

Solicitation, Offer, and Award

Board of Governors of the Federal Reserve System

OMB No. 7100-0180
Approval expires June 30, 2009

This report is required to obtain a benefit and is authorized by law [12 U.S.C. 243, 244, and 248].

The Federal Reserve may not conduct or sponsor, and an organization (or person) is not required to respond to, a collection of information unless it displays a currently valid OMB number.

1. THIS CONTRACT IS					PAGE OF PAGES
2. SOLICITATION NUMBER	3. TYPE OF SOLICITATION Negotiated	4. DATE ISSUED	5. CONTRACT NUMBER	6. ISSUED BY Board of Governors of the Federal Reserve System 20th and C Street, NW Washington, DC 20551	

SOLICITATION

7. Sealed offers in original and _____ copies for furnishing the supplies or services will be received at mail room of the Board of Governors of the Federal Reserve System located at 20th and C Street, NW, Washington, DC 20551 until _____ local time _____ .
(Hour) (Date)

NOTE: All offers are subject to all terms and conditions contained in this solicitation.

CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L.

8. FOR INFORMATION CALL	A. NAME	B. TELEPHONE	C. E-MAIL
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9. TABLE OF CONTENTS

(X)	SECTION	DESCRIPTION	PAGE	(X)	SECTION	DESCRIPTION	PAGE
		TRANSMITTAL LETTER			H	PERSONNEL	
	A	SOLICITATION, OFFER, AND AWARD			I	EVALUATION AND AWARD PROCESS	
	B	COST/PRICE PROPOSAL FORM			J	CONTRACT ADMINISTRATION	
	C	STATEMENT OF WORK			K	REPRESENTATIONS AND OTHER STATEMENTS OF OFFER	
	D	WARRANTY			L	GENERAL INSTRUCTIONS AND INFORMATION	
	E	INSPECTION AND ACCEPTANCE			M	GENERAL CONTRACT PROVISIONS	
	F	CONTRACT DELIVERABLES			N	VENDOR INFORMATION FORM	
	G	INQUIRIES					

OFFER (Must be fully completed by the Offeror)

NOTE: Minimum Bid Acceptance Period 60 Days

10. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days) unless a *different* period is inserted by the offeror from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

11. DISCOUNT FOR PROMPT PAYMENT	10 CALENDAR DAYS (%) _____	20 CALENDAR DAYS (%) _____	_____ CALENDAR DAYS (%) _____	F.O.B. <input type="checkbox"/> Prepaid <input type="checkbox"/> Origin <input type="checkbox"/> Destination
12. ACKNOWLEDGEMENT OF AMENDMENTS <i>(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated.)</i>	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
13. NAME, ADDRESS, TELEPHONE/FAX OF OFFEROR	NAME	TELEPHONE	EXT.	
	ADDRESS	FAX		
	CITY	STATE	ZIP	E-MAIL

NOTE: If remittance address is different from above, enter such address in Section N.

14. CONTRACTOR'S NEGOTIATED AGREEMENT *(Contractor is required to sign this document and return _____ copies to issuing office.)* Contractor agrees to furnish and deliver all items or perform all the services set forth in this Solicitation, Offer, and Award. The rights and obligations of the parties to this contract shall be subject to and governed by the documents in this Solicitation, Offer, and Award. In the event of any inconsistency among their provisions, the inconsistency shall be resolved by giving precedence in the following order (a) this Solicitation, Offer, and Award form; (b) the Statement of Work; (c) the General Instructions and Information; (d) the General Contract Provisions; (e) such provisions, representations, drawings and specifications, as are attached or incorporated by reference or otherwise in this Solicitation; and (f) the offeror's proposal, including all amendments and related correspondence.

15. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER <i>(Type or print)</i>	16. SIGNATURE	17. OFFER DATE
NAME		
TITLE		

AWARD (To be completed by the Board)

18. ACCEPTED AS TO ITEMS NUMBERED	19. TOTAL AMOUNT	
1. _____ \$ _____		
2. _____ \$ _____		
3. _____ \$ _____		
20. SUBMIT INVOICES TO ADDRESS SHOWN IN SECTION L	21. PAYMENT WILL BE MADE BY: EFT	
22. NAME OF CONTRACTING OFFICER <i>(Type or print)</i>	23. SIGNATURE OF CONTRACTING OFFICER	24. AWARD DATE

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

**BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, DC 20551**



MANAGEMENT DIVISION

**SOLICITATION, OFFER, AND AWARD
ZZZ**

Gentlemen:

The Board of Governors of the Federal Reserve System hereby issues this Solicitation, Offer, and Award (Solicitation) to perform/provide work/services/data ZZZ as described in Section C, the Statement of Work.

By no later than ZZZ, 2005, those intending to submit proposals are required to express their intent by telephone (confirmed by facsimile), facsimile, or electronic mail (confirmed by postal mail). Amendments issued, if any, after this date will not be furnished to those potential Offerors that have not advised this office of their intent to propose.

Pertinent dates associated with this Solicitation are:

Release of SOA:	ZZZ, ZZ 2005
Preproposal conference:	ZZZ, ZZ 2005 If n/a, delete L.18
Closing date for inquiries:	ZZZ, ZZ 2005
Submission of proposals:	ZZZ, ZZ 2005 2:00 p.m. Washington, DC, time

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

Interested parties may direct questions regarding this Solicitation to me at the following address:

Federal Reserve Board
Procurement Section, Mail Stop 128
20th and C Streets, NW
Washington, DC 20551
Attention: Specialist Name ZZZ
RE: Solicitation ZZZ

Telephone (202) 452-ZZZZ/Fax (202) 728-5826/E-mail ZZZ@frb.gov

Sincerely,

Specialist Name ZZZ
Senior Contract Specialist
Procurement Section, Management Division

2/5/09 12:44 PM

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award *ZZZZZ*

Please see attached SOA form

SECTION B

COST/PRICE PROPOSAL FORM

B.1 SERVICES TO BE PROVIDED

Offerors shall submit in their proposals the prices to provide the goods or services set forth in Section C, the Statement of Work, and the Specifications and Drawings YYY, of this Solicitation. Offerors shall use the forms included in this Section B when submitting their Cost/Price Proposals.

B.2 ESTIMATED QUANTITIES

The quantities shown herein are estimates, based on the best information available to the Board. The Board is furnishing these estimates solely as a basis for computing prices and price totals and are for evaluation purposes only. The Contractor shall furnish all services that may be ordered during the term of the Contract.

B.3 INDEFINITE QUANTITY

- a. This Contract is for an indefinite quantity for the good or services specified, and is effective for the period stated in the Contract.
- b. Delivery or performance shall be made only as authorized. The Contractor shall furnish, when and if ordered, the goods or services specified in the contract.
- c. Except for any limitations in Section C, the Statement of Work, there is no limit on the number of orders that the Board may issue.
- d. Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order.

B.4 PAYMENT OF PREVAILING WAGE: DAVIS-BACON ACT

The Contractor and all its subcontractors shall pay the prevailing wages that are applicable for Washington, DC. The Contractor shall:

- pay its workers wages that meet the minimum wages set forth in the attached copy of the General Wage Decision No. ZZZ from the US Department of Labor which lists prevailing wages and fringe benefits for building construction projects for Washington, DC
- incorporate in all contracts with subcontractors a provision that the subcontractor shall pay those wages specified in the General Wage Decision No. ZZZ, and

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award *ZZZZZ*

- assist the Board in determining any applicable wage decision for wages not on the General Wage Decision No. *ZZZ*.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award *ZZZZZ*

Please use attached price form

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award *ZZZZZ*

SECTION C

STATEMENT OF WORK

SECTION D

**WARRANTY – YYY
IF N/A, DELETE PARAGRAPHS YYY**

D.1 WARRANTY DURATION

The Contractor shall warrant all equipment and/or systems installed to be free from all defects in materials or workmanship for (number spelled out) (#) year(s) ZZZ from the date of acceptance by the Board's Contracting Officer's Technical Representative (COTR). The Contractor shall repair or replace the defective equipment or systems at no cost to the Board during such warranty period.

D.2 REPLACEMENT PARTS

The Contractor shall warrant that replacement parts for all equipment, systems, or their components, be available throughout the life of the warranty described in Paragraph D.1 above.

SECTION E

INSPECTION AND ACCEPTANCE

E.1 INSPECTION AND ACCEPTANCE

The COTR will inspect and accept the goods and services at intervals that he/she specifies.

E.2 REDELIVERY OF WORK

If any of the services delivered by the Contractor under this Contract do not conform with the descriptions contained in Section C, the Statement of Work, and the Specifications and Drawings YYY, the Contracting Officer may direct the Contractor to deliver the services again, in conformity with Section C, and the Contractor shall not reinvoice the Board for such rework. When defects in services cannot be corrected by re-delivery, as determined by the COTR, the Contracting Officer may require the Contractor to (1) take actions to assure the Board that future deliveries will conform to contract requirements, and (2) reduce the future amounts invoiced by the Contractor to reflect the reduced value of the nonconforming services.

If the Contractor again fails to deliver conforming services after attempting to re-deliver, or to take the actions necessary to ensure future conformance with contract requirements, the Board may (1) by contract or otherwise, engage a third party to perform and deliver the services in place of the Contractor and charge to the Contractor any charges incurred by the Board that are directly related to this third-party performance, or (2) terminate this Contract for default in accordance with the General Contract Provisions.

Notwithstanding any of the foregoing provisions, at any time, the Contracting Officer may require the Contractor to remedy by correcting or replacing the Contractor's personnel, without cost to the Board, any failure by the Contractor to comply with the requirements of this Contract if failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of any of the Contractor's personnel, or (2) the conduct of one or more of Contractor's personnel selected or retained by the Contractor after the Contractor's management has grounds to believe that its personnel are unqualified or habitually careless.

SECTION F

CONTRACT DELIVERABLES

F.1 DELIVERABLES

The Contractor shall ZZZ

F.2 WARRANTIES

The Contractor shall provide copies of all warranties, for both material and labor, prior to final invoice.

F.3 REPORTS

The Contractor shall submit reports, which may include draft and final reports in both electronic and print format.

F.4 INSURANCE CERTIFICATES

The Contractor shall provide the Board with insurance certificates for each policy required to be in effect throughout the performance period.

F.5 MANUALS

The Contractor shall submit [insert description: example technical, operational, user guides, and so on, for each XXX provided] ZZZ

SECTION G

INQUIRIES

G.1 POINT OF CONTACT

The Board's contact person responsible for providing additional information and answering inquiries about this Solicitation is the Senior Contract Specialist.

- a. The Offeror shall submit all communications, such as requests for clarification and/or information concerning this Solicitation, in writing via electronic mail followed up by postal mail to the following address:

Federal Reserve Board
Procurement Section, Mail Stop 128
20th and C Streets, NW
Washington, DC 20551
Attention: Specialist Name ZZZ
RE: Solicitation ZZZ

Telephone (202) 452-ZZZZ/Fax (202) 728-5826/E-mail ZZZ@frb.gov

- b. Inquiries shall be submitted in writing no later than ZZZ, 2005
- c. The Senior Contract Specialist ZZZ will provide answers to questions to potential Offerors giving due regard for the proper protection of proprietary information.

The Senior Contract Specialist ZZZ will not provide information concerning this Solicitation or requests for clarification in response to Offeror-initiated telephone calls. The Offeror shall make all such requests in writing via e-mail followed up by postal mail to the above address. Questions shall identify the specific area of this Solicitation, citing the particular section and paragraph of this Solicitation in which clarification is desired. The Senior Contract Specialist will provide questions and answers to all prospective Offerors. Sources of questions will not be identified.

Note: Offerors are instructed specifically to contact only Specialist Name ZZZ in connection with any aspect of this requirement prior to the Contract's award. The Offeror shall submit proposals and all correspondence relating to this document to the Specialist Name ZZZ.

SECTION H

KEY PERSONNEL

H.1 APPROVAL OF KEY PERSONNEL

Offerors shall submit resumes with their Technical Proposals (Volume II) of those persons that are essential for the performance of the goods or services described in Section C, the Statement of Work, and the Specifications and Drawings YYY, and who will be assigned to the resulting Contract (Key Personnel). The Contractor shall not remove or replace Key Personnel without prior notification to and approval by the COTR, and the COTR will approve any replacement of key personnel prior to their replacement. Approval of Key Personnel will not be unreasonably withheld.

H.2 PERSONNEL QUALIFICATIONS

Offerors shall indicate in their Technical Proposals how their Key Personnel will direct or perform the work as described in Section C. In addition, Offerors shall explain the procedures for training Key Personnel. Letters of commitment shall be included in the Technical Proposals for all Key Personnel.

OPTIONAL YYY

Each Offeror shall include a personnel plan in its Technical Proposal that includes a matrix listing all of the Offeror's Key Personnel who will have responsibility over the Contract, which shall include the Offeror's subsidiaries and subcontractors, where appropriate. The personnel plan shall also include procedures that the Offeror intends to use to provide fully qualified personnel to perform the work required in Section C. Descriptions of the skill sets, qualifications, and experience requirements for the remaining individuals to be employed to perform the work required in Section C shall be included, but need not contain the names of any of the individuals being proposed for those positions.

OPTIONAL YYY

This Solicitation does not require the identification of Key Personnel.

OPTIONAL YYY

Brief resumes of the Key Personnel proposed for work on the program shall be included, but need not go below the top three levels of key management and/or technical personnel. Letters of commitment shall be included for all personnel proposed for these key positions.

Descriptions of the skill sets, qualifications, and experience requirements for the remaining positions to be employed on the program shall be included, but need not contain the names of any of the individuals being proposed for those positions.

SECTION I

EVALUATION AND AWARD PROCESS

I.1 EVALUATION OF PROPOSALS - PASS/FAIL YYY

- a. A proposal consists of Volume I (Offer), Volume II (technical proposal), and Volume III (cost/price proposal) submitted by an Offeror responding to this Solicitation. Each Offeror shall submit a technical proposal and a cost/price proposal, according to the guidelines presented in the following:

1. Section B, Cost/Price Proposal Form
2. Section C, Statement of Work
3. Section L, General Instructions and Information

NOTE: Offerors are advised that a one-word response, for example “comply”, to a mandatory requirement is insufficient and that such a response will receive a fail rating, thereby causing the entire proposal to be rated as fail.

- b. Each technical proposal is subject to the same review and pass/fail analysis by the Board’s technical evaluation team. Each proposal will first be examined to determine if the Offeror is responsible (see I.2) and if the proposal meets all mandatory YYY requirements set forth in Section C, Statement of Work, and the Specifications and Drawings YYY. If any mandatory YYY requirement is not met, the proposal will be rejected and will receive no further consideration. Technical proposals that meet all mandatory requirements will receive a “pass” rating.
- c. A Board price evaluation team will review each Offeror’s cost/price proposal as formatted according to Section B. Offerors are reminded that they must use the format set forth in Section B in submitting their cost/price proposals. The price evaluation team will evaluate the cost/price proposals for price reasonableness, realism, risk, and any other criteria set forth in Section B. The price evaluation team may reject unrealistically low or materially unbalanced offers.
- d. The Offeror with the lowest price, acceptable proposal that received a “pass” rating will be awarded the Contract.

I.1 EVALUATION OF PROPOSALS - MANDATORY REQUIREMENT(S) AND PRICE AND TECHNICAL POINTS –ALTERNATE YYY

- a. Each Offeror shall submit a technical proposal and a cost/price proposal according to the guidelines presented in Section L, General Instructions and Information, Proposal Submission. In addition, the Offeror shall submit the cost/price proposal in the same format as the sample form provided in Section B, the Cost/Price Proposal Form.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

Each response to this Solicitation shall be subject to the same review and assessment process by the Board's technical and cost evaluation teams.

Each proposal will first be examined to determine if the Offeror is responsible (see I.2) and if the proposal meets all mandatory YYY requirements set forth in Section C, Statement of Work, and the Specifications and Drawings YYY. If any mandatory requirement is not met, the proposal will be rejected and will receive no further consideration. Technical proposals that meet all mandatory requirements qualify for further evaluation and will receive up to number (#) ZZZ technical points. In addition, these proposals will receive number (#) ZZZ cost points in inverse proportion to the ratio of their cost to that of the lowest proposal. Technical and cost points will be combined to determine who is awarded the Contract.

b. Technical proposal

Factor No. 1: Personnel/past performance. This factor involves an evaluation of the Offeror's references, experience and past performance and the references and experience of its key personnel. The Offeror shall demonstrate satisfactory past performance under prior contracts for similar project services.

Factor No. 2: Overall strategy, technical approach, and methodology. This factor involves evaluating the data submitted with the offer that explains the Offeror's procedures for completing the solicitation requirements.

Factor No. 3: Detailed implementation plan. This factor involves evaluating how thorough the Offeror explains and outlines the work plan.

c. Cost/price proposal

A Board price evaluation team will use the same review process to evaluate each Offeror's cost/price proposal as formatted according to Section B. Offerors are reminded that they must use the format set forth in Section B in submitting their cost/price proposals. The price evaluation team will evaluate the cost/price proposals for price reasonableness, realism, risk, and any other criteria set forth in Section B. The price evaluation team may reject unrealistically low or materially unbalanced offers. The lowest price, acceptable proposal will be awarded number (#) ZZZ points, and higher priced bids will get points in an inverse proportion.

d. Covered Company Preference

If a covered company, as defined in Section M.25, is among the Offerors whose cost/price proposal is being evaluated under this section, costs will be adjusted as

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

described in subparagraph 1., below. The adjusted costs will be used when awarding cost points under the process described in paragraph c., above.

1. Except for the acquisitions described in subparagraph 2., below, if a responsible covered company submits a responsive bid, quotation, or proposal, the Contracting Officer shall, for the purpose of price evaluation, add to each noncovered company's proposal the following factor(s): three percent (3%) of the first \$500,000, plus one percent (1%) for any amount of the bid, quotation, or proposal that exceeds \$500,000. After applying this price adjustment, the Contracting Officer will evaluate the proposals and award the Contract as provided in paragraphs a. and c., above.
2. No price adjustment will be calculated in any of the following acquisitions, even if a covered company is a bidder: (1) the value of the contract is equal to or less than \$100,000, (2) the acquisition is a set-aside under the Board's Small and Disadvantaged Business Acquisition Policy, (3) the covered company has executed a waiver of the price preference, (4) price is not a factor in the evaluation, or (5) the contract is being awarded pursuant to the Trade Agreements Act or another international agreement.

I.2 FACTORS TO DETERMINE A RESPONSIBLE OFFEROR

- a. The Offeror shall provide financial statements for its two most recently completed fiscal years.
- b. The Offeror shall disclose any actions pending before any body competent to rule on, adjudicate, or referee any legal dispute, including labor or workers' compensation controversies, or bankruptcy filings.
- e. The Offeror shall possess, as of the date of release of this Solicitation, all required licenses and/or permits to conduct business both in the jurisdiction in which their main offices are located, and in Washington, DC. The Offeror shall indicate the type(s) of licenses and/or permits that have been issued to them, and the names of the issuing jurisdictions. The Offeror shall provide copies of such licenses and/or permits if requested. The Offeror shall keep current all required licenses and permits.
- f. The Offeror shall certify, as of the date of release of this Solicitation, that it has paid all taxes due, withholding or otherwise, and that it is not a party to any action by any taxing jurisdiction or authority to collect overdue or back taxes.
- g. If an Offeror has financial statements that are weak, has any actions pending, has not obtained or retained the required licenses and/or permits, has any outstanding taxes, or fails to provide any other information required by this Solicitation, the Offeror shall fully explain such action or deficiency so that the Contracting Officer may have sufficient information to determine whether the Offeror is a responsible Offeror.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- h. The Offeror's past performance (see Factor No. 1 of the technical proposal evaluation) will be evaluated as follows:
1. Quality of product or service. This refers to compliance with contract requirements, accuracy of reports, and technical excellence. Excellent: there were no quality problems.
 2. Timeliness of performance. This refers to whether the Offeror met interim milestones, was reliable and responsive to technical direction, completed the project on time, including wrap-up and contract administration, and no liquidated damages. Excellent: there were no unexcused delays.
 3. Cost control. This refers to the budget and cost efficiencies, and also whether the invoices were accurate and complete, and there were no overruns. Excellent: there were no cost issues.
 4. Business relations. This refers to effective management, effective small and small disadvantaged-business subcontracting programs, reasonable and cooperative behavior, flexible effective Contractor-recommended solutions, and business-like concern for the organization's interest. Excellent: response to inquiries and to technical, service, and administrative issues was effective and responsive.
 5. Customer satisfaction. This refers to end user satisfaction with the Contractor's service. Excellent: ninety (90) percent or more of end users surveyed rated the service as excellent or better.

OPTIONAL IN THE EVALUATION FACTOR YYY

Past performance will receive number (#) ZZZ of the noncost/price factors ratings. Or the following: YYY

1. A statement of the Offeror's financial condition.
2. Demonstration of prior satisfactory performance. This demonstration shall include a list of references, including individual names, addresses, and telephone numbers of negotiated contracts of those with whom the Offeror has most recently conducted business.
3. Demonstration of adequate financial resources, or the ability to obtain such resources as required during performance of the Contract.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

4. Demonstration of the ability to comply with the required or proposed delivery schedule, taking into consideration all existing business commitments, both commercial and Board.
5. Demonstration of the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.
6. Demonstration of the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
7. Demonstration that the Offeror is otherwise qualified and eligible to receive an award under applicable laws and regulations.

I.3 PROTESTS

Any actual or prospective Contractor who is aggrieved in connection with the solicitation or award of a contract may submit a written protest consistent with the provisions of Section M.23.

SECTION J

CONTRACT ADMINISTRATION

J.1 CONTRACT TYPE

It is contemplated that the Board will award a type ZZZ contract to the successful Offeror. (If construction add the Davis Bacon clause) YYY

J.2 PERIOD OF PERFORMANCE

The initial period of performance under the Contract will be from ZZZ, 2005 through ZZZ, 2005, with one year option periods of performance as set forth in Section J.2.1 below. YYY

J.2.1 OPTION TO EXTEND CONTRACT YYY

The Board may extend the Contract for number (#) ZZZ additional one-year periods without formal recompetition, based on the Contractor's satisfactory performance as determined by the COTR at his/her sole discretion, continued project funding, and subject to a continuation of the Contract and the continued need for the Contractor to perform services under the Contract.

The Board may extend the Contract by giving written notice to the Contractor at any time prior to the Contract's expiration date. If the Board exercises this option, the extended Contract shall be considered to include this option provision.

The total duration of this Contract including the exercise of any option under this clause shall not exceed number (#)ZZZ years without written modification to the Contract.

Negotiated extensions of the Contract beyond the option periods without formal competition are a Board prerogative and not a contractual right.

J.3 INVOICES AND PAYMENTS

The Contractor shall submit invoices in arrears and on a thirty-day (30) cycle or in accordance with Clause 6, Payments, of the General Contract Provisions. The terms are net 30/prompt payment. All invoices shall show the contract number and modification number, if issued.

The Contractor shall submit invoices via electronic mail to MGT-Accounts-Payable@frb.gov or by facsimile to (202) 452-2840. If the Contractor does not have access to electronic mail or facsimile equipment, it may also submit the invoice by postal mail in duplicate (original and one copy) to:

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

Federal Reserve Board
Accounting Section, Mail Stop 152
20th and C Streets, NW
Washington, DC 20551

If any travel is authorized under this Contract, the Contractor shall attach to the invoice all documentation for travel expenses. The Contractor shall be reimbursed according to the Board's travel policy in effect on the date of travel.

The Board will make payment by electronic funds transfer. Notification will be provided by facsimile to the Contractor on the date of payment.

J.4 CONTRACT MANAGEMENT

Contract management is as follows:

Name	Title
Name ZZZ	Contracting Officer
Name ZZZ	Procurement Manager
Name ZZZ	Contract Specialist
Name ZZZ	COTR

J.5 COTR FUNCTIONS AND LIMITATIONS

Name ZZZ is designated the cognizant COTR who represents the Contracting Officer in administering technical details within the scope of the Contract and in inspecting and accepting. The COTR is not otherwise authorized to make any representations or commitments of any kind on behalf of the Contracting Officer or the Board. The COTR does not have the authority to alter the Contractor's obligations or change the terms and conditions of the Contract. If, as a result of technical discussions, it is desirable to alter or change contract terms and conditions, changes will be issued in writing and signed by the Contracting Officer or his/her authorized representative.

Some of the types of actions within the scope of the COTR's authority are:

- a. To assure compliance of the Contractor's performance with Section C, the StatementWork.
- b. To perform or cause to be performed those inspections necessary to determine the Contractor's compliance with the technical requirements and the Statement of Work.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZZ

- c. To maintain both oral and written communications with the Contractor concerning those aspects of this Contract within his/her purview.
- d. To monitor the Contractor's performance and to advise the Board's Senior Contract Specialist ZZZ of any deficiencies.
- e. To coordinate the availability of Board-furnished property and services and to provide entry to the work area for the Contractor's personnel, as required.
- f. To obtain the Contractor's proposal for a change order and to relay the information in a memo to the Senior Contract Specialist. ZZZ
- g. To review invoices and, based on satisfactory performance of the terms and conditions of the Contract, to notify the Accounting Section that a payment should be made pursuant to the Contract.
- h. To determine final acceptance of services provided under this Contract.

SECTION K

REPRESENTATIONS AND OTHER STATEMENTS OF OFFEROR

The Offeror shall include one copy of Section K, Representations and Other Statements of Offeror, in Volume I (Offer). To make the offer binding, the Offeror shall complete all blocks of Section K, as required, type in the name of the authorized signing official in the space reserved for his/her signature, and sign the form on that space.

1. Small business concern
2. Regular dealer-manufacturer
3. Quotation acceptance period
4. Contingent fee
5. Type of business organization
6. Persons authorized to conduct negotiations for Offeror
7. Previous contracts and compliance reports
8. Affirmative action compliance
9. Equal employment compliance
10. Intended place(s) of performance or other establishment(s) from which the supplies are to be furnished or services are to be performed
11. Acknowledgment of amendments
12. Acknowledgement of duties, responsibilities, and authority

REPRESENTATIONS AND OTHER STATEMENTS OF OFFEROR

K.1 SMALL BUSINESS CONCERN

The Offeror () is, () is not a small business concern.¹ If the Offeror is a small business concern and is not the manufacturer of the supplies offered, it also represents that all supplies to be furnished hereunder () will, () will not be manufactured or produced by a small business concern in the United States, its possessions or Puerto Rico.

K.2 REGULAR DEALER-MANUFACTURER (applicable only to supply contracts exceeding \$10,000.

The Offeror is a () regular dealer in, () manufacturer of the supplies offered.

K.3 QUOTATION ACCEPTANCE PERIOD

This quotation is valid for ZZZ days from ZZZ. (Delete note: A minimum of sixty (60) calendar days should be allowed. YYY)

K.4 CONTINGENT FEE (applicable only to supply contracts exceeding \$100,000)

- a. The Offeror () has, () has not employed or retained any company or person (other than a full-time, bona fide employee working solely for the Offeror) to solicit or secure this Contract; and
- b. The Offeror () has, () has not paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the Offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and
- c. The Offeror agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer.

If the Offeror, by checking the appropriate box, has represented that it has employed or retained a company or a person (other than a full-time bona fide employee working solely for the Offeror) to solicit or secure this Contract, or that it has paid or agreed to pay any

¹ A small business concern for the purpose of government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

fee, commission, percentage or brokerage fee to any company or person contingent upon or resulting from the award of this contract, the Offeror shall provide a statement that:

1. Provides the full name and business address of any or all company(ies) or person(s) employed or retained to solicit or obtain this contract and indicate whether such is an individual, a partnership or a corporation.
2. Describes the relationship of the Offeror to such person or entity (for instance, a sales or purchasing representative, a broker, an employee, or a corporate officer or principal and,
3. Indicates whether a written contract or agreement exists regarding such relationship. If a contract exists, the Offeror must provide a copy of such contract; otherwise, it must state in detail the terms of such arrangement including the amount and the method of computation of compensation and expenses.

The Offeror shall submit two copies of this statement, each signed by an authorized principal. If the Offeror has previously submitted a completed statement to the office issuing this Solicitation, the Offeror may accompany its quotation with a signed statement (i) indicating when it previously furnished such completed form, (ii) identifying by number the previous solicitation or contract, if any, in connection with which it submitted such form, and (iii) representing that the statement in such form is applicable to this quotation.

K.5 TYPE OF BUSINESS ORGANIZATION

The Offeror operates as () an individual, () a partnership, () a nonprofit organization, () a corporation incorporated under the laws of the State of _____.

K.6 PERSONS AUTHORIZED TO CONDUCT NEGOTIATIONS FOR OFFEROR SHALL BE THE FOLLOWING:

Name(s)/Title(s)	Phone No(s)
------------------	-------------

K.7 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (NOTE: Applicable only to contracts or subcontracts that are not exempt from the equal opportunity compliance clause.) YYY

The Offeror represents that:

- a. It () has, () has not participated in a previous contract or subcontract subject either to the Equal Opportunity Compliance clause herein or the clause originally contained in Section 301 of Executive Order No. 10925, dated March 6, 1961, or the clause contained in Section 201 of Executive Order No. 11114, dated June 22, 1963;

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- b. It () has, () has not filed all required compliance reports; and
- c. It shall obtain representations indicating submission of required compliance reports, signed by proposed subcontractors, prior to subcontract award(s).

K.8 AFFIRMATIVE ACTION COMPLIANCE

The Offeror represents that it () has, () has not developed and maintained at each of its establishments a written affirmative action compliance program policy.

K.9 EQUAL EMPLOYMENT COMPLIANCE

By submission of this offer, the Offeror represents that:

- a. To the best of its knowledge and belief, except as noted below, up to the date of this offer no written notice such as a show cause letter, a letter indicating probable cause, or any other written notification citing specific deficiencies, has been received by the Offeror from any Federal government agency or representative that the Offeror or any of its divisions or affiliates or known first-tier subcontractors is in violation of (i) any of the provisions of Executive Order 11246 of September 24, 1965, as amended, or (ii) the rules and regulations of the Secretary of Labor and specifically as to not having an acceptable Affirmative Action Compliance Program or being in noncompliance with any other aspect of the Equal Employment Opportunity Program.
- b. Should there be any change (i) in the Offeror's status or circumstances between this date and the date of expiration of this offer or any extension thereof, or (ii) during any Contract's performance period or extension thereof resulting from this Solicitation, the Offeror will promptly notify the Contracting Officer.

K.10 INTENDED PLACE(S) OF PERFORMANCE OR OTHER ESTABLISHMENT(S) FROM WHICH THE SUPPLIES ARE TO BE FURNISHED OR SERVICES ARE TO BE PERFORMED

The Offeror shall stipulate in its offer the following: the plant(s) where the work is to be performed, the street address(es), and the name(s) and address(es) of the owner(s) and operator(s) if other than the Offeror. If more than one plant is specified, information must be submitted as to the percentage and the extent of the work that is to be done in each plant listed.

Company Name

Street Address

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

City/County/State/Zip Code

NOTE: If additional space is needed, attach an addendum.

K.11 ACKNOWLEDGMENT OF AMENDMENTS

Amendment No. Date

K.12 ACKNOWLEDGMENT OF DUTIES, RESPONSIBILITIES AND AUTHORITY

The undersigned acknowledges his/her company's understanding that:

- a. The Board's Contracting Officer is the only person authorized to sign contracts or contract modifications on behalf of the Board.
- b. The Board's Contracting Officer is the only person authorized to issue change orders to Board contracts. The Contracting Officer will only issue changes in accordance with the changes clause of the General Contract Provisions.
- c. A person designated in any Board contract as a representative of the Contracting Officer to inspect and accept products or services on behalf of the Contracting Officer or to provide technical oversight during contract performance, does not have the authority to make changes to the contract terms and conditions for any reason whatsoever. Such person may have the designation of COTR or Contracting Officer's Representative, or any other designation.
- d. As a Contractor for the Board, any services performed or products delivered not specifically required under the Contract terms and conditions shall be provided at the Contractor's own expense and the Contractor shall not file any claim for reimbursement from the Board.

This acknowledgment is a material representation of fact upon which reliance will be placed by the Board in any contract agreed to as a result of this solicitation.

Company Name and Address (Typed)

Name and Title (Typed)

Date

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award *ZZZZZ*

Signature

SECTION L

GENERAL INSTRUCTIONS AND INFORMATION

L.1 GENERAL INSTRUCTIONS

- a. A Solicitation, Offer, and Award form, completed and signed by the Offeror, constitutes the Offeror's acceptance of the terms and conditions of this solicitation. The Offeror shall type in the name of the authorized signing official in Block 15 of the Solicitation, Offer, and Award form. The form shall be executed by a representative of the Offeror who is authorized to commit the Offeror to contractual obligations.
- b. The Offeror is expected to examine the entire solicitation document. Failure to do so shall be at the Offeror's own risk.
- c. Each Offeror shall furnish all information required by this Solicitation. The Offeror shall also fill in all blocks of Section K as required, and shall enter in the name of the authorized signing official in the space reserved for his/her signature.

L.2 DEFINITIONS

The following terms shall have the meaning as set forth below for this Solicitation:

Board means the Board of Governors of the Federal Reserve System.

Contract means this Solicitation, Offer, and Award after execution of the Award section of the Solicitation, Offer, and Award form by the Contracting Officer.

Contracting Officer's Technical Representative means the person designated to represent the Contracting Officer in administering the technical details of this Solicitation as more fully described in paragraph J.5 of Section J.

Contractor means the Offeror who is awarded a Contract under this Solicitation.

Offerors means those persons to whom the Board sent a Solicitation.

Solicitation means this Solicitation, Offer, and Award document initially issued by the Board seeking proposals from Offerors.

L.3 QUALIFICATION OF PROSPECTIVE CONTRACTOR

The Board will consider proposals only from Offerors who are regularly established in the business called for, and who are financially responsible and able to show evidence of their reliability, capability, and experience. The Offeror shall have the equipment, facilities, and

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

personnel directly employed or supervised by it to render prompt and satisfactory performance at the time of award. If the Offeror intends to subcontract any portion of the operation, it shall be so stated in its proposals. The qualifications of the identified subcontractor(s) will then be considered along with those of the prime Contractor.

L.4 CONDITIONS

- a. This Solicitation does not commit the Board to pay any cost incurred in the preparation or submission of any proposal. The Board is not liable for any costs incurred in anticipation of a contract award. The Contracting Officer, at his/her sole discretion, may allow those costs that if incurred after contract award would be allowable.
- b. This Solicitation in no way obligates the Board to award a contract(s), and the Board reserves the right to reject any and all offers for any reason that the Contracting Officer determines.
- c. The Board reserves the right to award to other than the low-cost Offeror.
- d. The Board reserves the right to award a contract(s), after receipt of proposals, without further discussion. Therefore, it is emphasized that all proposals should be submitted initially on the most favorable terms from a cost and technical standpoint that the Offeror can submit to the Board.
- e. The proposal shall be signed by an official authorized to commit the Offeror to a contract.
- f. The Offeror will guarantee its prices for a minimum of sixty (60) days from the due date of proposal.

L.5 FORBIDDEN CONTACT

Offerors are cautioned against discussing the preparation of proposals or technical questions with Board technical personnel. The circumstances of any unauthorized contact, when verified, may result in disqualification of the Offeror's proposal. Discussions with Board technical personnel concerning the specifications, the documents incorporated by reference, pricing, or any other technical matters are strictly forbidden.

L.6 INTERPRETATION OF CONTRACT REQUIREMENTS

No interpretation of any provision of this Solicitation, including applicable specifications, shall be binding on the Board unless furnished or agreed upon in writing by the Contracting Officer or his/her designated representative authorized to make such interpretation.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

L.7 INSURANCE

The selected Offeror shall obtain all insurance coverage such as workers' compensation or employer's liability coverage, general liability insurance, including commercial general liability, completed operations, and any other coverage that may be required by law, regulation, or ordinance, or is otherwise carried as common industry practice.

The insurance referred to above shall protect the Offeror, as named insured, up to the respective policy limits with respect to claims for damages for injury to persons or property arising out of or in connection with any act or omission of the Offeror or of any agent of the Offeror or of anyone directly or indirectly employed or retained by any of them with respect to the performance of services hereunder. The Offeror shall furnish the Board with evidence, in a form satisfactory to the Board, from its insurance companies showing that the above insurance is in force, stating policy numbers, effective dates, expiration dates, and limits of liability there under. All policies providing the above insurance shall be endorsed to provide that the insurance company shall notify the Board, in writing, thirty (30) days prior to any cancellation of or change in the above insurance. Compliance by the Offeror with the foregoing requirements to carry insurance shall not relieve the Offeror from liability assumed hereunder. The Board shall be named as an additional insured on said insurance policies.

L.8 EXCEPTIONS AND/OR DEVIATIONS

Offerors are cautioned that any exceptions or deviations taken to any provision of this Solicitation may result in that Offeror's entire proposal being declared unacceptable. It is the Board's intent that an Offeror satisfactorily meet each and every requirement as stated in this Solicitation. Should the Offeror request exceptions and/or deviations from any requirement of Section C, the Statement of Work, and/or any other clauses, provisions, or terms and conditions of this Solicitation, that request will be held to the highest burden of justification. Offerors shall identify in Volume 1 each requirement, clause, provision, or term and condition for which it requests exceptions and/or deviations. Each exception and/or deviation identified shall be fully explained including sufficient justification as to technical advantage, cost savings, and/or benefits to the Board so that the Board can thoroughly evaluate the Offeror's input and determine if it is in the best interest of the Board. If the Offeror's explanation is not acceptable to the Board, the exception and/or deviation will not be allowed, and, unless the original requirement is met, the Offeror's proposal may be found unacceptable.

L.9 MULTIPLE PROPOSALS

Offerors may submit more than one proposal in response to this Solicitation provided that each proposal addresses and meets all requirements specified herein. If multiple proposals are submitted, each proposal shall be clearly labeled and identified on the cover page of each separate document, and the reason for each additional proposal and its comparative benefits shall be explained. Each page of each proposal shall identify the proposal to which it belongs. Each proposal shall be a complete offer in and of itself. Each proposal submitted will be evaluated on

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

its own merits. The Board will not accept or evaluate proposals for requirements other than those identified in this Solicitation.

L.10 FOCUSED ALTERNATIVES

Alternate proposals aimed at satisfying specific elements of the Board's overall requirements in a unique or alternative manner will be permitted if accompanied by and fully cross-referenced to a fully compliant proposal. Each such proposal will be evaluated on its focused proposed solutions and the common solutions of the responsive proposal that accompanies it. Proposals that do not address all requirements (either directly or by cross-reference) may be deemed unacceptable.

L.11 IDENTIFICATION OF RESTRICTED RIGHTS IN COMPUTER SOFTWARE

Offerors are cautioned of the requirement that any restrictions on the Board concerning use or disclosure of computer software that was developed at private expense and is to be delivered under the Contract must be set forth in an agreement to be negotiated prior to award and made a part of the Contract. Therefore, the Offeror shall identify in its proposal, to the extent feasible, any computer software that was developed at private expense and upon which it desires to negotiate restrictions, and shall state the nature of the proposed restrictions. A listing of such software shall be attached to and included as part of the Technical Proposal. If no such software is identified in the proposal, the Board assumes it has unlimited rights. Offerors will be deemed to have given a warranty by the signing of the proposal section of the Solicitation, Offer, and Award form (Section A) that software rights are not limited.

L.12 LATE PROPOSALS, MODIFICATIONS OF PROPOSALS, AND WITHDRAWALS OF PROPOSALS

- a. Any proposal received by the office designated in this Solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and
 1. it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receiving offers (for instance, an offer submitted in response to a solicitation requiring receipt of offers by the twentieth of the month shall have been mailed by the fifteenth or earlier),
 2. it was sent by mail, and it is determined by the Board that the late receipt was due solely to mishandling by the Board after receipt at the Board; or
 3. it is the only proposal received.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- b. Any revision of an Offeror's proposal, except a revision resulting from the Contracting Officer's request for best and final offer, is subject to the same conditions as in a.1. and a.2. above.
- c. A revision to an Offeror's proposal resulting from the Contracting Officer's request for best and final offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Board after receipt at the Board's installation.
- d. The only acceptable evidence to establish:
 - 1. the date of mailing of a late proposal or modification sent either by registered or certified mail is the US or Canadian Postal Service postmark on the wrapper or on the original receipt from the US or Canadian Postal Service.² If neither postmark shows a legible date, the proposal or modification of the proposal shall be deemed to have been mailed late.
 - 2. the time of receipt at the Board is the Board's time/date stamp on the proposal wrapper or other documentary evidence of receipt maintained at the Board.
- e. Notwithstanding the above, a late revision of an otherwise successful proposal, which makes its terms more favorable to the Board, will be considered at any time it is received and may be accepted.
- f. Proposals may be withdrawn by written notice received at any time prior to award. Proposals may be also withdrawn in person by an Offeror or its authorized representative, provided that the identity of this person is made known and that he/she signs a receipt for the proposal prior to award.

L.13 PROPOSAL SUBMISSION

- a. Proposals shall set forth full, accurate, and complete information.
- b. Offerors shall submit proposals by mail or messenger to the following address:

Federal Reserve Board
Procurement Section, Mail Stop 128
20th and C Streets, NW
Washington, DC 20551

²The term postmark means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service. Therefore, Offerors should request the postal clerk to place a bull's-eye, that is, a hand-stamped cancellation or postmark, on both the receipt and the envelope or wrapper.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

Attention: Specialist Name ZZZ

RE: Solicitation ZZZ

- c. The Board will accept proposals at the above address until the time and date specified below. Proposals received after this time and date will be processed as specified in section L.12 above.

Closing date: DATE ZZZ

Closing time: 2:00 pm (Washington, DC time)

- d. Proposals shall be typed on paper no larger than 8-1/2 by 11 inches, using one side only. Expensive paper or elaborate artwork and bindings are neither necessary nor desired.
- e. Information requested in this Solicitation shall be furnished completely in compliance with instructions. The information requested and the manner of submission are essential to permit prompt evaluation of all proposals, and on a fair and uniform basis. Accordingly, the Board reserves the right to declare as nonresponsive, and to reject any proposals in which material information requested is not complete.
- f. Proposals submitted in response to this Solicitation may contain technical data, trade secrets, and commercial or financial information that is privileged and confidential and that the Offeror does not want disclosed or used for any purpose other than evaluation of the proposal by the Board. The Offeror may restrict the disclosure or use of such data or information by identifying specific pages on the proposal as "RESTRICTED DATA" and by marking the cover sheet of the proposal with the legend below:

TECHNICAL DATA, TRADE SECRETS, COMMERCIAL AND/OR FINANCIAL INFORMATION CONTAINED IN PAGES ZZZ OF THIS PROPOSAL NO. ZZZ, AND MARKED "RESTRICTED DATA" SHALL NOT BE DISCLOSED OR USED OTHER THAN FOR PROPOSAL EVALUATION PURPOSES BY THE BOARD, EXCEPT THAT SUCH RESTRICTED DATA MAY BE USED IN ACCORDANCE WITH THE PROVISIONS OF ANY CONTRACT AWARDED AS A RESULT OF, OR IN CONNECTION WITH, THIS PROPOSAL. THIS RESTRICTION DOES NOT LIMIT THE BOARD'S RIGHT TO DISCLOSE OR USE SUCH DATA OR INFORMATION IF OBTAINED FROM ANOTHER SOURCE WITHOUT SUCH RESTRICTIONS.

The above restriction shall not be construed as altering or limiting in any way the Board's obligation under the Freedom of Information Act (5 U.S.C. § 552), or any other applicable law or rule, court order or Congressional requirement, or any other right reserved by the Board.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

The Board assumes no liability for disclosure or use of unmarked technical data, trade secrets, and commercial and financial information, and may disclose or use such data or information for any Board purpose.

- g. Nonresponsive proposals will be identified and will be eliminated from further consideration. A proposal that is nonresponsive is one that:
 - 1. Does not address itself to the mandatory requirements of this Solicitation.
 - 2. Contains major deficiencies, omissions, or out-of-line costs.
- h. Offerors are cautioned that an award may be made without further discussions or negotiations, or a request for best and final offer.
- i. Proposals shall consist of one complete original and the number of copies as stated below. Proposals shall be submitted in three volumes, each separate and complete in itself in order that evaluation of one may be accomplished independently of, and concurrently with, evaluation of the others. Each volume shall be titled and submitted as follows:

Volume I Cover Letter. Submit one original. Volume I shall consist of any exceptions taken by the Offeror, the completed and signed Representations and Other Statements of Offerors, and the Vendor Information form.

Part A -- Identification of Exceptions

The Offeror shall provide identification and explanation of any exceptions or deviations taken or conditional assumptions made with respect to the Offeror's proposal versus the requirements of this Solicitation. Any exceptions taken shall contain sufficient amplification and justification to permit evaluation. All benefits to the Board shall be explained for each exception taken. Such exceptions will not, of themselves, automatically cause a proposal to be deemed unacceptable unless they fail to provide sufficient benefits to the Board, or result in material deviations from the requirements of Section C, the Statement of Work.

Part B Signed Certification and Representation (Section K)

Part C Vendor Information Form (Section N)

Part D Solicitation, Offer and Award Form (Section A)

Part E The information requested in paragraph I.2 of section I

Part F Subcontractor plan (if required) YYY

Volume II Technical Proposal. Submit one original and five copies. Volume II shall be termed the "technical proposal," and shall be prepared in accordance with the instructions provided in paragraph below. The technical proposal shall not contain any reference to price. The technical proposal shall be presented in a concise and straightforward manner.

Part A Management Plan

In this part, the Offeror shall provide a detailed description of its approach to meeting the requirements of this Solicitation. To facilitate evaluation of the Management Plan, the order of presentation should follow the sequence set forth below.

1. Key personnel. The Offeror shall provide résumés of key personnel and other information as set forth in Section H.
2. Offeror's experience. The Offeror shall provide a description of its experience in providing services of the type and complexity required in this Solicitation to the federal government, or to the Federal Reserve System, or to other clients of similar-sized workforce. Detailed information shall be provided, including years in business and references as required in Section C, the Statement of Work.
3. Offeror's approach to requirements. The Offeror shall narrate its approach to meeting or exceeding the requirements indicated in Section C, the Statement of Work.

Part B References and Corporate Qualifications

1. References. Offerors shall submit at least six YYY references consisting of present or past clients, within the past five years, who are capable of verifying the following:
 - a. Two YYY references documenting the Offeror's ability to manage projects comparable (as close as possible in size, complexity, and scope) to the Solicitation resulting from this acquisition.
 - b. Four YYY references, for itself and for all major subcontractors, capable of documenting that, in combination, the Offeror and subcontractors have provided, operated and managed contracts comparable (as close as possible in size, complexity, and scope) to those required under this Solicitation.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

The Offeror shall provide the following information on each client reference:

- a. Total contract value
 - b. Contracting Officer name, address, and telephone number
 - c. Brief description of the services, size, and scope of services
 - d. Information on whether the Offeror is currently providing services under the Contract
2. Corporate qualifications. Offerors shall submit material describing their general corporate capabilities and qualifications.
 3. Implementation plan. The Offeror shall provide a detailed work plan and schedule for implementing the program.

Volume III Cost/Price Proposal. Submit one original and two copies.

Volume III shall be termed "cost/price proposal." This volume shall consist of completed cost proposal forms in the format set forth in Section B. The cost proposal form shall be sealed in a separate envelope marked "Cost/Price Proposal for Solicitation ZZZ."

L.14 INDEMNIFICATION

By signing the Proposal section of the Solicitation form, the Offeror agrees to save and hold harmless the Board, its members, officers, and employees from liability of any kind or nature, including cost and expenses to which they might become subject, arising or resulting in whole or in part from the negligent performance of the Offeror upon award of a contract to the Offeror under this Solicitation including action or failure to act by its owners, directors, officers, employees, agent, or subcontractors.

L.15 NOTICES

All notices required to be sent under this Solicitation shall be sent certified mail, return receipt requested, overnight deliver (using a service that verifies receipt of delivery), or messenger service (using a service that verifies receipt of delivery).

Notices to the Board shall be sent to:

Federal Reserve Board
Procurement Section, Mail Stop 128
20th and C Streets, NW
Washington, DC 20551
Attention: Michael Kelly, Procurement Manager
RE: Solicitation ZZZ

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

Notices to the Contractor will be sent to the person and address set forth in Section 12. of the Representations And Other Statements Of Offer (Section K).

L.16 SECURITY

- a. General. The Contractor shall require its personnel and those of its subcontractors and suppliers to comply with all Board security standards and procedures. Such personnel will be briefed on the Board's security standards and procedures, and will be provided with written documentation of these standards and procedures.
- b. Personnel access. All personnel of the Contractor and its subcontractors, suppliers and associates who require access to Board property must be cleared in advance by the Board's Security Department. The Contractor shall provide the Board with a list of all personnel requiring access to the site, which shall include legal names, dates of birth, and social security account numbers. This list shall be continuously updated. The Contractor shall notify the Board immediately, in writing, of any changes to the list, including any personnel who are no longer employed by Contractor or its subcontractors, suppliers and associates.
- c. Access badges. The Board denies access to its premises to any individual who does not possess a valid access badge issued by the Board. Access badges issued by other organizations are not valid at Board facilities. The Board issues two types of badges to non-FRB personnel. The first is a paper "Escort Required" badge, which is valid only on the day on which it is issued. An individual who holds only a daily "Escort Required" badge must be escorted by authorized personnel. The second type of badge is a laminated photo-identification badge. Holders of photo-identification badges are authorized access to Board property without requiring an escort, and are also authorized to escort holders of "Escort Required" badges.

Generally, personnel who work on Board premises for any extended period of time will be issued photo-identification badges, provided that the results of their security checks are satisfactory. Personnel who require only short-term or occasional access to the Board facilities will be issued "Escort Required" badges on a daily basis, and it shall be Contractor's responsibility to ensure that such personnel are properly escorted by a person or persons possessing a valid Board photo-identification badge.

1. Lost or stolen badges. Laminated photo-identification badges should be turned into the Board Security Administration office whenever the job status of the person holding that badge changes, for instance, resignation, assignment to another project, project completion. The Security Administration office shall be notified immediately in the event that a photo-identification badge is lost or stolen. There is a fee for replacing lost badges.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- d. Security checks. The Board will check the names of all Contractor, subcontractor and supplier personnel who require access to Board facilities through the FBI National Crime Information Center (NCIC). Personnel requiring an “Escort Required” badge will be screened by name and social security account number. This screening typically takes less than a day. Personnel who require a laminated photo-identification badge will be screened not only by name and social security account number, but also by their fingerprints. This check is conducted by submitting the individual’s fingerprints to the Office of Personnel Management (OPM), which forwards them to the FBI. It normally takes 2-3 days for the FRB to receive a response.
 1. Results of security checks. The determination as to the suitability of any employee or associate of the Contractor or its subcontractors or suppliers to enter the Board’s premises shall be made by the Board at its sole discretion. The Board may, as a result of the fingerprint security check described above, deny access to a person who had previously been granted temporary access based on a name and social security account number check.

- e. Security alert system. The Board has a security alert system that somewhat models the National Alert System. The Board normally operates at the Code Yellow level. Individuals in possession of a valid Board photo-identification badge are granted uncontrolled access to Board facilities and free movement within the premises (except for certain restricted areas) during Code Yellow conditions, while holders of “Escort Required” badges are required to be screened with magnetometers and their bags and packages must be x-rayed. During Code Orange conditions, all persons entering Board facilities are required to be screened with magnetometers, and all bags and packages must be X-rayed. All vehicles entering Board garages are searched during Code Orange conditions. When Code Red conditions are in effect, Contractor personnel are not allowed on the Board’s premises, unless specific exceptions are granted by the Board Security Administration office.
 1. Special circumstances. Notwithstanding its condition at any particular time with respect to the Board’s security alert system, the Board reserves the right to screen individuals and bags, packages or vehicles as indicated above at any time as a precondition to granting such individuals access to Board premises.

L.17 PUBLICITY

The Contractor shall not release any publicity or advertising regarding this Contract or the work to be performed hereunder and shall not use the name or insignia of the Board or of the Federal Reserve System, or any variation or adaptation thereof, for any commercial, advertisement, promotional or endorsement purposes, unless the Contractor has obtained the prior written consent of the Staff Director for Management of the Board or his authorized representative in such matters.

L.18 PREPROPOSAL CONFERENCE

- a. A preproposal conference will be conducted as indicated in the Solicitation cover letter.
- b. The Offeror shall submit in writing to the Contract Specialist any questions it has concerning this Solicitation, in accordance with Section G, above. Written responses to questions submitted in writing prior to the preproposal conference will be provided during or after the conference.
- c. Offerors are specifically cautioned that verbal discussion, questions, and replies regarding this solicitation shall not change the clauses or provisions of this Solicitation.
- d. The purpose of this conference is to provide a briefing on this Solicitation, the scope of work, and the specifications. The Board considers attendance at this conference essential to preparing a competitive and cost-effective offer, and to understanding the total result desired by the Board. For building security purposes, please fax in the names of the attendees with their social security numbers and dates of birth at least 24 hours in advance of the preproposal conference.

SECTION M

GENERAL CONTRACT PROVISIONS

1. Definitions
2. Inspection
3. Assignment of claims
4. Federal, state, and local taxes
5. Board-furnished property
6. Payments
7. Extras
8. Nondisclosure
9. Board's Office of the Inspector General
10. Notice and assistance regarding patent and copyright infringement
11. Covenant against contingent fees and conflict of interest
12. Gratuities
13. Anti-kickback procedures
14. Interpretation of contract requirements
15. Changes
16. Pricing of adjustments
17. Board delay of work
18. Excusable delays
19. Stop work order
20. Termination for convenience of Board
21. Default
22. Disputes
23. Protests
24. Competition in subcontracting
25. Subcontracting Plan
26. Equal opportunity
27. Employment of persons with disabilities
28. Affirmative action for special disabled and Vietnam era veterans
29. Walsh-Healey Public Contracts Act
30. Service Contract Act of 1965
31. Buy American Act
32. Contract Work Hours and Safety Standards Act – Overtime compensation
33. Privacy Act
34. Paperwork Reduction Act
35. Combating Trafficking in Persons

SECTION M

GENERAL CONTRACT PROVISIONS

M.1 DEFINITIONS

As used throughout this contract, the following terms shall have the meaning as set forth below:

Board identifies the Board of Governors of the Federal Reserve System.

Contract means all types of agreements and orders, including purchase orders for the procurement of supplies, services, printing, and/or equipment. It includes amendments and supplemental agreements with respect to any of the foregoing.

Contractor means an individual, partnership, corporation, or other entity responsible for the execution of a contract to provide goods and/or services at a certain price or rate.

Contracting Officer means the person executing this Contract on behalf of the Board or his/her successor or successors.

M.2 INSPECTION

- a. All work under this Contract shall be subject to inspection and test by the Board to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Board, through any authorized representative, may inspect the premises of the Contractor or any subcontractor engaged in the performance of this Contract.
- b. The Board may reject any work that is defective or otherwise not in conformity with the requirements of this Contract. If the Contractor fails or is unable to correct or to replace such work within the delivery schedule or such later time as the Contracting Officer may authorize, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances.
- c. If any inspection or test is made by the Board on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Board inspectors in the performance of their duties. If the Board inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Board. All inspections and tests by the Board shall be performed in such a manner so as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this Contract, but failure to inspect and accept or reject the work shall neither relieve the

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

Contractor from responsibility for such work as is not in accordance with the Contract requirements nor impose liability on the Board therefore.

- d. The inspection and test by the Board of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except as regard to latent defects, fraud, or such gross mistakes as amount to fraud.
- e. The Contractor shall provide and maintain an inspection system acceptable to the Board covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Board during the performance of this Contract and for such longer period as may be specified elsewhere in this Contract.

M.3 ASSIGNMENT OF CLAIMS

- a. Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. Section 3727, 41 U.S.C. Section 15), if this Contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Board under this Contract may be assigned to a bank, trust company, or other financial institution, including any federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this Contract not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.
- b. In no event shall copies of this Contract or of any plans, specifications, or other similar documents relating to work under this Contract, if marked "Top Secret," "Secret," or "Confidential" be furnished to any assignee of any claim arising under this Contract or to any other person not entitled to receive the same. Nevertheless, a copy of any part or all of this Contract so marked may be furnished, or any information may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

M.4 FEDERAL, STATE, AND LOCAL TAXES

- a. Except as may be otherwise provided in this Contract, the contract price includes all applicable federal, state, and local taxes and duties.
- b. Nevertheless, with respect to any federal excise tax or duty on the transaction or property covered by this Contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

1. results in the Contractor being required to pay or bear the burden of any such federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the Contract price shall be increased by the amount of such tax, duty, or rate increase, provided that the Contractor, if requested by the Contracting Officer, warrants in writing that no amount for such newly imposed federal excise tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise; or
 2. results in the Contractor not being required to pay or bear the burden of, or in its obtaining a refund or drawback of, any such federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the Contract price, the Contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Board as directed by the Contracting Officer. The Contract price shall be similarly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of or does not obtain a refund or drawback of any such federal excise tax or duty.
- c. No adjustment pursuant to paragraph (b) above shall be made under this Contract unless the aggregate amount thereof is or may reasonably be expected to be more than two hundred and fifty dollars (\$250).
 - d. As used in paragraph (b) above, the term "contract date" means the date set for the bid opening or, if this is a negotiated Contract, the date of this Contract. As to additional supplies or services procured by modification to this Contract, the term "contract date" means the date of such modification.
 - e. Unless there does not exist any reasonable basis to sustain an exemption, the Board, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this Contract to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this Contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.
 - f. The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the Contract price, and shall take action with respect thereto as directed by the Contracting Officer.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

M.5 BOARD-FURNISHED PROPERTY

No material, labor, or facilities will be furnished by the Board unless otherwise provided for in the Solicitation.

M.6 PAYMENTS

The Contractor will be paid upon the submission of proper invoices and vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Board when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either one thousand dollars (\$1,000) or fifty (50) percent of the total amount of this Contract. All payments shall be made by electronic funds transfer (EFT), and to receive payment, the Contractor must submit the form titled Vendor Information.

M.7 EXTRAS

Except as otherwise provided in this Contract, no payment for extras shall be made unless the Contracting Officer authorizes such extras and the price in writing.

M.8 NONDISCLOSURE

The Contractor acknowledges that all information and material related to (a) the security arrangements and strategies of the Board; (b) economic data; (c) financial, statistical and personnel data pertaining to Federal Reserve Banks or other financial institutions; and (d) financial, statistical, personnel, planning and similar information relating to past, present or future activities of the Board, which has or will come into the possession or knowledge of Contractor or its agents or employees in connection with this Agreement or the performance hereof shall be considered to be confidential and proprietary, the disclosure of which to third parties will be damaging to the Board. The Contractor, therefore, agrees to use such information only for the Board's benefit and will use the same effort to avoid publication or dissemination of such information as it employs with respect to the Contractor's own confidential information. The Contractor agrees to require each of its agents or employees assigned to perform services for the Board under this Agreement, by means or appropriate written agreements, to keep any such information obtained by them while performing such services confidential in the same manner as, and using the same discretion required of, such persons with respect to confidential information of Contractor and not to disclose such information to any person (other than a Contractor's employee requiring such information in connection with the performance of services hereunder) without the Board's prior written consent. Notwithstanding any of the foregoing, the Contractor shall not be required to keep confidential or limit its use of any ideas, concepts, know-how or techniques related to data processing that the Board intentionally discloses in writing at any time to the Contractor or developed by either party, and if developed

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

by the Board intentionally disclosed by the Board in writing, during the course of this Agreement. The Board by this Agreement does not agree to give Contractor any rights to any third party ideas, concepts, know-how or techniques. The Contractor shall have no obligation of any kind with respect to any information which: (a) is already in the possession of the Contractor except that which has been received under another confidentiality agreement with the Board; (b) is rightfully received by the Contractor from a third party; (c) is independently developed by or for the Contractor; or (d) is or becomes publicly available.

M.9 BOARD'S OFFICE OF THE INSPECTOR GENERAL (OIG)

- a. This clause is applicable to any Contract regardless of the amount or the manner into which it was entered.
- b. The Contractor agrees that the Board's OIG shall, until expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract.
- c. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Board's OIG shall have the same rights to the subcontractor as specified in paragraph (a) above.
- d. The periods of access and examination described in (b) and (c) above, for records which relate to (1) litigation or the settlement of claims arising out of the performance of this Contract, or (2) costs and expenses of this Contract as to which exception has been taken by the Board's OIG, shall continue until such litigation, claims, or exceptions have been disposed of.
- e. The Contractor and any subcontractor agrees to make notification to all Contractor and subcontractor employees the Board's OIG hot line telephone number, 1-800-827-3340, to report any suspected "waste, fraud, or abuse" transactions related to the performance of this Contract.

M.10 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

Note: This clause is applicable to all contracts exceeding one hundred thousand dollars (\$100,000).

- a. The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- b. In the event of any claim or suit against the Board on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Board, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Board except where the Contractor has agreed to indemnify the Board.
- c. This clause shall be included in all subcontracts in the amount of fifty thousand dollars (\$50,000) or more.

M.11 COVENANT AGAINST CONTINGENT FEES AND CONFLICT OF INTEREST

The Contractor warrants that no person or agency has been employed or retained to influence, solicit, or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, contingent fee, or special interest, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Board shall have the right to annul this Contract without liability, or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

M.12 GRATUITIES

- a. The Board may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found, after notice and hearing, by the Board or its duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contract, to any officer or employee of the Board with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determination with respect to the performance of such Contract, provided that the existence of the facts upon which the Board or its duly authorized representative makes such findings shall be an issue and may be reviewed in any competent court.
- b. In the event this Contract is terminated as provided in paragraph (a) hereof the Board shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor.
- c. The rights and remedies of the Board provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

M.13 ANTI-KICKBACK PROCEDURES

Note: This clause is applicable to all contracts over one hundred thousand dollars (\$100,000).

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- a. The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations of the Anti-Kickback Act (41 U.S.C. 51-58) in its own operations and direct business relationships.
- b. The Anti-Kickback Act prohibits any person from (1) providing, or attempting to provide, or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- c. When the Contractor has reasonable grounds to believe that a violation of the Anti-Kickback Act may have occurred, the Contractor shall promptly report in writing the possible violation to the Board's Office of the Inspector General.
- d. The Contractor shall cooperate fully with any federal agency investigating a possible violation of the Anti- Kickback Act.
- e. The Contractor agrees to incorporate the substance of this clause, including this subparagraph (e), but excepting subparagraph (a) in all subcontracts under this Contract exceeding one hundred thousand dollars (\$100,000).

M.14 INTERPRETATION OF CONTRACT REQUIREMENTS

No interpretation of any provision of this Contract, including applicable specifications, shall be binding on the Board unless furnished in advance and agreed to in writing by the Contracting Officer or his designated representative.

M.15 CHANGES

- a. The Contracting Officer may, at any time, without notice to the sureties, by written change order, make any change in the work within the general scope of the Contract, including but not limited to changes (1) in the specifications (including drawings and designs); (2) in the method or manner of performance of the work; (3) in the Board-furnished facilities, equipment, materials, services, or site; or (4) directing acceleration in the performance of the work.
- b. Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation, or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- c. Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- d. If any change under this clause causes an increase or decrease in the part of the work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly, provided, however, that except for claims based on defective specifications no claim for any change under (b) above shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required: And provided further, that in the case of defective specifications for which the Board is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.
- e. If the Contractor intends to assert a claim for an equitable adjustment under this clause, it must, within thirty (30) days after receipt of a written change order (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Board. The statement of claim hereunder may be included in the notice under (b) above. No claim by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

M.16 PRICING OF ADJUSTMENTS

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause (Clause 15) or any other provision of this Contract, such costs shall be allowed to the extent they are reasonable and allocable. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and consistently applied may be used.

M.17 BOARD DELAY OF WORK

- a. If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this Contract, which act is not expressly or impliedly authorized by this Contract or by his/her failure to act within the time specified in this Contract (or within a reasonable time if no time is specified), an adjustment (excluding profit) shall be made for any increase in the cost of performance of this Contract caused by such delay or interruption, and the Contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. No adjustment, however, shall be made under this clause for any delay or interruption (1) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or (2) for which an adjustment is provided or excluded under any other provision of this Contract.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- b. No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the Contract.

M.18 EXCUSABLE DELAYS

Except with respect to default of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy, acts of the Board in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress and if such failure arises out of causes beyond the control of both the Contractor and the subcontractor and without fault or negligence of either, the Contractor shall not be deemed to be in default unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer ordered the Contractor in writing to procure such supplies or services from such other sources, and (c) the Contractor failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure, and if he/she determines that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Board under the clause hereof entitled "Termination."

Note: As used in this clause, the terms "subcontractor" and "subcontractors" means subcontractor(s) at any tier.

M.19 STOP WORK ORDER

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either (1) cancel the stop work order, or (2) terminate the

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

work covered by such order as provided in the "Default" or the "Termination for Convenience" clauses of this Contract.

- b. If a stop order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price or both, and the Contract shall be modified in writing accordingly, if
 - 1. the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part,
 - 2. the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, it may receive and act upon any such claim asserted at any time prior to final payment under this Contract.
- c. If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Board, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.
- d. If a stop work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

M.20 TERMINATION FOR CONVENIENCE OF THE BOARD

The Contracting Officer, by written notice, may terminate this contract in whole or in part, when it is in the Board's interest. To the extent that this Contract is for service and is so terminated, the Board shall be liable only for payment in accordance with the payment provisions of this Contract for services rendered prior to the effective date of termination. If the Board terminates this Contract under this paragraph, the Contractor must immediately take all actions necessary to minimize the cost of termination settlement to the Board.

M.21 DEFAULT

- a. The Board may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in any one of the following circumstances:
 - 1. if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof, or
 - 2. if the Contractor fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

- b. In the event the Board terminates this Contract in whole or in part as provided in paragraph (a) of this clause, the Board may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Board for any excess costs for such similar supplies or services; provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.
- c. Except with respect to default of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy; acts of the Board in either its sovereign or contractual capacity; fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- d. If this Contract is terminated as provided in paragraph (a) of this clause, the Board, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Board, in the manner and to the extent directed by the Contracting Officer, (1) any completed supplies, and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Board has an interest. Payment for completed supplies delivered to and accepted by the Board shall be at the Contract price. Payment for manufacturing materials delivered to and accepted by the Board and for the protection and preservation of property shall be in the amount agreed upon by the Contractor and Contracting Officer. The Board may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Board against the losses because of outstanding liens or claims of former lien holders.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- e. If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of the clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience provisions of this Contract.
- f. The right and remedies of the Board provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- g. As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

M.22 DISPUTES

- a. Any claim by the Contractor seeking payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract must be submitted in writing to the Contracting Officer. Upon receipt of such a claim, the Contracting Officer or his/her representative will contact the claimant and attempt to negotiate a mutually acceptable resolution.
- b. Upon the failure to reach such a resolution, the Contracting Officer shall issue a written determination after reviewing the pertinent facts and consulting with legal and other advisors. The written determination shall be issued within a reasonable time, but not less than sixty (60) days after receipt of a written request from the claimant for a written determination. The written determination shall contain (1) a description of the claim or dispute; (2) reference to the pertinent contract terms; (3) a statement of the factual areas of agreement and disagreement; (4) a statement of the Contracting Officer's decision, with supporting rationale; and (5) a statement that the Contracting Officer's decision is final and that the claimant may appeal the decision to the Board's Staff Director for Management. The Contracting Officer's decision will be furnished by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- c. Failure of the Contracting Officer to issue a written determination within sixty (60) days of a written request for such determination shall be deemed to be a denial of the claim, which may be appealed to the Board's Staff Director for Management. Any appeal to the Board's Staff Director for Management must be made in writing within ninety (90) days from the date the claimant receives the Contracting Officer's written decision.
- d. The Board will pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim, or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims will be paid at the rate, fixed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat 97), which is applicable to the period during which the Contracting Officer receives the claim.

M.23 PROTESTS

- a. Protests may be submitted by actual or prospective Offerors to the manager of the Procurement Section as follows: Procurement Manager, Management Division, 20th and C Streets, NW, Washington, DC 20551. Protests on alleged improprieties in a solicitation that are apparent prior to the closing date for receipt of bids or proposals shall be filed prior to that date. In all other cases, protests shall be filed not later than ten (10) calendar days after the basis of the protest is known or should have been known, whichever is earlier. Protests shall include (1) the name, address, and telephone number of the protester; (2) the solicitation or contract number; (3) a detailed statement of the legal and factual grounds for the protest, including copies of relevant documents; (4) a request for a ruling by the Board; and (5) a statement of the form of relief requested.
- b. If the Procurement Manager receives a protest prior to award, an award will not be made until a decision on the protest is issued, or the matter is otherwise resolved unless the Procurement Manager first determines, in writing, that (1) the supplies or services to be contracted for are urgently required, (2) delivery or performance will be unduly delayed by failure to make award promptly, or (3) a prompt award will otherwise be advantageous to the Board. If the award is to be delayed pending resolution of the protest, the other Offerors shall be notified of the protest; and, if appropriate, those Offerors should be requested to extend the time for acceptance to avoid the need for resolicitation.
- c. If a protest is received after award, the contract performance will not be suspended unless it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Board's interest.
- d. The Procurement Manager will furnish a copy of the written protest ruling to the protester by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The protester may appeal the ruling of the Procurement Manager to the Chief Acquisition Officer. Any appeal to the Chief Acquisition Officer must be made in writing within ten (10) calendar days from the date the protester receives the Procurement Manager's written ruling. If the Chief Acquisition Officer has a conflict, then the director of the Management Division will decide the appeal.

M.24 COMPETITION IN SUBCONTRACTING

The Contractor shall elect subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

M.25 SUBCONTRACTING PLAN

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- a. For purposes of this clause, “covered company” means a firm qualified as a small business concern under the Small Business Act (15 U.S.C. § 632) and regulations thereunder, including (1) business concerns that meet the size eligibility standards set forth in 13 C.F.R § 121; (2) small business concerns owned and controlled by veterans or service-disabled veterans as defined by 15 U.S.C. § 632(q); (3) qualified HUBZone small business concerns pursuant to 15 U.S.C. § 632(p) and 13 C.F.R § 126; (4) socially and economically disadvantaged small business concerns as defined by 15 U.S.C. § 637 and certified as such under 13 C.F.R. § 125; and (5) small business concerns owned and controlled by women as defined by 15 U.S.C. § 632(n).
- b. The Board has a policy of providing covered companies with an equitable opportunity to compete, as a prime contractor or a subcontractor, in Board acquisitions conducted pursuant to the formal bidding procedures, negotiated procurement procedures, or simplified acquisition procedures of the Board’s Acquisition Policy, to the extent that this opportunity is consistent with efficient contract performance.
- c. Except for solicitations for services that are personal in nature or for solicitations that are expected to be \$300,000 or less (\$500,000 or less for construction), each noncovered company’s bid or proposal must include a subcontracting plan that describes the Offeror’s commitment to provide covered companies the maximum practicable opportunity to participate in contract performance, consistent with the vendor’s efficient contract performance. The subcontracting plan must be acceptable to the Contracting Officer in order for the Offeror to be awarded the contract.
- d. Offerors acting in good faith may rely on the written representations of their subcontractors regarding their status as a covered company.

M.26 EQUAL OPPORTUNITY (See Attachment No. 1)

M.27 EMPLOYMENT OF THE PERSONS WITH DISABILITIES

Note: This clause is applicable to contracts and subcontracts in excess of ten thousand dollars (\$10,000).

- a. The Contractor shall not discriminate against any employee or applicant for employment because of a physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to hire, place, and advance qualified persons with disabilities who are physically or mentally disabled. The Contractor shall not discriminate against persons with disabilities in employment practices such as the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship programs.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

- b. The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 793) (the "Act").
- c. In the event of the Contractor's noncompliance with the requirements of this clause, the Board may take such actions of noncompliance as may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- d. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor. Such notices shall state (1) the Contractor's obligation under the law to take affirmative action to hire, place, and advance in employment qualified persons with disabilities, and (2) the rights of applicants and employees.
- e. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to hire, place, and advance in employment qualified persons with physical and mental disabilities.
- f. The Contractor shall include the provisions of this clause in every subcontract or purchase order in excess of ten thousand dollars (\$10,000), unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 503 of the Act.

M.28 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA
VETERANS

Note: This clause is applicable to all contracts and subcontracts of twenty-five thousand dollars (\$25,000) or more.

- a. Definitions.

"Appropriate office of the state employment service system", as used in this clause, means the local office of the federal-state national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization", as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

considered, and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement", as used in this clause, means employment openings that the Contractor proposes to fill from union halls under their customary and traditional employer-union hiring relationship.

"Suitable employment openings", as used in this clause

1. includes, but is not limited to, openings that occur in jobs categorized as (i) production and nonproduction, (ii) plant and office, (iii) laborers and mechanics, (iv) supervisory and nonsupervisory, (v) technical, and (vi) executive, administrative, and professional positions compensated on a salary basis of less than twenty-five thousand (\$25,000) a year; and
2. includes full-time employment, temporary employment of over three (3) days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, but not openings in an educational institution that are restricted to students of that institution.

b. General.

1. Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam era veterans without discrimination based upon their disability or veterans' status in all employment practices such as (i) employment; (ii) upgrading; (iii) demotion or transfer; (iv) recruitment; (v) advertising; (vi) layoff or termination; (vii) rates of pay or other forms of compensation; and (viii) selection for training, including apprenticeship.
2. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. Section 2012).

c. Listing openings.

1. The Contractor agrees to list all suitable employment openings existing at Contract award or occurring during Contract performance, at an appropriate office of the state employment service system in the locality where the opening occurs.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

These openings include those occurring at any Contractor facility, including one not connected with performing this Contract. An independent corporate affiliate is exempt from this requirement.

2. State and local government agencies holding federal contracts of twenty-five thousand dollars (\$25,000) or more shall also list all their suitable openings with the appropriate office of the state employment service.
3. The listing of suitable employment openings with the state employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and non-veterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive Orders or regulations concerning nondiscrimination in employment.
4. Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the state employment service system, in each state where it has establishments, of the name and location of each hiring location in the state. As long as the Contractor is contractually bound to these terms and has so advised the state system, it need not advise the state system of subsequent contracts. The Contractor may advise the state system when it is no longer bound by this contract clause.
5. Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

d. Applicability.

1. This clause does not apply to the listing of employment openings which occur and are filled outside the fifty states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
2. The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

e. Postings.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

1. The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.
 2. These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.
 3. The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam era veterans.
- f. Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- g. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of twenty-five thousand dollars (\$25,000) or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

M.29 WALSH-HEALEY PUBLIC CONTRACTS ACT

If this Contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed ten thousand dollars (\$10,000), and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. Section 35-45), they are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereinafter be in effect.

M.30 SERVICE CONTRACT ACT OF 1965 (See Attachment 2)

M.31 BUY AMERICAN ACT

- a. The Buy American Act (41 U.S.C. Section 10) provides that preference should be given to domestic end products.

"Components", as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

"*Domestic end product*", as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (b)(3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"*End products*", as used in this clause, means those articles, materials, and supplies to be acquired for public use under this Contract.

- b. The Contractor shall deliver only domestic end products, except those
 1. for use outside the United States;
 2. that the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
 3. for which the Board determines that domestic preference would be inconsistent with the public interest; or
 4. for which the Board determines the cost to be unreasonable.

M.32 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME
COMPENSATION

This Contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. Section 327-330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

- a. Overtime requirements. No Contractor or subcontractor shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of forty hours in such workweek on work subject to the provisions of the contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of forty (40) hours in such workweek.
- b. Violation, liability for unpaid wages, and liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his/her unpaid wages.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of ten dollars (\$10) for each calendar day on which such employee was required or permitted to be employed on such work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by paragraph (a).

- c. Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
- d. Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this clause in any subcontract exceeding one hundred thousand dollars (\$100,000), and shall require their inclusion in all subcontracts of any tier.
- e. Records. The Contractor shall maintain payrolls and basic payroll records during the course of contract work for a period of three (3) years from the completion of the Contract. Such records shall be available for inspection by authorized representatives of the Board and the Department of Labor. The Contractor shall permit such representatives to interview employees during working hours on the job. The payroll records shall contain the name and address of each employee, the social security number, the correct classifications, the hourly rates of wages paid, the daily and weekly number of hours worked, the deductions made, and the actual wages paid.

M.33 PRIVACY ACT

- a. The Contractor agrees:
 - 1. to comply with the Privacy Act of 1974, 5 U.S.C. Section 552a, and the rules and regulations issued pursuant to the Act in the design, development, and/or operation of any system of records on individuals in order to accomplish a Board function, when the Contract specifically identifies (i) the system or systems of records, and (ii) the work to be performed by the Contractor in terms of any one or combination of the following: (A) design, (B) development, or (C) operations;
 - 2. to include the Privacy Act notification contained in this Contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the statement of work in the proposed subcontract requires the design, development, or operation of a system of records on individuals to accomplish a Board function.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

3. to include this clause, including this paragraph (3), in all subcontracts awarded pursuant to this Contract which require the design development, or operation of such a system of records.
- b. In the event of violations of the Privacy Act, a civil action may be brought against the Board when the violation concerns the design, development, or operation of a system of records on individuals to accomplish a Board function and criminal penalties may be imposed upon the officers or employees of the Board when the violation concerns the operation of a system of records on individuals to accomplish a Board function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish a Board function, the Contractor and any employee(s) of the Contractor are considered to be employee(s) of the Board.
- c. The terms used in this clause have the following meanings:

"Operation of a system of records" means performance of any of the activities associated with maintaining the system of records including the collection, use, and dissemination of records.

"Record" means any item, collection, or grouping of information about an individual that is maintained by the Board and/or Government agency, including but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

"System of records" on an individual means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particulars assigned to the individual.

M.34 PAPERWORK REDUCTION ACT

Information collection requirements contained in this solicitation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Section 3501 et seq. and have been assigned OMB No. 7100-0180.

M.35 COMBATING TRAFFICKING IN PERSONS

The Contractor agrees that the provisions of Federal Acquisition Regulation (48 C.F.R.) 52.222-50, relating to combating trafficking in persons, shall apply to this Contract, and the Contractor agrees to comply with the requirements and responsibilities set forth therein.

Revised August 1986

ATTACHMENT NO. 1

EQUAL OPPORTUNITY CLAUSE

Note: The following clause is applicable unless this Contract is exempted under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR Ch. 60).

(a) If, during a 12-month period (including the 12 months preceding the award of this Contract), the Contractor has been or is awarded nonexempt federal contracts and/or subcontracts that have an aggregate value in excess of ten thousand (\$10,000), the Contractor shall comply with subparagraphs (b)(1) through (b)(7) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performance of this Contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(2) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor shall furnish to the Board all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the Board or the Office of Federal Contract Compliance Programs for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with this Equal Opportunity clause or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Board contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor shall include the provisions of paragraph (b)(1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Contractor. The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of such direction by the Board, the Contractor may request the Board to enter into such litigation to protect the interests of the Board.

(c) Nonsegregated Facilities. Note: This clause is applicable to Contracts exceeding ten thousand dollars (\$10,000) that are not exempt under Clause (a) above. By acceptance of this Contract, the Contractor represents that he does not and will not maintain nor provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The Contractor agrees that a breach of his representation is a violation of the Equal Employment Opportunity clause of this Contract. As used herein the term "segregated facilities" means any waiting rooms, work areas, rest rooms, wash rooms, restaurants (and other

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

eating areas), time clock, locker rooms, storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, religion, color, age, or national origin, because of habit, local custom, or otherwise.

Contractor further agrees that (except where subcontractors have similarly certified for specific time periods) he shall obtain identical representations from proposed subcontractors prior to award of subcontracts exceeding ten thousand dollars (\$10,000) which are not exempt from the provisions of the Equal Employment Opportunity clause, that he will retain such representations in his files, and that he will provide the following notification to proposed subcontractors (except where the proposed subcontractors have submitted identical representations for specific time periods) as follows:

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR NONSEGREGATED FACILITIES. A Statement of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding ten thousand dollars (\$10,000) that is not exempt from the provisions of the Equal Opportunity clause. The statement may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. Section 1001.

(d) Affirmative Action Program. If this Contract is for an amount of \$50,000 or more, Contractor by acceptance of this Contract certifies that he has, or will within one hundred and twenty (120) days from the date of this Contract, develop and maintain at each of his establishments Affirmative Action Programs, pursuant to 41 CFR Section 60-1 and 60-2.

(e) Preaward on Site Equal Opportunity Compliance Review. An award in the amount of one million dollars (\$1,000,000) or more will not be made unless the Contractor and each of his known first-tier subcontractors (to whom he intends to award a subcontract of one million dollars [\$1,000,000]) or more are found on the basis of a compliance review to be able to comply with the provisions of the Equal Opportunity Clause of this contract.

Revised May 1989

ATTACHMENT NO. 2

**SERVICE CONTRACT ACT OF 1965
AS AMENDED (MAY 1989)**

Note: This Contract, to the extent that it is of the character to which the Service Contract Act of 1965 (41 U.S.C. Section 351 et seq.) applies, is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor thereunder.

(a) Definitions. Act, as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

Contractor, as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term Government Prime Contractor.

Service employee, as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in part 541 of title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability*. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in subpart C of 29 CFR part 4.

(c) *Compensation*. (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than thirty (30) days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within thirty (30) days of receipt or will notify the Contracting Officer within thirty (30) days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after one (1) year and not less often than once every two (2) years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with subpart D of 29 CFR part 4.

(e) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor Contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor that are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

(i) Records. (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(I) For each employee subject to the Act --

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semimonthly.

(k) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List. Not less than ten (10) days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names, of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

(o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR part 4.

(p) Contractor's Certification. (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92 - 473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award ZZZZZ

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than thirty dollars (\$30) a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR part 531. However, the amount of credit shall not exceed \$1.34 an hour beginning January 1, 1981. To use this provision --

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

[54 FR 19828, May 8, 1989]

Board of Governors of the Federal Reserve System
Solicitation, Offer, and Award *ZZZZZ*

SECTION N

SUPPLIER INFORMATION FORM