

SECTION L - PART I - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS

L.1 LISTING OF PROVISIONS INCORPORATED BY REFERENCE

NOTICE: The following contract clauses pertinent to this section are hereby incorporated by reference:

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)

CLAUSE NUMBER	DATE	TITLE
52.211-14	SEP 1990	NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE
	Insert:	"DO-C9 rated order" in blank
52.215-16	JUN 2003	FACILITIES CAPITAL COST OF MONEY
52.222-46	FEB 1993	EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES
52.232-38	MAY 1999	SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER
52.237-1	APR 1984	SITE VISIT
52.237-10	OCT 1997	IDENTIFICATION OF UNCOMPENSATED OVERTIME

II. NASA FAR SUPPLEMENT (48 CFR CHAPTER 18) PROVISIONS

CLAUSE NUMBER	DATE	TITLE
1852.223-73	NOV 2004	SAFETY AND HEALTH PLAN
1852.231-71	MAR 1994	DETERMINATION OF COMPENSATION REASONABLENESS
1852.233-70	OCT 2002	PROTESTS TO NASA

(End of Provision)

L.2 INSTRUCTIONS TO OFFERORS-COMPETITIVE ACQUISITION (FAR 52.215-1) (JAN 2004)

(a) *Definitions.* As used in this provision-

"*Discussions*" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"*In writing*," "*writing*," or "*written*" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"*Proposal modification*" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"*Proposal revision*" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages

(i) addressed to the office specified in the solicitation, and

(ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror.

Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show-

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, revision, and withdrawal of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 pm, local time, for the designated Government office on the date that proposal or revision is due.

(ii) (A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

- (1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 pm one working day prior to the date specified for receipt of proposals; or
 - (2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
 - (3) It is the only proposal received.
- (B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.
- (iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
 - (iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
 - (v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.
- (4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.
 - (5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.
 - (6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.
 - (7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.
 - (8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.
 - (9) Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined. The Government reserves the right to amend the

solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall-

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of/or in connection with the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award.

(1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of Provision)

L.3 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (FAR 52.215-20) (OCT 1997)

(a) Exceptions from cost or pricing data.

(1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Commercial item exception. For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items

have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include--

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of provision)

L.4 TYPE OF CONTRACT (FAR 52.216-1) (APR 1984)

The Government contemplates award of a Cost plus Award-Term with Performance Incentive Fee contract resulting from this solicitation.

(End of Provision)

L.5 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FAR 52.222-24) (FEB 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

(End of provision)

L.6 SERVICE OF PROTEST (FAR 52.233-2) (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgement of receipt from:

Stephanie D. Hunter, Contracting Officer
NASA Johnson Space Center
Mail Code BH4
2101 NASA Parkway
Houston, TX 77058-3696

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of Provision)

**L.7 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE
(FAR 52.252-1) (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at these addresses:

<http://www.arnet.gov/far/>

<http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>

(End of provision)

L.8 PREPROPOSAL/PRE-BID CONFERENCE (NFS 1852.215-77) (DEC 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date: February 16, 2005

Time: 9:00 am CST

Location: NASA Lyndon B. Johnson Space Center
Gilruth Recreation Center
Houston, TX

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of Provision)

L.9 PROPOSAL PAGE LIMITATIONS (NFS 1852.215-81) (FEB 1998)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Table L-1 - Page Limits

Volume	Title	Copies	Page Limit
I	Management Approach	15	
II	Technical Approach Response to Technical Scenarios		
IV	Small Business Subcontracting Plan		
V	Past Performance		
	Total Page Limit for Above Volumes		260
Items Excluded from Page Limits			
I	Commitment Letters for Key Personnel	5	None
I	Key Personnel Resumes	5	
I	Forms and Total Compensation Plan (Attachment L-5)	1 & CD- ROM	
III	Safety, Health, and Environmental Compliance Plan	5	
V	Past Performance Questionnaire	1	
VI	Cost/Price Proposal	15	
	Forms and Total Compensation Plan (Attachment L-5)	1 & CD- ROM	
	DRD's submitted with Proposal	15	

(b) A page is defined as one side of a sheet, 8 1/2" x 11", with at least one inch margins on all sides, using not smaller than Arial (non-compressed) 11 point type for the main body of the text. Arial (non-compressed) type no smaller than 9 point may be used in tables, charts, and graphics. Foldouts count as an equivalent number of 8 1/2" x 11" pages. The metric standard format most closely approximating the described standard 8 1/2" x 11" size may also be used. Pages within each volume shall be numbered consecutively. Offerors shall submit the number of hard copies as stated above and in addition submit one separate CD-ROM containing the cost/price volume V1 and one CD-ROM containing the remaining volumes (I – V).

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation. Forms and Total Compensation Plan requested in the Management Approach is not included in the page count and should be placed in the Cost Volume

(d) If final revisions are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of Provision)

L.10 CONTRACT AWARD QUANTITIES (JSC 52.215-91) (JAN 2000)

Proposals for quantities less than specified in the solicitation will not be considered for award. (Reference paragraph (c)(4) of solicitation provision 52.215-1 Instruction to Offerors—Competitive Acquisitions).

(End of Provision)

L.11 COMMUNICATIONS REGARDING THIS SOLICITATION (JSC 52.215-105)
(DEC 1999)

Any communications in reference to this solicitation shall cite the solicitation number and be directed to the following Government representative:

Stephanie D. Hunter, Contracting Officer
NASA Johnson Space Center
Mail Code BH4
2101 NASA Parkway
Houston, TX 77058-3696

Phone: 281-483-8523 (collect calls not accepted)

QUESTIONS REGARDING THIS SOLICITATION MUST BE PRESENTED IN WRITING and should be submitted to the above address within ten days of the solicitation issue date in order that answers may be obtained and disseminated in a timely manner, since it is not expected that a proposal submission date can be extended. Oral questions will not be answered due to the possibility of misunderstanding or misinterpretation. Questions shall not be directed to the technical activity personnel.

Note: Any written communications should include the mail code on the envelope to expedite processing.

(End of Provision)

L.12 SUBMISSION OF PROPOSALS BY COMMERCIAL CARRIER
(JSC 52.215-108) (SEPT 1988)

Offerors are advised that proposals sent to JSC by commercial carrier (e.g., Federal Express, Purolator, United Parcel Service) are NOT delivered directly to the place designated in the solicitation for submission of proposals. All parcels and packages delivered by commercial carriers are routed to the Transportation Branch in Building 421 at JSC. If such a parcel contains on its visible, exterior surface the information required by the "Submission of Offers" provision of this solicitation (i.e., the time specified for receipt, the solicitation number, and the name and address of the offeror), it will be handled on an expedited basis by the Transportation Branch; however, depending on when it is received by the Transportation Branch, it MAY OR MAY NOT be received by the office designated for receipt of proposals by the required time. Transportation Branch personnel will NOT open the commercial carrier's package to determine its contents.

In view of the above, offerors who choose to submit proposals by a commercial carrier should, if they want to have reasonable assurance that their proposals will be received in a timely manner at the place designated in the solicitation, do the following:

- (a) Make sure that the carrier puts the information required by the "Submission of Offers" provision ON THE EXTERIOR OF THE ENVELOPE IN WHICH HE/SHE DELIVERS THE PARCEL, and

(b) Get the proposal to the carrier in time for it to be delivered to the Transportation Branch at JSC ON THE DAY BEFORE THE SCHEDULED TIME DESIGNATED FOR RECEIPT OF PROPOSALS.

While taking the above steps should normally result in the timely receipt of proposals, offerors are reminded that proposals may be sent by U.S. Mail, and that clear and precise rules regarding the consideration of late submissions are set forth in the solicitation provision titled "LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS." Offerors are further reminded that it is their responsibility to get their proposals to the designated place on time. Proposals which are sent by commercial carrier are considered to be handcarried, and, if they are received late at the place designated in the solicitation, they will only be considered if it is shown that the sole or paramount cause for the late receipt was some Government impropriety.

(End of Provision)

L.13 SUBMISSION OF PROPOSALS

(a) Due to heightened security measures in force at the Johnson Space Center (JSC), and to ensure timely proposal submission, the following procedures shall be followed.

Offerors will deliver proposals to

Building 416N
Johnson Space Center (JSC)
2101 NASA Parkway
Houston, TX 77058-3696

no later than 11:00am on the designated due date, April 25, 2005. Each offeror is encouraged to notify the Contracting Officer two days in advance of the proposal submission.

The following instructions for submission of proposals are designed to ensure proposal data is adequately protected against potential improper disclosure while concurrently ensuring the physical security of JSC. The delivery process may require an hour or more for packages to be screened through security and subsequently transported and delivered by the offeror at the designated building while being accompanied by an employee of the U. S. Government (civil service point of contact). After 2:30pm local time, incoming packages cannot be screened until the following business day. Any attempt by an offeror to deliver a proposal on a weekend or on a Federal holiday shall be coordinated through the Contracting Officer at least 48 hours prior to the planned delivery date. While the offeror may use a commercial provider for delivery services, the offeror shall ensure that its proposal is delivered in a manner that fully complies with the requirements of this solicitation provision and any other proposal delivery instructions in this RFP. Failure to comply could delay the proposal delivery or allow it to be handled by unauthorized or non-Government personnel. Proposals must be hand delivered to comply with security requirements and to ensure that your proposal data is not compromised. Offerors are advised that proposals sent by commercial carrier or through the U.S. Postal Service are subject to being opened and inspected by non-Government personnel. As used herein, the term "non-Government personnel" refers to all personnel not employed directly by the U.S. Government, and includes employees of Government contractors.

To expedite delivery, each box containing proposal information shall be clearly marked with the following information:

Proposal Data – SEB Sensitive -- DO NOT OPEN
 Submitted by [Offeror's Identity] in response to [RFP Number]
 Box ___ of ___.

Civil Service Points of Contact:

Ms. Stephanie D. Hunter, 281-483-8523

Ms. Carol Devany, 281-244-7267

To deliver a proposal to JSC, offerors shall do so by first entering JSC at Gate 4. Offerors are advised that entry through any other gate could result in excessive delays or searches of vehicle contents by non-Government personnel. Anyone delivering a proposal, including persons having authorized access to JSC, may be subjected to searches or delays when attempting to enter through a gate other than Gate 4. Gate 4 can be reached by traveling east on Bay Area Boulevard from Interstate Highway I-45. Turn right off of Bay Area Boulevard at Space Center Boulevard and enter the Johnson Space Center at the first entrance on the right. Gate 4 is open from 6:00am local time. Upon entering the site, offerors will encounter a security guard posted at Gate 4. Offerors shall advise the guard posted at Gate 4 that they are delivering a proposal and will receive instructions to proceed to a security checkpoint (Post 12). Since all incoming freight is screened, to avoid delays, offerors are encouraged to limit vehicle contents to the proposal being delivered.

Upon arriving at the security checkpoint (Post 12) each offeror shall verify with the guard that an authorized civil service point of contact has been requested to accompany the offeror for the remainder of the delivery process. The authorized civil service point of contact will be notified by the security guard. The civil service point of contact will acknowledge the time and screen the proposal before it is loaded back onto the offeror's vehicle for delivery at the designated building. Offerors are responsible for transporting proposals from the security checkpoint to the designated building and may be requested to offload the proposal material upon arrival at the designated building. The cutoff time for proposal submission is 11:00am local time on the date designated below.

(b) Volume V, Past Performance, and the Performance Questionnaires will be submitted separately from the remainder of the proposal and in accordance with the Return Information in Section L, Attachment 4. These items shall be submitted to the OMOHC SEB by the offeror and offeror's subcontractor/teaming partner's contract customer no later than 11:00am local time April 12, 2005.

(c) Summary of Proposal Due Dates/Times

Table L-2 - Proposal Due Dates and Times

Volume	Title	Due Date	Time Due (Local time)
I	Management	4/25/05	11:00am
II	Technical (including Response to Technical Scenarios)	4/25/05	11:00am
III	Safety, Health, and Environmental Compliance Plan	4/25/05	11:00am
IV	Small Business Subcontracting Plan	4/25/05	11:00am
V	Past Performance	4/14/05	11:00am
VI	Cost	4/25/05	11:00am

L.14 ACCOUNTING FOR LEASE COSTS (JSC 52.231-91) (DEC 1999)

This solicitation covers a period of potentially ten years, including the basic contract and all options to extend period of performance. In providing for offsite facilities, it is possible that the contractor may lease space and that any resulting lease agreement may be for the entire life of the contract. In this regard, offerors should be aware that Financial Accounting Standards (FAS) apply to Government contracts through their incorporation into the Federal Acquisition Regulation (see FAR 31.205-36). Of particular interest in this context is the Statement of Financial Accounting Standards (SFAS) No. 13, "Accounting for Leases". The amount of lease costs that will be allowable under the contract will depend, in part, on whether the lease is considered to be "operating" (wherein lease costs would be allowable if otherwise allocable and reasonable) or "capital" (in which case, allowable lease costs would be limited to what the cost would have been if the contractor had acquired the facility and depreciated it).

Whether a lease is properly characterized as an operating lease or a capital lease depends upon criteria established by SFAS-13, which states, in pertinent part, that a lease is a capital lease if (1) the lease transfers ownership of the property to the lessee; (2) the lease contains a bargain purchase option; (3) the lease term is equal to 75 percent or more of the estimated economic life of the leased property; or (4) the present value of minimum lease payments equals 90 percent or more of the fair market value of the leased property. It should be noted that SFAS-13 provides that the determination as to whether a lease is operating or capital is to be made at the inception of the lease. An analysis is also required at the time an option is exercised if it is considered a "new agreement" in accordance with the provisions of SFAS-13.

Under SFAS-13 criteria 3 and 4 above, the issue as to whether a lease is capital or operating may depend not only upon the apparent lease term expressed in the lease, but also upon whether termination of the lease before the expiration of the term is "reasonably possible" or a "remote contingency". SFAS-5 (applicable to SFAS-13) defines "reasonably possible" as "the chance of the future event or events occurring is more than remote but less than likely." The definition of "remote contingency" is "the chance of the future event or events occurring is slight."

The offeror shall submit copies of any proposed lease, along with a statement of whether it considers the lease to be capital or operating, for purposes of reimbursement under the contract. The offeror should also include an analysis detailing the cost impact of treating the lease as an operating lease and the cost impact of treating the lease as a capital lease. The offeror shall also, whether it considers the lease to be operating or capital, submit the rationale therefore, with sufficient substantiation to enable the Government to conclude that the offeror's categorization and proposed cost of the lease is correct. The offeror should explain where these costs are included in the cost proposal elements.

(End of Provision)

[END OF SECTION]