

RFP Template

[Throughout this template, fill-in-the-blank areas are indicated with the symbols <> and notes are indicated by []. Footnotes provide additional background information.

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.

This is not a complete RFP. It does not include Sections C, E, and M, which are a required part of a complete RFP. Sections C and E are covered in the "Procurement Specifications Templates for Onsite Solar Photovoltaic: For Use in Developing Federal Solicitations" (see <https://energy.gov/eere/femp/downloads/procurement-specifications-templates-site-solar-photovoltaic-use-developing>). Section M will be added to a future version of this document.

This RFP assumes that FAR Part 12 Commercial Items is utilized. Agency contracting and legal staff should determine if this is appropriate. The clauses, especially the Davis Bacon Act and The Service Contract Act clauses, should be carefully reviewed to ensure that there is no conflict between FAR Parts . The RFP should be modified accordingly if an agency decides not to use FAR Part 12.

To solicit and award an ESPC without a multiple award contract, a contracting officer should refer to the procedures, selection method, and terms and conditions provided in 42 USC § 8287 and FAR 23.205(c) Solicit and Award.

A Notice of Intent to Award (NOITA) step could be added before contract award. This would allow the government to ensure that the energy service company (ESCO, also referred to as the Contractor in this RFP) has everything in order for a successful project; including project financing, evidence of bonds/insurance, a signed interconnection agreement and/or other criteria.

There may be some provisions in the RFP that should be moved to the site access agreement. Contracting/legal staff should coordinate with real property staff to determine the appropriate document for the relevant clauses. Clause duplication should be avoided to prevent language conflicts that may occur due to document edits]

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**These sections are included in “Procurement Specifications Templates for Onsite Solar Photovoltaic: For Use in Developing Federal Solicitations”, see <https://energy.gov/eere/femp/downloads/procurement-specifications-templates-site-solar-photovoltaic-use-developing>. Section M will be added to a future version of this document.*

PART I – THE SCHEDULE

SECTION A – SOLICITATION/CONTRACT FORM

[The following optional Executive Summary covers key components of the ESPC ESA contract that can be included in Section A and/or in other RFP section(s).]

Executive Summary

The intent of this acquisition, for *<agency, site name, city, state>*, is to enter into a firm-fixed-price *<with/without>* an annual escalation factor Energy Savings Performance Contract Energy Sales Agreement (ESPC ESA) with a single energy service company (ESCO, also referred to as the Contractor throughout the RFP) for the purchase of electricity generated from the following PV energy conservation measures (ECMs), for the purpose of achieving energy savings:

[When sizing the PV system(s), consider whether it would be beneficial to avoid net metering. Carefully review the applicable net metering regulation; including how net excess generation is treated and whether the use of net metering will result in utility ownership of the solar renewable energy certificate (SRECs).]

<List PV System location, type (rooftop, carport, ground-mount) and estimated size.>

The Contractor will be responsible for PV System development at its own expense, without any up-front capital cost to the *<agency>*. The *<agency>* will contract to purchase all electricity generated from the PV System during the ESPC ESA contract term, in accordance with the terms and conditions set forth herein. Net metering *<is/is not>* anticipated. Section H.5 contains details regarding disposition of the solar renewable energy certificates (SRECs).

This solicitation is issued on a *<restricted with small business set-aside or other>*; under FAR Parts *<list the applicable Parts such as FAR Part 12 Commercial Items, FAR Part 15 Contracting by Negotiation, FAR Part 17 Special Contracting Methods,1 and FAR Part 41 Acquisition of Utility Services2 and/or other FAR Parts.>* The North American Industry Classification System (NAICS) code for this procurement is 221114, Solar Electric Power Generation.

The ESPC ESA must meet all ESPC statutory and regulatory requirements (*See* 42 U.S.C. § 8287 *et seq.* and 10 C.F.R. § 436.30 *et seq.*), including the requirement that the agency pay for the cost of the ESPC ESA from

¹ 42 U.S.C. §8287, (a)(2)(D)(iii) states that ESPC contracts are “governed by FAR 17.1 of the Federal Acquisition Regulation promulgated under section 421 of title 41 or the applicable rules promulgated under this subchapter.”

² FAR 41.102(b)(7) states that “agencies may utilize Part 41 for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. §8287 for periods not to exceed 25 years.”

energy savings generated each year over the life of the contract. The current rate at <site name> is <\$/kWh> and the rate is forecasted to increase at <x%> per year.

The ESCO must be on the U.S. Department of Energy's (DOE) *Qualified List of Energy Service Companies (DOE Qualified List)*, available at <http://energy.gov/eere/femp/doe-qualified-energy-service-companies> by the time of award. To ensure sufficient time for DOE Qualified List approval, it is recommended that Offerors apply to the DOE Qualified List prior to proposal submission. *[The agency should determine if a more stringent requirement is desired (for example, application submitted or approved by the time a proposal is submitted). An agency ESCO qualified list consistent with 42 U.S.C. § 8287(b)(2)(A)-(B) requirements can be referenced instead of the DOE Qualified List.]*

In order for the ESPC ESA contract to be scored annually, it must be consistent with the requirements under the OMB "Addendum to OMB Memorandum M-98-13 on Federal Use of Energy Savings Performance Contracts (ESPCs) and Utility Energy Service Contracts (UESCs)" (M-12-21, dated September 28, 2012), including the requirement that the federal government retain title to the onsite renewable energy generation system at the conclusion of the contract.

The ESCO 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 (see <https://www.irs.gov/pub/irs-irbs/irb17-07.pdf>) 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). Section 4 specifies the following requirements that must be met to qualify for this safe harbor:

“(1) *Term*. The total term of the ESPC ESA cannot exceed 20 years in length. The term must be consistent with and appropriate for the scope and scale of the renewable project.

(2) *Other Federal guidance*. The ESPC ESA must satisfy the requirements of 42 U.S.C § 8287 and OMB Memorandum M-12-21.

(3) *Operation of Alternative Energy Facility*. Under no circumstances will the FA³ attempt to operate the renewable energy generation asset. In the event of a shut-down or mechanical issue, FA will immediately notify the ESCO or its designated contractor.

(4) *Risk*. The ESCO 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.

(5) *Reduced Costs*. The contract price for electricity will not be reduced if operating costs should diminish.

(6) *Equipment Purchase*. The FA may have the option to purchase, or may be required to purchase, the renewable energy generation asset at the end of the contract term, for its fair market value (FMV) at the time of the purchase.”

³ FA=Federal Agency

Tax incentive eligibility due diligence is the responsibility of the ESCO, not the government. The ESPC ESA price will not be modified if the IRS determines that the ESCO is not eligible for the tax incentives and the ESCO has no other recourse against the *<agency>*.

The ESCO will transfer a portion of the payments it receives from *<agency>* each year into a reserve account held by the ESCO.⁴ The *<agency>* satisfies the obligation to take title to the PV System by the end of the contract through its annual payments over the course of the contract (and through any adjustments to the payments resulting from the ESCO's periodic reappraisals of the PV System FMV to ensure that the ESCO's reserve account has sufficient funds by the point at which title is transferred).

See Sections B.1 and H.3 for reserve account and FMV determination details. The total ESPC ESA price, including the reserve account payment, will be used to determine compliance with the ESPC statutory savings requirement.

<Agency> agrees to allow the Contractor access to the PV systems on its *<roofs, parking lots and/or land>* in accordance with *<site access terms and conditions in Section H.11 of the RFP, using FAR 52.241-5, or site access agreement (license/easement/lease) attached as Exhibit 5.>* *[Add if there is a separate site access agreement.] <The site access agreement will be fully incorporated into the Contract and is aligned with the terms and conditions of the Contract.>*

⁴ The ESPC ESA financing mechanism allows an ESCO to use a reserve account (i.e., a private account independently held by the ESCO, not an escrow account by both parties to the contract) in which a portion of an agency's annual payments from energy savings are set aside for title transfer of the onsite energy generation asset by the conclusion of the contract. This is an accounting measure for the ESCO. The funds in the account belong to the ESCO, not to the Federal Government.

A.1 Definitions

[NOTE: This template includes definitions that are specific to energy projects and ESPC ESAs in particular; this list is not exhaustive, add other definitions as necessary.]

In addition to other terms specifically defined elsewhere in this solicitation, the following words and phrases shall be defined as follows:

“Contract” means the mutual binding legal relationship, resulting from this solicitation, including Sections A-K of the Request for Proposal, any Amendments, the Schedules and Exhibits attached hereto and the Contractor’s price proposal in response to the solicitation.

“Contractor” means the individual or entity that is awarded the Contract resulting from the solicitation. The terms “ESCO” and “Contractor” are used interchangeably.

“Construction Phase” means the period commencing upon receipt by the Contractor of a Notice to Proceed from the Government and ending at PV project acceptance by *<agency>*.

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

“Electric Distribution Company (EDC)” means the company providing electric distribution services to the *<agency>*.

“Energy Sales Phase” means the period beginning after final PV project acceptance by *<agency>*.

“Energy Savings Performance Contract Energy Sales Agreement (ESPC ESA)” means the contractual arrangement entered into pursuant to the authority under 42 U.S.C. §8287, *et seq.*, in which the selected Contractor installs, maintains, and operates PV Systems on-site at *<agency site name>* until the end of the contract term, and in which the *<agency name>* purchases the PV System’s electric output from the selected Contractor for the life of the contract.

“Energy Service Company (ESCO)” refers to the selected Contractor. The terms “ESCO” and “Contractor” are used interchangeably.

“Fair Market Value” means, 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. Fair Market Value of the PV system will be determined pursuant to Section H.3.

“MW” means megawatt. A megawatt is a unit for measuring power that is equivalent to one million watts (equivalent to one joule per second).

“Party” or “Parties” means either Contractor or the Government or the Contractor and the Government, respectively.

“Premises” means the real property assets listed in *<Section # and/or Exhibit #>*.

“PV System” means the integrated assembly of PV components, including but not limited to PV modules, mounting assemblies, ballast weights, inverters, metering, transformers, disconnects, combiners, switches, wiring devices, conduit, wiring and any other equipment or appurtenance necessary to be installed at the Premises to make the PV system complete and operational, owned by the Contractor, and interconnected with EDC, to provide electricity to the identified buildings. *[This definition could be expanded to include required electrical upgrades and/or other infrastructure such as fences if deemed beneficial.]*

“PV System Acceptance” means the official letter from *<agency>* to the Contractor stating that an individual PV System has been accepted and is ready for operation.

“Renewable Energy Certificates (RECs)” represent all of the environmental and other attributes of energy generated from renewable sources that are sold separately from the underlying electricity. They are also referred to as renewable energy credits, green certificates, green tags, or tradable renewable certificates. The RECs must include all of the greenhouse gas and other emissions/attributes associated with the renewable resource, including those emissions associated with the displacement of conventional energy generation (as legally applicable), with no emissions or attributes being disaggregated and sold separately.

“Solar RECs (SRECs)” means solar renewable energy certificates.

Interpretation. The captions or headings are strictly for convenience and shall not be considered in interpreting this Contract. Words that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this document as a whole and not to any particular provision of this document. Except as the context otherwise indicates, all references to “Exhibits”, “Attachments” and “Sections” refer to Exhibits, Attachments and Sections of this document.

A.2 Pre-Proposal Conference and Site Visit

See Section L.1 for information regarding the *<date>* pre-proposal conference and site visit.

SECTION B – SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 Contract Line Item Number (CLIN) Description

[Enter desired contract term in the first sentence (see Section F.1 note). See Section H.3 for more details regarding the ESCO's reserve account, the FMV determination, and title transfer of the PV System. Consult with FEMP for assistance and updated information.]

The *<agency>* contemplates award of a firm-fixed-price contract for a term of *<x>* years. The *<agency>* will only pay for kilowatt-hours of electricity delivered – all costs associated with this contract shall be reimbursed through the \$/kWh price.

Per the ESPC statute, ESPC ESA payments must come from energy savings generated each year over the life of the contract; annual payments may not exceed the amount that the *<agency>* would have paid for utilities in the absence of this ESPC ESA. The price for the electricity purchased from the PV System for the life of the contract, *< Select one of the following: with no escalation rate, escalated annually at a rate of x% or escalated at a rate to be proposed by the Offeror>*, must be less than the current and forecasted electricity price, including transmission, distribution and all other electricity charges.

The government has estimated the PV System FMV at the end of the contract term to be \$*<x>* based on *<20% of estimated PV System cost or other methodology>*. Using this FMV estimate and PV System production estimates shown in Exhibit 4, the government payment to the ESCO's reserve account will initially be set to *<x>* \$/kWh. This amount will be added to the Offeror's proposed ESPC ESA price to determine the total ESPC ESA price, and for determining whether the ESPC statutory savings requirement is met.

The Contractor will furnish all planning, management, supervision, labor materials; structural, electrical and other engineering services; equipment, materials, tools, (except as otherwise provided) necessary to design, finance, construct and own the PV System in accordance with the requirements herein. The Contractor is responsible for all operation & maintenance, as well as equipment repair & replacement throughout the term of the contract.

The Contractor is also responsible for monetization of available incentives,⁵ *<add SREC sales if applicable>*, the cost of meeting all utility interconnection requirements and *<add permitting and other applicable requirements such as National Historic Preservation Act and glare analysis>*.

The ESCO 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. The contract price for electricity will not be reduced if ESCO operating costs should diminish.

All proposed prices must be in the unit indicated, submitted using the Exhibit 2 form.

B.2 Required CLIN:

0001 Firm Fixed Price (\$/kWh) *[add annual escalation rate if applicable]*

⁵ Tax incentive eligibility due diligence is the responsibility of the ESCO.

Enter the proposed ESPC ESA price for electricity from the specified PV System, including the <x>\$/kWh (specified in Section B.1) that will be allocated to the ESCO's reserve account for the PV System title transfer at FMV. SRECs under this CLIN <Select one of the following: "are required and should be transferred to the government per Section H.5 instructions" or "are not required and should be sold by the ESCO to reduce the ESPC ESA price">. Details regarding SREC disposition are contained in Section H.5.

<Select one of the following: "The rate shall be fixed throughout the contract." or "An escalation rate of <x>% shall be applied annually to the electricity price." or "Offeror shall propose the annual escalation rate." >

Free On Board (FOB): Destination

B.2 Optional CLIN:

[This option is for roof-top PV systems, if roof repair and/or replacement may be required during the contract term.]

0002 First Year Price (\$)

To permit roof repair and/or replacement, an option to relocate the PV System may be exercised at any time during the contract, and may be exercised more than once. The option price shall include PV System removal, storage, reinstallation and three (3) months of lost revenues. The Government may specify partial removal, storage and installation of the PV System. In such situations; the actual price will be prorated based on the proposed first year price and the percentage of the PV System that is removed, stored and reinstalled; but shall not be less than <\$x> per incident. The specified price shall apply for the first year of the contract, with the price adjusted in future years based on the consumer price index.

FOB: Destination

B.3 Cancellation Ceiling Schedule

[A cancellation ceiling schedule is an ESPC requirement since it is used to determine if Congressional notification is required, and should therefore be a required submittal in the RFP.]

The proposal shall include a cancellation ceiling schedule (see Exhibit 3).

SECTION C – DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

[See “Procurement Specifications Templates for Onsite Solar Photovoltaic: For Use in Developing Federal Solicitations”, available at <https://energy.gov/eere/femp/downloads/procurement-specifications-templates-site-solar-photovoltaic-use-developing>.

Section C should include guaranteed savings and annual M&V requirements.]

SECTION D – PACKAGING AND MARKING

D.1 Payment of Postage and Fees

All postage and fees related to submitting information including forms, reports, etc., to the Contracting Officer (CO) or the Contracting Officer's Representative (COR) shall be paid by the Contractor.

D.2 Packing, Packaging, Marking and Storage of Equipment

All packing, packaging, marking and storage expenses which are incidental to Contractor's shipping of the materials under this Contract shall be within the ESPC ESA firm-fixed-price. All packaging must be new and suitable for shipment and short term storage.

SECTION E – INSPECTION AND ACCEPTANCE

[See “Procurement Specifications Templates for Onsite Solar Photovoltaic: For Use in Developing Federal Solicitations”, available at <https://energy.gov/eere/femp/downloads/procurement-specifications-templates-site-solar-photovoltaic-use-developing>.]

SECTION F – DELIVERIES OR PERFORMANCE

F.1 Term of Contract

[The total ESPC ESA contract length must not exceed 20 years in order to meet the IRS Revenue Procedure 2017-19 ESPC ESA safe harbor requirements⁶. An initial contract term of less than 20 years may be beneficial so that the contract can be extended if the estimated PV System FMV increases significantly during the contract term. This will provide additional time for the required ESCO's reserve account funds to be accumulated. The alternative is to increase the government's payments that are to be allocated to the ESCO's reserve account. This will only be allowed if the statutory savings requirement is still met and may require a more extensive contract modification.]

The ESPC ESA contract term will begin upon contract award and continue for <x> years, unless terminated earlier pursuant to the provisions of this contract.

F.2 Place of Performance

The place of performance for this contract is the following:

<List of PV System(s) location and type (rooftop, carport, ground-mount)>

F.3 Notice to Proceed (NTP)

Both the design and construction phases of the contract will begin upon receiving a written NTP from <agency>. The Contractor may proceed with design after receiving an official design NTP letter from <agency>. The NTP will be provided no later than <x> days after contract award. The PV System design shall be submitted within <x> days of the design NTP letter date. The <agency> will review the design and provide feedback within <x> days.

Construction NTP will be granted when the following conditions have been met: all final design approvals are received; the final stamped designs are received; all other construction documents including a construction plan and schedule (see Section 0) have been reviewed and approved by <agency>; and proof of insurance and bonds has been received. Limited construction NTP, in advance of the official construction NTP, may be granted upon request for purposes of ordering equipment with long lead-time. Limited construction NTP will only be granted by <agency> after review of the equipment specs to ensure that they meet all contract requirements.

F.4 Contract Performance Deliverables

Construction and acceptance of the PV System shall be completed by <date>. The Contractor will not be held responsible for <agency> or other Government delays. In case of delays that are not the fault of the Contractor, a new completion date shall be proposed by the Contractor, for approval by the <agency>.

⁶ As stated in Section A, tax incentive eligibility due diligence is the responsibility of the ESCO, not the government.

F.4.1 PV System Design <and Structural Analysis>

PV system designs are due <x> days after design NTP. *[Add other details regarding design deliverable requirements. For example, add due dates for draft designs if desired in addition to 100% design documents.]*

[For rooftop PV systems only.]

The roof structural analysis shall be completed by <x> days after design NTP.

F.4.2 Construction Plan and Schedule

The Contractor shall submit a construction plan for <agency> approval within <x> days after construction NTP. The construction plan shall include key milestones and should document that the PV System commercial operation date will meet <list incentive and/or other applicable deadlines> deadlines. The schedule shall minimize disruption of day-to-day activities, utilities, and services. An updated plan shall be provided every <x> weeks.

F.4.3 Meeting Requirements

Meetings and/or telecons shall occur between <agency> and Contractor <weekly/bi-weekly/monthly/other frequency>.

[Add other requirements to ensure that there is close coordination throughout the design and construction process.]

F.4.4 Training Requirements

[Enter all training requirements, such as emergency PV System shut-off and firefighting.]

F.4.5 Other Deliverables and Submittals

[Below is an example list that should be modified based on PV System type and RFP requirements]

1. Contractor emergency points of contact
2. Safety Plan, including Accident Prevention Plan
3. Proof of insurance and bonding
4. Copy of completed HSPD-12 application and approval
5. Traffic Control Plan
6. Construction and crane permits
7. Crane and operator credentials
8. Safety data sheets for proposed PV systems
9. Waste disposal manifests
10. Agency and firefighter personnel training plan
11. Evidence of completed training (agenda, sign-up sheet, evaluation by participants)
12. System Acceptance Testing report and Completion Notice
13. Executed Interconnection Agreement

14. O&M Manual including: complete “as-built” drawings showing the final details of the PV System(s) as installed, sequence of operation, start-stop and emergency shut-down procedures, preventative maintenance procedures, troubleshooting guide, list of spare parts and sources for each main component.
15. Monthly invoice
16. Maintenance records upon request by the Government
17. Calibration reports upon the calibration of any meters
18. Annual M&V reports
19. Annual ESCO reserve account statement

SECTION G – CONTRACT ADMINISTRATION DATA

G.1 Authorized Contract Changes

The CO is the only person authorized to approve changes in any of the requirements of this Contract. No order or statement of <agency> personnel during the performance of this Contract shall constitute a change under this Contract. The Contractor shall not comply with any order, direction or request of <agency> personnel unless it is issued in writing and signed by the CO, or is pursuant to specific authority otherwise included as a part of this Contract. Modifications to the Contract will be issued on Standard Form 30.

In the event the Contractor effects any change at the direction of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any incurred costs as a result thereof.

The <agency> will not be obligated to reimburse the Contractor for work performed, items delivered or any costs incurred, nor shall the Contractor be obligated to perform, deliver, or otherwise incur costs except as authorized by a duly executed Contract or modification to the Contract.

The address and telephone number of the CO is:

Name:

Mailing Address:

Telephone Number:

Email:

G.2 Contracting Officer's Representative (COR)

A COR will be appointed by the CO to provide coordination of all general contracting issues. The COR and alternative COR for the Contract is *[Can note that the COR will be provided at time of award]*:

COR Name:

Mailing Address:

Telephone Number:

Email:

Alternate COR Name:

Mailing Address:

Telephone Number:

Email:

The COR will act as the CO's on-site representative for technical matters - providing technical clarification, as necessary, with respect to the contract requirements, and will monitor the progress and quality of the Contractor's performance. The COR is not an Administrative Contracting Officer and does not have authority to modify the Contract.

When, in the opinion of the Contractor, the COR requests a change to any of the requirements of the Contract, the Contractor shall promptly notify the CO in writing. No action shall be taken by the Contractor under such direction until the CO has issued a modification to the Contract, or until the issue has been otherwise resolved.

In the event that the COR named above is absent due to leave, illness, or official business, all responsibilities and functions assigned to the COR will be the responsibility of the Alternate COR.

G.3 Correspondence

Correspondence, notices and documents related to this contract shall be submitted via e-mail by the Contractor to both the CO and the COR. The Contractor shall provide the CO and COR with contact information (names, titles, telephone numbers, email addresses, fax numbers and mailing address) for the primary and alternative point of contact of those persons who have the authority to represent the Contractor and who are authorized to receive official notices and correspondence from *<agency>*.

All correspondence and data submitted by the Contractor shall include the contract number. The Contractor shall sequentially number each question submitted, and keep a record of each question submitted. The Contractor shall describe the nature of the question, the Contract section or other pertinent document, and if applicable provide a recommended solution for the *<agency's>* consideration.

G.4 Payment and Billing Procedures

The Contractor shall provide a monthly invoice that includes delivered electrical energy in kWh and the amount due. The Contractor's invoice will be prepared in the format proposed by the Contractor and accepted by the Contracting Officer and shall include the following information:

- Account number (if any)
- Entity name for checks
- Address for mail payment
- Invoice date
- The beginning and end dates of the period covered
- Meter number
- Electricity consumption
- Unit price (electricity, in \$/kWh)
- Unit price (ESCO's reserve account, in \$/kWh)
- Total due (electricity + ESCO's reserve account, in \$)
- ESCO's reserve account balance
- Point of contact (name, address, phone and email)

Invoices shall be submitted each month. All costs associated with billing shall be included in the offered rates. *<Agency>* will not pay any additional charges for billing services or other costs. The Contractor may only invoice for charges allowed under the terms and conditions of the Contract (*i.e.* the fixed rates for electricity delivered and any termination liability payments), as well as the requirements set forth in paragraph (g), Invoice, of FAR 52.212-4.

The Contractor shall invoice the *<agency>* no later than the *<x>* day of each month (a "Monthly Invoice Date"), commencing on the first Monthly Invoice Date to occur after the PV System acceptance. The first invoice shall include any production that occurred prior to the initial Monthly Invoice Date. The last invoice shall be prorated, as necessary, to include annual production only through the end of this Contract.

G.5 Contractor Performance Assessment Reporting

[The agency can consider a CPARS requirement.]

SECTION H – SPECIAL CONTRACT REQUIREMENTS

[Reference the DOE IDIQ contract Section H for other potentially relevant clauses.]

H.1 Special Purpose Entities and Novation

[Agency may specify that the Contractor must select financing through a competitive selection process involving a minimum of three reputable finance companies.]

The <agency> recognizes that securing financing may involve the establishment of a limited liability company (LLC) or other type of special purpose entity (SPE). Creation of an SPE under an ESPC ESA requires the execution of a novation agreement by the agency CO and prime contractor to recognize a successor in interest to the agency contract when contractor assets are transferred.

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 qualified list ESCO 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 contracting officer and must be consistent with all applicable statutory and regulatory requirements. Specifically, the requirement that the transferor (ESCO) guarantees performance of the contract by the transferee (SPE) must be met. See FAR 42.1204(h)(3). Novation agreement approval is at the <agency's> sole discretion pending a determination by the CO that the SPE is capable of meeting all contract requirements and obtaining financing.

The planned use of an LLC or other type of SPE should be identified in the proposal as part of the Preliminary Project Finance Plan (see Section H.16).

[If this agreement is novated, a novation may also be required for the site access agreement.]

H.2 Title to the PV System

Until such time as the <agency> accepts title to the PV System, the ESCO shall be the legal and beneficial owner of the PV System. During this time, the system shall be the personal property of the ESCO as defined under Article 9 of the Uniform Commercial Code and shall not be deemed as part of, or fixture to, the Premises. The <agency> covenants that it will use reasonable commercial efforts to place all parties having an interest in the ESCO's property located on the Premises on notice of the ownership of the PV System and the legal status or classification of the PV System as personal property. The <agency> is the owner of the Premises and consents to the filing of a disclaimer of the PV System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises until such time that the <agency> accepts title to the PV System.

As specified in Section H.3, <agency> shall accept title to the PV System from the ESCO by the end of the contract term.

H.3 ESCO's Reserve Account, FMV Determination and Title Transfer of the PV System

[This section should be carefully reviewed by legal, contracting and management. Add details regarding requirements associated with the ESCO's reserve account. The ESCO could be required to obtain an FMV appraisal right after contract award so that the government's estimated FMV and the resulting reserve account payment can be confirmed. Consult with FEMP for assistance and updated information.]

Title to the PV System shall be transferred to *<Agency>* for FMV, determined by the methodology specified in Section H.3.2, by the end of the contract and funds necessary for this purchase must be generated from a specified portion of the scheduled payments that are transferred to a reserve account held by the ESCO.

H.3.1 ESCO's Reserve Account

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

[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. 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 shall be made at the following intervals *<list desired intervals such as years 5, 10 and 15>*. If needed, the contract length⁷ and/or *<agency's>* payment to be allocated to the ESCO's reserve account shall be increased or decreased, through a contract modification. This will ensure that the ESCO's reserve account has sufficient funds to reach the FMV of the PV System 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 appraiser⁸ shall be selected by the ESCO, with approval by the *<agency>*. The FMV appraisal costs shall be borne by the ESCO.

H.3.1.1 ESCO Reserve Account Fund Uses and Management

[This section contains optional sample language regarding the management and use of the reserve account funds. The CO may include a clause requiring CO approval of all reserve account fund expenditures.]

The ESCO's reserve account funds are intended for the following uses only: FMV purchase, applied by the ESCO to final ESPC payments, a contract modification (i.e. additional equipment) and/or termination liability. In the case of termination, disbursement from the ESCO's reserve account fund shall be negotiated through the termination settlement process, in accordance with FAR 52.249-2.

⁷ The contract length can only be extended up to 20 years.

⁸ Add Appraiser requirements. Possible language: "A nationally recognized, independent third-party Accredited Senior Appraiser with a specialty in machinery and equipment appraisal techniques applied to solar photovoltaic property. *<Agency>* shall be a named Intended User in the appraisal assignment, and shall be granted access to the complete work file supporting the appraisal."

An annual reserve account statement, including documentation of all reserve account activity during the year, shall be included in the annual M&V report. All costs of administering the ESCO's reserve account shall be borne by the ESCO, rather than being taken out of the reserve account funds.

Any funds in the ESCO reserve account in excess of the PV System FMV may, at the ESCO's option, be applied by the ESCO to offset the final ESPC payment(s). The reserve account balance shall be zero by the end of the contract.

H.3.2 Determination of Final FMV

At least six months prior to the end of the contract the final PV System FMV appraisal shall be made. This value will be determined by an appraiser⁹. Such appraiser shall act reasonably and in good faith to determine the PV System 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 ESCO.

The final FMV amount shall be compared to the ESCO's reserve account balance. If there is a shortfall; the *<agency>* shall ensure that there will be sufficient funds by the end of the contract by one or more of the following:

- 1) Increase reserve account payment.
- 2) Increase the contract length.
- 3) Use agency funds, subject to availability of appropriations.

A contract modification may be required.

H.3.3 Title Transfer of the PV System for FMV

By the end of the contract, the *<agency>* shall accept title to the PV System from the ESCO at FMV, as determined per Section H.3.2, using the funds in the ESCO's reserve account.

Upon title transfer, the Parties will promptly execute all documents necessary to (A) cause title to the PV system to pass to the *<agency>*, free and clear of any encumbrances and (B) assign all warranties for the PV panels and other PV System equipment to the *<agency>*.

H.4 Congressional Notification

[Modify this section based on FAR 17.108 provisions that apply to your agency and any other agency-specific policies. FEMP congressional notification information is available at http://energy.gov/sites/prod/files/2014/07/f17/espc_congressional_notification.pdf]

FAR 17.108 requires agencies to notify Congress at least 30 days prior to the award of certain proposed multiyear contracts. Congressional notification will be required for this contract if the cancellation ceiling exceeds *<\$135.5 million for DoD, NASA and Coast Guard; \$13.5 million for other agencies, or other amount based on current FAR/agency policies>*.

⁹ Add Appraiser requirements that are the same or more stringent than the initial appraisal requirements.

The contract may then be awarded only after the end of the 30-day period beginning on the date the notification is received by Congress.

H.5 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. 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 RE goal. 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 FEMP for assistance in developing appropriate RFP language.]

[If the agency would like the Contractor to sell the SRECs and reduce the ESPC ESA price:]

The Government's purchase of energy from the PV Systems excludes any associated SRECs. The Contractor is free to sell the SRECs *<and shall purchase replacement RECs on behalf of the agency or 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 proposal the *<agency>* a lower ESPC ESA price.

[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 systems¹⁰>*.

H.6 Small Business Subcontracting Plan and Reporting Requirement

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H.7 Payment and Performance Bond

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H.8 Representations and Warranties

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H.9 Regulatory Considerations

Contractor represents and warrants as of contract award that:

(a) It has taken all required actions, if any, necessary to comply with the Public Utility Holding Company Act of 2005, as amended and

¹⁰ See REC Tracking System information at <https://www.epa.gov/greenpower/renewable-energy-tracking-systems>.

(b) It is not an electric utility subject to rate regulation by the Public Utility Commission or any Governmental Authority.

H.10 General Insurance Requirements

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H.11 Site Access

[Review these clauses if there is a separate site access agreement and determine if they belong in the RFP and/or the site access agreement.]

The <agency> authorizes the Contractor to install, own, repair, operate and maintain the PV System 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 System(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 the license>. Access will be granted for any proper purpose under this Contract, including use of the Premises agreed upon by the parties hereto for the construction, installation, operation, repair, replacement and maintenance of the PV System. 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, 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 their sole discretion. If power outages or other disruptive activities are planned, these will require the approval of the <agency> building manager 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 System 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>.

H.11.1 Access to Buildings

[Include this section if needed for roof-top systems and/or modify for ground-mount/carport systems.]

It shall be the Contractor's responsibility, through the COR, to obtain access to Government buildings and to arrange for each room/area to be opened and closed as necessary in performance of contract requirements. The Contractor shall be responsible for safeguarding all Government property and securing facilities, equipment, and materials at the end of each work period.

H.11.2 Construction Phase Access

The Contractor's personnel, or personnel of designated subcontractors, will be given reasonable access to the site for PV System installation. See Section F.4.2 for details regarding required construction plan submittals.

H.11.3 Construction Permit and Crane Work Requirements

[Include if applicable]

The Contractor must comply with <city> code regulations. The Contractor shall apply and pay for all relevant permits, including coordinating any restriction of traffic/pedestrian flow and/or any necessary road closures, as well as any potential compensation for lost parking revenues. A permit is required for cranes. The Contractor shall employ a Professional Structural Engineer to certify that the location of the crane complies with applicable national and local codes. The Contractor shall provide credentials for crane <and forklifts if applicable>. The <agency> does not make any warranties regarding site suitability for crane work.

H.11.4 Contractor Staging Area

PV, electrical and other equipment shall only be stored in space approved for Contractor use by <agency>. Parking and laydown areas for equipment and materials shall be coordinated and controlled by the <agency>, and used only for the indicated period of time and for the indicated purpose. The following location(s) are available for storage: <list storage area(s)>. The Contractor is responsible for safeguarding all stored materials and shall take security and weatherproofing precautions. The Contractor shall hold and save the <agency>, its officers and agents, free and harmless from liability for the safety of any stored materials; the <agency> is not responsible for theft or damage. The Contractor shall submit staging/lay-down area requests at least two weeks in advance.

H.11.5 Energy Sales Phase Access

O&M shall be conducted in accordance with the requirements of Section <C.x>. During the Energy Sales phase, the Contractor's personnel, or personnel of designated subcontractors, will be given reasonable access to the site for O&M of the PV System and any equipment repair or replacement.

H.11.6 Security Requirements

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H.11.7 Safety Requirements

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H.11.8 Fire Prevention

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H. 11.9 Contractor Employees

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H.11.10 Contractor Work Schedule

[Incorporate agency requirements. Sample language below for your consideration.]

The Contractor shall schedule work to be within the normal working hours between <specify times> Monday-Friday, exclusive of Federal holidays, as long as it will not cause interference with the normal conduct of <agency> business or with the progress of other Contractors' projects. However, work may be performed at

night when the PV System is not producing if it can be scheduled without disruption to <agency> operations and security. Depending on the type of work to be performed and associated noise levels that would interrupt the <agency> operations, the Contractor may be required to conduct operations during evenings and weekends. The Contractor shall communicate work conditions that may create increase noise levels or affect the operations of the facility occupants to the Contracting Officer Representative 72 hours in advance of planned activities. Work shall not commence without the express approval of the Contracting Officer. The Contractor shall promptly notify the CO and the COR when it appears that <agency> activities or personnel or other contractor's projects are hindering the effective execution of its work efforts.

H.11.11 Photography

No photography, of any nature, is allowed while at <site> without the written authorization of the CO. Submit photography requests to the CO at least two (2) business days prior to anticipated photo session. After the photo session the pictures must be approved by the <agency>.

H.11.12 Applicable Laws and Standards Conformation

The PV System shall be installed with due care conforming to the applicable standards and practices, applicable laws, and easement for the Premise (if any) by qualified employees, representatives, agents or sub-contractors of Contractor. If the PV System fails to meet any of the foregoing standards, Contractor shall perform at its own cost, and without additional charge to the <agency>, the professional services necessary to correct errors and omissions, to include any necessary replacement of the PV System that are caused by Contractor's failure to comply with the above standards.

H.12 Solar Easement

The <agency> will take reasonable steps as necessary within its control to prevent other buildings, structures or flora (outside of the PV System) from overshadowing or otherwise blocking access of sunlight to the PV Systems. If the <agency> takes actions that result in shading of the solar array, and the Contractor is harmed thereby, such event shall be governed by FAR 52.212-4 paragraph (d), Disputes.

The Contractor, with <agency> assistance, is responsible for obtaining solar access rights from any other landowners adjacent to the Premises.

H.13 Protection of Financier's Interest

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

H.14 Force Majeure

[Incorporate requirements based on agency policy and terminology. Add a force majeure definition if applicable.]

H.14.1 Force Majeure and Service Interruption Plan

All offerors shall include a force majeure and service interruption plan in their proposal. The plan will be incorporated into the final contract at award and shall include the following components:

[Sample plan components below for your consideration. Determine whether some or all of this Force Majeure and Service Interruption Plan will be part of the evaluation process.]

- 1) Describe how the Contractor plans to protect itself (both financially and in terms of physical assets) from a Force Majeure event that significantly affects the PV System.
- 2) Identify steps that the Contractor will take to prevent damage to the PV System when there is a known pending disaster such as a hurricane.
- 3) Identify how the Contractor will bring the PV System back into service expeditiously following any such force majeure event.
- 4) Identify any intent to rely on the Federal Emergency Management Agency or other government relief agencies for financial assistance in recovering from any Force Majeure event and identify to what extent, if any, the Contractor would expect reimbursement under the contract.
- 5) Identify catastrophic insurance, if applicable, that will be purchased for this contract.
- 6) Define procedures for responding to all service interruptions caused by the utility, system operator or PV System under normal daily operations and during disaster/contingency operations. These procedures should cover the following items:
 - a) Discussion of the expected causes of service interruption and how each would be handled by the Contractor.
 - b) 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.).
 - c) Estimated time for re-establishment of permanent service.
 - d) Discussion of *<agency>* notification procedures.
 - e) Emergency restoration plan.
 - f) *[Add other agency requirements and any procedures necessary to sufficiently address those requirements when responding to a service interruption.]*
- 7) 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.

H.15 Information Disclosure Restrictions

The following restrictions on advertising and disclosure of information shall apply: *<agency-specific restrictions, including press release approval>*. All data related to the PV Systems shall be the property of the *<agency>* and accessible only by authorized *<agency>* and Contractor personnel. No advertising or identifying information shall be publicly disclosed without prior written authorization by *<agency>*.

To avoid any conflicts with Federal Trade Commission rules regarding claims of renewable energy use, the Contractor and *<agency>* shall by mutual written agreement set forth specific statements to be used in any press releases that address the *<agency>*'s use of renewable energy.

H.16 Project Finance Plan and Financial Statement Requirements

All offerors shall include a preliminary project finance plan in their proposal. This plan will be incorporated into the final contract at award and shall include the following components:

[Sample plan components below for your consideration. Financial submittal requirements during the contract term, such as annual pro forma financial statements, could be added. Determine whether some or all of this Project Finance Plan will be part of the evaluation process.]

- 1) A summary of the project finance structure, including anticipated costs, a discussion of the risks and why this strategy is of value to the *<agency>*. Describe plans to set up an LLC or other type of SPE, per Section H.1
- 2) A list all proposed sources of construction and other financing. Include a schedule showing the expected amount, type (debt, equity, other) and timing of project funding.
- 3) Identify the terms of the debt and equity financing sources, highlighting terms that are subject to change prior to award. Provide information on the other types of expected borrowing, including type(s) of credit instrument(s) to be issued and security to be pledged for such borrowing.
- 4) A quarterly sources and uses of funds statement for the construction period, prepared in accordance with the U.S. Generally Accepted Accounting Principles, showing the timing and amount of each funding source.
- 5) A pro forma financial statement.

The Contractor shall submit its final project finance plan within *<x>* days after contract award.

H.17 Alternative Dispute Resolution

[Incorporate agency requirements and reference the DOE IDIQ contract Section H.]

PART II – CONTRACT CLAUSES

SECTION I – CONTRACT CLAUSES

[Below are FAR clauses that could be included, for agency consideration. The CO should modify this section based on current FAR requirements and agency policies. Dept. of Defense (DoD) should incorporate DoD specific clauses as appropriate. Since this RFP assumes use of FAR Part 12 Commercial Items, ensure that any included FAR clauses do not conflict with FAR Part 12. If it is determined that FAR Part 12 will not be utilized, then FAR clause changes will be much more substantial.]

The DOE ESPC Indefinite Delivery Indefinite Quantity (IDIQ) contract (available at <https://energy.gov/eere/femp/downloads/2017-doe-idiq-espc-generic-contract>) Section I Contract Clauses should be reviewed for possible inclusion. Keep in mind that DOE's contract is an IDIQ and does not utilize FAR Part 12 Commercial Items.

The Contracting Officer should decide what Buy American Act/Trade Agreement Compliant clause applies, if any (taking into account Executive Orders, agency and other applicable policies), as well as the applicable labor clauses.

Clauses that apply only to the construction phase are included towards the bottom of the section.]

I.1 FAR Clauses Incorporated by Reference (FAR 52.252-2)(FEB 1998)

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 CO 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>

FAR 52.204-4 Printed or Copied Double-Sided on Recycled Paper
FAR 52.212-1 Instructions to Offerors -- Commercial Items (Apr 2014)
FAR 52.213-17 Affirmative procurement of EPA-designated items in service and construction contracts
FAR 52.217-2 Cancellation under Multiyear Contracts
FAR 52.227-1 Authorization and Consent
FAR 52.228-5 Insurance - Work on a Government Installation

[Agency to determine which bond clause to include. Modify bond section H.7 if needed.]

FAR 52.228-15 Performance and Payment Bonds—Construction (Oct 2010)
FAR 52.228-16 Performance and Payment Bonds--Other Than Construction (Nov 2006)

FAR 52.229-3 Federal, State and Local Taxes
FAR 52.232-11 Extras
FAR 52.232-18 Availability of Funds

FAR 52.247-34 F.O.B Destination
FAR 52.249-2 Termination for Convenience of the Government (Fixed-Price) (APR 2012)
FAR 52.249-8 Default (Fixed-Price Supply & Service)
FAR 52.253-1 Computer Generated Form

[Agency to consider the following clauses, to be incorporated by reference, that may apply to the initial construction work and/or Operations and Maintenance.]

FAR 52.236-1 Performance of Work by the Contractor. (APR 1984)
FAR 52.236-2 Differing Site Conditions. (APR 1984)
FAR 52.236-3 Site Investigation and Conditions Affecting the Work. (APR 1984)
FAR 52.236-5 Material and Workmanship. (APR 1984)
FAR 52.236-6 Superintendence by the Contractor. (APR 1984)
FAR 52.236-7 Permits and Responsibilities. (NOV 1991)
FAR 52.236-8 Other Contracts. (APR 1984)
FAR 52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements. (APR 1984)
FAR 52.236-10 Operations and Storage Areas. (APR 1984)
FAR 52.236-11 Use and Possession Prior to Completion. (APR 1984)
FAR 52.236-12 Cleaning Up. (APR 1984)
FAR 52.236-13 Accident Prevention. (NOV 1991) and Alternate I (NOV 1991)
FAR 52.236-14 Availability and Use of Utility Services. (APR 1984)
FAR 52.236-15 Schedules for Construction Contracts. (APR 1984)
FAR 52.237-2 Protection of Government Buildings, Equipment, and Vegetation
FAR 52.242-13 Bankruptcy
FAR 52.242-15 Alt I Stop-Work Order AUG 1989 - Alternate I
FAR 52.222-5 Construction Wage Requirements – Secondary Site of the Work
FAR 52.222-6 Construction Wage Requirements
FAR 52.222-7 Withholding of Funds
FAR 52.222-8 Payrolls and Basic Records
FAR 52.222-9 Apprentices and Trainees
FAR 52.222-10 Compliance with Copeland Act Requirements
FAR 52.222-11 Subcontracts (Labor Standards)
FAR 52.222-12 Contract Termination-Debarment
FAR 52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations
FAR 52.222-14 Disputes Concerning Labor Standards
FAR 52.222-15 Certification of Eligibility
FAR 52.222-27 Affirmative Action Compliance Requirements for Construction
FAR 52.222-43 Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (Multiple Year and Option Contracts) (May 2014)

I.1 Clauses Incorporated By Full Text

[FAR 52.12-4(l), Termination for the Government's Convenience could be tailored through a FAR 52.212-4 Addenda. Contact FEMP for example language that has been used by other federal agencies for similar projects. Please also refer to FAR 52.249-2.]

52.216-1 TYPE OF CONTRACT (Apr 1984)

The Government contemplates award of a Firm-Fixed Price contract resulting from this solicitation.

52.241-5 CONTRACTOR'S FACILITIES (Feb 1995)

[Inclusion of this clause is one option to provide site access to the Contractor. Delete this clause if a separate site access agreement is utilized or if site access is provided through other means.]

(a) The Contractor, at its expense, unless otherwise provided for in this contract, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder, and measure such service at the point of delivery specified in the Service Specifications. Title to all such facilities shall remain with the Contractor and the Contractor shall be responsible for loss or damage to such facilities, except that the Government shall be responsible to the extent that loss or damage has been caused by the Government's negligent acts or omissions.

(b) Notwithstanding any terms expressed in this clause, the Contractor shall obtain approval from the Contracting Officer prior to any equipment installation, construction, or removal. The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract. This permit or license includes use of the site or sites agreed upon by the parties hereto for the installation, operation, maintenance, and repair of the facilities of the Contractor required to be located upon Government premises. All applicable taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, maintenance and repair of such facilities, shall be the obligation of the Contractor.

(c) Authorized representatives of the Contractor will be allowed access to the facilities on Government premises at reasonable times to perform the obligations of the Contractor regarding such facilities. It is expressly understood that the Government may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security, public safety).

(d) Unless otherwise specified in this contract, the Contractor shall, at its expense, remove such facilities and restore Government premises to their original condition as near as practicable within a reasonable time after the Government terminates this contract. In the event such termination of this contract is due to the fault of the Contractor, such facilities may be retained in place at the option of the Government for a reasonable time while the Government attempts to obtain service elsewhere comparable to that provided for hereunder.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J – LIST OF ATTACHMENTS

[Example list based on Exhibits referenced in this template. Add other applicable Exhibits based on the final RFP that includes Sections C, E & M (including technical details such as site photos/diagrams, electricity rate information, roof details, one-line diagrams, etc).]

Exhibit 1 - PV System List

Exhibit 2 - Price Proposal Form

Exhibit 3 - Annual Cancellation Ceiling Schedule

Exhibit 4 – PV System Production Estimate

Exhibit 5 – Site Access Agreement

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION K – REPRESENTATIONS, CERTIFICATIONS & OTHER STATEMENTS

52.212-3 -- Offeror Representations and Certifications -- Commercial Items.

Offeror Representations and Certifications -- Commercial Items (Jan 2017)

[Insert the most recent 52.212-3 clause language.]

SECTION L – INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

[Agency contracting/legal staff should decide whether to include FAR 52.212-1 as is, or modified in an Addenda based on agency policy and goals. Reference the DOE ESPC IDIQ RFP and/or contact FEMP for 52.212-1 Addenda suggestions, including language regarding exceptions to contract terms and conditions.]

FAR 52.212-1 - Instructions to Offerors -- Commercial Items (Jan 2017) incorporated by reference applies with the same force and effect as if they were given in full text.

L.1 Pre-Proposal Conference and Site Visit

A pre-proposal conference and site visit for potential Offerors will be on *<date/time>* at *<location>* for the purpose of answering questions regarding this solicitation. The site visit will enable Offerors to examine site conditions and electrical systems. Offerors shall submit the name, employer, email address, date of birth and social security number of all attendees, not to exceed *<x>* per Offeror, to *<name and email address>*, Contracting Officer, at no later than 5:00 PM on *<date>*.

Information presented by *<agency>* at the pre-proposal conference and site visit shall not constitute a change to the terms and conditions of this solicitation. *<Agency>* shall only communicate changes to the terms of the solicitation in writing via an amendment. If an amendment is issued by *<agency>*, normal procedures relating to the acknowledgment and receipt of solicitation amendments shall apply.

Offerors shall wear closed-toe shoes and full-length pants during the site visit; loose fitting clothing (e.g., ties, scarves) is prohibited. Offerors may use cameras during the site visit to capture still photographs only after expressed consent of *<agency>* representative administering the site visit. Other recording devices are prohibited.

Following are parking, security screening, and other details:
<add details>

L.2 *[Add all required submittal requirements, including a Cancellation Ceiling Schedule (reference Exhibit 3).]*

SECTION M – EVALUATION FACTORS FOR AWARD

[Section M will be added to the next version of the See “Procurement Specifications Templates for Onsite Solar Photovoltaic: For Use in Developing Federal Solicitations”, available at <https://energy.gov/eere/femp/downloads/procurement-specifications-templates-site-solar-photovoltaic-use-developing>, available at <https://energy.gov/eere/femp/downloads/procurement-specifications-templates-site-solar-photovoltaic-use-developing>.]

Exhibit 1 - PV System List

Exhibit 2 - Price Proposal Form

CLIN 0001 Total Firm Fixed ESPC ESA Price \$_____/kWh
Amount allocated to ESCO Reserve Account \$_____/kWh
(taken from Section B.1)

[Add if applicable]
Annual Escalation Rate _____%

This price includes all costs associated with the ESPC ESA contract except for the government's reserve account payment. This price *<includes/excludes>* the project RECs.

[Include this option if there are PV systems on roofs that may need to be replaced or repaired during the contract term.]

CLIN 0002 First Year \$ Price \$_____

To permit roof repair and/or replacement, an option to relocate the PV System may be exercised at any time during the contract, and may be exercised more than once. The option price shall include PV System removal, storage, reinstallation and three (3) months of lost revenues. The Government may specify partial removal, storage and installation of the PV System. In such situations; the actual price will be prorated based on the proposed first year price and the percentage of the PV System that is removed, stored and reinstalled; but shall not be less than *<\$x>* per incident. The specified price shall apply for the first year of the contract, with the price adjusted in future years based on the consumer price index

Exhibit 3 - Annual Cancellation Ceiling Schedule

IMPORTANT INFORMATION:

(1) Cancellation Ceilings for each time period specified below establish the maximum termination liability for that time period. Actual total termination costs will be negotiated.

(2) The contractor may attach a monthly Financing Termination Liability Schedule.

(3). In the event of contract cancellation or termination for convenience, FAR 52.217-2 or 52.249-2 will apply.

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

Exhibit 4 – PV System Production Estimates

[monthly, annual or other]

Exhibit 5 – Site Access Agreement