

The University of California
Lawrence Berkeley National Laboratory
Procurement Department
One Cyclotron Road
Mail Station 71R0259
Berkeley, CA 94720

May 31, 2011

Megdal and Associates
Acton, MA 01720
Attention: Lori Megdal
lmegdal@megdalassociates.com

Subject: Request for Proposals (RFP) No. DY-2011-06
Proposal Due Date: June 27, 2011

The University of California, Lawrence Berkeley National Laboratory ("LBNL") requests a proposal for **Better Buildings Program Assessment**, in accordance with this RFP and the enclosed Proposal Preparation Instructions, the Sample Subcontract, and other enclosures.

Background

The U.S. Department of Energy (DOE) is investing billions of dollars to deploy energy efficiency technologies across the country. Under the Recovery Act, funding for DOE's Energy Efficiency and Conservation Block Grant (EECBG) program totals \$3.2 billion. EECBG is administered through formula (\$2.7 billion) and competitive grants (\$454 million) to ~2300 U.S. cities, counties, states, territories, and Indian tribes. Of the \$454 million, funds were awarded to two topic areas: the Better Buildings Program (formerly called the Retrofit Ramp-up Program; \$390 million) and the General Innovation Fund (\$64 million).

Lawrence Berkeley National Laboratory (LBNL) has been tasked by DOE to work with a subcontractor to perform an assessment of the Better Buildings Program.

Objective of the RFP

The objective of this Request for Proposal is to select a qualified subcontractor to conduct a process and impact evaluation of the U.S. Department of Energy's Better Buildings Program (formerly called the Retrofit Ramp-up Program). The Better Buildings Program has funded innovative proposals structured to provide whole-building and neighborhood energy retrofits. There are multiple objectives: 1) to initiate projects that achieve energy savings in sectors where this has proved difficult, 2) demonstrate a sustainable business model for providing cost-effective energy upgrades for a large percentage of the residential, commercial, and/or public buildings in a specific community and 3) identify and spread the most effective approaches supporting the development of a robust retrofit industry in the United States (best practices). Special attention will be paid to marketing and financing efforts and changes in the local marketplace for retrofits (labor and materials supply, availability of financing, consumer demand). Approaches funded

include innovative partnerships between the public and private sector, local retrofit and audit programs, alternative financing, and others. The targets of this program are city and state government, utilities, non-profits, local neighborhood associations, colleges and universities, and financial institutions.

It is expected the work under the Subcontract will be performed over a period of four years. The anticipated not-to-exceed budget for the Subcontract is \$4,000,000.00.

An original of a complete written (hard copy) proposal and two copies, and an electronic version must be received by the undersigned LBNL Procurement Representative by 4 P.M. Pacific Standard Time on June 28, 2011. The proposal shall be valid for a period of 120 days from the proposal due date.

This solicitation is governed by procurement policies and procedures established under the Prime Contract between the University and the U.S. Government, represented by the Department of Energy ("DOE"), for management and operation of LBNL. Any award resulting from this solicitation will be a subcontract under the Prime Contract.

Acceptance of late proposals will be at LBNL's sole discretion. LBNL reserves the right to reject any and all proposals, to waive any minor irregularities in any proposal, or to cancel this RFP at any time prior to award without cost to LBNL. This RFP does not include provisions for the direct reimbursement of proposal preparation costs.

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NAICS CODE AND SMALL BUSINESS SIZE STANDARD

The North American Industry Classification System (NAICS) Code for this acquisition is 541990, All Other Professional, Technical, Scientific Services. The corresponding small business size standard for this acquisition is annual receipts of \$7 Million or less. Annual receipts are to be based on the average annual gross revenue for the past three fiscal years.

The Offeror shall complete the *Small Business Program Representations* clause in the attached Representations and Certifications form based on this small business size standard. Refer to Subpart 19.1 - Size Standards of the Federal Acquisition Regulation (FAR) for information on calculating the annual average gross revenue.

SUBMITTAL OF PROPOSALS

The Offeror shall send the proposal to the University Procurement Representative at the address shown below. Electronic submittals shall have the RFP # in the Subject line of the transmittal.

Dianne Yoder,
Principal Subcontract Administrator

Lawrence Berkeley National Laboratory
One Cyclotron Rd., Mail Stop 71R0259
Berkeley, CA 94720
Telephone: 510.486.5715
Email: dsyoder@lbl.gov

BASIS FOR SELECTION – BEST VALUE

LBNL intends to select the responsive and responsible Offeror whose proposal contains the combination of supplier attributes, and probable cost offering the best overall value. LBNL's selection may be made on the basis of the initial proposals or LBNL may elect to negotiate with Offerors selected as finalists.

A responsive Offeror is one whose offer satisfies the requirements of this RFP, including the technical requirements of the proposed subcontract. A responsible Offeror is one that is considered capable of performing and is otherwise eligible and qualified to perform the proposed subcontract.

LBNL will determine the best overall value by comparing differences in supplier attributes offered with differences in probable cost and related factors, striking the most advantageous balance between expected performance and the overall probable cost to LBNL.

LBNL reserves the right to make multiple awards as a result of this solicitation, if it is in the best interest of LBNL.

EVALUATION OF PROPOSALS

LBNL will evaluate each Offeror's proposal based on the information provided by the Offeror, LBNL's own experience, and/or information from the Offeror's customers. Offerors should, therefore, be persuasive in describing their supplier attributes and their value in enhancing the likelihood of successful performance and achievement of LBNL's objectives.

The evaluation of proposed supplier attributes will focus on the strengths and weaknesses of the proposal within the framework of capability, affordability, and feasibility.

Capability

- What are the Offeror's supplier attributes (personnel, financial, etc.) and how well will they enable the Offeror to satisfy LBNL's requirements?
- What is the Offeror's past experience on similar contracts? What experience, knowledge and

involvement in program evaluation allows leverage of prior experience or organizational knowledge, assets and processes in this project? Note experience in conducting similar process and impact evaluations, logic modeling, and quasi-experimental studies.

- What ability does Offeror have to identify and utilize publicly available information about these energy programs and related activities.

- How has Offeror demonstrated ability to write clearly and understandably, especially to a targeted audience.

- Has Offeror successfully performed recent contracts similar in type and complexity as the proposed subcontract? The Offeror should include in its proposal a written description of recent contracts similar in type and complexity as this scope of work that the Offeror successfully completed. These may include public and private contracts. Include technical and business contact points by name, title, address, telephone number and, if available, e-mail address. Offerors are encouraged to include a self-assessment of their performance on these contracts, including what went well and what did not. Offerors may discuss the latter in the context of a lessons learned from the project and how the lessons have been incorporated into improved products/services and processes.
- If work will be subcontracted, to what extent is the assignment of work scope appropriate, and to what extent is the prospective lower-tier subcontractor qualified to do that work?

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Affordability

- What is the probable cost to LBNL?

- How realistic is the proposed estimate/budget in relation to the approach the Offeror proposes to employ?

- How does the proposed budget compare to the LBNL's estimate and to other proposed budgets, and are the trade-offs worth the difference?

Feasibility

- How well will the proposed approach contribute to successful and timely completion of the work?

- How well will the approach work as proposed?

- What is the probability that the solution proposed will be provided within the time frame required?

ENCLOSURES

1. The Offeror shall complete the following enclosures and submit them with the proposal:

Representations and Certifications

OCI Disclosure Statement

Cost Accounting Standards Notices and Certifications

Budget

Proposal

Preaward Survey of Prospective Subcontractor's Accounting System

2. The following enclosures are provided and need not be returned with the proposal:

Proposal Preparation Instructions

Sample Time & Materials Subcontract and its Incorporated Documents

3. The following Enclosures will be required only from the successful Offeror:

Small Business Subcontracting Plan

E-verify Registration

Certificate of Current Cost or Pricing Data

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If there are any questions, please contact me.

Sincerely,



Dianne Yoder,
LBNL Procurement Representative



PROPOSAL PREPARATION INSTRUCTIONS

PROPOSAL CONTENTS

General

The proposal should consist of a technical/management proposal and a cost proposal. The proposal should be submitted with a cover letter identifying the Offeror's name and address, solicitation number and title, the name(s), title(s), and telephone number(s) of the individuals in Offeror's organization who have commitment authority on behalf of the Offeror and will be responsible for contractual negotiations and administration of any resultant Subcontract.

Technical/Management

The technical/management proposal should contain a comprehensive discussion of Offeror's approach for successful performance of the work, plus any other element that may be necessary to fulfill the requirements of the Scope of Work, including a delivery schedule, and task plan with budget. LBNL requires delivery of several reports during this contract period. Alternate delivery dates may be proposed which may be subject to negotiation prior to award.

Supplier Attributes

The proposal should identify, describe, and discuss the supplier attributes the Offeror considers important to successful performance of the proposed subcontract. LBNL has identified the supplier attributes listed below, which are the qualitative criteria the University will use for the subjective evaluation of proposals. They are not listed in any order of importance and no feature or attribute is more important than any other. The Offeror should discuss them in the proposal and may identify other supplier attributes it believes may be of value to LBNL. If LBNL agrees, they will be considered in the evaluation process. In all cases, LBNL will assess the value of each proposal as submitted.

Price Proposal

The price proposal must include fixed fully burdened labor rates and itemized estimated costs for direct expenses for the work.

Financial Capability

The cost/price proposal should fully describe the Offeror's current financial condition and its financial ability to support performance of the proposed subcontract. Upon request, the Offeror shall provide financial information such as the following: (1) audited and certified year-end financial statements for the last two years (balance sheet, income statement and other financial statements or reports); (2) financial statements compiled and reviewed by a certified public accountant or other accounting professional (include the accounting firm's cover letter); (3) tax returns for the two most recent completed fiscal years; or (4) other information acceptable to LBNL. LBNL reserves the right to request additional financial statements.

Organizational Conflicts of Interest (OCI) Disclosure

The selected Offeror shall provide an OCI Disclosure Statement, utilizing the attached form.

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the subcontract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

The Disclosure Statement must contain the following:

1. A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work.
 - a. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the Offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to LBNL, the University, or any other client (including a U.S. or foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The LBNL or University contract number under which the services were rendered must also be included, if applicable.
 - b. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests, enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.
2. A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant subcontract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the subcontract in question has been communicated as part of the required statement.

Failure of the Offeror to provide the required statement may result in the Offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

Offerors' Questions

LBNL will respond to questions submitted in writing to the LBNL Procurement Representative on or before June 16, 2011. Questions submitted after this date may not be answered prior to the proposal due date. Questions may be submitted by letter, facsimile or e-mail, with e-mail preferred. Answers to questions that are germane to the interpretation of LBNL' requirements will be issued to all Offerors in writing.

Acceptance of Terms and Conditions

Submission of a proposal shall indicate the Offeror's willingness to accept the terms and conditions of the Sample Subcontract and its attachments unless specific exceptions are taken. These terms and conditions have been approved by the DOE. Failure to accept the terms and conditions will not be evaluated favorably, and may cause LBNL to reject Offeror's proposal.

Proprietary Information

LBNL will treat any commercial or financial information in the proposal as proprietary. LBNL prefers not to receive proprietary technical information. If the proposal includes any proprietary technical information, it must be marked "Proprietary" or its equivalent. LBNL will use its best efforts to (1) maintain such proprietary information in confidence, giving it the same degree of care, but no less than a reasonable degree of care, as LBNL exercises with its own proprietary information to prevent its unauthorized disclosure; and (2) only disclose such proprietary information to its employees, agents, consultants, subcontractors or Government personnel who have a need to know related to this RFP and are bound by an obligation of confidentiality.

If the Offeror intends to use a product or process in which there is a proprietary or background patent position, the proposal should indicate and list patent applications and/or patents granted (including dates, numbers, and descriptions), and whether the Government has rights to the patents.

PROPOSAL FORMAT

8 Offerors are requested to provide concise yet complete description of the Offeror's approach and capabilities for satisfying the required services outlined in this RFP. **Excessive length is discouraged.** In addition, Offerors are encouraged to pro-actively present additional information and responses, not specifically requested, that help demonstrate understanding of LBNL's specific evaluation objectives and needs as well as bidder creativity, experience, and/or expertise.

Proposals should adhere to the following set format (the numbers indicated are suggested page limits):

- Proposal cover
- Signed cover/transmittal letter
- Table of Contents (include proposal date and page numbers on each page of proposal)

Sections

1. Company overview
2. Executive summary (2 pages)
3. Work scope and schedule (20 pages)
4. Responses to essay questions (4 pages)
5. Staffing and subcontracting (5 pages)
6. Qualifications and Experience (10 pages)

7. Budget (2 pages plus tables)
8. Disclosures and required documentation (as needed)
9. Resumes (2 pages per resume)

Proposal Cover and transmittal letter

The proposal cover should indicate the RFP name, the proposal date, Offeror's name and list of subcontractors with an indication of which portfolio is addressed in the proposal. The cover should also state that the person signing the letter is authorized to commit the Offeror's organization to the proposed work scope, budget and rates; terms and conditions of the RFP, and that the information in the in the proposal is accurate

Sections 1 and 2: Company Overview and Executive Summary,

Sections 1 and 2 of the proposal contain general information about Offeror's firm, and a high level summary of the proposal including the approach to LBNL's evaluation tasks and the bidding team's qualifications to perform the services sought through this RFP.

Section 3: Work Scope and Schedule

Section 3 of the proposal should discuss Offeror's approach to conducting a process and impact evaluation for the work described in the Statement of Work, and the Project Description documents. Offerors are reminded that an initial task for the selected consultants will be to develop a detailed evaluation plan. Section 3 of the proposal should describe Offeror's approaches with sufficient detail to distinguish the strengths and unique features that are suggested, but it should not be overly detailed and lengthy.

Section 3 should include a schedule for performing Tasks. The schedule should be presented graphically and supplemented with text explanations needed to provide a complete understanding of the proposed timeline. The schedule will be reviewed at the project's kickoff meeting.

Section 4: Responses to Essay Questions

To encourage Offerors to demonstrate their creativity and their understanding of LBNL's requirements, Offerors are required to include short essay responses to the four (4) questions posed below. The essays should be concise yet comprehensive and they should reflect an understanding of evaluation best practices and LBNL's needs.

1. Briefly discuss how to allocate funds for impact and process evaluations, and for performing benefit/cost analysis. Discuss trade-offs that should be made, synergies that could be exploited, use of secondary research and so forth.
2. LBNL is interested in the effects of possibly increasing or decreasing the evaluation budget. What would be the impact if the evaluation budget was reduced by 25%? What additional services and/or improvements are suggested if the budget was increased by 25%?

3. Discuss what kinds of issues should be considered when attempting to use the vast existing program evaluation literature and analyses to provide recommendations to LBNL on the Better Buildings Program. Which kinds of information might map well for achieving LBNL's goals, and how might existing information be supplemented to reflect those circumstances?
4. Describe how Offeror would suggest handling accuracy in reporting program results? What strategies will work well for reducing overall uncertainty while controlling evaluation review costs? How does Offeror propose reporting uncertainty of the results?

Section 5: Staffing and subcontracting plan

In this section, Offerors are requested to:

Include a management and organizational chart that depicts the relationships and among team members) to accomplish the proposed work. Note that LBNL expects that the primary contact with LBNL will be the Offeror's project manager.

Identify the lead staff member assigned to manage the evaluation work, provide a short biography, and explain why he or she is qualified for this position. Describe this person's availability for the project, and the office where he or she will be based. Identify the key personnel to be assigned to this project, describe their responsibilities. Indicate availability and length of time commitment to project. Include resumes for all individuals named in budget in a proposal appendix. Resumes and bios should describe relevant responsibilities from other projects that will help LBNL evaluate the qualifications and experience of key personnel. Please limit length of resumes to **two** pages. Staffing changes for key personnel are subject to approval by LBNL.

Section 6: Qualifications and Experience

Use this section to address Offeror's qualifications and experience, drawing on lessons learned and personal best practices. At a minimum please address the following topics, although Offerors are not limited to these alone:

6.1 Summary

Summarize why Offeror is best suited to conduct the requested EM&V services. Include any previous experience bidding team has evaluating utility and government programs.

6.2 EM&V Experience

- Describe Offeror's previous experience as the lead consultant responsible for evaluating a program like the Better Buildings Program.
- List recent, last three years, evaluation reports prepared by team members that are relevant to this RFP's scope and programs.
- Describe Offeror's experience in successfully completing evaluation assignments. Include at least the following descriptions of team experience with:

- Uncertainty analysis for programs. Developing and reporting uncertainty levels for evaluating program impacts. Describe any innovative methods you may have used to mitigate uncertainty and bias in your reporting of program impacts.
- Fieldwork for evaluations.
- Engineering analysis of measure and project savings, including conducting field inspections, taking spot measurements, conducting short and long term monitoring, and the development of savings and incremental costs for deemed savings measures.
- Sample and survey instrument design, interviewing for determining net adjustments to gross savings; also describe your experience with analyzing survey results for determining net adjustments.
- Developing logic models.
- Planning and conducting surveys for process evaluations.
- Presenting evaluation findings to diverse audiences.
- Data tracking in support of verification and evaluation studies conducted by the Offeror's team.
- Managing teams of similar size for similar evaluation activities.

6.3 References

Offerors should provide three or four references from current (preferred) or recent clients for whom they have performed projects that are relevant to the work scope. References should include a brief synopsis of specific services provided, company name and location, contact name, contact title, telephone number and, email address of the reference.

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Section 7: Budget

Using the forms provided with this RFP package as a separate Excel file (EM&V_RFP_BudgetForms.xls), Offeror should provide labor and other direct costs by program, for evaluation services to be provided during the four year period.

- **The completed Excel budget file should be submitted as a separate document. Please include Offeror's Name in the file name**
- **The budget tables should be "pasted" into the proposal document as part of Section 7.**
- **Cost Proposal**
Time and Materials cost proposals from Offerors should include the following information:
 - For each proposed labor category, the fixed fully burdened hourly labor rates (specify the applicable time period and any escalation factors used), the proposed hours, the extended cost, and the total proposed direct labor cost.
 - Travel costs (showing estimates for air and ground travel and M&IE and lodging estimates based on CONUS per diems, itemized by number or travelers, destinations, and trips).
 - Materials, subcontracts and services (itemized and stating applicable rates and the basis for / source of the estimates).
 - Total proposed non-labor cost
 - Total estimated cost.

- A budget corresponding to the Task Plan required for the technical/management proposal should also be included.
- A completed copy of the enclosed *Preaward Survey of Prospective Subcontractor's Accounting System*.

Section 8: Disclosures and Documentation

Section 9: Resumes

(End of Proposal Preparation Instructions)

Better Buildings Program Description

The *Better Buildings Program* funded innovative proposals structured to provide whole-building and neighborhood energy retrofits. There are multiple objectives: 1) to initiate projects that achieve energy savings in sectors where this has proved difficult, 2) demonstrate a sustainable business model for providing cost-effective energy upgrades for a large percentage of the residential, commercial, and/or public buildings in a specific community and 3) identify and spread the most effective approaches supporting the development of a robust retrofit industry in the United States (best practices). Special attention will be paid to marketing and financing efforts and changes in the local marketplace for retrofits (labor and materials supply, availability of financing, consumer demand). Approaches funded include innovative partnerships between the public and private sector, local retrofit and audit programs, alternative financing, and others. The targets of this program are city and state government, utilities, non-profits, local neighborhood associations, colleges and universities, and financial institutions. DOE initially made 25 awards to local governments or non-profit organizations sub-granting to local governments, with award size ranging from \$1.2-40 million. Similar grantees from the formula EECGB program have been included bringing the total number to 34 and funding to \$485 million.

The goal of the Better Buildings Program is to stimulate activities and investments that can:

- Deliver verified energy savings from a variety of projects in the local jurisdiction of the grantee, with a particular emphasis on energy efficiency improvements in residential, commercial, industrial and public buildings;
- Achieve broader market participation and greater efficiency savings from building retrofits;
- Highly leverage grant funding in order to significantly enhance the resources available for supporting the program;
- Sustain themselves beyond the grant monies and the grant period by designing and implementing a viable strategy for program sustainability;
- Serve as pilots for building retrofit programs demonstrating the benefits of gaining economy of scale and beginning to isolate the most promising marketing and financing approaches; and
- Serve as examples of comprehensive community-scale energy-efficiency approaches that could be replicated in other communities across the country even with less or no on-going governmental support.

The Better Buildings Program is intended to have the following outcomes:

- Increased awareness of energy-focused retrofits by homeowners, apartment owners and occupants, and owner/manager/tenants of commercial and public buildings
- Increased availability of low-cost financing
- Expanded retrofit activity by consumers, contractors and local programs

- Wider effects and progress toward a self-sustaining retrofit “industry” significantly raising the efficiency of energy use in existing homes, businesses, and public buildings in the United States. Aspects include:
 - Formation of new alliances (local government, financial institutions, contractor associations, etc.) and community organizations
 - Increased technical capability throughout the supply chain (e.g., trained contractors)
- National energy, environment, health, job, and net economic benefits

Initial study planning work and establishment of the pre-2009 period baseline will begin in 2011. The definition and tracking of metrics will coincide with the work on program theory, and market analysis, and metrics tracking will continue over the course of the study. Process evaluations will be conducted annually, primarily based on interviews with grantees. The first impact evaluation, focused on interim outcome metrics, will be completed in Fall 2012. The subsequent impact evaluation in 2014 will focus on both tracked interim outcome metrics and overall net benefits on effects such as energy, GHGs, health, energy security, and the economy. A third round of impact evaluation will be conducted in 2016, if new non-ARRA funds are available after September 2014 (when all ARRA funds have to be spent).

**Statement of Work
To
Subcontract Number xxxxxxxx
Between
The Regents of the University of California
Lawrence Berkeley National Laboratory
And
xxxxxxx
For
xxxxxxx**

Evaluation Focus

This evaluation study will be the definitive, official evaluation of the Better Buildings Program (as funded by the American Recovery and Reinvestment Act of 2009 (ARRA)), providing the definitive guidance of what subsequent retrofit grant programs can learn from the Better Buildings Program. This Request for Proposals and its scope of work includes:

- a preliminary process evaluation focusing on the early program period,
- a final process evaluation covering the entire program period,
- a preliminary impact evaluation (focusing on early grantee projects and including a limited market effects analysis), and
- a final impact evaluation (focusing on all grantee projects and including a limited market effects analysis).

Preliminary Process Evaluation

The preliminary process evaluation will focus on the early program experience of those grantees that have rolled out their programs. Since the preliminary process evaluation will be completed after six months of the start of the evaluation contract, it is possible that not all grantees' programs will be covered. As an initial task, the selected evaluator will design the approach for identifying which grantees' programs should have process evaluations and the plan for conducting the process evaluation. The evaluation will analyze grantees' successes and failures in implementing their programs and provide lessons learned to those grantees still designing and implementing their programs. The process evaluation activity will be coordinated with other process evaluation activities, such as the lessons learned work by LBNL (see below).

Final Process Evaluation

The final process evaluation will focus on determining what program designs and implementation strategies by the Better Building Program grantees resulted in: (a) the greatest success with respect to achieving the desired Better Building Program objectives, goals and outcomes; and (b) which projects are most like to be successfully replicated for the future. As an initial task, the selected evaluator will design the approach for identifying which grantees' programs should have process evaluations and the plan for conducting the process evaluation. The final process evaluation differs from the preliminary process evaluation in that the former covers the entire program period and all grantees, while the latter covers the early program period and may not cover all grantees due to different program rollout times.

As an example, the final process evaluation would address the question “What have been the most effective marketing and financing approaches?” by investigating:

- i. How energy and cost savings and other impacts compare across different approaches (e.g., financing and marketing), which approaches yielded the most savings, and why?
- ii. What would be necessary to make the most successful approaches work in other areas?
- iii. What approaches have been less successful and not pursued? Are differences observed based on differences in grantee characteristics?
- iv. What are the effects of the program’s efforts on other partner outputs and outcomes (such as, number and type of local retrofitting programs, renewable energy technologies and energy efficiency measures installed, and financing programs for renewable energy and energy efficiency technologies)?
- v. Are other local governments replicating Better Building Grantees’ programs and projects; if so how and how many?
- vi. Are grantees continuing their Better Building programs and projects; if so, how are they funding them, how are they changing them, and how many buildings are being retrofitted?
- vii. What are the environmental factors that enable successful replication of successful approaches?

Preliminary Impact Evaluation

The preliminary impact evaluation will focus on verifying grantee reported activities and quantifying impact metrics for projects and the program that have been completed by the end of 2012. A utility bill analysis will be conducted among participating and non-participating buildings. This evaluation will also include a limited market effects analysis. The market analysis will focus on key changes in the market that may have resulted from the Better Buildings Program, such as: numbers and profiles of installers, contractors, and material providers; availability of more efficient building materials; changes in the type and amount of finance available for retrofits; and others. The reason that there is a preliminary impact evaluation activity is to provide impact results before the end of the entire program and evaluation cycle, support the process evaluation activity, and to coordinate with other evaluation activities, such as lessons learned work by LBNL (see below). The metrics for this early project impact evaluation are the same as for the Final Impact Evaluation.

Final Impact Evaluation

The final impact evaluation will focus on verifying all or a sample of grantee reported activities (e.g. confirm number of installations, funding provided, etc.) and quantifying impact metrics for projects and the program. A utility bill analysis will be conducted among participating and non-participating buildings. The final impact evaluation differs from the preliminary impact evaluation in that the former is expected to evaluate all of the grantees’ activities (or a sample of them for efficiency and budgetary purposes), while the latter will only be able to evaluate a subset of grantees’ activities since not all of them will have been implemented by the time of the preliminary impact evaluation. The final impact evaluation will also include a limited market analysis, building upon the market effects analysis that was conducted in the preliminary impact evaluation. Specifically, the impact evaluation is intended to support the process evaluation

analyses and assess the Better Building Program's intended outcome of "national energy, environment, health, job, and cost savings."

As an example, the impact evaluations will address the question "**What is the direct impact on energy and cost savings**" by investigating at a minimum, for both participating grantees and non-participants over time:

1. # energy units saved – by project, by program, by marketing and financing approach
2. costs saved – by project, by program, by marketing and financing approach
3. # energy efficiency measures installed
4. # households retrofitted
5. # renewables installations
6. # renewables MW installed

The study will address the following additional questions:

- What is the impact on jobs?
- What is the cost of installing renewables and energy efficiency (\$/W, cents/kWh)?

Evaluation Design

The impact evaluation will employ a quasi-experimental, pre-post comparison study design. (For the process evaluations, there will *not* be a comparison group for the awardees). The goal of a quasi-experimental design is to eliminate as many reasonable alternative hypotheses as possible for the observed differences between the program participants and a comparison/control group. However, this design has some challenges to its validity that must be dealt with in the design of the research. The first is the self-selection factor, by which we can expect that the buildings treated by the program are non-randomly different from those that were not treated. The second is that any increase in adoption of renewables and energy efficiency technologies in the nonparticipant areas may be due to the spillover from the grantees and their activities as well as the general interest in retrofit activities, as well as other factors. And third, in addition to the Better Buildings Program, other programs influence the market place (e.g., DOE's State Energy Program, EECBG, and Weatherization Assistance Program), making it challenging to attribute market changes solely to the Better Buildings Program. The evaluator is expected to rigorously and transparently address such threats in the study design and analysis when setting up the design of the evaluation study, particularly in determining the best option for defining and identifying the comparison group.

The impact evaluation will assess the net effect of the program by comparing its outcomes with an estimate of what would have happened in the absence of the program (participant projects compared with a group of non-participant projects). Evaluation methods will be used to establish a causal connection between program activities and outcomes and to separate out rival explanations of other contributing influences. In addition to developing baselines against which to calculate market changes, the interviews with key market players will help determine an estimate of net impacts, taking into account what would have happened in this industry if the above program's activities had not occurred. Because of multiple activities by multiple players in

the energy efficiency and renewable energy field, it may be challenging to isolate the Better Buildings Program's unique efforts in transforming the energy efficiency retrofit and renewable energy market. Nevertheless, for the market effects analysis, the consultant will identify those areas where DOE's contributions were significant in changing the retrofit and renewables market, in concert with other organizations' activities. The consultant is expected to develop a sampling plan for selecting the grantees' projects and a comparison group of non-participating projects. Because not all of the grantees' projects started at the same time, there will be a preliminary impact evaluation (focusing on early grantees' projects and a comparison group), and a final impact evaluation (focusing on all grantees' projects and a comparison group).

Another key aspect of evaluation design is that the evaluator is expected to conduct impact evaluations of all (or a sample) of projects and process and market evaluation activities for all grantees. The sample size for the impact evaluation will be finalized in the design of the evaluation.

As part of the market analysis in the impact evaluation, surveys and/or interviews will be conducted with key market participants. The market analysis will focus on key changes in the market that may have resulted from the Better Buildings Program, such as: numbers and profiles of installers, contractors, and material providers; availability of more efficient building materials; changes in the type and amount of finance available for retrofits; and others.

The process evaluation will investigate whether the Better Buildings Program awardees structured and operated their programs in a way best to achieve the desired outcomes. All awardees will be the focus of the process evaluation; unlike the impact evaluation, where there will be sampling of projects, there will be no sampling of awardees. For the purposes of this RFP, a process evaluation is defined as a systematic assessment of an energy efficiency program for the purposes of (1) documenting program operations at the time of the examination, and (2) identifying and recommending improvements that can be made to the program to increase the program's efficiency or effectiveness for acquiring energy resources while maintaining high levels of participant satisfaction.¹ These findings will provide maximum learning not only to awardees, but also to others who may conduct retrofit programs. For example, the process evaluation will examine the perspectives of participants about issues that impeded or fostered their effective participation, how awardees operated their programs, etc. The process evaluation will also identify "best practices" in program design and implementation by examining, for example, how different marketing and financing mechanisms, tools for energy savings determination, messages and messengers, business models, and differences in loan performance are linked to the Program's effects on outcomes, such as number of projects in the marketplace, achieved savings, costs of delivery, and consumer demand. The consultant will indicate whether and under what circumstances these best practices would be effective if used in other areas of the country and to other energy efficiency and renewable energy programs. Because not all of the grantees' projects started at the same time, there will be a preliminary process evaluation (focusing on early grantees' projects), and a final process evaluation (focusing on all grantees' projects).

¹ Adapted from The California Evaluation Framework (2004), prepared for the California Public Utilities Commission by TecMarket Works et al. Available at: http://www.calmac.org/publications/California_Evaluation_Framework_June_2004.pdf.

Evaluation Study Coordination

The evaluator for this study will need to coordinate with other activities that the DOE is funding and that other states are conducting. The evaluator for this study will be expected to coordinate, and to the extent that the objectives of its work are not compromised, leverage the work of others in evaluating the Better Buildings activities to the maximum extent possible, consistent with the goals and objectives of this evaluation. This could include sharing of data, coordinating on surveys or analysis, or other activities. The objectives of this coordination are to enable both the overall national evaluation, and evaluations conducted by grantees, to achieve maximum results at lowest overall cost, and to build the capacity in grantees and others. The contractor is expected to address how these coordination and collaboration issues will be addressed and potentially leveraged in their proposal and in the workplan.

Potential other evaluation coordination activities include:

- In the middle of 2012, the National Renewable Energy Laboratory (NREL) will be analyzing the participant savings based on the utility bills provided by the grantees (they will not be analyzing non-participant bills), and NREL will be providing early feedback on participant savings (but *not* nonparticipants savings) to the grantees. The NREL work may provide useful information for the impact evaluation, however, the impact evaluation (the focus of this RFP) is to provide results that are the definitive program evaluation and that are expected to be more comprehensive than the NREL billing analyses.
- LBNL will be conducting case studies during the early stages of program implementation in order to identify lessons learned and promising opportunities for other grantees that have not yet implemented their projects. LBNL's work is expected to lead into the formal process and impact evaluations of this program.
- At least 10 grantees are conducting their own evaluation of the Better Buildings Program. Often, these evaluations are being conducted by third parties. The known evaluation activities include impact, process or both.
- In addition, several Better Building grantees have also received funds under the DOE's State Energy Office (SEO) grant program, and they are using those funds for jointly funded retrofits. Several of these are pursuing evaluation work coordinated through the National Association of State Energy Offices.
- Other DOE programs (e.g., State Energy Program, EECBG, and Weatherization Assistance Program) may also be evaluating the market effects of their programs.

Tasks

The consultant is expected to conduct multiple tasks, some of which may be repeated (e.g., Tasks 5-9) for the two process and impact evaluation studies (including market effects analysis).

Task 1. Conduct a project initiation meeting with LBNL Project Manager, DOE Project Manager, and DOE staff to discuss proposed work and schedule.

The purpose of this meeting is to:

- Review and refine the research objectives and methods, discuss pros and cons of alternative evaluation methodologies, discuss current data availability and next steps on determining data requirements and data availability and quality,
- Review and confirm the scope of work and deliverables with LBNL and DOE staff regarding the EM&V program assessment overall and the evaluation of the grantees' projects,
- Review and adjust (as necessary) the project approach outlined in the proposal, and
- Clarify program management and communication protocols.

In consultation with the LBNL Project Manager, the consultant shall prepare an agenda for the meeting. The consultant shall also prepare and submit to the LBNL Project Manager for approval a detailed memorandum documenting the results of the project initiation meeting.

Task 1 Deliverables:

- Agenda for project initiation meeting
- Memorandum documenting the results of the project initiation meeting

Task 2. Conduct preliminary review of key documents, hold meetings and interviews with program managers and key stakeholders, and coordinate with other organizations.

In this task, the consultants will conduct a critical review of documents related to the Better Buildings Program. In addition, the consultant is expected to hold meeting and interviews with DOE program managers, NREL staff responsible for Better Buildings tracking and reporting information, state and local government agencies conducting evaluation of their projects, and other individuals familiar with the design and implementation of the Better Buildings Program in order to review program theories, as preparation for Tasks 3 and 4. Coordination with other organizations involved in the analysis of the Better Buildings Program at the national level and in the evaluation of grantees' projects at the state level is expected to continue throughout the length of this evaluation study.

Task 2 Deliverables:

- List of material reviewed
- List of people interviewed

Task 3. Draft a detailed logic model laying out the underlying theory of change for the Better Buildings Program and for a market assessment, and participate in peer review process.

Based on the work conducted in the previous task, the consultant should review the program and market theories for the Better Buildings Program, refine the theories as necessary, identify any alternate theories that merit review, develop the program logic model and market model (showing how the retrofit market could change) to be used in the evaluations², specify program performance and market metrics, and identify data that the consultants can expect to obtain from project grantees. Based on these models, the consultant will define the evaluation questions to be answered in evaluation plans. The program and market models will be peer reviewed by a group of qualified and independent reviewers. LBNL will manage the peer review process, and the consultant is expected to participate in the peer review process. After the peer review, the consultant shall revise the logic model, market model, and evaluation questions, as needed.

Task 3 Deliverables:

- Draft logic model and market model, program performance and market metrics, evaluation questions
- After peer review: revised models for program and market, program performance and market metrics, evaluation questions

Task 4. Prepare evaluation plans for conducting process and impact evaluations (including market analysis), and participate in peer review process.

Based on the work conducted in the previous task, the consultant should prepare evaluation plans for conducting preliminary and final process and impact evaluations (including market analyses). The evaluation plans shall provide a detailed description of all work activities. Coordination with other groups involved in examining the activities of the Better Buildings Program should be taken into account. The evaluation plans will be peer reviewed by a group of qualified and independent reviewers. LBNL will manage the peer review process, and the consultant is expected to participate in the peer review process. After the peer review, the consultant shall revise the evaluation plans.

At a minimum, the consultant shall include the following sections in the evaluation plans:

1. Research Objectives and Approach
 - a. The research objectives as refined in Task 1
 - b. A short description of the Better Buildings Program projects that are being evaluated
 - c. A presentation of the program and market theories
 - d. A short description of the expected program effects and program performance and market metrics
 - e. A list of the technologies and services offered by the program with an indication of which technologies and services will be addressed in the evaluation

² It is possible that multiple models will need to be developed to reflect different types of grantees' programs.

- f. A presentation of the researchable issues and questions to be addressed in the evaluation and reported in the evaluation report
- g. A presentation of the overall scope of the evaluation
- h. A detailed presentation of the evaluation activities to be undertaken
2. Data Requirements
 - a. Identification and description of all data necessary to meet the research objectives and conduct the analysis
3. Secondary Research
 - a. Identification and description of any secondary research that will be collected
4. Data Acquisition
 - a. Identification of people who will be surveyed/interviewed
 - b. A presentation of the sampling approach and sample selection methods for each evaluation activity that includes sampling efforts
5. Data Cleaning and Quality Control
6. Analysis Methodology
 - a. A description of the data handling and data analysis approach to be used to address the researchable issues
 - b. A description of how the comparison group or non-participant information will be used in the evaluation
 - c. A presentation and discussion of the threats to validity, potential biases, methods used to minimize bias, and the level of uncertainty associated with the sample selection methods and the evaluation approaches
7. Method of attributing overall program outputs and outcomes to the Better Building Program projects
8. Schedule and milestones
9. Final Report Outline
10. Project Management
 - a. Detailed work plan and schedule for the study by tasks and subtasks
 - b. Discussion of project management issues including procedures for identifying and monitoring the progress of the evaluations
11. Budget
 - a. A presentation of evaluation costs by tasks

Task 4 Deliverables:

- Draft process evaluation plan (that will be used for conducting preliminary and final process evaluations)
- Draft impact evaluation plan (that will be used for conducting preliminary and final impact evaluations)
- After peer review: revised impact and process evaluation plans

Task 5. Conduct data collection, analysis and management and provide interim feedback.

The consultant shall implement the evaluation plan. During the implementation process, the consultant will prepare a management plan showing how the data will be collected and stored (including a description of the data tracking system). The consultant shall provide periodic feedback to the LBNL Project Manager, DOE, and other parties involved in providing assistance

to the Better Buildings Program about status of work and what appears to be working and not working. The intent is to help to improve processes and effectiveness. Feedback shall be in the form of findings memos and conference calls.

Task 5 Deliverables:

- Findings memos summarizing status of work and periodic feedback
- Minutes from conference calls summarizing status of work and periodic feedback
- Data management plan and any other additional documentation of data collection activities (e.g., data tracking system), as specified in the evaluation plans

Task 6. Prepare draft and final reports, and participate in peer review process.

Four reports will be prepared under this contract: Preliminary Process Evaluation, Final Process Evaluation, Preliminary Impact Evaluation, and a Final Impact Evaluation. For each of these reports, the consultant shall provide a draft report, consistent with the outline specified in the evaluation plans. At a minimum, the draft report shall include the following sections:

1. Executive Summary, emphasizing the major findings and the most significant recommendations.
2. Background or Introduction chapter including the research objectives and description of the evaluation.
3. Methodology chapter describing and justifying the chosen approaches, logic models, data sources, data collection methods used in the evaluation, and any limitations of the data/analysis.
4. Results chapter.
5. Recommendations chapter.
6. Appendices

The draft report will be peer reviewed by a group of qualified and independent reviewers. LBNL will manage the peer review process, and the consultant is expected to participate in the peer review process. After the peer review, the consultant shall finalize the report by incorporating any comments or changes (if applicable) from the peer review process.

Task 6 Deliverables:

- Draft report
- Final report

Task 7. Prepare two-page summary and presentation.

After the final report has been prepared, the consultant shall prepare a two-page summary (referred to as an Executive Brief) of the report and a MS PowerPoint presentation that can be used for disseminating information about the evaluation to a wider audience. A draft summary and presentation will be prepared, and the consultant shall finalize the summary by incorporating any comments or changes (if applicable) from the LBNL Project Manager and DOE Project Manager.

Task 7 Deliverables:

- Draft summary
- Final summary
- Draft presentation slides
- Final presentation slides

Task 8. Brief DOE.

At the end of the project, the contractor will present the findings from the evaluation to DOE staff and other interested individuals, using the slides prepared in Task 7.

Task 8 Deliverables:

- DOE briefing

Task 9. Provide Project Management.

Under this task, the selected evaluator will be responsible for:

- Ensuring that all the evaluation work activities are implemented as documented in the evaluation plans and that project reporting is completed according to the specifications and schedule documented or referenced in the evaluation plans.
- Ensuring that the evaluator's contract management obligations are carried out in a professional manner.
- Managing sub-contractors, if any, so that the evaluation team speaks with one voice through the prime contractor.
- Maintaining regular and direct communication with the LBNL Project Manager and grantees as directed by the LBNL Project Manager.
- Maintaining and archiving electronic and paper files and data collected or developed during the conduct of the evaluation work. The documentation is the property of LBNL and will be turned over to LBNL at the end of the contract term. It must be in a form and structure that supports a chain of evidence for all evaluation findings.
- Attending and occasionally facilitating meetings - including initiation meeting(s), regular and ad-hoc project meetings, and a final evaluation "close out" meeting (via conference call).

Task 9 Deliverables:

- Electronic and paper files and data collected or developed during the conduct of the evaluation work

Task 10. Provide Project Status Reporting.

Project reporting is expected to include, but will not necessarily be limited to, the following items:

- i. **Weekly or bi-weekly** – On an agreed-upon day and time, the consultant and the LBNL Project Manager shall have a weekly or bi-weekly conference telephone call, during which the consultant shall provide a study update.
- ii. **Monthly** – Project status reports highlighting issues with each evaluation activity and problems (e.g., including discussion of difficulties in getting the job done, coordination with other organizations, etc. with recommended or agreed solutions).
- iii. **Quarterly** – Review of major findings, observations, review of project implementation and recommended updates to the evaluation plan. Findings and results (e.g., what are we learning from the evaluations and what can we learn about the evaluations that we can share with grantees?) shall be provided.

Task 10 Deliverables:

- Monthly status reports

Deliverables and Schedule:

The project is expected to be completed over four years. A detailed schedule and list of deliverables will be developed as part of the first task. The schedule will include time for a peer review by a group of qualified and independent reviewers of draft deliverables (so that review comments can be addressed when finalizing deliverables) and presentations to DOE staff. The consultant shall submit all project deliverables to the LBNL Project Manager and the DOE Project Manager.



University of California
Lawrence Berkeley National Laboratory

REPRESENTATIONS AND CERTIFICATIONS

(This solicitation is issued under Contract No. DE-AC02-05CH11231 with the Department of Energy)

The following Representation & Certification solicitation provisions must be completed and this form must be signed and returned with the Offeror's proposal. As used herein, the term "contract" shall mean the UC/LBNL Subcontract resulting from this solicitation; "subcontract" shall mean the Offeror's subcontract, "offer" includes "bid," "proposal," and "quotation," and "Offeror" includes "bidder," "proposer," and "quoter", as may be applicable.

INDEX

Table with 2 columns listing sections: 1. OFFEROR INFORMATION, 2. SMALL BUSINESS PROGRAM REPRESENTATIONS, 3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS, 4. AFFIRMATIVE ACTION COMPLIANCE, 5. COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS, 6. CERTIFICATION AND DISCLOSURE ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS, 7. CERTIFICATION ON RESPONSIBILITY MATTERS, 8. BUY AMERICAN ACT CERTIFICATION, 9. REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE, 10. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

1. OFFEROR INFORMATION

(Complete and check all that applies.)

[Complete the following sections of (b) only if the Offeror represents in paragraph (b)(1) that it is a small business concern.]

Name: _____

Taxpayer Identification Number (TIN): _____

Dun & Bradstreet D-U-N-S® Number: _____

Type of Domestic Organization

- For-Profit, Educational Institution, Other Non-Profit, Sole Proprietorship, Partnership, Corporation, Limited Liability Co. (LLC) incorporated or organized in the State of: _____

Government entity (Federal, state, or local)

Joint Venture, with: _____

Number of employees (If not a government entity): _____

Type of Foreign Organization

- Foreign Government entity (describe below), Non-U.S. company, institution, or organization (describe below), Nonresident alien or foreign corporation or partnership that does not have an office or a place of business in the U.S or personnel located in the U.S in furtherance of its trade or business., Other (describe): _____

2. SMALL BUSINESS PROGRAM REPRESENTATIONS

(Per FAR 52.219-1, MAY 2004)

(Applies if any performance will be in the U.S. or its outlying areas.)

(a) (1) The North American Industry Classification System (NAICS) code for this acquisition, per the solicitation, is: 541990

(2) The small business size standard, per the solicitation, is: \$7M

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations.

The Offeror represents as part of its offer that:

(1) It is, is not, a small business concern.

(2) It is, is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) It is, is not, a women-owned small business concern.

(4) It is, is not, a veteran-owned small business concern.

(5) It is, is not, a service-disabled veteran-owned small business concern.

(6) It is, is not, an 8(a) concern listed, on the date of this representation, on the list of qualified 8(a) concerns maintained by the Small Business Administration, and it continues to meet all eligibility criteria of 13 CFR 124, Subpart A for 8(a) business development program participation.

(7)(i) It is, is not, a HUBZone small business concern listed, on the date of this representation, on the list of qualified HUBZone small business concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It is, is not, a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(7)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture.

[The Offeror shall enter the name of the HUBZone small business concern or concerns participating in the joint venture:]

Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) Definitions. As used in this provision-

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision. SOLICITATION NUMBER

SOLICITATION NUMBER DY-2011-06

Table with 4 columns: Date, Signature, Company, Title

"Women-owned small business concern" means a small business concern (1) that is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more women.

"Veteran-owned small business concern" means a small business concern (1) not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and (2) the management and daily business operations of which are controlled by one or more veterans.

"Service-disabled veteran-owned small business concern"

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(d) Notice.

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall-

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

3. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

(Per FAR 52.222-22, FEB 1999)

(Not Applicable if performance will be on an Indian Reservation or outside the U.S. by employees not recruited in the U.S.)

The Offeror represents that:

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

(b) It has, has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before lower-tier subcontract awards.

(d) If (a) is answered "has participated" and (b) is answered "has not filed all required compliance reports", the Offeror certifies as the reason that: it has less than 50 employees ; it has not received a Federal Government prime contract or first-tier subcontract of \$50,000 or more ; or other (explain):

4. AFFIRMATIVE ACTION COMPLIANCE

(Per FAR 52.222-25, APR 1984)

(Not applicable if the offer is for construction work or work on an Indian Reservation or outside the U.S. by employees not recruited in the U.S.)

The Offeror represents that:

(a) It has previously had contracts or subcontracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) and it has developed and has on file, has not developed and does not have on file, at each establishment, an affirmative action program as required by the rules and regulations of the Secretary of Labor, or

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

(c) If (a) is answered "has not developed", the Offeror certifies as the reason that: it has less than 50 employees ; it has not received a Federal Government prime contract or first-tier subcontract of \$50,000 or more ; or other (explain):

5. COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS

(Per FAR 52.222-38, SEP 2010)

(Applies to offers >\$150,000)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause.

6. CERTIFICATION AND DISCLOSURE ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(Per FAR 52.203-11, SEP 2007)

(Applies to offers >\$150,000)

(a) Definitions. As used in this provision—"Lobbying contact" has the meaning provided at 2 U.S.C. 1602(8). The terms "agency," "influencing or attempting to influence," "officer or employee of an agency," "person," "reasonable compensation," and "regularly employed" are defined in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12).

(b) Prohibition. The prohibition and exceptions contained in the FAR clause of this solicitation entitled "Limitation on Payments to Influence Certain Federal Transactions" (52.203-12) are hereby incorporated by reference in this provision.

(c) Certification. The Offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of the contract.

(d) Disclosure. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the Offeror with respect to the contract, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The Offeror need not report regularly employed officers or employees of the Offeror to whom payments of reasonable compensation were made.

(e) Penalty. Submission of this certification and disclosure is a prerequisite for entering into the contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

7. CERTIFICATION ON RESPONSIBILITY MATTERS

*(Per FAR 52.209-5, APR 2010)
(Applies to offers >\$150,000)*

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

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

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

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

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

(D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(See Clause 52.209-5 in the FAR for information and examples on delinquent Federal taxes.)

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

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

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

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

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

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

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other available remedies, the

University may terminate the contract resulting from this solicitation for default.

8. BUY AMERICAN ACT CERTIFICATION

(a) The Offeror certifies that each end product to be delivered or construction material to be incorporated into the work, except those listed in paragraph (b) of this provision, is a domestic end product or construction material, mined, produced, or manufactured in the United States. Components thereof of unknown origin, other than commercially available off-the-shelf (COTS) items, have been considered as mined, produced, or manufactured outside the United States.

The items listed in paragraph (b) are not mined, produced, or manufactured in the United States or are mined, produced, or manufactured in the United States but are not a COTS item and do not meet the component test of the domestic end product or construction material definitions.

(b) Foreign End Products or Construction Material:

<u>Item</u>	<u>Country of Origin</u>
_____	_____
_____	_____
_____	_____

(c) The terms used in this provision are defined in FAR Clause 52.225-1, *Buy American Act-Supplies*, or FAR Clause 52.225-9, *Buy American Act-Construction Materials*, of this solicitation.

(d) The University will take into consideration applicable provisions of FAR Subpart 25.1 in evaluating offers for foreign end products.

9. REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE

*(Per FAR 52.227-15, DEC 2007, with definitions from DEAR 927.409)
(Applies if data will be produced, furnished, or acquired in performance of the subcontract)*

(a) This solicitation sets forth the University's/DOE's known requirements for data (as that term is defined in DEAR 927.409). Any data delivered under the resulting subcontract will be subject to the *Rights in Data-General* clause at 52.227-14 to be included in the subcontract. Under the latter clause, a subcontractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. Use of Alternate V with the latter clause provides the University/DOE the right to inspect such data at the Subcontractor's facility.

(b) By completing the remainder of this paragraph, the Offeror represents that it has reviewed the requirements for data, including technical data and computer software, and states:

(check appropriate box)

None of the data proposed for fulfilling the requirements for data qualifies as limited rights data or restricted computer software; or

The following data proposed to be used for fulfilling the requirements for data will be withheld from delivery as limited rights data or restricted computer software:

c) Any identification of limited rights data or restricted computer software in the Offeror's response is not determinative of the status of the data should a subcontract be awarded to the Offeror.

NOTE: The terms "data", "limited rights data", "restricted computer software", "computer software", "technical data", and "form, fit, and function data" are defined in DEAR 927.409 as follows:

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include data incidental to the administration of the contract, such as financial, administrative, cost and pricing, or management information.

Limited Rights Data means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. (The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (g)(2) of the Rights in Data - General clause.)

Restricted Computer Software means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. (The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of the Rights in Data - General clause.)

Computer Software means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations, and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

Technical data means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Form, Fit, and Function Data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

10. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

(Per FAR 52.223-13, AUG 2003)

(Applies to competitive solicitations >\$100,000, except those for commercial items)

(a) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the Offeror certifies that—

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the Offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313 (a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons:

[Check each block that is applicable.]

(i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094)

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(v) The facility is not located in the United States or its outlying areas.

Department of Energy Acquisition Regulatory Clause 952.209-8

Organizational conflict of interest Disclosure - Advisory and Assistance Services (Jun 1997)

- (a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person or organization is unable or potentially unable to render impartial assistance or advice to the University/LBNL, or the person's or organization's objectivity in performing the Subcontract work is or might be otherwise impaired, or the person or organization has an unfair competitive advantage.
- (b) An Offeror notified that it is the apparent successful Offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful Offeror" means the offeror or offerors selected for final negotiations.
- (c) The statement must contain the following:
- (1) A statement of any past (within the past 12 months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work.
- For contractual interests, such statement must include the name, address, telephone number of the client or clients, a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the Offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the University/LBNL, the Government, or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable.
- For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.
- (2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant Subcontract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the Subcontract in question has been communicated as part of the statement required by (b) of this provision.
- (d) Failure of the Offeror to provide the required statement may result in the Offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

(End of Clause)

**UNIVERSITY OF CALIFORNIA
LAWRENCE BERKELEY NATIONAL LABORATORY**

**COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION
(June, 2000) (with Alternate I)**

NOTES: This notice does not apply to small businesses or foreign governments.
This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant subcontract.

If the offeror is an Educational Institution, Part II does not apply unless the contemplated subcontract will be subject to full or modified CAS-coverage pursuant to the 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. DISCLOSURE STATEMENT – COST ACCOUNTING PRACTICES AND CERTIFICATION

- (a) Any subcontract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR, Chapter 99), except for those subcontracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting a proposal which, if accepted, will result in a subcontract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

- (c) Check the appropriate box below:

Certificate of Concurrent Submission of Disclosure Statement

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency authorized to act in the capacity (Federal Official), as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal Official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and address of Cognizant ACO or Federal Official where filed:

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

Certificate of Previously Submitted Disclosure Statement

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____

Name and address of Cognizant ACO or Federal Official where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

Certificate of Monetary Exemption

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than \$50 million (of which at least one award exceeded \$1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the University immediately.

Certificate of Interim Exemption

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised

certificate to the University, in the form specified under subparagraphs (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$25 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

[Alternate I.]

- Certificate of Disclosure Statement Due Date by Educational Institution

If the offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202-1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

- A Disclosure Statement filing Due Date of _____ has been established with the cognizant Federal agency.
- The Disclosure Statement will be submitted within the six-month period ending _____ months after receipt of this award.

Name and address of Cognizant ACO or Federal Official where Disclosure Statement is to be filed:

II. COST ACCOUNTING STANDARDS – ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant subcontract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

- The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the University immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered subcontract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated subcontract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

Yes

No

Company: _____

Signature: _____ Date: _____
(Authorized Representative)

Name: _____ Title: _____

PREAWARD SURVEY OF PROSPECTIVE SUBCONTRACTOR'S ACCOUNTING SYSTEM

Contractors for Lawrence Berkeley National Laboratory (LBNL) are required to have a cost accounting system that is adequate for the proposed type of subcontract, including distinct sets of accounts to accumulate costs incurred (by job or task, as necessary) that will be invoiced, including timekeeping records substantiating invoiced hours.

Complete Section A of this form, and complete Sections B and C if the answer in Section A is "no". Check the boxes as applicable, and sign and date below, and provide a narrative explanation of any "no" answers in Sections B and C.

A. GOVERNMENT REVIEW/APPROVAL

Yes No

Has the government recently reviewed and approved your cost accounting system?

If the answer is "yes", attached a copy of the approval.

B. DOES THE ACCOUNTING SYSTEM:

Yes No N/A

1. Accumulate costs under a general ledger and identify and accumulate direct costs by contract?
2. Include procedures to ensure direct and indirect costs are clearly distinguished and properly segregated, and indirect costs are logically and consistently allocated to intermediate and final cost objectives? (the proposed LBNL subcontract is an example of a final cost objective)
3. Determine interim (at least monthly) costs charged to a contract through routine posting of books of account?
4. Have the ability to generate the specific cost information required under the subcontract?
5. Identify the costs for each subcontract job or task, as if each job or task were a separate contract?
6. Segregate and exclude costs which are not allowable under the subcontract terms?
7. Provide reasonable data for projection of costs to complete the subcontract?

C. DOES THE TIMEKEEPING SYSTEM:

Yes No N/A

1. Include procedures to ensure that direct and indirect labor is charged to the appropriate cost objectives?
2. Require that internal work authorizations/job assignments are issued and controlled by individuals independent of those responsible for performance of the work?
3. Require supporting labor documentation/work descriptions that identify the nature of the work, provide enough detail to be trackable to the intermediate or final cost objective, and describe if the effort is direct or indirect and allowable or unallowable?
4. Identify on the timesheets the employee's full name and title, the contract and job or task being charged by name or code number, and the days and hours worked?
5. Require one timesheet per employee per period, account for the total available hours, and require daily recording of the direct hours worked?
6. Require the employee to certify as to accuracy of their reported time, and any changes made to the timesheet, and require the supervisor to approve the reported time, and any changes?
7. Include sufficient supporting records, as necessary, to ensure accurate time recording and allocating of labor costs to intermediate and final cost objectives when multiple jobs are worked in a day?

The Contractor hereby certifies that the above answers are true and correct, to the best of its knowledge and belief.

Contractor's Name: _____

Signature: _____

(Date)

(3/7/11)



SMALL BUSINESS SUBCONTRACTING PLAN

The following is a suggested model for use when developing a Subcontracting Plan for a Subcontract with the Lawrence Berkeley National Laboratory, as required by Federal Acquisition Regulation (FAR) 52.219-9, Small Business Subcontracting Plan. While this Model Plan has been designed to be consistent with statutory and regulatory requirements, other formats of a Subcontracting Plan may be acceptable. However, failure to include essential information as reflected in this Model Plan may be cause for either a delay in acceptance or the rejection of a bid or offer when a Subcontracting Plan is required. The use of this Model is not intended to waive any requirements that may be applicable by law or regulation.

BASIC INFORMATION

TBD		
LBNL Subcontract Number	Offeror/Subcontractor Name	Address
LBNL Subcontract Amount *	Phone Number	Address
Period of Performance	Fax Number	Email Address

* Total estimated value of LBNL subcontract, including options.

The following, along with any attachments, is hereby submitted as a Subcontracting Plan to satisfy the applicable requirements of the Small Business Act (15 U.S.C. 637(d)) and FAR Clause 52.219-9, Small Business Subcontracting Plan.

TERMS AND DEFINITIONS

The following terms, abbreviations, or acronyms are used throughout this Plan:

- **ANC** – Alaska Native Corporation
- **HUBZone** – Historically Underutilized Business Zone.
- **SB** – Small Business concern.
- **SDB** – Small Disadvantaged Business concern.
- **VOSB / SD-VOSB** – Veteran-Owned Small Business concern / Service-Disabled Veteran-Owned Small Business concern.
- **WOSB** – Women-Owned Small Business concern.

PART I – SUBCONTRACTING GOALS (See Footnotes 1 & 2)

A. Total dollars of planned subcontracting (including Small and Large Business): \$			
B. The separate Dollar and Percentage Goals for each of the SB concerns are as follows: Percentages are expressed as a percentage of the total dollars planned to be subcontracted. All subcontracts that will contribute to performance of the Berkeley Laboratory subcontract are included. (See Footnotes 3, 4, and 5)	All SB Concerns	\$	%
	SDBs (including ANC and Indian tribes)	\$	%
	WOSBs	\$	%
	HUBZone SBs	\$	%
	VOSBs	\$	%
	SD-VOSBs	\$	%

¹ Excludes: (a) subcontracts involving performance outside the U.S. or its outlying areas, and (b) purchases to a corporation, company, or subdivision that is an affiliate of the subcontractor.

² Indirect (Overhead) costs incurred for common or joint purposes may be allocated on a prorated basis to the subcontracts.

³ Subcontractors are required to submit separate Dollar and Percentage Goals for each Socioeconomic category in Part I B.

⁴ Place here Total Estimated Dollar Value and Percentage of planned Subcontracting with all Small Business categories, below.

⁵ Subcontracts awarded to an ANC or Indian tribe shall also be counted towards the subcontracting goals for SB and SDB, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

C. Description of the principal types of supplies and services to be subcontracted to each SB concern category:

SMALL BUSINESS SUBCONTRACTING PLAN

SB	
SDB	
WOSB	
HUBZone SB	
VOSB	
SD-VOSB	

D. Description of the method(s) used to develop the above Subcontracting Goals:

(attach additional sheets of paper, as necessary)

E. Statement as to whether indirect costs are included in establishing the Goals? Yes [] No []
 If yes, the following describes the method(s) used to determine the proportionate share of indirect costs to be allocated to SB concerns.

SB	
SDB	
WOSB	
HUBZone SB	
VOSB	
SD-VOSB	

PART II - SUBCONTRACTING PROCEDURES

A. The following indicates the position (program administrator) within the company, as well as the duties and responsibilities, of the employee who will administer and monitor the compliance of Offeror/Subcontractor's Small Business Subcontracting Program: [Reference FAR Clause 52.219-9, *Small Business Subcontracting Plan*, (See Paragraphs (e)(9) –(11) of the clause) for specific duties as they relate to the company's Subcontracting Program and include any additional duties the Offeror/Subcontractor has designated].

Name & Title:	
Address:	
Telephone/e-mail:	

Description of duties:

(attach additional sheets of paper, as necessary)

- B. The following indicates the methods used to identify potential sources for solicitations, such as the following (not all inclusive):
- Maintenance of company source list or supplier management program.
 - Conducting market surveys to identify new sources.
 - Contacting minority and small business trade associations.
 - Contacting business development organizations and local chambers of commerce.
 - Attending Small Business procurement conferences and trade fairs.
 - Utilizing Veteran service organizations.

SMALL BUSINESS SUBCONTRACTING PLAN

- Utilizing the Central Contractor Registration (CCR/Dynamic Small Business Search).
- Utilizing Federal government development centers such as DoD's Procurement Technical Assistance Center (PTAC), SBA's Small Business Development Center (SBDC), Department of Commerce's Minority Business Development Agency, or the National Minority Purchasing Council Vendor Information Services.
- Other:

(attach additional sheets of paper, as necessary)

- C. The following describes the methods used to assure that SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB concerns are provided an equitable opportunity to compete for the lower-tier subcontracts:

(attach additional sheets of paper, as necessary)

PART III - SUBCONTRACTING PLAN MANAGEMENT

The Offeror/Subcontractor certifies, by signature on this Plan, that the following procedures regarding management of this Subcontracting Plan will be enacted and maintained:

- A. Offeror/Subcontractor will assist SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate participation by such concerns.
- B. Where the lists of potential lower-tier subcontractors are excessively long, Offeror/Subcontractor will make a reasonable effort to give all SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB concerns an opportunity to compete over a period of time.
- C. Offeror/Subcontractor will provide adequate and timely consideration of the potentialities of SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB concerns in all "make or buy" decisions.
- D. Offeror/Subcontractor will counsel and discuss subcontracting opportunities with representatives of SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB concerns.
- E. Offeror/Subcontractor will provide notice to lower-tier subcontractors concerning penalties and remedies for misrepresentation of business status as SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB concerns, for the purpose of obtaining a lower-tier subcontract that is to be included as part or all of a Goal contained in the Subcontractor's Subcontracting Plan.
- F. Offeror/Subcontractor will establish and maintain the following types of records to demonstrate procedures that have been adopted to comply with the requirements and Goals in this Plan. The records shall include at least the following on a plant-wide or company-wide basis, unless otherwise indicated:
 - 1. Description(s) of Offeror/Subcontractor's efforts to locate sources that are SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB concerns and to award subcontracts to them;
 - 2. Source lists (e.g., CCR/Dynamic Small Business Search), guides, and other data that identify SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB concerns;
 - 3. Records of each subcontract solicitation resulting in an award of more than \$100,000.00, indicating:
 - a. Whether Small Business concerns were solicited, and if not, why not;
 - b. Whether Veteran-Owned Small Business concerns were solicited, and if not, why not;
 - c. Whether Service-Disabled Veteran-Owned Small Business concerns were solicited, and if not, why not;
 - d. Whether HUBZone Small Business concerns were solicited, and if not why not;
 - e. Whether Small Disadvantaged Business concerns were solicited, and if not, why not;
 - f. Whether Women-owned Small Business concerns were solicited, and if not, why not; and
 - g. If applicable, the reason why the award was not made to a small business concern.
 - 4. Records of outreach efforts to contact such activities as: (a) trade associations, (b) small business development organizations, and (c) conferences and trade fairs to locate SB, VOSB, SD-VOSB, HUBZone, SDB, and WOSB business sources.

SMALL BUSINESS SUBCONTRACTING PLAN

5. Records of internal guidance and encouragement provided to buyers through (a) workshops, seminars, training, etc., and (b) monitoring performance to evaluate compliance with the program's requirements; and
6. Records on a lower-tier subcontract-by-subcontract basis, supporting information for award data submitted by the Subcontractor to Berkeley Laboratory, including the name, address, and business size of each lower-tier subcontractor. (Subcontractors having Commercial Plans need not comply with this requirement.)

PART IV - LOWER TIER SUBCONTRACTOR FLOW/DOWN CLAUSE

Offeror/Subcontractor certifies, by signature on this Plan, that the following procedures regarding management of this Subcontracting Plan will be enacted:

- A. Offeror/Subcontractor agrees to include the provisions under FAR Clause 52.219-8, "*Utilization of Small Business Concerns*," in all lower-tier subcontracts that offer further lower-tier subcontracting opportunities.
- B. Offeror/Subcontractor agrees to ensure that all large business subcontractors receiving a lower-tier subcontract in excess of \$550,000.00 or \$1,000,000.00 for construction must adopt and comply with a Small Business Subcontracting Plan similar to the Plan required by FAR Clause 52.219.9, "*Small Business Subcontracting Plan*," as well as **PART V**, below. (See FAR 19.704 and FAR 19.708(b)).

PART V - ELECTRONIC SUBCONTRACTING REPORTING SYSTEM (eSRS) REPORTING

Offeror/Subcontractor hereby provides assurance of: (1) cooperation in any studies or surveys that may be required; (2) submission of any periodic reports which will allow Berkeley Laboratory to determine the extent of compliance by the Offeror/Subcontractor with its Subcontracting Plan; and (3) submission of the electronic "*Subcontracting Report for Individual Contracts*," or "*Individual Subcontracting Report*" (ISR, formerly Standard Form [SF] 294), and the ELECTRONIC "*Summary Subcontract Report*" (SSR, formerly SF 295) in accordance with the **list below regarding MANDATORY electronic submission of these Reports.**

Reporting Period	Type of Report Due	Due Date
Oct 1 - Mar 31	ISR (formerly the SF 294)	Apr 30
Apr 1 - Sept 30	ISR (formerly the SF 294)	Oct 30
Oct 1 - Sept 30	SSR (formerly the SF 295)	Oct 30
Subcontract Completion	ISR (formerly the SF 294)	30 days after completion

Special Assurances for the eSRS:

The Offeror/Subcontractor also hereby provides assurances that the Offeror/Subcontractor will: (1) submit the "*Individual Subcontracting Report(s)*" (ISRs) and "*Summary Subcontracting Report(s)*" (SSRs) under the eSRS and (2) ensure that its subcontractors agree to submit Individual Subcontracting Reports and Summary Subcontracting Reports **at all tiers**, in eSRS.

The Offeror/Subcontractor will provide such information so as to allow applicable lower tier subcontractors to fully comply with the statutory requirements prescribed in FAR 19.702.

The Offeror/Subcontractor will utilize Berkeley Laboratory Prime Contract No. DE-AC02-05CH11231 for the eSRS submissions.

The Offeror/Subcontractor will direct any questions regarding Subcontractor submittal of ISR and SSR or eSRS to the following office: **Ms. Hanh Le, Small Business & Supplier Management Office, Procurement, Mail Stop 937-R0200, Lawrence Berkeley National Laboratory, One Cyclotron Road, Berkeley, California, 94720.** Ms. Le's Telephone Number is: 510-486-4596; Fax number is: 510-486-7629; and E-mail address is: HMLe@lbl.gov. Additional information is available at: <http://esrs.gov> or <http://acquisition.gov>.

Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End Of Certificate)

E-Verify Employment Eligibility Verification

- Case Administration
 - [Initial Verification](#)
 - [View Cases](#)
- User Administration
 - [Change Password](#)
 - [Pwd Challenge Q&A](#)
 - [Change Profile](#)
- Site Administration
 - [Add User](#)
 - [View Users](#)
 - [Maintain Company](#)
 - [Terminate Company Participation](#)
- Reports
 - [View Reports](#)

Company Information

Company Name: [REDACTED] [View / Edit](#)
 Company ID Number: [REDACTED]

Physical Location:

Address 1: [REDACTED]
 Address 2: [REDACTED]
 City: [REDACTED]
 State: [REDACTED]
 Zip Code: [REDACTED]
 County: [REDACTED]

Mailing Address:

Address 1:
 Address 2:
 City:
 State:
 Zip Code:

Employer Identification Number: [REDACTED]
 Total Number of Employees: [REDACTED]
 Corporate / Parent Company:

Organization Designation:


Employer Category: Federal Contractor with FAR E-Verify Clause
 Federal Contractor Category: None of these categories apply
 Employees being verified: All new hires and all existing employees assigned to a Federal contract

NAICS Code: [REDACTED] [View / Edit](#)

Total Hiring Sites: [REDACTED] [View / Edit](#)

Total Points of Contact: [REDACTED] [View / Edit](#)

SAMPLE

TIME & MATERIALS SUBCONTRACT NO. XXX	 <p>The Regents of the University of California Lawrence Berkeley National Laboratory One Cyclotron Road Berkeley, CA 94720</p>
Subcontractor: [Name] Attention: _____ [Address] [City, State, Zip] Phone: _____ Fax: _____ E-Mail: _____	University Procurement Representative: Name: D.S. Yoder Title: Principal Subcontract Administrator Office of the Chief Financial Officer Phone: (510) 486-5715 Fax: (510) 486-4380 E-Mail: dsyoder@lbl.gov

Introduction

This is a time and materials subcontract (hereinafter "Subcontract") for [general description of the work], as further described herein.

This Subcontract is between The Regents of the University of California, (hereinafter "University") and the party identified above as the "Subcontractor".

This Subcontract is issued under Prime Contract No. DE-AC02-05CH11231 between the University and the United States Government (hereinafter "Government"), represented by the Department of Energy (hereinafter "DOE") for the management and operation of the Lawrence Berkeley National Laboratory (hereinafter "LBNL") and the performance of certain research and development work.

Agreement

The parties agree to perform their respective obligations in accordance with the terms, conditions, and provisions of the attached SCHEDULE OF ARTICLES and the documents referenced or incorporated therein, which together with this Signature Page shall collectively constitute the entire Agreement and shall supersede all prior negotiations, representations, or agreements, whether verbal or written.

[SUBCONTRACTOR'S NAME]

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

SCHEDULE OF ARTICLES

ARTICLE 1 – SCOPE OF WORK

A. The Subcontractor shall _____. The work is more specifically described in the incorporated document entitled [Title of the Statement of Work].

The Subcontractor shall furnish all personnel, supervision, materials, supplies, equipment, tools, facilities, transportation, testing, and other incidental items and services necessary for performance of the work, except for Government Property specified herein to be furnished by the University. The Subcontractor shall deliver the materials, products, supplies, reports and residuals, as specified herein. The materials, supplies, equipment, tools, and other incidental items furnished or used by the Subcontractor shall meet nationally recognized safety standards or have been tested and found safe for use.

B. Location. The work shall be performed by the Subcontractor at the Subcontractor's facility located at _____, at the LBNL, and at other locations approved by the University.

ARTICLE 2 – PERIOD OF PERFORMANCE

The work described in the *Statement of Work* shall commence upon signature of this Subcontract by both parties on and shall be completed on or before [insert end date].

ARTICLE 3 – ALLOWABLE EXPENDITURES AND PAYMENT

Allowable expenditures and payments shall be in accordance with the following and the *Payments Under Time and Materials and Labor-Hour Contracts* clause of the General Provisions.

A. Allowable Expenditures

1. Labor: Labor shall be reimbursed at the following fixed hourly rates, which rates are fully burdened to include the direct wages and related indirect / labor overhead costs, general and administrative (G&A) expenses, and fee or profit. The fixed hourly rates shall apply to labor performed by employees of the Subcontractor

<u>Category</u>	<u>Fixed Hourly Rate</u>	<u>Estimated Labor Hours</u> [Optional]
	\$	
	\$	

2. Other Direct Expenses: None

3. Travel Expenses: Travel expenses shall be reimbursed in accordance with the attached Subcontractor Guide to Reimbursable Travel Expenses.

3. Sales or Use Tax. Items purchased hereunder are for resale, per the University's California State Resale Permit No. SR-CH 21-835970 for LBNL, and the University shall not be charged for any sales or use tax. Items furnished hereunder for temporary use by the University are subject to California state sales or use tax. Such tax is not included in the fixed rates stated herein and shall be separately identified in Subcontractor's invoices.

B. Ceiling Price

1. The ceiling price for the performance of this Subcontract, including all allowable expenditures and termination costs, is \$ _____.
2. The University shall not be obligated to compensate the Subcontractor for the performance of this Subcontract, including any allowable expenditures and termination costs incurred, and the Subcontractor shall not be required to continue performance under this Subcontract or otherwise incur expenses, in excess of the above-stated ceiling price.
3. The ceiling price of this Subcontract may only be adjusted by the University Procurement Representative in a unilateral modification to this Subcontract.
1. The Subcontractor shall email its invoices no more than once each month directly to the LBNL Accounts Payable Office at APInvoice@lbl.gov. The "subject" line of the email shall identify the Subcontractor and the Subcontract number, as follows:

"Subject: Invoice for Subcontract No. ___, [Subcontractor's Name]"

If unable to submit its invoices by email, the Subcontractor may submit its invoices by mail to the following address:

Lawrence Berkeley National Laboratory
Accounts Payable Office, Subcontract No. XXX
One Cyclotron Road MS 90J-0106
Berkeley, CA 94720

2. All invoices except the final invoice shall be processed for payment within 30 days of receipt; provided, however, that payments made thereafter shall not be subject to any interest or late charges. Only those items/services identified in this Subcontract or a Subcontract Modification will be considered for payment.
3. All invoices shall identify in sufficient detail the work performed and tasks accomplished, the effort expended by labor category, the materials used, and other direct expenses incurred. All invoices for labor shall be accompanied by individual daily timecards or other substantiation approved by the University Procurement Representative. The Subcontractor shall maintain records which support all invoiced costs, and provide them to the University Procurement Representative upon request.

D. Payment Terms

1. Invoices shall be paid within 30 days of receipt of a proper invoice.
2. Payments shall be subject to (1) the University's acceptance of the work based on the requirements of this Subcontract and a high professional standard of quality, (2) receipt

and University acceptance of any required deliverables, and (3) applicable credits, tax withholds, retentions, offsets, rebates, and refunds.

ARTICLE 4 – SUBCONTRACT ADMINISTRATION

- A. The University Procurement Representative for this Subcontract is the person authorized to make changes in the requirements of this Subcontract or make modifications to this Subcontract, including changes or modifications to the work. The Subcontractor shall submit all documents, notices, and requests for approval required by this Subcontract to the University Procurement Representative at the email address indicated on the signature page or at the following mail address:

Dianne Yoder,
Principal Subcontract Administrator
Lawrence Berkeley National Laboratory
Office of the Chief Financial Officer
One Cyclotron Rd., Mail Stop 71R0259
Berkeley, CA 94720
Phone: (510) 486-5715
Fax: (510) 486-4380
E-Mail: dsyoder@lbl.gov

Any notices and approvals required by this Subcontract from the University to the Subcontractor shall be issued by the University Procurement Representative.

- B. The University Technical Representative for this Subcontract is [Name of Technical Representative]. The Technical Representative is the person designated to monitor the work and to interpret and clarify the technical requirements of the work. The Technical Representative is not authorized to make changes to the work or to modify this Subcontract.

ARTICLE 5 – REPORTS

- A. Type of Reports

The Subcontractor shall prepare and submit the following reports to the University:

1. Monthly Progress Reports

Monthly progress reports shall be submitted by the fifth business day of each month. The progress reports may be informal letter summaries in a format approved by the University representatives. These reports shall contain a description of work performed during the report period and the work planned for the succeeding period

2. Final Report

A final report shall be submitted upon completion of the work and contain a comprehensive summary of all work results and conclusions. The form and content of the final report shall be acceptable to the University Technical Representative. If so requested, a draft copy of the Report shall be provided to the University Technical Representative for review prior to final submittal.

- B. Submittal. Reports shall be separately submitted to the following recipients at the following email or mailing address:

Lawrence Berkeley National Laboratory
Attention: [Intended Recipient; see below]
One Cyclotron Rd., Mail Stop [see below]
Berkeley, CA 94720

With the exception of an authorized representative of DOE, the Subcontractor shall not distribute reports of work under this Subcontract to any other individual or organization without the prior written approval of the University Procurement Representative.

- C. Interim Reports. It is understood that there will be other information exchanged between the parties from time to time. The data may be exchanged directly between the parties concerned; formal reporting and distribution is not required in these cases.

ARTICLE 6 – KEY PERSONNEL

It is understood and agreed that the Subcontractor's key personnel designated below are considered to be essential to the work being performed hereunder and shall not be reassigned or replaced without prior University approval, except where such circumstances are beyond the reasonable control of the Subcontractor. The Subcontractor shall notify the University Procurement Representative reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the performance of this Subcontract.

NAME

TITLE

ARTICLE 7 – LBNL SITE ACCESS REQUIREMENTS

- A. All Subcontractor and lower-tier subcontractor employees requiring access to LBNL DOE-affiliated sites are subject to DOE restrictions.
- B. The Subcontractor shall not assign foreign national employees to work at LBNL DOE-affiliated sites who were born in, are citizens of, are employed by, or represent a government, company, institution, or other organization based in a country on the Department of State's List of State Sponsors of Terrorism without prior written approval from DOE Headquarters. Terrorist-sponsoring countries include Cuba, Iran, Sudan, and Syria. Requests for access must be submitted to LBNL at least 180 days in advance to allow time for approval from the DOE.
- C. LBNL is also required by DOE to document all foreign national employees who were born in, are citizens of, or are employed by a government, employer, institution or organization, of a sensitive country who require access to LBNL DOE-affiliated sites for 30 days or more (assignees). Such employees must identify themselves upon entry to any LBNL site. Sensitive countries include Algeria, Armenia, China, India, Israel, Libya, North Korea, Pakistan, Russia and various other former soviet union countries, and Taiwan. A complete list of sensitive countries and additional information on this requirement is available at <http://www.lbl.gov/ufva>.

ARTICLE 8 – APPROVAL OF TECHNICAL DATA

If this Subcontract requires the Subcontractor to furnish any drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance or test data, or other technical data for approval by the University prior to Subcontractor performance, the approval of the data by the University shall not relieve the Subcontractor from responsibility for any errors or omissions in such data or from responsibility for complying with the requirements of this Subcontract, except as specified below. Any work done prior to such approval shall be at the Subcontractor's risk.

Unless otherwise specified, the University requires a period of 10 working days from date of receipt to review and approve the data. If the University does not approve the data within the allotted time period, the parties will establish a new time period for review and approval of the data and, if necessary, the delivery schedule or completion date will be equitably adjusted.

If the data includes any variations from the Subcontract requirements, the Subcontractor shall describe such variations in writing at the time of submission of the data. If the University approves any such variation(s), a change order to the Subcontract shall be issued by the University and, if appropriate, a bilateral modification to the Subcontract shall be negotiated.

ARTICLE 9 – ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

In the performance of this Subcontract, the Subcontractor shall utilize environmentally preferable products and services (i.e., products and services with a lesser or reduced effect on human health and the environment), to the maximum possible extent consistent with the Subcontract requirements and the intended end use of the items or services furnished under this Subcontract. Information on environmentally preferable products and services is available at: <http://www.epa.gov/opptintr/epp/>.

ARTICLE 10 - E-VERIFY PROGRAM ENROLLMENT VERIFICATION

- A. The Subcontractor is required to include the clause of the General Provisions entitled *Employment Eligibility Verification* (FAR 52.222-54) in its lower-tier subcontracts for any service or construction work exceeding \$3,000.
- B. Prior to the start of work, the Subcontractor shall provide the University Procurement Representative with copies of the 'Company Profile' page or other page(s) from the E-Verify System, at <https://e-verify.uscis.gov/enroll>, that verifies the enrollment in the system of the Subcontractor and any lower-tier subcontractors described above, if not previously provided.

ARTICLE 11 – ELIGIBILITY CERTIFICATION

By acceptance of this Subcontract, the Subcontractor certifies that:

- A. To the best of its knowledge and belief, it and its principals are not presently debarred, suspended, proposed for debarment, or declared ineligible by any agency of the Federal Government for the award of contracts (including subcontracts); and
- B. To the extent it has had previous Government contracts or first-tier subcontracts subject to the *Equal Opportunity* clause (FAR 52.222-26) of the General Provisions, it has developed and has on file all written affirmative action programs and it has filed all prescribed compliance reports, as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2).

ARTICLE 12 – INCORPORATED DOCUMENTS

The following documents are hereby incorporated as a part of this Subcontract, and are attached hereto:

- General Provisions for Time and Materials Subcontracts, dated March 21, 2011
- Statement of Work, dated _____
- Subcontractor Guide to Reimbursable Travel Expenses, dated November 4, 2009
- ~~Applies if the Subcontract exceeds \$650K and is awarded to a large business.~~ Small Business Subcontracting Plan, dated _____

ARTICLE 13 – GENERAL PROVISIONS

- A. The clauses listed in the referenced General Provisions shall be applicable to this Subcontract, based on the value of the Subcontract, the status of the Subcontractor, or the nature and location of the work, as indicated in the General Provisions.
- B. FAR Clause 52.227-14, *Rights in Data—General*, of the General Provisions is hereby deleted and replace with the following clause, which clause shall govern all rights to data related to this Subcontract:
- FAR 52.227-17, *Rights in Data—Special Works* (DEC 2007)
- C. This Subcontract is for advisory and assistance services, as defined in FAR 2.101. Accordingly, the *Organizational Conflict of Interest* clause of the General Provisions (DEAR 952.209-72) shall apply.
- D. This Subcontract is not for research, development, or demonstration work or design work involving non-standard types of construction. Accordingly, the clauses listed in the General Provisions related to such work shall not apply.

(END OF SCHEDULE OF ARTICLES)



University of California
Lawrence Berkeley National Laboratory

GENERAL PROVISIONS FOR TIME & MATERIAL SUBCONTRACTS

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CLAUSE 1 – DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "Government" means the United States Government.
- "DOE" means the U. S. Department of Energy.
- "University" means The Regents of the University of California, acting through the LBNL.
- "LBNL" means the Lawrence Berkeley National Laboratory.
- "Subcontract" means the subcontract between the University and the Subcontractor which includes these General Provisions.
- "Subcontractor" means the party who has entered into the Subcontract with the University, as identified in the Subcontract.
- The lower case term "subcontractor" means the Subcontractor's subcontractor(s).

CLAUSE 2 – SCOPE OF SUBCONTRACT

The scope of the Subcontract shall be limited to the acquisition of supplies and services on a time and material basis, which may include research, development, or demonstration work.

The Subcontract is entered into as a subcontract under the University's Prime Contract No. DE-AC02-05CH11231 with the Government, represented by the DOE, for management and operation of the LBNL and the performance of certain research and development work.

CLAUSE 3 – ACCEPTANCE OF SUBCONTRACT

The Subcontractor's written acceptance of this Subcontract or the performance of any portion of this Subcontract shall constitute the Subcontractor's unqualified acceptance of this Subcontract and all of the Subcontract's terms and conditions. Any alterations made to the documents comprising this Subcontract or any conditions imposed by the Subcontractor upon its written acceptance of this Subcontract are not acceptable and shall constitute a proposal for modification of the Subcontract only and shall have no effect on the validity or the Subcontractor's acceptance of this Subcontract and its terms and conditions, anything to the contrary notwithstanding.

In the event the Subcontractor's business status indicated on the face of this Subcontract is not accurate and current, in accordance with applicable Federal laws, executive orders, and regulations, the University may cancel this Subcontract, without further obligation.

CLAUSE 4 – DOCUMENTS OF SUBCONTRACTOR

The provisions of any quotation or other documents of the Subcontractor referenced in or incorporated as a part of this Subcontract are referenced or incorporated only for the purpose of specifying the nature of the materials, supplies, or services ordered, the price thereof, and/or the delivery thereof, and any terms and conditions contained in such referenced or incorporated documents shall not apply.

CLAUSE 5 – FORCED, CONVICT, AND INDENTURED LABOR

(a) By signing or accepting this subcontract, the Subcontractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to this subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

(b) Any Subcontractor subcontracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a subcontract pursuant to the above, may have any or all of the following sanctions imposed:

(1) The subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University.

(2) The Subcontractor may be removed from consideration for University subcontracts for a period not to exceed 360 days.

CLAUSE 6 – PACKAGING INSTRUCTIONS

The Subcontractor shall suitably package the Items to prevent damage during handling and shipping. Any damage resulting from improper packaging, containerizing, or lack thereof shall be the liability of the Subcontractor, anything to the contrary notwithstanding. The Subcontractor shall indicate the University Subcontract number on each container or package. An itemized packing list shall be affixed to the outermost cover of each container or package.

The University encourages the use of biodegradable packaging materials. To assist in this endeavor, the Subcontractor is requested to use every reasonable effort to use biodegradable packaging materials for shipments to the University.

CLAUSE 7 – TITLE AND RISK OF LOSS

Unless otherwise provided in the Subcontract, title to the Items purchased under the Subcontract shall pass directly to the Government upon, and the risk of loss or damage to the Items shall remain with the Subcontractor until, and shall pass to the University upon:

- If F.O.B. Shipping Point: Completion of delivery to the carrier and any loading by the Subcontractor.
- If F.O.B. Destination: Completion of delivery or commencement of unloading by the University at the delivery point.

However, (1) if the Subcontract provides for formal acceptance of any Items by the University, then title to such Items shall pass directly to the Government upon such formal acceptance; and (2) the title and risk of loss or damage to Items that are non-conforming shall remain with the Subcontractor until acceptance of the Items by the University as conforming.

CLAUSE 8 – SHIPMENTS FOR UNIVERSITY'S ACCOUNT

Except as otherwise provided in the Subcontract, all shipments by the Subcontractor for the University's account shall be (1) shipped FOB Shipping Point and marked as shipped "For the U. S. Department of Energy;" (2) shipped at the maximum declared value for the lowest applicable transportation rate or classification, and the bill of lading shall so note; and (3) self-insured by the University and not insured by the Subcontractor. Airway bills shall be marked with the appropriate "Government Package" entry. Shipping costs in excess of those per the "Shipping Instructions" specified on the face of this Subcontract shall be deducted from the Subcontractor's invoice(s).

CLAUSE 9 – TRAVEL

This Subcontract may include the estimated cost of round trip travel deemed necessary by the LBNL Technical Coordinator. Only actual travel costs will be paid, and any such costs must be paid in accordance with the Federal Travel Regulations and Berkeley Laboratory Travel policies, attached as needed. Any Foreign Travel (any travel outside of the United States and its territories and possessions) will require prior written approval by LBNL.

CLAUSE 10 – INVOICES

The Subcontractor shall submit its invoice at the time of final shipment, unless otherwise provided in the Subcontract. The invoices shall reference the Subcontract Number and include a complete description of the materials, supplies, services; prices; ship dates; and the name of the University Procurement Representative. Failure to comply with any of these requirements may result in a delay in payment of the invoices.

CLAUSE 11 – PAYMENT

Unless otherwise provided in the Subcontract, Subcontractor shall be paid within 30 days after receipt of the Subcontractor's properly submitted invoice, for Items delivered and accepted or services rendered and accepted. Any offered discount shall be taken if payment is made within the discount period indicated by the Subcontractor. Invoices must be accompanied by transportation receipts, or facsimiles, if transportation is payable and charged as a separate item.

CLAUSE 12 – NOTIFICATIONS

(a) Subcontractor shall immediately notify the University Procurement Representative in writing of: (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; and (2) any claim made against the Subcontractor, the cost of which is reimbursable hereunder.

(b) Subcontractor agrees to notify the University of any government tax, fee, or charge levied or purported to be levied on or collected from the Subcontractor in connection with this Subcontract which the Subcontractor has reason to believe may be inapplicable or invalid, and which would be reimbursable or the University has claimed an exemption hereunder. Subcontractor also agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by the University, and to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest and, if so directed by the University, to cause to be assigned to the University or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit the University or its designee to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name.

(c) If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the University Procurement Representative in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to resolve such circumstances within the shortest possible time.

CLAUSE 13 – BANKRUPTCY

If the Subcontractor enters into any proceeding related to bankruptcy, it shall give written notice to the University Procurement Representative via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the LBNL purchase orders, subcontracts, or agreements affected.

CLAUSE 14 – EXCUSABLE DELAYS

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics quarantine, restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the University in writing as soon as reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give the University written notice of the cessation of such occurrence.

CLAUSE 15 – WORK ON UNIVERSITY OR GOVERNMENT PREMISES

(Applicable to Subcontracts involving Subcontractor's performance at University or Government-owned sites or facilities.)

(a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each, and that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

(b) **Indemnify, Defend and Hold Harmless.**

(1) The Subcontractor shall indemnify, defend and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborers', material's, and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government; and

(2) Promptly notify the University, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, suits, or liens and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means. The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof, as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed; but the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

(c) **Clean Up.** The Subcontractor shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its work or the work of any of its lower-tier subcontractors; and shall remove all such waste material and rubbish at the completion of the work and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. If the waste material and rubbish is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.

(d) **Employees.**

(1) The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best-qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall remove such person from the work under the subcontract, and that person shall not again, without written permission of the University, be assigned to work under the subcontract.

(2) It is understood that if employees of the University shall perform any acts for the purpose of discharging the responsibility undertaken by the Subcontractor hereunder, whether requested to perform such acts by the Subcontractor or not, such employees of the University while performing such acts shall be considered the agents and servants of the Subcontractor subject to the exclusive control of the Subcontractor.

(e) **Insurance.** The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract sufficient to protect the University and the Government from any and all public liability and Workers' Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University with one copy of certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors' compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.

(f) **Environment, Safety, and Health.**

(1) The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the health and safety of employees and members of the public, to minimize danger from all hazards to life and property, and to prevent injury to any of its employees or other persons; and shall comply with all applicable environmental, safety, health, and fire protection regulations and requirements, including those of the University and DOE (including reporting requirements).

(2) The Subcontractor shall immediately take action to correct any noncompliance with the requirements of this clause. In the event that the Subcontractor fails to comply with said regulations or requirements of the University or the DOE, the University may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

CLAUSE 16 -- TECHNICAL DIRECTION AND CHANGES

(a) Performance of the work under this Subcontract shall be subject to the technical direction of the University Technical Representative. The Subcontractor shall promptly proceed with the performance of technical direction of the nature prescribed by this article issued by the University Technical Representative.

(b) The term "technical direction" is defined to include directions to the Subcontractor within the Scope of Work of the Subcontract which: (1) clarify the desired work emphasis between work areas or tasks; (2) direct the pursuit of certain lines of inquiry; (3) assist in the interpretation of drawings, specifications, or technical portions of the work description; or (4) fill in details necessary to perform and complete the Scope of Work. All technical direction must be issued in writing by the University Technical Representative.

(c) The University Technical Representative is not authorized to issue any technical direction which would: (1) constitute an assignment of work outside the general scope of the work covered by this Subcontract; (2) change the description of the work to be performed or any applicable drawings, designs, and specifications; (3) change the time or place of performance; the method of shipment or packaging, or the place of inspection, delivery or acceptance; (4) increase the estimated cost for performance of the work, the fixed fee, or the time required for performance of the work; (5) change any expressed term or condition of the Subcontract; or (6) unreasonably interfere with the Subcontractor's ability to perform and complete the work.

Any such technical direction must first be authorized by a written change order to this Subcontract issued by the University Procurement Representative, as provided in the clause of these General Provisions entitled *Changes-Time-And-Materials or Labor-Hour Contracts*.

(d) If any instruction or direction by the University Technical Representative falls within one of the types described in Paragraph C, above, the Subcontractor shall not proceed to act on such technical direction and shall promptly notify the University Procurement Representative.

Upon receipt of a notification from the Subcontractor, the University Procurement Representative shall promptly advise the Subcontractor either that, in accordance with the *Changes-Time-And-Materials or Labor-Hour Contracts* clause: (1) the technical direction is within the

general scope of the Subcontract and does not constitute a change and to proceed to act on such technical direction; or (2) the technical direction is not within the general scope of the Subcontract or would constitute a change, and to act on such technical direction unless and until the University issues a written change order.

CLAUSE 17 -- APPROVAL OF TECHNICAL DATA

(a) If this Subcontract requires the Subcontractor to furnish any drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance or test data, or other technical data for approval by the University prior to Subcontractor performance, the approval of the data by the University shall not relieve the Subcontractor from responsibility for any errors or omissions in such data or from responsibility for complying with the requirements of this Subcontract, except as specified below. Any work done prior to such approval shall be at the Subcontractor's risk.

(b) If the data includes any variations from the Subcontract requirements, the Subcontractor shall describe such variations in writing at the time of submission of the data. If the University approves any such variation(s), a change order to the Subcontract shall be issued by the University and, if appropriate, a bilateral modification to the Subcontract shall be negotiated.

CLAUSE 18 -- QUALITY OF SUPPLIES

Any supplies furnished by the Subcontractor in performance of the work shall, as a minimum: (1) be new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety; (2) be as warranted; and (3) not contain any counterfeit or suspect materials, parts, or components. Types of counterfeit or suspect materials, parts, and components typically include, but are not limited to: electrical components, piping, fittings, flanges, and fasteners. The University will not accept any work involving the furnishing of any supplies found by the University not to conform to these minimum requirements, notwithstanding any inspection or acceptance of delivery by the University, unless such condition is specifically approved in writing by the University Procurement Representative.

CLAUSE 19 -- WARRANTY

The Subcontractor warrants that the supplies and services furnished under this Subcontract shall be: (1) free from defects in workmanship, material, and Subcontractor's design or engineering contributions; (2) of the most suitable grade and exactly as specified in the descriptions and specifications of this Subcontract and the affirmations and promises made by the Subcontractor in its proposal; and (3) merchantable and fit for the particular purpose, if any, described in the Subcontract. The Subcontractor further warrants that the data and documentation provided by the Subcontractor or its suppliers shall be complete and accurate, and may be relied upon by the University.

The Subcontractor shall correct all nonconformances with this warranty discovered within one year after formal acceptance or initial use of the supplies and services. Such corrective action shall be at the Subcontractor's expense, including any related transportation costs. The limited warranty period shall not apply in the case of latent defects, specific failure to comply with the terms of this Subcontract, or fraud or such gross mistakes as amount to fraud.

CLAUSE 20 -- RELEASE OF INFORMATION

The Subcontractor agrees that information regarding this Subcontract, any data developed or obtained, and the name of the University, the Lawrence Berkeley National Laboratory, or the Government shall not be disclosed in any publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information without prior written approval from the University Procurement Representative.

CLAUSE 21 -- ASSIGNMENTS

(a) This Subcontract may be assigned by the University to the U.S. Government or a successor-in-interest to the University.

(b) Except as to the assignment of payments due hereunder, the Subcontractor shall have no right, power, or authority to sell, mortgage, transfer, or assign this Subcontract, any portion hereof, any interest herein, or any claim hereunder, nor shall it allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

CLAUSE 22 – DISPUTES

(a) Except as otherwise provided in this Subcontract, any non-routine claim under this Subcontract not resolved in the ordinary course of business shall be referred in writing to the University Procurement Representative and the executive management of the Subcontractor with the authority to settle the dispute. The representatives of the parties, or their designees, shall then attempt in good faith to resolve the dispute by negotiations. All negotiations shall be confidential and shall be treated as compromise and settlement negotiations, for the purposes of application of rules of evidence. Pending resolution of the dispute, the Subcontractor shall proceed diligently with the performance of the Subcontract, in accordance with its terms and conditions.

(b) Any unresolved dispute with a value under \$100,000 relating to the Subcontract (whether contract, tort, or both), or the breach of the Subcontract shall be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court in Alameda County, CA having jurisdiction.

(c) The following modifications are made to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA.; (2) the location for all arbitrations shall be in Alameda County; and (3) each party to the arbitration shall pay its pro rata share of the arbitrator's fees not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

(d) The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of \$100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the GOVERNING LAW AND VENUE clause.

CLAUSE 23 – WORKER SAFETY AND HEALTH

(Applicable if the subcontract involves performance at an LBNL site.)

The Subcontractor and its lower-tier subcontractors performing work at an LBNL site are subject to the DOE Worker Safety and Health Program regulation of Title 10, Part 851 of the U.S. Code of Federal Regulations (10 CFR 851), and shall perform the work in compliance with the LBNL Health and Safety Manual, available at <http://www.lbl.gov/ehs/pub3000/>, which implements the requirements of 10 CFR 851, and in compliance with their Cal/OSHA mandated Injury and Illness Prevention Plan (IIPP) or equivalent and all other LBNL safety procedures and policies communicated to the Subcontractor. The Subcontractor is responsible for ensuring that its lower tier subcontractors comply with these requirements. Violations of these requirements may subject the Subcontractor and its lower tier subcontractors to civil penalties.

The Subcontractor shall ensure that all workers requiring unescorted/unbadged access to an LBNL site complete the *General Employee Radiation Training* (GERT). A GERT booklet and the on-line training are available at <http://www.lbl.gov/ehs/training/>. The GERT booklet is also available at the Site Access Office in Building 65B.

CLAUSE 24 – INJURY REPORTING

(Applicable if the Subcontract involves performance by ten or more Subcontractor employees at LBNL sites.)

(a) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the University within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 101 or equivalent) for each such case. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109. In addition, serious injuries resulting in death or hospitalization shall be reported by telephone immediately to the LBNL Health Services Receptionist, (510) 486-6266.

(b) Subcontractor shall report to the University the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109.

CLAUSE 25 – LAWS AND REGULATIONS

The Subcontractor and its employees and subcontractors shall at all times comply with all applicable state and federal laws, ordinances, statutes, codes, rules, and regulations, including, but not limited to, those relating to wages, hours, employment, discrimination, immigration, and safety (including OSHA).

CLAUSE 26 – GOVERNING LAW AND VENUE

This Subcontract shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Subcontract shall be instituted in the State of California in the Superior Court of Alameda County (or in the Superior Court of Contra Costa County if the underlying action occurred at LBNL's JGI Site).

CLAUSE 27 – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract document (including any signature page and schedule of articles), these General Provisions, and any other referenced or incorporated clauses, provisions, and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) these General Provisions, including the FAR and DEAR clauses listed in the clause entitled *Clauses Incorporated by Reference*; (c) any specifications; (d) other documents listed in the Subcontract Article entitled *Incorporated Documents*, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, and documents.

CLAUSE 28 – CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of this Subcontract, as prescribed below. As used in the clauses, the term "contract" shall mean this Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into this Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR clauses 52.227-1 & its Alt. I, 52.227-2, 52.227-3, 52.227-14, and 52.227-19, and DEAR clauses 952.227-11, 952.227-13, and 970.5232-3, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University. As used in FAR clause 52.245-1, the terms "Government" and "Contracting Officer" shall mean the University, except with respect to title. As used in DEAR clauses 952.227-9 and 970.5232-3, the term "DOE" shall mean DOE and the University. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

THE FOLLOWING CLAUSES APPLY TO ALL SUBCONTRACTS:

DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000). Applies if the Subcontract involves any work at a DOE owned or leased facility.
DEAR 952.204-71	SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994). Applies if the Subcontract includes sensitive foreign nation controls requirements. See list of nations at: www.lbl.gov/ufva .
DEAR 952.204-77	COMPUTER SECURITY (AUG 2006). Applies if the Subcontractor has access to any computers owned, leased or operated by or on behalf of LBNL or DOE.
DEAR 970.5208-1	PRINTING (DEC 2000). Applies if printing is specified under the Subcontract.
FAR 52.211-17	DELIVERY OF EXCESS QUANTITIES (SEP 1989). Applies if the Subcontract is for supplies.
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (DEC 2010). Applies if the Subcontract involves any further subcontracting opportunities.

FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)		3. Use (except for manufacture) by other contractors or subcontractors participating in the Government's program of which the specific subcontract is a part;
FAR 52.222-26	EQUAL OPPORTUNITY (MAR 2007) Note: Download the required EEO Poster at: http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm		4. Emergency repair or overhaul work; and
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (FEB 2009)		5. Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation or for emergency repair or overhaul work.
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), with ALTERNATE I (JUL 1995). Applies if the Subcontract involves the delivery or on-site use of any hazardous materials.		If delivery of Restricted Computer Software is required, then ALTERNATE III shall apply.
FAR 52.223-11	OZONE-DEPLETING SUBSTANCES (MAY 2001). Applies if the Subcontract involves the delivery or use of ozone-depleting substances or supplies that may contain or be manufactured with ozone depleting substances	FAR 52.227-19	COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007). Applies if the Subcontract involves the acquisition of commercial computer software.
FAR 52.223-12	REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995). Applies if the Subcontract is for services involving the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances, as a refrigerant, such as air conditioners (including motor vehicles), refrigerators, chillers, or freezers.	DEAR 952.227-82	RIGHTS TO PROPOSAL DATA (APR 1994). Applies if the awarded Subcontract is based upon a technical proposal.
FAR 52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007). Applies if the Subcontract involves furnishing, specifying the use of, or using at an LBNL Site any energy-consuming product listed in the ENERGY STAR® Program or DOE's Federal Energy Management Program (FEMP). For information on listed energy-consuming products see: http://www.energystar.gov/products and http://www1.eere.energy.gov/femp/technologies/eep_purchasingspecs.html .	FAR 52.232-7	PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (FEB 2007). The first sentence of Paragraph (b)(4) and Paragraphs (h) and (i) shall not apply.
FAR 52.223-16	IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007). Applies if the Subcontract involves the furnishing or use at an LBNL Site of any personal computer products (as defined). Requires personal computer products that are EPEAT Bronze Registered or higher. For information about the standard, see http://www.epeat.net .	FAR 52.236-7	PERMITS AND RESPONSIBILITIES (NOV 1991)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)	FAR 52.242-15	STOP-WORK ORDER (AUG 1989)
DEAR 952.227-9	REFUND OF ROYALTIES (FEB 1995). Applies if "royalties" are paid under the Subcontract by the Subcontractor, or a subcontractor at any tier.	FAR 52.243-3	CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS (SEP 2000)
FAR 52.227-14	RIGHTS IN DATA-GENERAL (DEC 2007), with ALTERNATE V and DEAR 927.409(d)(3), and substituting paragraph (a) with DEAR 927.409(a). Applies if any "data" will be produced, furnished, or acquired under the Subcontract. If delivery of Limited Rights Data is required, then ALTERNATE II shall apply, with the following disclosure purposes added to the end of paragraph (a) of the Limited Rights Notice: 1. Use (except for manufacture) by support services contractors or subcontractors; 2. Evaluation by non-government evaluators;	FAR 52.244-2	SUBCONTRACTS (OCT 2010), with ALTERNATE I (JUN 2007). Paragraph (d) insert regarding consent is: "Any subcontract or purchase order that: (1) is for work at an LBNL site; (2) exceeds \$150,000 and is for other than a "commercial item," as defined in FAR 2.101; or (3) provides for the reimbursement of costs."
		FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010)
		FAR 52.245-1	GOVERNMENT PROPERTY (AUG 2010), with ALTERNATE I (JUN 2007)
		FAR 52.246-1	CONTRACTOR INSPECTION REQUIREMENTS (APR 1984)
		FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003). Applies if the Subcontract involves international air transportation.
		FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006). Applies if the Subcontract involves ocean transportation of supplies other than "commercial items", except as described in Paragraph (e)(4) of the clause.
		DEAR 952.247-70	FOREIGN TRAVEL (JUN 2010)
		FAR 52.249-6	TERMINATION (COST REIMBURSEMENT) (MAY 2004), with ALTERNATE IV (SEP 1996)
		FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)
			THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$2,500:
		FAR 52.222-41	SERVICE CONTRACT ACT OF 1965, AS AMENDED (NOV 2007). Applies if the Subcontract is principally for the furnishing of services through the use of "service employees", unless the Subcontract qualifies for an exemption.

FAR 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT-PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (SEP 2009). Applies if FAR clause 52.222-41 is applicable and the Subcontract is for multiple years or has an option to renew.

FAR 52.222-44 FAIR LABOR STANDARDS ACT AND SERVICES CONTRACT ACT - PRICE ADJUSTMENT (SEP 2009). Applies if FAR Clause 52.222-41 is applicable and FAR clause 52.222-43 does not apply.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$3,000:

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009). Applies if the Subcontract is for construction or services in the U.S., except for commercial services that are part of the purchase of a 'commercially available off-the-shelf' (COTS) item, or a COTS item with minor modifications, normally provided for that COTS item, and performed by the COTS provider.

FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (FEB 2009)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$15,000:

FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (OCT 2010). Applies if the Subcontract is for other than a "commercial item," as defined in FAR 2.101.

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$25,000:

DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000). Applies if the Subcontract involves any of the hazardous activities stipulated in 10 CFR 707.2.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$100,000 OR MORE:

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEP 2010)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (SEP 2010)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$100,000:

FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003), excluding Paragraph (e). Applies if the Subcontract was competitively awarded and is for other than a "commercial item."

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010), Paragraphs (a) through (h), excluding Paragraph (d). The records shall be retained for 3 years after final payment.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$150,000:

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006). ALTERNATE 1 (JUL 1995) applies if the Subcontract is for "commercial items".

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (OCT 2010), excluding paragraph (c)(1). Applies unless the Subcontract is for "commercial items".

FAR 52.203-10 PRICE OR FEE REDUCTION FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009), with ALTERNATE 1. Applies if the Subcontract involves advisory and assistance services, as defined in FAR 2.101. The period of ineligibility shall be five years.

FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCT 2010), excluding paragraph (b)

FAR 52.215-23 LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009)

FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (JUL 2005). Applies if the Subcontract involves mechanics or laborers and is for other than "commercial items."

FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007) Applies only if the subcontract is not for research, development or demonstration work.

FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

FAR 52.227-3 PATENT INDEMNITY (APR 1984). Applies IF commercial supplies are furnished under the Subcontract.

FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

FAR 52.246-6 INSPECTION - TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$500,000:

DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$650,000:

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2010). Applies unless the Subcontractor is a small business or there are no subcontracting possibilities.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$700,000:

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 2010). Applies if certified cost or pricing data is required.

FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010). Applies if certified cost or pricing data is required.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$5,000,000:

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010). Applies if the Subcontract has a performance period of more than 120 days. All disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the DOE Office of the Inspector General, with a copy to the LBNL DOE Contracting Officer.

FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007). Download the required poster at: http://ig.energy.gov/documents/Hotline_poster.pdf

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT INDICATES IT IS FOR RESEARCH, DEVELOPMENT, OR DEMONSTRATION (RD&D) WORK OR DESIGN WORK INVOLVING NON-STANDARD TYPES OF CONSTRUCTION:

- DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) Paragraph (a), in place of Clause FAR 52.227-1.
Applies if the Subcontract exceeds \$150,000.
- DEAR 952.227-11 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995).
Applies if the Subcontractor is a Domestic Small Business or Non-Profit Organization, as defined at FAR 27.301.
- DEAR 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (SEP 1997). Applies if the Subcontractor is not a Domestic Small Business or Non-Profit Organization, as defined at FAR 27.301.
- FAR 52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987). Applies to all Subcontracts except those with Universities or Colleges under \$500,000.
- DEAR 952.227-84 RIGHT TO REQUEST PATENT WAIVER (FEB 1998)
- DEAR 952.235-71 RESEARCH MISCONDUCT (JUL 2005)

END OF GENERAL PROVISIONS



LAWRENCE BERKELEY NATIONAL LABORATORY

Subcontractor Guide to Reimbursable Travel Expenses		
ACTIVITY OR EXPENSE TYPE	ALLOWABLE AMOUNT	REQUIREMENTS
DOMESTIC TRAVEL * (within Continental US "CONUS", up to 30 days)		
Meal and Incidental Expenses (M&IE)	Varies by county and/or defined location.	Reimbursable up to the maximum GSA-published CONUS per diem rates, subject to the GSA Travel Management and Berkeley Lab Travel Services guidelines at the web addresses indicated below.
	12 Hours or less	No reimbursement for M&IE.
	12 to 24 Hours	Actual up to 75% of the maximum GSA CONUS rate
	Over 24 Hours	Actual up to 75% of the maximum GSA CONUS rate for the first and last day of travel and up to the maximum GSA CONUS rate for other days.
Lodging/Hotel	Actual, up to the daily maximum rate	Lodging must be necessary and reasonable. Reimbursable up to the maximum GSA CONUS per diem rate, subject to the GSA Travel Management and Berkeley Lab Travel Services guidelines at the web addresses indicated below. Receipts are required.
Airfare	Actual, allowable airfare	Allowable airfare is the <u>lowest</u> fare, including discount fares that meet the needs of the traveler. Receipts are required. Business or First Class fare is not allowed.
Reissued or exchanged airfare	Actual	All documentation, for both the original and reissued tickets needs to be submitted.
Canceled Reservations	Actual	Traveler is responsible for canceling reservations (air and hotel). Costs for failure to cancel are <u>only</u> reimbursed, if due to circumstances beyond traveler's control.
Mileage	GSA Rate (\$0.55/mile, eff. 1/1/09)	Applies to use of privately owned vehicles while on official travel. Receipts not required.
Parking	Actual	Receipts required for charge of \$75 or more.
Taxi/Shuttle/Limo	Actual	Receipts required for charge of \$75 or more.
Private Auto to/from terminals	Actual	Actual mileage, at the allowable GSA mileage rate, for one round trip, plus parking (long term parking encouraged), or two round trips and short term parking. Subcontractor is financially responsible for auto liability insurance, including collision coverage. Receipts required if total \$75 or more.
Rental Cars	Actual	Necessity must be explained on report if not apparent by mileage usage, etc. Receipts required. A car is assumed to be adequate for official business. Subcontractor is financially responsible for any auto liability insurance, including collision coverage.
Rental car gas	Actual	Receipts required for charge of \$75 or more.
Tolls	Actual	Receipts required for charge of \$75 or more.
Phone Calls	Actual	All business calls and one reasonably brief personal call per day. Emergency calls to family concerning itinerary changes or calls to family, doctor or other when traveler is ill or injured.
ATM Transaction fees	Actual	List as miscellaneous item on travel expense report, or attachment to invoice.
Miscellaneous Expenses	Actual	Expenses must be reasonable and necessary to accomplish the official business purpose of trip, such as laundry, baggage handling, postage, FAX transmittals, etc. Receipts required for any charge of \$75 or more.
FOREIGN TRAVEL (Including travel to Mexico and Canada)		
	U.S. Department of State per diem rates apply.	Berkeley Lab and DOE APPROVAL must be obtained <u>PRIOR</u> to travel. Air travel to foreign destinations must comply with the requirements of FAR Clause 52.247-63, "Preference for U.S.-Flag Air Carriers".

*For Alaska, Hawaii, Puerto Rico, and US Possessions, the U.S. Department of Defense per diem rates shall apply.

These guidelines are subject to change. Review the below websites for more details and the most up-to-date information:

GSA Travel Resources: <http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeld=17113&channelId=-24651>

Berkeley Lab Travel Services: <http://travel.lbl.gov/reimbursements/index.html>