

FEE, LIABILITY, QUALIFICATION CRITERIA, BIDDING TIME

As a result of comments received on the draft RFP in the areas of fee, liability, qualification criteria, and bidding time, the following are proposed provisions being considered for the final RFP. Comments or questions on these provisions are solicited by March 29, 1999. Comments should be sent to e-mail at ornlseb@oro.doe.gov, or fax to 423-241-1647. Although DOE is providing this information at this time, offerors are cautioned to rely solely on the provisions of the final RFP.

Fee

The fixed fee provision remains as shown in the draft RFP.

B. Fixed Fee

A fixed fee of _____ shall be paid to the Contractor for performance of the
(offeror propose)
work under the contract for the period February 1, 2000, through September 30, 2000, in accordance with the provisions of the clause entitled, "Payments and Advances," in Section I. There shall be no adjustment in the amount of the fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work. Fee is subject to adjustment only under the provisions of the clause entitled, "Changes," in Section I. The fixed fee shall be applicable to the prime contractor and its members in a joint venture or limited liability company, teaming partner, and subcontractors identified and considered a part of the selection and award of this contract, if any.

The performance fee has been modified to incorporate a fee discount factor as follows:

B. Performance Fee

In implementation of the clause entitled, "Total Available Fee: Base Fee Amount and Performance Fee," the following shall apply:

- (a) There is no base fee for the period October 1, 2000, through September 30, 2005. Total available performance fee for each annual evaluation period during the period October 1, 2000, through September 30, 2005, shall be \$7,000,000 less a fee discount factor of _____%.
(Offeror propose)
- (b) There will be no annual negotiation of fee since the fee for the basic period of the contract has been established. There shall be no adjustment in the amount of the available fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work. Fee is subject to adjustment only under the provisions of the clause entitled,

“Changes,” in Section I. The performance fee shall be applicable to the prime contractor and its members in a joint venture or limited liability company, teaming partner, and subcontractors identified and considered a part of the selection and award of this contract, if any.

- (c) Based on the annual evaluation of the Contractor’s performance, the total fee earned for each evaluation period shall be as follows:

<u>Performance Attained</u>	<u>Available Fee Earned</u>
<u>Outstanding</u> - Exceeds performance expectations.	100%
<u>Excellent</u> - Meets performance expectations.	90%
<u>Good</u> - Meets most performance expectations.	50%
<u>Marginal</u> - Does not meet performance expectations.	0%

Fee earned shall be available for payment in accordance with the provisions of this clause and the clause entitled, “Payments and Advances,” in Section I.

- (d) Performance expectations, including relative weights and performance objectives upon which the Contractor will be evaluated annually will be contained in a performance evaluation and measurement plan identified as Performance Evaluation Plan consistent with the clause entitled, “Performance Expectations,” in Section H.
- (e) The Contractor may be paid provisional fee payments consistent with the provisions of the clause entitled, “Payments and Advances,” in Section I. The Contractor shall promptly refund to the Government any amount of fee paid that exceeds the amount of fee earned.

The instruction in the Section L provision entitled, “Proposal Preparation Instructions -- Volume I, Offer,” is modified to reflect the fee discount as follows:

Fee. The offeror shall propose (1) the fixed fee for the period February 1, 2000, through September 30, 2000, and (2) the fee discount factor applicable to both the base contract period of October 1, 2000, through September 30, 2005, and the option period. The fixed-fee proposed shall not exceed, but may be less than, \$3,500,000. The fee discount

factor shall be applied against \$7,000,000 for each fiscal year during the base period.

Liability

A new provision on liability is added as follows:

H. Limitation on Liability

If the Contractor is a non-profit organization, the following provision shall apply:

- (a) The Contractor's liability for certain obligations, which it has assumed under this contract, shall be limited as set forth in paragraph (b) below. These limitations shall apply only to obligations the Contractor has assumed pursuant to the following provisions:
 - (1) Section I, Clause 970.5204-31, entitled, "Insurance–Litigation and Claims (Jun 1997)," paragraphs (h)(3) and (j)(2), except for punitive damages resulting from the Contractor managerial personnel's willful misconduct or lack of good faith.
 - (2) Section I, Clause 970.5204-21, entitled, "Property (Jun 1997)," paragraph (f)(1)(i)(C).
 - (3) Section H, Clause entitled, "Costs Associated with Whistleblower Actions."
- (b) The Contractor shall be liable for an amount not to exceed 1.5 times the maximum fee available for each fiscal year in accordance with the provisions of the clauses in Section B entitled, "Fixed Fee" and "Performance Fee." The amount of the Contractor's liability shall be calculated on a cumulative, per fiscal year basis. The annual cap which will apply shall be based on the fiscal year in which the Contractor's act or failure to act was the proximate cause of the liability assumed by the Contractor pursuant to the provisions of the Clauses identified above. In the event the Contractor's act or failure to act overlaps more than one period, the limitation will be the annual limitation for the last fiscal year in which the Contractor's act or failure to act occurred. If the Contractor's cumulative obligations equal the amount of the annual limitation of liability, the Contractor shall have no further responsibility for the costs of the liabilities it has assumed pursuant to (a)(1) through (3) above; and all costs in excess of the limitation of liability shall be borne by the Government.

Qualification Criteria

The qualification criterion related to acceptance of terms and conditions would be eliminated, but additional provisions related to exceptions taken with respect to award without discussions would be added. Two provisions are shown below:

M. Qualification Criteria

- (a) Offerors must meet the qualification criteria in paragraph (b) of this clause in order to be evaluated in accordance with the evaluation criteria in M-3.
- (b) The offeror or its combined parent companies, in the case of a joint venture, teaming arrangement, limited liability company, or other similar entity, must have managed an organization which has
 - (1) at least \$50 million in average annual research and development (R&D) revenues/costs (R&D includes basic and applied research and exploratory, advanced, and engineering development) over the last three completed/audited fiscal years of the offeror, and
 - (2) been responsible for the operation and maintenance of an industrial/scientific infrastructure (to include a variety of buildings and equipment, including specialized experimental laboratories) of at least 1,000,000 square feet.
- (c) The offeror shall provide annual financial statements or other documentation, which have been certified by a public accounting firm (may be a part of the offeror's annual report), and validate that the offeror meets these qualification criteria.

L. The Proposal

This Section L of the RFP provides instructions and other information to the offeror related to the preparation of its proposal. Offerors are cautioned to follow these instructions carefully in order to assure that DOE receives consistent information in a form that will facilitate proposal evaluation. These instructions and the information contained in these instructions are not evaluation factors for this RFP. The evaluation factors are contained in Section M.

Proposals will be evaluated on both written and oral information submitted and presented by the offeror and detailed below. Each initial proposal should contain the offeror's best terms from a cost, fee and technical standpoint since it is the Government's intent to evaluate proposals and award a contract without discussions. Any exceptions or

deviations taken to the terms of the contract (Section A-K) will make the offer unacceptable for award without discussions. If an offeror proposes exceptions to the terms and conditions of the contract, the Government may make an award without discussions to another offeror who did not take exception to the terms and conditions of the contract. Offerors should pose any issues/questions to DOE prior to the time for receipt of proposals to allow DOE the opportunity to consider whether the matter warrants an amendment to the solicitation. The Government, however, reserves the right to conduct discussions if it later determines that discussions are necessary (see the clause entitled, “Instructions to Offerors–Competitive Acquisition,” in Section L).

Bidding Time

The date for receipt of proposals would be extended from 45 days, as shown in the draft RFP, to 90 days. However, this time might be adjusted depending on the actual date the RFP is released.