractor’s operations under this IDIQ contract or any TO issued hereunder.

*For PV ESA ECM:*

C. **PV ESA ECM Property Insurance**

*[Federal agency determine appropriate insurance requirements and other considerations, and tailor the section accordingly.]*

1. Throughout the term of the contract, the Contractor shall maintain property insurance, written on a comprehensive form of policy, with coverage limits sufficient to replace the PV ESA ECM (including all improvements made since project acceptance) in the event of a covered loss or damage affecting the PV ESA ECM. The insurance policy shall be written on an occurrence basis. The policy shall include a waiver of subrogation in favor of the Government.
2. Within 5 business days after the TO is signed, the Contractor shall furnish a copy of the insurance policy endorsement evidencing that the required insurance has been obtained. Anytime during the contract, at the agency’s request, the Contractor shall furnish a current insurance policy endorsement evidencing that the required insurance is being maintained.
3. Notification.
4. The Contractor shall give the Government thirty (30) days’ written notice before the insurance is cancelled or materially altered.
5. The Contractor shall notify the Government in writing within ten (10) business days after a claim has been made and ten (10) business days after insurance proceeds have been received. The notification shall include details regarding the cause of the claim and the amount of the proceeds.
6. Insurer Qualifications. All property insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder’s Rating in the current edition of Best’s Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company’s debt to policyholder surplus ratio of 1:1.

## **H.10 Safety Requirements**

*Specify any different or additional site- or agency-specific safety requirements. Consider local processes and requirements.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

All work shall be conducted in a safe manner and, as applicable, shall comply with the requirements in FAR 52.236-13, Accident Prevention, as well as the ordering agency’s individual safety program requirements. Other specific requirements relative to safety are as follows:

**A.** Prior to commencing work, the Contractor shall meet with the ordering agency to agree upon administration of the safety program.

**B.** The Contractor's on-site workplace may be inspected periodically for OSHA compliance. Corrective actions for violations shall be the responsibility of the Contractor and/or the Government, as determined by the ordering agency. The Contractor shall fully participate in an inquiry or investigation conducted by the ordering agency and/or federal or State OSHA inspector, if a complaint is filed. Any fines levied on the Contractor by federal or State OSHA offices due to safety/health violations will be paid promptly by the Contractor.

**C.** The Contractor shall report to the ordering agency all accidents and submit a full report of damage to ordering agency property and equipment by Contractor or subcontractor employees, at any tier.

**D.** The Contractor shall prepare a safety and health plan and hazard analysis and provide it to the ordering agency prior to the start of work on a construction site.

## **H.11 Fire Prevention**

*Specify any site- or agency-specific fire prevention procedures, rules, or regulations.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** Fire Safety, Fire Prevention, Fire Protection and First Aid – The Contractor shall perform all work and maintain Contractor on site facilities in a fire-safe manner. On sites under Contractor control or responsibility, the Contractor shall supply and maintain fire protection equipment adequate to extinguish incipient fires. The Contractor shall comply with applicable site, local, and State fire prevention regulations and applicable National Fire Protection Association (NFPA) codes. The Contractor shall supply and maintain, at Contractor on-site facilities, such first aid equipment as is appropriate for dealing with minor incidents.

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

*For PV ESA ECM:*

The Contractor shall inspect the system initially and maintain it over the contract term in order to prevent electrical and other sources of fire (exposed parts, arc-faults, ground-faults). See Section C.19 for Vegetation Management requirements. The Contractor shall consult with the agency fire marshal/fire safety officer regarding the design, location and layout of the PV ESA ECM. The Contractor shall provide training for agency designated fire protection personnel regarding PV ESA ECM operations, site access, safety shut-off switchgear and fire safety procedures. The Contractor shall provide printed versions of these fire safety procedures.

## **H.12 Government-Furnished and Contractor-Furnished Equipment, Materials and Supplies**

*Designate and identify any Government-furnished property considered for this project.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

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

## **H.13 Salvage**

*List any equipment to be salvaged rather than disposed of and designate a place for its storage.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

## **H.14 Disposal of Nonhazardous Waste**

*Specify any different or additional site- or agency-specific terms and conditions. Consider local processes and requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

## **H.15 Hazardous Materials**

*This section provides terms and conditions for the handling and documentation of hazardous materials. Specify any different or additional site- or agency-specific terms and conditions. Consider local processes and requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

**A.** As part of each proposed ECM project, the Contractor shall identify the presence of and include the cost of removal of any known and possible hazardous material for each ECM. The Contractor and the ordering agency will negotiate the responsibilities associated with the removal of the known and possible hazardous materials and document this in the ESPC Risk, Responsibility and Performance Matrix (Attachment J-7).

**B.** If unknown hazardous material is discovered after TO award, the Contractor shall immediately stop work, take measures to reduce the Contractor or building personnel contamination, and immediately notify the ordering agency and the building manager of the hazardous material condition and location. If not already documented in the ESPC Risk, Responsibility and Performance Matrix, the Contractor and the ordering agency shall negotiate the responsibilities associated with the removal of the discovered hazardous materials.

**C.** Unless otherwise provided in the TO, if the handling and disposal of hazardous material and/or Poly-chlorinated Biphenyl (PCB) is or becomes the responsibility of the Contractor in a TO award, it shall be handled as follows:

1. *Hazardous Material Handling and Disposal* **–** Hazardous wastes resulting from Contractor-owned material and equipment must be disposed of in accordance with the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§6901, et seq.) and all applicable federal, State and local regulations. If applicable, the TO will provide additional site-specific requirements.

2. *PCB Handling and Disposal* **–** If PCBs exist at a site covered by a TO, the ordering agency shall insert the necessary clause in the TO addressing PCB recycling and/or disposal requirements to comply with applicable federal, State and local regulations. If applicable, the TO will provide additional site-specific PCB handling and disposal requirements.

**D.** Material Safety Data Sheet Availability – In implementation of the clause at FAR 52.223-3, Hazardous Material Identification and Material Safety Data, the Contractor shall obtain, review and maintain a Material Safety Data Sheet (MSDS) in a readily accessible manner for each hazardous material (or mixture containing a hazardous material) ordered, delivered, stored or used for each awarded TO. The Contractor shall maintain an accurate inventory and history of use of hazardous materials at each use and storage location. The MSDS shall conform to the requirements of 29 CFR 1910.1200(g).

## **H.16 Contractor Employees**

*Consider potential changes to Contractor Employee requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

The Government shall not exercise any supervision or control over Contractor employees performing services under this IDIQ contract and awarded TOs. The Contractor's employees shall be held accountable solely to the Contractor's management, who in turn is responsible for contract performance to the Government.

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

**B.** The Contractor shall furnish sufficient qualified personnel to perform all work specified within the TO.

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

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

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

**F.** Contractor employees must comply with ordering agency rules and guidelines regarding access to the site or specific facilities as specified in the TO.

## **H.17 Security Requirements**

*Specify any different or additional site- or agency-specific security requirements. Consider local processes and requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

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

**B.** Contractor Vehicles – Each Contractor vehicle shall adhere to ordering agency requirements regarding the display of the Contractor's name. The ordering agency may issue vehicle passes as it determines, and these shall also be displayed so as to be clearly visible.

**C.** Contractor Access to Buildings – It shall be the Contractor's responsibility to notify and work with the ordering agency to obtain authorized access to buildings on the TO project site.

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

**E.** Security Clearances – Security clearance requirements will be specified by the ordering agency.

**F.** Agency-Specific Requirements – The ordering agency may specify additional and/or different security requirements, if appropriate, in the TO.

## **H.18 Contractor Interface with Other Contractors and/or Government Employees**

*Specify any different or additional site- or agency-specific terms and conditions. Consider local processes and requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

The Government may award contracts to other Contractors for work to be performed at an ordering agency site or facility. The Contractor shall cooperate fully with all other on-site Contractors and Government employees. The Contractor shall coordinate its own work with such other work as may be directed by the ordering agency CO or a duly authorized representative. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by a Government employee.

## **H.20 Incorporation of Small Business Subcontracting Plan**

*Specify any tailored and/or additional site- or agency-specific small business subcontracting goals.*

*[ ] IDIQ language and small business subcontracting goals are acceptable.*

*[ ] IDIQ language is acceptable, with the noted tailored and/or additional goals.*

**A.** In accordance with the clause at FAR 52.219-9, Small Business Subcontracting Plan, the subcontracting plan contained in Section J, Attachment J-16, is hereby incorporated into and made a part of this IDIQ contract.

**B.** When required by the ordering agency for a specific TO project under this IDIQ contract, the Contractor shall submit to the ordering agency CO tailored subcontracting goals required by the ordering agency in accordance with FAR 52.219-9, Small Business Subcontracting Plan. The tailored subcontracting goals are subject to the ordering agency CO’s approval; and the approved goals are incorporated by reference into the TO. The tailored goals shall at least match the subcontracting goals DOE / EERE is currently required to meet, or the subcontracting goals that the ordering agency is required to meet, whichever goals are greater.

## **H.21 Reporting of Fraud, Waste, Abuse, Corruption, or Mismanagement**

*Specify any different or additional agency-specific requirements for reporting.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

The Contractor shall comply with the following:

**A.** Notify employees annually of their duty to report allegations of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE (and other agency) programs, operations, facilities, contracts, or information technology systems to an appropriate authority (e.g., OIG, other law enforcement, supervisor, employee concerns office, security officials). Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; DOE environment, safety, and health violations; theft; computer crimes; Contractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Contractors must also ensure that their employees are aware that they may always report incidents or information directly to the Office of Inspector General (OIG).

**B.** Display the OIG hotline telephone number in buildings and common areas such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies.

**C.** Publish the OIG hotline telephone number in telephone books and newsletters under the Contractor’s cognizance.

**D.** Ensure that its employees report to the OIG within a reasonable period of time, but not later than 24 hours after discovery, all alleged violations of law, regulations, or policy, including incidents of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement, that have been referred to Federal, State, or local law enforcement entities.

**E.** Ensure that its employees report to the OIG any allegations of reprisals taken against employees who have reported to the OIG fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.

**F.** Ensure that its managers do not retaliate against DOE (and other agency) Contractor employees who report fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.

**G.** Ensure that all their employees understand that they must –

1. Comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements;

2. Not impede or hinder another employee's cooperation with the OIG; and

3. Not take reprisals against DOE Contractor employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.

**H.** Seek more specific guidance concerning reporting of fraud, waste, abuse, corruption, or mismanagement, and cooperation with the Inspector General, in DOE (and other agency) directives.

## **H.22 Lobbying Restriction**

*Specify any different or additional agency-specific lobbying restrictions.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## **H.24 Department of Energy *[or Ordering Agency-Specific]* Directives**

*Specify any different or additional agency-specific directives. Consider local processes and requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Replace the IDIQ language as noted below.*

**A.** In performing work at the TO level for ESPC projects performed at DOE sites/facilities under this contract, the Contractor shall comply with the requirements of those Department of Energy (DOE) directives, or parts thereof identified below or identified elsewhere in the contract. For non-DOE sites, similar directives may be applicable, and incorporated at the TO level, as determined by the ordering agency CO.

**Directive No. Date Directive Title / Contract Requirements Document**

DOE Order 142.3A 10/14/2010 Unclassified Foreign Visits and Assignments Program

DOE Order 150.1A 03/31/2014 Continuity Programs

DOE Order 151.1D 08/11/2016 Comprehensive Emergency Management System

DOE Order 206.2 02/20/2013 Identity, Credential and Access Management (ICAM)

DOE Order 210.2A 04/08/2011 DOE Corporate Operating Experience Program

DOE Order 221.1B 09/27/2016 Reporting Fraud, Waste and Abuse to the Office

Of Inspector General

DOE Order 221.2A 02/25/2008 Cooperation with the Office of Inspector General

DOE Order 225.1B 03/04/2011 Accident Investigations

DOE Order 226.1B 04/25/2011 Implementation of DOE Oversight Policy

DOE Order 227.1A 12/21/2015 Independent Oversight Program

DOE Order 231.1B 11/28/2012 Environment, Safety and Health Reporting

DOE Order 241.1B 12/13/2010 Scientific and Technical Information Management

DOE Order 414.1D 05/08/2013 Quality Assurance

DOE Order 420.1C 12/04/2012 Facility Safety

DOE Order 422.1 06/25/2013 Conduct of Operations

DOE Order 436.1 05/02/2011 Departmental Sustainability

DOE Order 442.2 07/29/2011 Differing Professional Opinions for Technical Issues Involving

Environmental, Safety and Health Technical Concerns

DOE Order 470.4B 02/15/2013 Safeguards and Security Program

DOE Order 471.6 11/23/2012 Information Security

DOE Order 551.1D 04/02/2012 Official Foreign Travel

**B.** The DOE IDIQ Contracting Officer may, at any time, unilaterally amend this clause, or other clauses which incorporate DOE directives, in order to add, modify or delete specific requirements. Prior to revising the listing of directives, the DOE IDIQ Contracting Officer shall notify the Contractor in writing of the Department's intent to revise the list, and the Contractor shall be provided with the opportunity to assess the effect of the Contractor's compliance with the revised list on future TO cost and funding, technical performance, and schedule, and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the DOE IDIQ Contracting Officer's notice, the Contractor shall advise the Contracting Officer in writing of the potential impact of the Contractor's compliance with the revised list. Based on the information provided by the Contractor and any other information available, the DOE IDIQ Contracting Officer shall decide whether to revise the listing of directives and so advise the Contractor not later than 30 days prior to the effective date of the revision.

**C.** Notwithstanding the process described in paragraph (b), the DOE IDIQ Contracting Officer may direct the Contractor to immediately begin compliance with the requirements of any directive for all TOs not yet awarded.

**D.** The Contractor and the DOE IDIQ Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision pursuant to the clause of this contract at FAR 52.243-1, Changes - Fixed-Price.

**E.** Regardless of the performer of the work, the Contractor is responsible for compliance with the requirements of this clause. The Contractor shall include this clause in all subcontracts to the extent necessary to ensure the Contractor’s compliance with these requirements.

## **H.25 Public Affairs – Contractor Releases of Information Regarding DOE ESPC Projects**

*Specify any different or additional site- or agency-specific requirements for the release of information to the public. Consider local processes and requirements.*

*[ ] IDIQ language is acceptable.*

*[ ] IDIQ language is acceptable, with the noted additional requirements.*

*[ ] Revise / replace the IDIQ language as noted below.*

In implementation of the clause at DEAR 952.204-75, Public Affairs, all communications or releases of information to the public, the media, or Members of Congress prepared by the Contractor related to work performed on DOE ESPC projects through TOs awarded under this IDIQ contract shall be reviewed and approved by the DOE ordering site prior to issuance. Therefore, the Contractor shall, at least 30 calendar days prior to the planned issue date, submit a draft copy to the DOE ordering site CO of any planned communications or releases of information to the public, the media, or Members of Congress related to work performed under the DOE TO. The DOE ordering site CO will obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

*For PV ESA ECM (Sections H.26 and H.27):*

**H.26 Site Access**

*[A separate site access agreement (such as a license, easement, lease or other) could be included as an attachment. If so, review these clauses and determine if they belong in this TO RFP document and/or the site access agreement. Another option is to use the FAR 52.241-5 Contractor’s Facilities clause which provides that the Government may grant a revocable permit or license and is allowable under FAR Part 41.501(c)(4).]*

The agency authorizes the Contractor to install, own, repair, operate and maintain the PV ESA ECM on agency *<roof/land/parking lots.>* and allow its agents and employees the right to enter the agency real property in order to access the *<roof/land/parking lots>* upon which the PV ESA ECM(s) are located, subject to the limitations specified in this Contract *<add if applicable: “and in accordance with FAR 52.241-5, Contractor’s Facilities, which grants a license or permit”>*. It is expressly agreed upon, acknowledged, and understood that the *<agency>* may limit or restrict the right of access herein granted in any manner considered to be necessary for national security and/or agency mission, or in the event that this Contract is terminated.

Site access must be arranged *<x>* weeks in advance, although agency may permit access with less notice at its sole discretion. If power outages or other disruptive activities are planned, these will require the approval of the agency COR at least *<x>* weeks in advance and be at a time acceptable to the agency (generally outside of normal working hours). Construction and O&M of the PV ESA ECM shall be performed in such a way as to avoid impact to agency activities, or cause any damage to the *<land, building/roof, parking lot>*.

This access shall continue for a reasonable period following the period of performance (up to 180 days) if it is necessary. The parties agree that if the agency denies the Contractor reasonable access over a period of time *<agency insert the period of time allowed>.* during the period of performance, the TO maybe terminated and the parties will have the same rights as if the TO is terminated for convenience as per Section I.

It shall be the Contractor's responsibility, through the COR, to obtain access to Government buildings *[If needed for roof-top systems. Include requirements for ground-mount/carport systems if applicable.]* and to arrange for each room/area to be opened and closed as necessary in performance of TO requirements.

The Contractor shall be responsible for safeguarding all Government property and securing facilities, equipment, and materials at the end of each work period.

*[Insert any agency/site specific requirements if applicable.]*

## **H.27 Solar Easement**

The agency will take reasonable steps as necessary within its control to prevent other buildings and structures (outside of the PV ESA ECM) from overshadowing or otherwise blocking access of sunlight to the PV ESA ECM. If the agency takes actions that result in permanent shading of the solar array, the Contractor is harmed thereby, and the Parties are unable to reach agreement on an equitable adjustment, such event shall be governed by FAR 52.233-1 Disputes.

The Contractor is responsible for obtaining solar access rights from any other landowners adjacent to the site.

**H.28 Force Majeure Event**

*[Agency should consider including a “Force Majeure Event” section. Sample language is included below for agency consideration and review by agency contracting officer, attorney and/or other staff. Issues to consider include:*

1. *Language from the Excusable Delay FAR clause, FAR 52.249-14, could be used as a model for a Section H clause. An agency could also include the Excusable Delay FAR clause and add some of the language below to a Section H clause as long as there are no conflicting or duplicative provisions.*
2. *What is the appropriate “Force Majeure Event” definition?*
3. *What termination clause applies, if there is a contract termination as a result of a “Force Majeure Event”? Note FAR Part 49 does not contain a specific termination clause applicable to Force Majeure Events, although aspects of the FAR Part 49 default and termination for convenience sections may be useful for settlement negotiation purposes. Consider, depending on your agency policies and project goals, whether any of the following FAR clauses may be useful:*
	1. *FAR 17.106  Multi-Year Contracting General*
	2. *FAR Part 49  Termination of Contracts*
	3. *FAR 52.212-4(1)  Termination for the Government’s convenience*
	4. *FAR 52.212-4(m) Termination for cause*
	5. *FAR 52.241-10  Termination Liability*
	6. *FAR 52.243-1  Changes—Fixed-Price*
	7. *FAR 52.249-2  Termination for Convenience of the Government (Fixed-Price)*
	8. *FAR 52.249-8 -- Default (Fixed-Price Supply and Service)*
4. *When can a termination occur, and should it be a Government decision or based on mutual agreement?*
5. *What scenarios are unacceptable for tax incentive eligibility, given the requirement that the Contractor has risk of non-performance (except if caused by temporary facility shutdown, see reference in paragraph 1)?*
6. *What property insurance requirements, if any, should be included in Section H.9?*
	1. *Will the cost of the property insurance be prohibitive?*
	2. *Can the Government be included as a beneficiary and/or additional insured?*
	3. *Should a waiver of subrogation be included?*
	4. *If the Government can be a beneficiary, how will the Government receive the insurance proceeds?*
	5. *Is Government self-insurance sufficient?*
7. *Should Contractor be required to remove and restore the site using their funds?*
8. *What happens to the reserve account funds if the contact is terminated? Can they be used for removing/restoring the site? Check with legal counsel regarding appropriate use of the reserve account funds.*
9. *What other requirements should be included, if any, to mitigate impacts to the Government from a Force Majeure Event? The Government could require that the Contractor develop a Force Majeure Event Plan (sample language below) that specifies how they will handle Force Majeure Events and mitigate impacts.*
10. *How to ensure that the ESA price, payment structure and contract term does not change due to a Force Majeure Event unless approved by the agency Contracting Officer?*
11. *Include appropriate codes and standards in Section C.5.2 (and/or other appropriate sections) to eliminate/reduce the impact of a hurricane and/or other Force Majeure Event on the PV ESA ECM. The ESCO could be required to review the requirements to ensure that they are sufficient to meet all applicable laws, property insurance requirements and will eliminate/minimize impact from a Force Majeure Event.]*

The Contractor shall be liable for default on the basis of non-performance unless non-performance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence (a “Force Majeure Event”). Consistent with Revenue Procedure 2017-19 (see https://www.irs.gov/pub/irs-irbs/irb17-07.pdf), the Contractor bears all financial risk for non-performance, except to the extent such non-performance is attributable to a temporary shut-down of the facility for repairs, maintenance, or capital improvements.

*[Sample definition below, tailor to your agency needs.]*

"Force Majeure Event" means any act or event that prevents the Contractor from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the Contractor and such Contractor had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums).

Subject to the foregoing conditions, “Force Majeure Event" shall include the following catastrophic events: (a) disastrous natural phenomena such as hurricanes, floods and earthquakes; (b) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Contractor seeking to be excused from performance; and (c) acts of the public enemy.

The Contractor shall exercise all reasonable efforts possible to minimize damage or construction delay caused by such event, especially if a Force Majeure Event is anticipated (e.g. hurricane[[10]](#footnote-10)).

If Contractor claims relief pursuant to a Force Majeure Event, the Government shall have no obligation to make payments to the Contractor for the period of time during which the Contractor is unable to perform. The Government’s obligation to make payments under this Contract will not resume until the Contractor resumes performance of its obligations under the Contract at which time the Government’s payment obligation will also resume. The Government shall not be excused from making payments for energy delivered to the Government prior to the Force Majeure Event performance interruption or for energy delivered from portions of the PV ESA ECM not adversely affected by the Force Majeure Event.

In no event will any delay or failure of performance caused by an Force Majeure Event extend this Contract beyond the 20-year allowable term (in accordance with the Revenue Procedure 2017-19), nor shall the ESA price or payment structure change without approval from the Contracting Officer.

Provided that the Contractor claims relief under G.5.2 item iv and obtains concurrence from the Government, the Contractor shall:

1. Immediately notify the Government in writing of the existence of the Force Majeure Event.
2. Provide a plan, as agreed to by the Government and the Contractor, as soon as practicable regarding restoration of the PV ESA ECM and any insurance payments that will be used for restoration, with references to applicable sections of the Force Majeure and Service Interruption Plan,
3. Repair and/or replace the PV ESA ECM as needed to resume performance of its obligations hereunder as soon as practicable thereafter, and

(c) Notify the Government in writing of the cessation or termination of said event.

*[Federal agency determine what termination clause applies and tailor the section accordingly.]*

In the event that the Contractor’s delay or failure of performance attributable to a Force Majeure Event continues for an uninterrupted period of *(agency specify time period)* from its inception (with respect to a Force Majeure Event occurring prior to PV ESA ECM acceptance) or *(agency specify time period)* from its inception (with respect to a Force Majeure Event occurring after PV ESA ECM acceptance), the Government may, at any time following the end of such period, terminate the Contract. The Government and the Contractor may, upon mutual agreement, decide to terminate the Contract at any time following a Force Majeure Event. The Contractor shall be responsible for removing all PV ESA ECM equipment and restoring the site to its original condition with reasonable wear and tear allowed. In the event of termination, any amount ultimately determined to be due to the Contractor, if any, shall be reduced by the amount the Contractor has or will receive in insurance proceeds covering the Force Majeure Event and any reserve account funds held by the Contractor *[agency check with their legal counsel regarding appropriate use of the reserve account funds]*. However, nothing herein shall be interpreted to limit the Government’s right to terminate the Contract for convenience at any time for reasons other than a Force Majeure Event.

### **Force Majeure and Service Interruption Plan**

### The Contractor’s final proposal shall include a Force Majeure and Service Interruption Plan. The Plan will be incorporated into the final TO at award and shall include the following components:

*[Sample plan components below for agency consideration.]*

* Describe how the Contractor plans to protect itself (including the required property insurance) from a Force Majeure Event that significantly affects the PV ESA ECM. For example, insurance to cover lost revenues while the PV ESA ECM is not operating.
* Identify steps that the Contractor will take to prevent damage to the PV ESA ECM, especially if a Force Majeure Event is anticipated (e.g. hurricane).
* Identify how the Contractor will bring the PV ESA ECM back into service expeditiously following any such Force Majeure Event.
* Identify any intent to rely on the Federal Emergency Management Agency or other Government relief agencies in recovering from any Force Majeure Event and identify to what extent, if any, the Contractor would expect reimbursement from any other source.
* Define procedures for responding to all service interruptions caused by the utility, system operator or PV ESA ECM under normal daily operations and during disaster/contingency operations.
	+ Discussion of the expected causes of service interruption and how each would be handled by the Contractor.
	+ Procedures for handling each type of service call (e.g., emergency, urgent, and routine) from notification to completion (may use diagrams, Gantt Charts, flow charts, etc.).
	+ Estimated time for re-establishment of permanent service.
	+ Discussion of *<agency>* notification procedures.
	+ Emergency restoration plan.
	+ *[Add other agency requirements and any procedures necessary to sufficiently address those requirements when responding to a service interruption.]*
* Description of the staffing and management personnel, and other resources, that will be available to implement the Force Majeure and Service Interruption Plan procedures to ensure a prompt response to emergency situations.

# **PART II - CONTRACT CLAUSES**

*Specify any additional clauses that are not already included in Section I of the IDIQ contract, or elsewhere in the TO RFP, by reference or in full text, as appropriate. Probably only agency-specific clauses need to be considered.*

*During the pre-award phase, consider adding any required provisions as an addendum (e.g., in Sections K, L, and M) to ensure that proposals include sufficient information.*

# **Section I - Contract Clauses**

## **I.1 FAR Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)**

*[ ] IDIQ FAR clauses incorporated by reference are acceptable.*

*[ ] IDIQ FAR clauses incorporated by reference are acceptable, with the noted additional clauses.*

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

 <http://farsite.hill.af.mil/>

 <https://www.acquisition.gov/?q=browsefar>

For any fill-in clauses listed below, the ordering agency is responsible for incorporating and completing each clause in full text in the TO. Ordering agencies may incorporate additional agency specific clauses as required:

**52.203-14 Display of Hotline Poster(s). (OCT 2015)** *[Fill-In Clause]*

**52.211-11 Liquidated Damages - Supplies, Services, or Research and Development. (SEP 2000)** *[Fill-In Clause]*

**52.211-12 Liquidated Damages - Construction. (SEP 2000)** *[Fill-In Clause]*

**52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data - Modifications. (OCT 2010) and Alternate III (OCT 1997) and Alternate IV (OCT 2010)** *[Fill-In Clause, Alt III and IV only]*

**52.222-5 Construction Wage Rate Requirements-Secondary Site of the Work. (MAY 2014)** *[Fill-In Clause]*

**52.225-9 Buy American - Construction Materials. (MAY 2014)** *[Fill-In Clause]*

**52.225-10 Notice of Buy American Requirement - Construction Materials. (MAY 2014)** *[Fill-In Provision]*

**52.225-11 Buy American - Construction Materials under Trade Agreements. (OCT 2016) and Alternate I (MAY 2014)** *[Fill-In Clause]*

**52.225-12 Notice of Buy American Requirement - Construction Materials under Trade Agreements. (MAY 2014) and Alternate I (MAY 2014) and Alternate II (JUN 2009)** *[Fill-In Provision]*

**52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States. (MAR 2008)** *[Fill-In Clause]*

**52.227-23 Rights to Proposal Data (Technical). (JUN 1987)** *[Fill-In Clause]*

**52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information. (JUL 2013)** *[Fill-In Clause]*

**52.246-17 Warranty of Supplies of a Noncomplex Nature. (JUN 2003)** *[Fill-In Clause]*

**52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria. (MAY 2001) and Alternate III (APR 1984)** *[Fill-In Clause]*

**52.247-1 Commercial Bill of Lading Notations. (FEB 2006)** *[Fill-In Clause]*

*List of FAR clause numbers incorporated by reference in the IDIQ contract:*

***52.202-1 52.203-3 52.203-5 52.203-6 52.203-7 52.203-8***

***52.203-10 52.203-12 52.203-13 52.203-17 52.203-19 52.204-2***

***52.204-2, Alt. II 52.204-4 52.204-9 52.204-10 52.204-13 52.204-15***

***52.204-18 52.208-9 52.209-6 52.209-9 52.209-10 52.210-1***

***52.215-2 52.215-8 52.215-14 52.215-19 52.217-2 52.219-4***

***52.219-8 52.219-9 52.219-14 52.219-16 52.219-28 52.222-1***

***52.222-3 52.222-4 52.222-6 52.222-7 52.222-8 52.222-9***

***52.222-10 52.222-11 52.222-12 52.222-13 52.222-14 52.222-15***

***52.222-20 52.222-21 52.222-26 52.222-27 52.222-29 52.222-30***

***52.222-35 52.222-36 52.222-37 52.222-40 52.222-50 52.222-54***

***52.222-55 52.222-60 52.222-62 52.223-2 52.223-3 52.223-5***

***52.223-6 52.223-10 52.223-11 52.223-12 52.223-15 52.223-17***

***52.223-18 52.223-19 52.223-20 52.223-21 52.225-1 52.225-13***

***52.226-1 52.227-1 52.227-2 52.227-3 52.227-4 52.227-16***

***52.228-2 52.228-5 52.228-11 52.228-12 52.228-14 52.228-15***

***52.229-3 52.229-6 52.232-1 52.232-5 52.232-8 52.232-11***

***52.232-17 52.232-18 52.232-23 52.232-25 52.232-27 52.232-33***

***52.232-39 52.232-40 52.233-1 52.233-3 52.233-4 52.236-21***

***52.236-26 52.236-27 52.237-1 52.237-2 52.242-5 52.242-13***

***52.243-1 52.243-1, Alt. II 52.243-4 52.244-5 52.244-6***

***52.245-1 52.245-9 52.246-21 52.246-23 52.246-24 52.246-25***

***52.247-64 52.249-2 52.249-3 52.249-8 52.249-10 52.251-1***

***52.253-1***

## **I.2 DEAR *[or Ordering Agency-Specific]* Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)**

*Incorporate any supplemental agency- or site-specific clauses by reference here.*

*[ ] IDIQ DEAR clauses incorporated by reference are acceptable.*

*[ ] IDIQ DEAR clauses incorporated by reference are acceptable, with the noted additional clauses.*

*[ ] Replace the IDIQ DEAR clauses as noted below.*

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

 <http://farsite.hill.af.mil/vfdoea.htm>

Ordering agencies may incorporate additional agency specific clauses as required:

**952.202-1 Definitions. (FEB 2011)**

**952.203-70 Whistleblower Protection for Contractor Employees. (DEC 2000)**

**952.204-2 Security. (MAR 2011)**

**952.204-70 Classification/Declassification. (SEP 1997)**

**952.204-75 Public Affairs (DEC 2000)**

**952.208-70 Printing. (APR 1984)**

**952.223-78 Sustainable acquisition program. (OCT 2010) – Alternate I for Construction Contracts and Subcontracts (OCT 2010)**

**952.226-71 Utilization of Energy Policy Act target entities. (JUN 1996)**

**952.227-9 Refund of Royalties (FEB 1995)**

**952.247-70 Foreign travel. (JUN 2010)**

**FAR CLAUSES INCORPORATED IN FULL TEXT**

*Incorporate any additional and completed fill-in FAR clauses in full text here.*

*[ ] IDIQ FAR clauses incorporated in full text are acceptable.*

*[ ] IDIQ FAR clauses incorporated in full text are acceptable, with the noted additional clauses.*

## **I.10 52.223-9 - Estimate of Percentage of Recovered Material Content for EPA-Designated Items. (MAY 2008)**

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

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall-

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

(2) Submit this estimate to: *[Filled in at the TO level]****.***

(End of clause)

*List of FAR clauses incorporated in full text in the IDIQ contract:*

*I.3 52.204-19 - Incorporation by Reference of Representations and Certifications (DEC 2014)*

*I.4 52.204-21 - Basic Safeguarding of Covered Contractor Information Systems (JUN 2016)*

*I.5 52.216-18 - Ordering. (OCT 1995)*

*I.6 52.216-19 - Order Limitations. (OCT 1995)*

*I.7 52.216-22 - Indefinite Quantity. (OCT 1995)*

*I.8 52.217-9 - Option to Extend the Term of the Contract. (MAR 2000)*

*I.9 52.219-13 - Notice of Set-Aside of Orders. (NOV 2011)*

*I.11 52.227-14 – Rights in Data - General. (MAY 2014) (Modified by Alternate V (DEC 2007) and DEAR 927.409 (DEC 2000))*

*I.12 52.243-7 - Notification of Changes. (APR 1984)*

*I.13 52.252-6 - Authorized Deviations in Clauses. (APR 1984)*

**DEAR *[or Ordering Agency-Specific]* CLAUSES INCORPORATED IN FULL TEXT**

*Incorporate any different or additional agency-specific and completed fill-in clauses in full text here.*

*[ ] IDIQ DEAR clauses incorporated in full text are acceptable.*

*[ ] IDIQ DEAR clauses incorporated in full text are acceptable, with the noted additional clauses.*

*[ ] Replace the IDIQ DEAR clauses as noted below.*

*List of DEAR clauses incorporated in full text in the IDIQ contract:*

*I.14 952.223-78 - Sustainable acquisition program. (OCT 2010)*

*I.15 952.225-71 - Compliance with Export Control Laws and Regulations (NOV 2015)*

*I.16 952.226-72 - Energy Policy Act subcontracting goals and reporting requirements. (JUN 1996)*

# **PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS**

# **Section J - List of Documents, Exhibits and Other Attachments**

*Include completed IDIQ attachments, such as a task-order specific version of Attachment J-4, Recommended Deliverables for Task Orders, and others as appropriate.*

|  |  |  |  |
| --- | --- | --- | --- |
| **ATTACHMENT NO.** | **DESCRIPTION** | **DATE** | **NO. OF PAGES** |
| J-4 | Recommended Deliverables for Task Orders | MM/DD/20YY | X |
| J-5 | Supplement to IDIQ Definitions for PV ESA ECM |  |  |
| J-6 | Schedule 1a - ESA Payments |  |  |
| J-7  | Risk, Responsibility and Performance Matrix (with ESA) |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Attachment J-5**

**Supplement to IDIQ Definitions for PV ESA ECM**

*For PV ESA ECM:*

Actual Annual Production - amount, in kilowatt hour (kWh), produced by the PV ESA ECM, as measured by the revenue meter.

Annual ESA Price – annual PV ESA ECM price (cents/kWh), taking into account the ESA escalation rate (if applicable).

Current Cost of Energy – baseline utility kWh rate (cents/kWh) for the first Production Year, that will be escalated per the agreed upon utility escalation rate (from the Energy Escalation Rate Calculator or other source).

Interconnection Equipment – any electrical switchgear, transformers and telemetry equipment that is required by code and or utility regulation to establish and maintain an interconnection with the site electrical distribution system. This equipment may be installed on the customer owned and/or utility owned distribution networks.

PV ESA ECM – PV system and all associated equipment installed on-site by the Contractor to produce the solar energy purchased by the Government under the TO; including but not limited to the PV panels, inverters, controls, meters, switches, connections, conduit, wires, mounting and other equipment.

Fair Market Value (FMV) - with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer. FMV of the PV ESA ECM will be determined pursuant to Section H.3.2.

Parties - the Contractor and the Government.

Reserve Account - a private account independently held by the ESCO in which a portion of an agency's annual payments from energy savings are set aside for title transfer of the PV ESA ECM at FMV by the end of the contract. The reserve account is not an escrow account held by both parties to the contract. The reserve account is an accounting measure for the ESCO. The funds in the account belong to the ESCO, not to the Federal Government.

Solar Insolation (also called irradiance) - a measure of solar radiation energy received on a given surface area, oriented in the plane of the PV array, over a specified time interval. It is commonly expressed as average irradiance in watts per square meter (W/m2), but more correctly as or kilowatt-hours per square meter per hour, kWh/(m2h), or per day, kWh/(m2day), to acknowledge that the power (W) may not be constant over the time period.

**Attachment J-6**

**Schedule 1a - ESA Payments**

*For PV ESA ECM:*

Contractor Name:

Project Site:

Reserve Account Rate, if applicable ($/kWh)[[11]](#footnote-11):

Annual ESA Escalation Rate (%):

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Col (1)** | **Col (2)** | **Col (3)** | **Col (4)** | **Col (5)** | **Col (6)** |
| **Post-Acceptance Production Year** | **Annual ESA Price (cents/kWh, escalates at annual ESA Escalation Rate, if applicable)** | **Guaranteed Annual Production (kWh)** | **Annual ESA Payment ($)[[12]](#footnote-12)** | **Reserve Account Payment**  | **Net ESA Payment to Contractor After Reserve Account Payment (Col 4 - Col 5)** |
| **One**  |  |   |  |  |  |
| **Two**  |   |  |  |  |  |
| **Three**  |   |  |  |  |  |
| **Four**  |   |  |  |  |  |
| **Five**  |   |  |  |  |  |
| **Six**  |   |  |  |  |  |
| **Seven**  |   |  |  |  |  |
| **Eight**  |   |  |  |  |  |
| **Nine**  |   |  |  |  |  |
| **Ten**  |   |  |  |  |  |
| **Eleven**  |   |  |  |  |  |
| **Twelve**  |   |  |  |  |  |
| **Thirteen**  |   |  |  |  |  |
| **Fourteen**  |   |  |  |  |  |
| **Fifteen**  |   |  |  |  |  |
| **Sixteen**  |   |  |  |  |  |
| **Seventeen**  |   |  |  |  |  |
| **Eighteen**  |   |  |  |  |  |
| **Nineteen**  |   |  |  |  |  |
| **Twenty**  |   |  |  |  |  |
|  |  |  |  |   |  |
| **Totals** |  |  |  |   |  |

**Attachment J-7**

**Risk Responsibility and Performance Matrix**

*[See separate document]*

1. Some template language is generic and applies to all renewable technologies, while other language is specific to PV. Contact FEMP for assistance if you would like to pursue an ESA with a renewable technology other than PV. [↑](#footnote-ref-1)
2. Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2012/m-12-21.pdf> [↑](#footnote-ref-2)
3. Published in the Internal Revenue Bulletin on February 13, 2017, see <https://www.irs.gov/pub/irs-irbs/irb17-07.pdf>. [↑](#footnote-ref-3)
4. See REC Tracking System information at https://www.epa.gov/greenpower/renewable-energy-tracking-systems. [↑](#footnote-ref-4)
5. <https://www.federalregister.gov/documents/2013/10/23/2013-24729/interim-policy-faa-review-of-solar-energy-system-projects-on-federally-obligated-airport> [↑](#footnote-ref-5)
6. Forge Solar’s GlareGauge tool (<https://www.forgesolar.com/>) [↑](#footnote-ref-6)
7. See [Solar Site Pollinator Habitat Assessment Form in the Minnesota Board of Water and Soil Resources Pollinator Plan](http://www.bwsr.state.mn.us/practices/pollinator/pollinator-plan.pdf), Appendix B for information. [↑](#footnote-ref-7)
8. An appraisal would be done by a certified appraiser and is more expensive than an estimate. [↑](#footnote-ref-8)
9. The contract length can only be extended up to a total of 20 years. [↑](#footnote-ref-9)
10. See Solar Photovoltaic Systems in Hurricanes and Other Severe Weather <https://www.energy.gov/sites/prod/files/2018/08/f55/pv_severe_weather.pdf> [↑](#footnote-ref-10)
11. The agency (or the ESCO) may specify the reserve account payment based on an estimated FMV. The reserve account payment may be based on a rate or specific value. The reserve account rate may be constant or escalated at a specified escalation rate. Contact your [Federal Project Executive](https://www.energy.gov/eere/femp/energy-savings-performance-contract-federal-project-executives-0) (FPE) for assistance. [↑](#footnote-ref-11)
12. The agency will pay for Actual Annual Production. Column 4 depicts agency minimum payment assuming the Guaranteed Annual Production requirement is met. [↑](#footnote-ref-12)