

**DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION
Management and Operation of Y-12 and Pantex Sites
Request for Proposal (RFP) No. 89233220RNA000002**

RFP Questions & Answers

Answers to relevant questions received in response to the subject NNSA RFP are included below. NNSA has attempted to group questions by relevant RFP section. Some questions submitted by prospective Offerors related to multiple topics; accordingly, prospective Offerors should carefully read all responses in this document and not simply rely on RFP section headings. Finally, please note the answers are provided for the convenience of Offerors, and the final RFP and any amendments take precedence over the answers provided herein.

Sec B-H – Part I Schedule

1. *Clause H-1, Continuation of Predecessor Contractor's Obligations and Transfer of Obligations to Successor Contractor.* While understanding the importance of this provision in a general sense, it raises several concerns:

- Concern 1: Section (a) requires the assumption of various agreements. There can be disallowed costs or liabilities under these agreements as a consequence of predecessor mismanagement, or negligence, or willful misconduct. While the successor should assume the agreements, it should not have to assume such disallowed costs or liabilities.

Request 1: That it be made clear in Section (a) that the assumption of the agreements specifically excludes disallowed costs or liabilities arising from the acts or omissions of the predecessor contractor, regardless whether arising before or after the transfer.

- Concern 2: Section (a) includes an obligation to assume litigation. There are several concerns with this.
 - While the other listed items in Section (a) are agreements, litigation is not an agreement, it is a potential liability. So it does not fit.
 - Courts will not allow a separate legal entity to assume litigation unless it is a successor in interest. As the successor contractor will be a successor in interest to the contract, it will not be a successor in interest to the predecessor entity.
 - Section (c) makes the successor responsible for disallowed costs under the Section (a) items once its contract ends and is passed on to the successor contractor. We assume the existing contractor has a similar obligation. Neither entity may want to allow another entity to manage litigation when it faces disallowed costs.

Request 2: Based on the above, it is recommended that Section 8(a) litigation and claims be its own independent paragraph under H-1 and that, instead of assigning the litigation/claims to the successor, all that is assigned is the obligation to manage the litigation/claims provided further that the predecessor has a right to retain management of any of its litigation/claims that has a potential to result in disallowed costs.

ANSWER: Please refer to revised Clause H-1 *Continuation of Predecessor Contractor's Obligations and Transfer of Obligations to Successor Contractor* under RFP Section B-H – Part I Schedule (Amd 0001). It is anticipated that the predecessor Contractor, the successor Contractor, and the NNSA will enter into a tri-party transition of responsibilities agreement that will address matters such as unallowable costs, liabilities, litigation and claims as related to obligations transferred from the predecessor Contractor to the successor Contractor.

2. Section H-1, Continuation of Predecessor Contractor's Obligations and Transfer of Obligations to the Successor Contractor. Section B - H, Page 24. This section states: “*Existing contractual agreements and regulatory obligations entered into under Contract No. DE-NA0001942 will continue during performance of this contract. The Contractor shall assume all existing contractual, commercial, regulatory, and other similar obligations incurred under the predecessor Contract, and shall be fully responsible and accountable under this Contract for the performance of such obligations.*” The RFP further indicates these obligations include items such as (1) subcontracts and purchase orders and (8) ongoing litigation and claims by or against the predecessor contractor. We assume that subcontracts and purchase orders once assigned may be managed, administered, and if determined appropriate, terminated, by the successor contractor. However, the RFP is not clear on the approach to be used and the legal and financial risks associated with the successor contractor assuming or defending a claim against the predecessor contractor by a third party.

Comment: Please clarify in the RFP that: 1) the successor contractor is defending against the claim on behalf of the Government; 2) any legal fees incurred are allowable costs under the contract; and 3) the Government retains responsibility for all liabilities, financial and otherwise, associated with the litigation.

ANSWER: Please refer to response to #1 above. For more information about allowability of costs related to legal fees and/or litigation, please refer to clauses such as:

- FAR 52.216-7 - *ALLOWABLE COST AND PAYMENT (AUG 2018) (AS MODIFIED BY DEAR 952.216-7) (Tailored APR 2020)*
 - DEAR 970.5228-1 - *Insurance-Litigation and Claims*
 - 48 CFR 970.31 - *Contract Cost Principals and Procedures*
 - 10 CFR part 719 - *Contractor Legal Management Requirements*
3. Clause H-15, NNSA Prime Contracts. Concern: Section (a) (substantially repeated at Section (a)(4)) provides that (emphasis added):

The Contractor shall not commit or permit any act or omission which shall interfere with the performance of work performed by any other contractor and/or by government employees, and the Contractor shall be liable for any added costs resulting from such acts or omissions (such as delay costs) whether such costs are incurred by the Government, or another DOE/NNSA Contractor performing DOE/NNSA contract work.

Excepting either (i) it being a FAR Part 31 or DEAR Part 931 disallowed cost or (ii) Contractor high-level management willful misconduct or lack of good faith, the identified Section H-15(a) Contractor cost responsibility is contrary to the risk/reward profile provided cost reimbursement Contractor's in the FAR and DEAR. The FAR and DEAR are clear that NNSA's remedies, should a Contractor fail to meet the H-15(a) standard, are limited to: (i) a downward adjustment in the Contractor's fee earnings, (ii) a negative past-performance evaluation and/or (iii) partial or complete termination.

Request: That the latter half of this provision be deleted as being inconsistent with the FAR and DEAR. Specifically:

~~The Contractor shall not commit or permit any act or omission which shall interfere with the performance of work performed by any other contractor and/or by government employees, and the Contractor shall be liable for any added costs resulting from such acts or omissions (such as delay costs) whether such costs are incurred by the Government, or another DOE/NNSA Contractor performing DOE/NNSA contract work.~~

ANSWER: H-15 as written is consistent with the FAR and DEAR. See e.g., FAR 31.201-2(a)(4).

4. Section H-18. Construction Projects. Section B - H, Page 33. This section states: *“For each construction project performed under CLIN 0004, the Contractor agrees that the NNSA will incorporate appropriate Sub-CLIN specific construction terms and conditions into the M&O Contract concurrent with the award of each Sub-CLIN for the completion of that project that are not otherwise contained in the M&O Contract.”*

Comment: Please revise the statement to read “appropriate standard Federal Acquisition Regulation and/or Department of Energy Acquisition Regulation Sub-CLIN specific construction terms and conditions...” to clarify only standard clauses may be included unless otherwise agreed to by both parties.

ANSWER: NNSA has considered this request, but declines to alter the RFP. Please note that Clause H-18 *Construction Projects* (b) identifies that “[i]f the Parties are unable to agree on an equitable adjustment, the matter shall be treated as a dispute under the Disputes Clause of this Contract and the Contractor shall diligently proceed with the performance or management of the Capital Construction Project pending the final outcome of the dispute.”

5. *Clause H-18, Construction Projects.* Concern: H-18(b) establishes a process, for CLIN 0004, Capital Construction Projects, whereby, except for applicable FAR and DEAR clauses, all

remaining terms are negotiable and, should mutuality not be reached, unilaterally decided by the Contracting Officer which decision is subject, first, to equitable adjustment and, subsequently, to disputes. However, the same process is not mentioned for failures to reached mutuality on CLIN 0002 construction.

Request: It is appropriate that the foregoing process --

i.e., should mutuality not be reached, unilaterally decided by the Contracting Officer which decision is subject, first, to equitable adjustment and, subsequently, to disputes. However, the same process is not mentioned for failures to reached mutuality on CLIN 0002 construction

-- equally apply to H-18(c) governing construction awarded under CLIN 0002, Strategic Partnership Projects.

ANSWER: Work under CLIN 0002 (Management and Operation of the Y-12 and PX Sites) including construction work, may be directed unilaterally by the Government and is subject to the M&O contract terms and conditions. The Contractor's remedies are the same whether the work is directed unilaterally under CLIN 0002 or 0004. Clause H-18(b) has been updated to clarify this matter.

6. Volumes I and III, Section B-2(c), Contract Type and Value. Section B-H, Page 4. Section B-2(c) states: *"The 10 percent change threshold shall apply only to scope changes and not changes caused by cost overruns, changes in the cost of labor, changes in the cost of materials, or other cost changes without a direct nexus to NNSA-approved changes in scope."*

Comment: Because the fee is based on the budget-based fee formula, stating that the 10 percent change applies to approved budget changes appears to be more accurate than stating that it applies to scope change. We recommend the 10 percent change threshold will apply to changes in the funded baseline, not to scope. Please consider revising accordingly.

ANSWER: The annual Award Fee pool, and changes thereto, are calculated based on the Annual Controlled Baseline (ACB), as described in section B-2 of the RFP. The ACB differs from the budget. Please refer to Section J, Appendix A – *Statement of Work* and Section J, Appendix N – *NNSA Cost Savings Program* for further description of the ACB.

7. Volume III, Section F-7(l), Deliverables During Transition. Section B - H, Page 19. This section states: *"The Contractor shall submit a Firm-Fixed-Price proposal for the High Explosive Science and Engineering Facility within 30 days after the start of the Transition Period."* No additional details are provided on the status of the design or requirements for this facility on the solicitation websites. Based on the assumptions that a design will not be available until after award and a number of subcontracts will need to be procured during the same time period, 30 days seems an unrealistic period to prepare a fixed-priced estimated. Even a 100 to 150 day submission period would be a challenge considering an unseen design.

This requirement is not consistent with FAR 36.208, Concurrent performance of firm-fixed-price and other types of construction contracts, which states: *“In view of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features shall not be permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts except with the prior approval of the head of the contracting activity.”*

FAR 52.228-15, Performance and Payment Bonds – Construction, is included in Section I.

Question: Does NNSA intend that the M&O obtain Performance and Payment bonds for the project and include the cost in the fixed price? We assume the surety would be liable for finishing the facility if the M&O defaulted on the project. The Payment bond would provide the guarantee that subcontractors and material suppliers would be paid. Does NNSA intend that the contractor and/or its parent companies be liable for any cost overrun under the Performance Guarantee Agreement?

Comment: Please clarify the current status of the design effort for the High Explosive Science and Engineering Facility, specifically, the stage of the Critical Decision process that has been approved. Developing a FFP within 30 days would require a completed, approved design at the very least. If NNSA intends to maintain this requirement as written in Section F-7(I), please consider a time period for preparation of the fixed fee estimate commensurate with the develop status of the design and the time required to adequately review the design, resolve design issues, and obtain appropriate subcontractors.

ANSWER: Yes; the successful Offeror will be required to obtain Performance and Payment bonds for fixed price SubCLINs, and include the cost of the bonds in the fixed price. Yes; the successful Offeror and/or Team Members will be liable for any cost overrun on fixed price SubCLINs. Please note revisions in RFP Amendment 0001 to Section B-H under B-3, *Contract Fee Structures*.

The High Explosive Science and Engineering Facility (HESEF) project design is substantially complete and will be made available for Offeror reference in the Reading Room. Furthermore, it is expected that the incumbent Contractor will solicit and award the FFP construction subcontract prior to award of the new M&O contract, and that subcontract is expected to be novated to the successor M&O Contractor. Bonds will be in place and part of the FFP subcontract cost. The proposal that is expected within 30 days of the M&O contract award is for the project construction management, contract management, facility startup and hot commissioning, and project closeout as described in the Project Management Plan (PMP) and Project Execution Plan (PEP) in accordance with the baseline schedule in place at contract transition. The HESEF project PEP and PMP are available in the Reading Room. Please see these documents for more specific information on the current status of the HESEF project.

The HESEF project timeline requires a proposal within 30 days after award. The successful Offeror will work closely with NNSA to obtain information necessary and submit the proposal to support the project timeline.

FAR 36.208 does not prohibit a Firm-Fixed-Price contract type for the projects such as the HESEF. The Contractor is required to implement a cost reporting system that is detailed and transparent, thus precluding any such labor or administrative problems. Please refer to RFP Amendment 0001 updated Section J, Appendix A – *Statement of Work* under Chapter V. *Current Project Status*.

8. Section H-13(a), Clause Updates and Implementation Section to FAR Clauses. Section B – H, Page 29. Section H-13(a) states: *“The Contractor agrees that the Contracting Officer may, from time to time and at any time, unilaterally modify the Contract to revise, add or delete Section H clauses, and FAR or DEAR clauses due to changes in the law or regulations or policy resulting from the approval of new deviations.”* We know of no precedent for granting such authority to unilaterally change a contract based on changes in law, regulation, or policies. This provision grants the Government the right to restructure the contract at will based on unknown future policies and places the contractor at significant and unknown risk.

Question: Would NNSA consider removing this clause or at a minimum revising it to include good faith negotiations between the contractor and the Government for contract changes related to changes in laws, regulations, or policies?

ANSWER: NNSA has considered this request, but declines to alter the RFP.

9. Sections H-17(b) and H-27(b)(2), Parent Oversight Plan and Advanced Understanding Regarding Additional Items of Allowable and Unallowable Costs and Other Matters, Items of Unallowable Costs. Section B - H, Page 33 and Page 38. Section H-17(b) states: *“Costs of activities associated with the Parent Oversight Plan shall only include: the actual direct labor costs of the persons performing such services; a percentage factor of direct labor costs to cover fringe benefits and payroll taxes; travel; and other direct costs. Any fee or other indirect costs such as allocation for overhead, General and Administrative (G&A), and Cost of Money will not be reimbursed.”*

Section H-27(b)(2) describes the following as unallowable costs: *“Home office expenses, whether direct or indirect, relating to activities of the Contractor, except as otherwise specifically provided in the Contract or specifically agreed to in writing by the Contracting Officer.”*

While fee does not apply in any case, Parent activities performed at the home office, or parent organization personnel working temporarily under the contract are subject to the parent’s approved CAS Disclosure Statement and allocation of all allocable indirect costs. We agree there should not be home office allocation of corporate costs to this contract. However, the indirect expenses of home office costs to labor costs do not constitute an “allocation” but rather a proper distribution of indirect home office costs. For example, the costs for the workspace (owned or rented) for parent office employees, human resources, payroll and accounting costs, etc. supporting the employee should be recoverable through an overhead/G&A application to the cost of the employee charged to the contract.

Comment: Please revise these clauses to provide for full cost recovery for parent organization support.

ANSWER: The RFP as written ensures NNSA does not bear undue or unnecessary home office expenses. However, NNSA recognizes Contractor organization structures and accounting systems vary. As such, NNSA included the H-27(b)(2) language referenced above, which enables Contracting Officer approval of home office expenses as appropriate during the course of the contract.

10. Volume III, Sections H-27(b)(6) and F-7(b)(2), Advance Understanding Regarding Additional Items of Allowable and Unallowable Costs and Other Matters, Items of Unallowable Costs and Deliverables During Transition, Key Personnel Cost Estimate. Section B - H, Page 38 and Section B - H, Page 17. Section H-27(b)(6) identifies Key Personnel Bonuses as unallowable costs. Section F-7(b)(2) states: *“The Contractor shall separately identify and provide a total summary of the annual compensation costs of the Contractor’s proposed Key Personnel for the first year of the Base Term. Costs shall include annual base salaries, and applicable bonuses, incentive pay, fringe benefits, and other Key Personnel compensation.”* These clauses appear to be in conflict by asking for pricing data that are unallowable. This will also impact the absolute Key Personnel payment cap of \$550,000/year. Further, Key Personnel that remain on their parent company payroll may receive bonuses that are traditionally an allowable cost per disclosed accounting practices and approved Forward Pricing/Billing Rates.

Comment: Please clarify: 1) if bonus information is to be submitted; and 2) the allowability of bonuses for Key Personnel.

ANSWER: Bonus information should not be submitted under the RFP. Key Personnel bonuses and incentive pay are not allowable costs. Further clarification is provided under RFP Amendment 0001, specifically in Section B-H, under F-7 and H-27.

11. RFP Volume: I; Section/Part: H-27;
- a) Title: ADVANCE UNDERSTANDING REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS;
 - b) Page No: H-37;
 - c) Background: Post award, there are opportunities to discuss and clarify areas in the proposal. The section does not provide an opportunity to discuss other areas that can be included as allowable costs under this contract and items that require clarification.
 - d) Question. Will NNSA include a subparagraph (c) that provides the opportunity post award to discuss and gain an advanced understanding of allowable and unallowable costs?

ANSWER: NNSA has considered this input, but declines to alter the RFP to include a subparagraph (c). Known allowable and unallowable costs have been identified within the RFP.

12. RFP Volume: I; Section/Part: H-27(a)(1);

- a) Title: ADVANCE UNDERSTANDING REGARDING ADDITIONAL ITEMS OF ALLOWABLE AND UNALLOWABLE COSTS AND OTHER MATTERS
- b) Page No: H-37;
- c) Background: Under personnel cost associated with the Statement of Work. Section J, Appendix A or Appendix D do not include withdrawal liability costs as an allowable expense. This is assuming that the Contractor has not made any changes to the plan without the CO's authorization.
- d) Question: Will NNSA include language in this section or another section that stipulates that withdrawal liability costs are an allowable expense under the contract?

ANSWER: NNSA assumes the question's reference to withdrawal liability refers to multiemployer pension plans, as withdrawal liability is a concept that is unique to multiemployer pension plans. It is possible that one, or more, multiemployer pension plans to which the Incumbent Contractor has an obligation to contribute, pursuant to the Construction Labor Agreement, will attempt to assess withdrawal liability on the Incumbent Contractor upon award of the Contract to a distinct entity. Existing provisions of the Incumbent Contract and/or the H-1, *Continuation of Predecessor Contractor's Obligations and Transfer of Obligations to Successor Contractor*, provide that NNSA may reimburse reasonable, allocable, and allowable costs associated with withdrawal assessments.

Sec I – Part II Contract Clauses

13. RFP Volume III; Section/Part: J, Chapter II. 1.2.2

- a. Title: NUCLEAR COUNTERTERRORISM INCIDENT RESPONSE (NCTIR)
- b. Page No: J-19
- c. Background: The Nuclear Counterterrorism Incident Response (NCTIR) program ensures that capabilities are in place to respond to any DOE/NNSA facility emergency, nuclear, or radiological incident within the United States or abroad, and to provide operational planning and training to counter both domestic and international nuclear terrorism and assure that DOE can carry out its mission- essential functions. This includes DOE's radiological assistance program, NNSA's worldwide weapons accident response management, and other investigations or advisory groups. This requirement could place Y-12 and/or Pantex personnel abroad in support of nuclear/rad needs, Price Anderson Act would not provide indemnification, but PL 85-804 indemnification would. This section and the international aspect of the support presupposes that we are granted PL 85-804 indemnification prior to deploying personnel and assets.
- d. Question: If we submit the request for PL 85-804 on day one of transition. Will NNSA ensure PL 85-804 is approved by end of transition/contract takeover for all elements of the contract?

ANSWER: It is incumbent upon the successor Contractor to submit an acceptable request for indemnification as stated in Section I of the RFP.

The Government cannot commit to approval of the package within a pre-determined timeframe.

14. RFP Volume: II; Section/Part: I Bold Note;

- a. Title: INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984)
ALTERNATE I (APR 1984)
- b. Page No: I-40
- c. Background: The clause states that "*This clause becomes applicable when the Offeror/Contractor submits an acceptable request for indemnification and receives approval from the Secretary of Energy.*" There are tasks that require the contractor to respond at a moment's notice to a nuclear counter-terrorism incident that may be delayed due to this requirement (e.g. Section J, Chapter II (NCTIR)). This is a SOW task that the contractor must respond to without hesitation. The contractor can send a report indicating that it has responded to the request and what assets are deployed in support.
- d. Question: If we submit the request for PL 85-804 on day one of transition. Will NNSA ensure PL 85-804 is approved by end of transition/contract takeover for all elements of the contract?

ANSWER: Please refer to response #13 above.

15. Section I-15 FAR 52.250-1. Indemnification Under Public Law 85-804 (Apr 1984) Alternate I (Apr 1984) (See Note).**

Comment: Please provide a copy of the current 85-804 Indemnification provided to the Incumbent Contractor. Additionally, please identify the date by which the Contractor/Awardee must submit its request under this clause.

ANSWER: The current 85-804 Indemnification under the Incumbent Contractor is incorporated into its contract in Section H, clause H-10 under Contract No. DE-NA0001942, which identifies the unusually hazardous or unclear risks under the present contract. The Incumbent Contractor's contract is available at <https://www.energy.gov/nnsa/nnsa-production-office-contract>. There is no specific due date for submitting a request under this clause.

16. Section I-30 DEAR 970.5232-3, Accounts, Records and Inspection (Dec 2010) (Deviation Nov 2011). 108.

Comment: In paragraph (c), please clarify that the Contractor is to use a risk-based audit approach to auditing subcontracts where costs incurred are a factor in determining the amount payable to the subcontractor and that 100% auditing of these type subcontracts is not required.

ANSWER: The clause requires audit of all subcontracts which meet the conditions of the referenced subparagraph (c). The successful Contractor will be required to submit for approval an Internal Audit Implementation Design and Annual Audit Plan, which include

the Contractor's plan for audit of subcontracts, pursuant to the clause at Section I-30 (DEAR 970.5232-3).

Sec J – Appendix D - Personnel Appendix

17. RFP Volume III; Section/Part: J, Appendix D, 4.0

- a. Title: PERSONNEL APPENDIX
- b. Page No: J-D-4
- c. Background: The offeror will take over responsibilities to manage multiple and diverse collective bargaining agreements. Those agreements need to be reviewed and understood. Some of them will be newly negotiated and other will be re-negotiated within the first 12 months of the contract.
- d. Question: Will NNSA provide a copy of the Collective Bargaining Agreements for both Pantex and Y12 prior to submission of the proposal with enough time for the offeror to review and ask questions?

ANSWER: NNSA has provided Collective Bargaining Agreements for both Y-12 and Pantex sites via the Reading Room established under the RFP. Please refer to RFP Section L-8 (b) for instructions on gaining access to the Reading Room.

18. RFP Volume III; Section/Part: J, Appendix D, 6.0

- e. Title: PERSONNEL APPENDIX
- f. Page No: J-D-7
- g. Background: Although the personnel appendix is quite detailed there are key components that are not available in the public domain or on the NNSA website. This includes number of employees that are covered under plans other than what were listed; contributions to Multi-Employer Pension Plans; funding levels of these plans; and the current and projected liabilities of the non-qualified plans.
- h. Questions:
 - i. Are there any union employees who are covered by plans not listed? If so, who, how many and the name of the plan?
 - ii. Are any contributions made to a Multi-Employer Benefits Plans? If so, which ones and where are they managed?
 - iii. At what percentage are the defined or Multi-Employed Benefits Plans funded?
 - iv. What are the overall liabilities of the non-qualified plans (Pantex and Y12)?

ANSWER: Section J, Appendix A, *Statement of Work*, CHAPTER II. WORK SCOPE STRUCTURE, Section 1.12 (Infrastructure and Operations)(iv)(C) states: “The Contractor shall recognize existing Construction Labor Agreements and shall require subcontractors engaged in construction on the construction project to recognize the Construction Labor Agreement.” Section J, Appendix D, Personnel Appendix, Section 4.0 states: “Costs of wages and benefits to employees represented by collective bargaining units and all other costs and expenses incurred pursuant to the provisions of collective bargaining agreements and revisions thereto are allowable costs provided the Contractor adheres to requirements provided in Section J Appendix A, Statement of Work, Chapter III, Section 5.0, Labor Relations.”

The Contractor's obligations with respect to fringe benefits, including hourly pension contributions to multi-employer pension plans, are set forth in the Construction Labor Agreement (CLA). The CLA is provided within the NNSA Reading Room. The level of funding of the multi-employer pension plans to which the Contractor has an obligation to contribute pursuant to the CLA does not bear on any Offeror's ability to formulate a proposal. There is one non-qualified plan, the Consolidated Nuclear Security, LLC Supplemental Retirement Plan. Please see Section J, Appendix D, Section 6.0 for more information. This RFP Section states that the non-qualified plan "is funded on a pay as you go basis." The amounts payable under the non-qualified are calculated and distributed annually; there are no separate assets set aside to fulfill obligations under the Consolidated Nuclear Security, LLC Supplemental Retirement Plan. Therefore, the total liability associated with the non-qualified plan is not quantified at this time.

Sec J – Appendix H – Special Financial Agreement

19. Section J, Appendix H, Special Financial Institution Account Agreement for Use with the Payments Cleared Agreement. Section J, Appendix H, Page 1.

Comment: This clause indicates that DOE "will provide a transfer of funds on a payment cleared basis" and "the financial institution agrees to honor upon presentation for payment all payments issued by the contractor." Please confirm that this is a Letter of Credit basis established by DOE for all CLINs that are identified in the RFP at present and all additional CLINs that will be definitized and executed in the future (sub CLINs to CLIN 0004).

ANSWER: The same systems and accounts will be used for payment for CLINs 0002 through 0004. However, NNSA may establish conditions precedent (e.g. Contracting Officer approval) for payment applicable to Sub-CLINs under CLIN 0004 and/or other CLINs. The Section J, Appendix H will not be used for payment of CLIN 0001 Transition Period. The successful Contractor will need to submit vouchers for Transition in accordance with Clause G-8, *Invoicing for Transition Price*. Also, please note revisions in RFP Amendment 0001 in Section B-H under B-3, *Contract Fee Structures*.

Sec J – Appendix Q – UPF Interface Management Plan

20. Volume II, Section J, Appendix Q, UPF Interface Management Plan. Section J, Appendix Q, Page 1.

Comment: This section states: "The Contractor will be responsible to...execute defined Contractor schedule activities required to support UPF completion." but does not reference where these schedule activities are defined. Please clarify the scope and source(s) of these schedule activities.

ANSWER: The Interface Control Documents (ICD) and Structures, Systems, and Components Interface Control Documents (SICD) further define this scope, and the interface with the project is shown in the UPF Project Level III schedule. The ICDs,

SICDs, and UPF Project Level III schedule are located in the Reading Room established under the RFP. Please refer to RFP Section L-8 (b) for instructions on gaining access to the Reading Room.

- 21.** Volume II, Section J, Appendix Q, UPF Interface Management Plan. Section J, Appendix Q, Page 1.

Comment: With regard to Section J, Appendix Q, please confirm that the work scope describe in this appendix, including without limitation the requirement to function as UPF Design Authority, the contract limits of liability as provided in Section I Clauses 1) I-20 DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (Aug 2016); 2) I-15 FAR 52.250-1 Indemnification Under Public Law 85-804 (Apr 1984) Alternate I (Apr 1984); and 3) DEAR 970.5228-1 Insurance, Litigation and Claims, apply as provided without exception.

ANSWER: The scope and applicability of each referenced provision is governed by the: (a) individual terms within those provisions; and (b) related provisions contained in the Solicitation/Contract.

Sec L – Instructions, Conditions, and Notices to Offeror

- 22.** Section L-8(b) Proposal Preparation Instructions-General, Solicitation Questions/Reading Room Information. Section L, Page 5. Background: This section states: The Government has established a reading room for Offerors to retrieve pertinent information pertaining to this solicitation. *Offerors may request access to this information for up to 2 personnel per potential Offeror via email request to SEB8@nnsa.doe.gov.*

Request: NNSA has limited access to available information in the Reading Room to 2 personnel per Offeror. The reading room will contain a large amount of essential information, and we are concerned that only allowing 2 personnel access places a limiting factor in preparing a response within the timeframe. This issue is exacerbated by restrictions from COVID, which further limits the ability to collocate and share information. We respectfully request that Offerors are allowed 4 personnel to have access to the reading room.

ANSWER: Please refer to revised Section L-8(b) *Proposal Preparation Instructions-General* as the NNSA has revised this section for “up to four (4) personnel.” Please note those four (4) personnel may download and share the Reading Room materials and/or documents with other Offeror personnel, subject to implementing appropriate safeguards (reference answer to Question #23 below).

- 23.** Part IV Section L-8(b), Proposal Preparation Instructions – General / Solicitation Questions/Reading Room Information Page No. 5: Please clarify what (if any) document safeguarding or dissemination control requirements and/or limitations (including but not limited to citizenship) should apply to information shared by DOE / NNSA via the Reading Room. For example, will the information be Controlled Unclassified Information (CUI), Unclassified Controlled Nuclear Information (UCNI), etc.

Would DOE / NNSA be amenable to expanding access to the Reading Room for Offerors consisting of multiple companies; Section L-8(b) currently limits access to two (2) individuals per Offeror.

ANSWER: Please refer to response to #22 above regarding the number of individuals granted access to the Reading Room.

Applicable requirements for safeguarding/dissemination control requirements related to Reading Room information include, but are not limited to, the following: DOE O 471.1B, *Identification and Protection of Unclassified Controlled Nuclear Information*; Title 10, Code of Federal Regulations, Part 1017, *Identification and Protection of Unclassified Controlled Nuclear Information*; DOE M 471.3-1 Chg 1 (Admin Chg), *Manual for Identifying and Protecting Official Use Only Information*; National Institute of Standards and Technology – Special Publication 800-171, *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations*; and Executive Order 13556, *Controlled Unclassified Information*.

24. Volume I, Section L-8(c), Proposal Preparation Instructions - General, Submission of Proposal. Section L, Page 6.

Comment: L-8(c) specifies an “electronic” submittal; however, it also specifies that a “signed original” is required for Volume I and “original” for Volume II and III. For required signatures, please clarify that a scanned version of the signed pages meets the requirements for “original” for the electronic submittal and that no hard copy original wet signatures are required. Alternatively, please provide directions for submitting the hard copy of the proposal with original signatures.

ANSWER: No hard copy wet signatures are required. A scanned copy of the signed original or an electronic signature is sufficient.

25. *Electronic Signatures.* Please consider allowing electronic signatures, such as those from DocuSign or Adobe, for all forms and key staff commitment letters so that those avoiding COVID exposure do not have to co-locate or pass paper that may be exposed to the proposal team. Also, the Performance Guarantee requires that the original of a corporate seal be affixed to the document. If electronic signatures are allowed by the government, would a copy or scan of the corporate seal (affixed to the document), rather than an original, be acceptable?

ANSWER: Please reference response to #24 above.

26. Volume II, Section L-10(a)(2), Proposal Preparation Instructions – Volume II Technical and Management Information, Criterion 1: Past Performance, Relevant Past Performance. Section L, Page 10. Background: This sub-section states: "Where an Offeror has proposed a Subcontractor Team Member to perform only specific sections of the SOW, the relevance of the Subcontractor Team Member's past performance contracts will be determined based on consideration of the specific sections of the SOW the Subcontractor is proposed to perform, as opposed to the entire SOW. The Offeror and/or Team Members that make up the Offeror, are responsible for the entire

SOW regardless of the specific sections they are proposed to perform, and, accordingly past performance that may not correlate with its proposed role under this solicitation may still be considered if it is relevant to the SOW.”

This clause implies that each Team Member that makes up the Offeror will have their performance evaluated against the entire SOW, even though their role may be only a portion of the SOW. This in essence eliminates specialty companies, such as security or cybersecurity companies from being Team Members of the Offeror and only permits them to be Subcontractor Team Members. This is further supported by the requirement at Section L-10(a)(3)(i) that states: “The Offeror may propose Team Members that make up the Offeror (i.e., prime contractor), to lead or be responsible for certain portions of the SOW, however, these Team Members are responsible for the entire SOW, regardless of the specific sections they are proposed to perform.” In addition, Section M-4(a)(ii) states that the “Offeror and each of the Team Members that make up the Offeror, are responsible for the entire SOW, regardless of the specific sections they are proposed to perform, and, accordingly past performance that may not correlate with its proposed role under this solicitation may still be considered if it is relevant to the SOW.”

Comment: Please clarify that the past performance write-ups for each Team Member that makes up the Offeror have to address, write to, and be evaluated on the entire SOW even though their role may be only a portion of the SOW.

ANSWER: Please see revised Section L, L-10 PROPOSAL PREPARATION INSTRUCTIONS – VOLUME II, TECHNICAL AND MANAGEMENT INFORMATION. The past performance information submitted under the RFP for each Offeror and/or Team Member should address the portion(s) of the SOW they are proposed to perform. However, as the Offeror and each of the Team Members that make up the Offeror (not Subcontract Team Members) are responsible for the entire SOW, NNSA reserves the right to consider past performance of the Offeror and/or Team Members that relate to portions of the SOW beyond the Team Member’s proposed role under this solicitation. Offerors should specifically demonstrate in detail how the proposed past performance is relevant and how it qualifies the Offeror to successfully perform the applicable sections of the SOW. These solicitation instructions do not preclude an Offeror from proposing a “specialty company” as a Team Member.

27. Volume II, Section L-10(a)(2), Proposal Preparation Instructions – Volume II Technical and Management Information, Criterion 1: Past Performance, Relevant Past Performance. Section L, Page 10. The following questions are samples of the confusion and would be helpful in clarification:
- a. Clarify whether the Offeror (proposes member of the LLC to perform subcontract work) with a defined role and responsibility managing certain PWS elements, consistent with their core capabilities, and past performance, have their Past Performance write-ups evaluated consistent with their proposed role? Or will their past performance be evaluated against the entire PWS?

- b. Clarify whether the Offeror and/or each member of the Offerors' (LLC) past performance must address the entirety of the SOW or only that which is relevant to their proposed contributions?
- c. Please clarify that you expect the Offeror and/or each member of the offeror to submit past performance for all elements of the SOW or in aggregate as the Offeror? They would not be provide Past Performance for elements for which they have no involvement.
- d. Clarify whether an LLC team member proposed to perform certain elements of the work must submit past performance of the work only that they will perform or as a team member, or, must submit all elements of the SOW even those for which they will have no accountability?

ANSWER: Please refer to response to #26 above.

28. RFP Volume IV; Section/Part: L-10 (a)(3)(ii)

- a. Title: PAST PERFORMANCE QUESTIONNAIRES (PPQs).
- b. Page No: L-12
- c. Background: The RFP requires PPQs sent to both a technical and contracting point of contact for each PPIF. These instructions did not exclude NNSA contracts that have both CPAR and PEMP scores which offer comprehensive insights into a contractor's performance than the questionnaire. Also, requiring both the Technical and Contract POCs to fill out these questionnaires can be an administrative burden.
- d. Question:
 - i. Will NNSA accept that if an offeror included NNSA contracts as part of their PPIFs, they are excluded from the PPQ requirement?
 - ii. If not, will NNSA accept one PPQ per contract from either the Technical or Contract POCs, but not both?

ANSWER: NNSA has considered this request. However, NNSA will not exclude the PPQ requirement for any Offeror, and declines to alter the RFP as requested.

29. Volume II, Section L-10(b), Proposal Preparation Instructions - Volume II, Technical and Management Information, Criterion 2: Sites Organization and Key Personnel. Section L, Page 12.

Comment: In other places in the RFP from the draft version to the final, NNSA changed the wording regarding "sites." Please similarly change the title of this section to eliminate the use of the word sites such that it would become Organization and Key Personnel for consistency and to avoid confusion.

ANSWER: NNSA has considered this input, but declines to alter the RFP. Use of the term "Sites" is appropriate because the RFP scope includes both the Y-12 and Pantex sites.

30. Volume II, Section L-10(d) and Section L, Attachment J, Proposal Preparation Instructions - Volume II, Technical and Management Information, Criterion 4; Small Business Participation

and Small Business Subcontract Dollars and Percentages. Section L, Page 16. Section L-10(d) states: “*The Offeror shall provide subcontract dollars and percentages in Section L, Attachment J - Small Business Subcontract Dollars and Percentages. Information provided must not contradict the Offeror’s Small Business Subcontracting Plan (reference Section L, L-9(e) above).*” The provided Section L, Attachment J contains a blank cover page and historic results of incumbent small business performance from 2014 to 2021 but does not include a format for Offeror's to complete/provide proposed small business subcontracted dollars and percentages.

Comment: Please provide an updated Section L, Attachment J for Offerors to populate and specify the appropriate location in Volume I, II, or III that Offerors should provide this completed form, which will contain cost data (\$) ? Requiring this to be part of Volume II seems to conflict with the requirement that no cost data be included in Volume II.

ANSWER: NNSA has incorporated a revised version of Section L *Attachment J - Small Business Subcontract Dollars and Percentages* under RFP Amendment 0001 in order to clarify the Government’s intent under the Offeror’s proposal Volume II, under Criterion 4. Small Business goals are not considered cost information. The Offeror shall fill in the excel spreadsheet under Section L, *Attachment J - Small Business Subcontract Dollars and Percentages* for the projected period of performance (i.e. 10 years) to complete this RFP requirement. Historical small business achievements under the predecessor contract have been placed in the Reading Room for Offerors’ reference.

31. Part IV, Section L-10(d), Proposal Preparation Instructions – Volume II, Technical and Management Information / Criterion 4: Small Business Participation, page 16. The RFP requires that: The Offeror shall provide subcontract dollars and percentages in Section L, Attachment J - Small Business Subcontract Dollars and Percentages. Information provided must not contradict the Offeror’s Small Business Subcontracting Plan (reference Section L, L-9(e) above).

Please confirm that it is NNSA’s intent for Offeror(s) to include both dollar values and percentages in Section L, Attachment J as part of its Volume II submittal. The presentation of dollar values, specifically, in Volume II (versus Volume I) is atypical from past DOE / NNSA solicitation practices if those dollar values are to be developed by the Offer(s).

If the presentation of dollar values is required within Section L, Attachment J, please provide either:

- the approximate contract period values by year to be used by the Offeror(s) for inclusion into the Attachment and/or
- the basis and/or methodology for Offeror(s) to develop the approximate contract period values (including anticipated cashflow per year and the corresponding scope).

ANSWER: Please refer to response under #30 above and # 32 below. The basis for Offerors to develop the approximate contract period values for Section L, Attachment J shall correspond to the Base Period start date of October 01, 2021 through all potential Option Periods (i.e. 10 years in total).

32. Part IV, Section L-9(e), Proposal Preparation Instructions – Volume I, The Offer, pages 9 and 10. The RFP requires that: The Offeror shall submit a Small Business Subcontracting Plan for Government fiscal year 2021 through 2031, which contains all the elements required by Section I clause FAR 52.219-9, Small Business Subcontracting Plan. Section L, Attachment C - Instructions for Small Business Subcontracting Plan, provides an outline and instructions for preparing the Plan. The Contracting Officer, must approve the Small Business Plan that will become part of Section J, Appendix E - Small Business Subcontracting Plan. Small Business Subcontracting Plans will be updated annually and shall be incorporated into the Contract by a separate supplemental agreement contract modification. Offerors should consider historical subcontract performance along with the current year subcontracting goals for the Site, as provided on the NNSA website, <https://www.energy.gov/nnsa/y-12-national-security-complex-and-pantex-plant-management-and-operating-mo-contract>.

Please provide the following inputs to inform the completion of Section L, Attachment C, as required above:

- the approximate contract period values by year to be used by the Offeror(s) for inclusion into the Attachment and/or
- the basis and/or methodology for Offeror(s) to develop the approximate contract period values (including anticipated cashflow per year and the corresponding scope).

ANSWER: The basis for the forecasted contract period values for Section L, Attachment C shall correspond to the Base Period start date of October 01, 2021 through all potential Option Periods (i.e. 10 years in total). Please refer to Section L Attachment H - *Price and Fee Spreadsheet* for basis of forecasted contract period values.

33. Volume III, Section L-11. Proposal Preparation Instructions - Volume III, Cost Information. Section L, Page 16.

Question: In view of the fact the Transition price is to be submitted as a lump sum, what “other than certified cost and pricing data” does the Government envision may be required?

ANSWER: The Government does not anticipate a need for “other than certified cost and pricing data” at this time. However, the Government reserves the right to request such data if determined necessary once proposals have been reviewed.

34. Volume III, Section L-11(b), Proposal Preparation Instructions - Volume III, Cost Information, Fee for Management and Operating Y-12/ Pantex (CLIN 0002 – Award Fee). Section L, Page 17. This section states: “*Offerors should be aware that significant legacy contract funding carry over may be available to fund portions of work scope required by this contract. The scope of work funded by legacy carry over shall not be eligible for fee entitlement under this contract, and therefore, offerors shall factor consideration for these potential conditions in their proposed fee percentage(s).*”

Comment: Please provide an estimate of this “significant contract funding” to permit offerors to make an informed judgment on proposing fee under this condition. In addition, we recommend that these funds be subject to the 10 percent change threshold specified in Section B-2(c).

ANSWER: Estimated carry over funding information is available in the Reading Room for this RFP. Please refer to RFP Section L-8 (b) for instructions on gaining access to the Reading Room. NNSA declines to include this funding in the 10% change threshold at Section B-2(c).

Sec L – Attachment D – Cross Reference Matrix

35. Volume I, Section L, Attachment D, Cross Reference Matrix. Section L, Attachment D.

Question: Does the provided cross reference matrix include all of the lines that NNSA wants Offerors to include such that we should simply fill out the provided table completing the five lines? Or should Offerors insert additional lines to provide cross referencing at a greater level of detail?

ANSWER: The purpose of the cross reference matrix is to help the Government quickly navigate Offerors' proposals, thus reducing proposal review time. Please fill in the table as provided.

Sec L – Attachment E – Past Performance Info Form (PPIF)

36. Part IV Section L, Attachment E, Past Performance Information Form, Section L-8(e)(2) of the Solicitation states that "The font size in graphs, figures, charts, and tables may be smaller than size 12 font and in a font other than Times New Roman; however, the font used shall be clearly legible and no smaller than size 8." Because the Past Performance Information Form is structured in a table format, may Offerors use a font smaller than size 12 when completing these forms? In addition, and also relating to formatting of the Past Performance Information Forms, may Offerors exclude the headers 1 – 14 from the form?

ANSWER: NNSA considers the PPIF form to be a table, and Offerors may utilize a font no smaller than size 8 in accordance with Section L-8(e)(2). The headers in sections 1-14 of the Past Performance Information Form may not be excluded.

37. *PPIF Form.* The form appears to be a table. The font, though, is 12-point. Yet the RFP allows smaller fonts for tables and graphics. Is a font as small as 10-point permitted for this table?

ANSWER: Please refer to the response to #35 above. Please note, Section L, Attachment E, PPIF Page 2 states "If more space is needed, please attach additional pages." RFP Section L-8(e)(7) states "Section L, Attachment E - Past Performance Information Forms (PPIF) and attached additional pages (limited to eight (8) pages per PPIF, including any additional pages)."

38. Part IV Section L, Attachment E, Past Performance Information Form, Page No. 4
There appears to be conflicting information in the instructions for the Past Performance Information Form (PPIF). The instructions for Question 12a state "List the Statement of Work task areas under Chapter II Work Scope Structure in Section J, Appendix A, Statement of Work

that you will perform under the Contract”. However, instructions for Question 12c state “Describe the nature and scope of the work as it relates to your proposed role in performing Section J, Appendix A, Statement of Work.....Provide a crosswalk to the SOW elements that are relevant to the work described in each Form”

Does NNSA intend Past Performance to be limited to Chapter 2 of the SOW as specified in Question 12a or the entire SOW as specified 12c? Given the enhanced emphasis placed on IT and Cyber requirements by NNSA, this critical requirement may not be sufficiently addressed if only Chapter 2 SOW requirements are included.

ANSWER: Past performance for Question 12a is for the entire Statement of Work, not limited to Chapter II. NNSA has updated Section L, Attachment E, *Past Performance Information Form* accordingly under RFP Amendment 0001.

Sec L – Attachment H – Price and Fee Spreadsheet

39. RFP Volume IV; Section/Part: L Attachment H

- a. Title: NNSA FORECASTED FEE BASE
- b. Page No: Tabs "Forecasted Budget", "CLIN 0002 Fee", and "CLIN 0003 Fee"
- c. Background: The figures on the tab are labeled as "Forecasted Fee Base" and may not represent the actual budget upon award and through the base period and options. Since the figures will be forecasted and not actuals when the contract is bid and awarded; the fee base and associated fees for CLIN 0002 and 0003 will also reflect an estimate based on a forecast and not the actual contract value and the associated fees that will be awarded and assessed.
- d. Question: At award, will the total available fee be based on actuals reflected in the contract award and not on the estimated fee submitted in the proposal?

ANSWER: The Forecasted Budget is provided for proposal evaluation purposes only. Available annual award fee for CLIN 0002 will be established unilaterally by NNSA prior to commencement of each applicable contract period and calculated based on the Annual Controlled Baseline. Please reference RFP Sections B-2(c) and L-11(b).

Sec M – Evaluation Factors for Award

40. Volume II, Section M-4(b), Technical and Management Criteria, Criterion 2: Sites Organization and Key Personnel. Section M, Page 4.

Comment: In other places in the RFP from the draft version to the final, NNSA changed the wording regarding "sites." Please similarly change the title of this section to eliminate the use of the word sites such that it would become Organization and Key Personnel for consistency and to avoid confusion. Please also change this wording in the first sentence of this section to delete the word Sites before Organization on the first line.

ANSWER: NNSA has considered this input, but declines to alter the RFP. Use of the term “Sites” is appropriate because the RFP scope includes both the Y-12 and Pantex sites.

41. Volume II, Section M-4(b)(2), Technical and Management Criteria, Criterion 2: Sites Organization and Key Personnel. Section M, Page 4.

Comment: Please clarify that the evaluation of each “Key Person’s expertise and experience in: (i) leading and/or managing work of similar size, scope, and complexity;” is related to the proposed position for the individual and not to the total contract size, scope, and complexity.

ANSWER: “Size, scope and complexity” under this criterion relates to the work each Key Person is proposed to lead and/or manage. The NNSA will consider all relevant Key Personnel information provided in accordance with the criterion. Please refer to RFP Amendment 0001 for revised Section M-4(b)(2) language.

Other General RFP Questions/Comments

42. General. Comment: Our Company’s bid approval process includes evaluation of the hazardous materials that could be encountered on the project. Please provide information related to facility and building conditions; characterization data for hazardous materials such as asbestos, lead, beryllium, etc.; quantities of hazardous materials such as asbestos surveys, asbestos and chemical inventories; asbestos management plans; hazardous material and/or chemical management plans; and other available information that would inform bidders of potential hazardous conditions that could impact worker, community, and environmental safety; influence business risk; and better define surveillance and maintenance requirements and understanding on the project.

ANSWER: NNSA has placed available relevant information in the Reading Room to provide context to Offerors for proposal preparation. Please refer to RFP Section L-8 (b) for instructions on gaining access to the Reading Room. Please note information in the Reading Room may be updated from time to time, so Offerors are advised to check the Reading Room regularly.

Also, reference the following public sites that contain information on “Annual Site Environmental Reports (ASER)” and “NEPA” documents. Please note that the ASER for Pantex is located in the reading room.

- ASER - <https://doeic.science.energy.gov/ASER/>
- NEPA - <https://www.energy.gov/nepa/office-nepa-policy-and-compliance>

43. Part I, Section G-8, Invoicing for Transition Price, page: Section B-H, Page 23.

Comment: Section G-8 Provides:

- (b) *The Contractor shall bill 1/4 of the firm fixed price for the transition period monthly. The Contractor shall invoice for work performed in accordance with Section I clause FAR 52.216-7 and as directed by the Contracting Officer following the procedures at paragraph (a) of this clause. The final invoice shall be submitted within 60 days after the end of transition period.*

Given that FAR 52.216-7 requires invoices based on actual costs, we do not understand how a contractor could simply bill 25% of the lump sum and be in compliance with FAR 52.216-7. Would DOE delete the reference to 52.216-7? Further Section G-8 is silent as to whether the transition can be billed at the beginning of each month or in arrears. Consistent with commercial practice for mobilization payments, we assume that we can bill the 25% at the beginning of each month of the transition. Please confirm our assumption is correct.

ANSWER: For the purposes of CLIN 0001 and compliance with FAR 52.216-7, NNSA has defined monthly reimbursable recorded costs as 25% of the firm fixed price of CLIN 0001. This may be invoiced in arrears. Language in section G-8(b) has been updated to correspond with the monthly in arrears invoicing.