

**Questions and Answers for Solicitations DACA45-03-R-0027,  
DACA45-03-R-0028, and DACA45-03-R-0029**

**The Omaha District believes all questions have been answered that were submitted before, during, and after the pre-proposal conference. Only if further questions require an amendment to the solicitations will future postings be made.**

1. Section B.3 – Will a successful offeror be required to submit a proposal in response to each Task Order RFP it receives?

*No.*

2. Section B – Table 1: This table provides unit rates for personnel, including all overhead and fee which will be used as the basis for TO negotiations, but does not include any pricing information for other direct costs and associated overhead and fee. How are ODCs and related overhead and fee to be presented in the TO estimates?

*For Labor – It should be included in the rate.*

*For ODC – Include in the cost of each ODC.*

*The Government understands that each Firm will have G&A/Overhead and Profit on its costs, it is the overall cost, and the technical approach used that the Government is interested in. The selections are based on the offeror that provides the “best value” to the Government. This will be done using a tradeoff process.*

3. Section B – Table 1: At the bottom of the table, USACE requests cost containment insurance premium pricing as a percentage range of overall price. Is the upper percentage considered a pricing ceiling?

*No. The range will be used as part of the “best value” evaluation purposes. The Government recognizes that insurance premiums are directly related to project risk; however, the Government wants to evaluate contractor performance risk.*

4. Section B – Table 1: Does the Government want to include Surplus Lines Taxes or other out of pocket costs related to the insurance premium with the insurance premium cost on Table 1?

*No.*

5. Sample problem on DACA45-03-0029: Are the 10 monitor wells and 10 soil borings co-located? The RFP gives some indication of horizontal distribution of contamination, what information is available regarding the vertical distribution of contaminants?

*03r0027 - Wells and Borings – offeror is to decide the best placement.*

*03r0029 - Offeror is to make an assumption how the contamination tapers off. no contamination is found below 25 ft as stated.*

6. Is there a minimum or average size of the Task Orders anticipated for the contracts?

*No. The size, complexity and locations will vary with each and every task order.*

7. Are the sample problems indicative of the size and scope of projects anticipated for this contract?

*No. They are being used to evaluate how well the contractor can put together a performance based proposal, (giving the assumptions, milestones, and costs to reach each milestone & overall cost) and determine if the contractor can provide a “best value” solution.*

**8.** Section L.3.4.3 – In the last sentence, is it USACE's intent for the offeror to explain how it verifies that a laboratory is able to produce a data package in an electronic format, or is the offeror to name a laboratory, and provide verification that the named laboratory is able to produce a data package in an electronic format?

*USACE is not interested in which laboratory the contractor uses as long as it is certified by NELAP or USACE and can provide an electronic data package that is useful. This information will be provided with the proposals for each Task Order. The Government is looking for the "best value", therefore it is expected that for the Contractor to be competitive, they will find the most competitive certified laboratories to use in performing work under a Task Order.*

**9.** Section L.3.5.2 – Contractor's are required to track SB Performance for ID/IQ contracts at the contract level not at the project (Task Order) level. SB information for Task Orders may not be available for Task Orders submitted as projects. Should the offeror in this case use the ID/IQ contract SB performance information for Task Orders submitted as projects?

*Since most work will be done on a Task Order basis under these contracts, USACE would like to see how well the Offeror is meeting its SB Goals on a lower level. However, USACE knows that it is not a standard practice to do this kind of SB Goal Tracking at the Task Order level. If it is possible, please present both the overall Contract and the Task Order goals and actual percentages achieved, however, USACE prefers the SB Goals achieved at the Task Order level.*

**10.** How does Omaha intend to use the two large business contracts; i.e., how will work be apportioned between the single award contract and the multiple (3) award contract?

*It will primarily depend on the amount and the extent of the Construction Activities that is expected to take place based off the independent government evaluation/estimate.*

**11.** The recent Omaha ERS Contract RFP was amended to exclude the requirement for a laboratory plan. Will this requirement be deleted from the FPRI RFP in the future?

*The requirements have not and will not be deleted, but they have been relaxed. Please see Section L.*

**12.** Reference Section L, Volume I, Section I, Tab 1. The project definition in Section L, Page 15 of 24, Section 3.1.1, Bullet 2 includes the parenthetical (i.e., a non-ID/IQ contract) while this parenthetical was not included in the ERS Contract RFP definition of project. We have several installation specific contracts that are ID/IQ contracts under which we have completed remedial actions at single sites under multiple task orders or multiple sites under a single task order. The use of separate task orders in both these cases was primarily for the convenience of the government because of issues including incremental funding. In several cases, we started remediation projects under one task order and completed work under a second and sometimes a third task order. Will this definition be amended in the future included multiple projects under multiple task orders on a single installation ID/IQ contract to meet the FPRI project definition?

*The definition of a project remains as stated in the solicitations. No changes will be made.*

**13.** Section L.2.2: States that "The page size of the offeror's proposal shall not exceed an 8-1/2 inch by 11-inch sheet of paper." Then in the next paragraph it states " Each foldout page in excess of 8-1/2 inch by 11-inch shall count as two pages." Should the first sentence excluding the use of any size sheet in excess of 8-1/2 inch by 11-inch be removed or modified?

*Any pages that exceed the 8-1/2 inch by 11-inch sheet will be counted as two pages. Some offerors may wish to use larger sheets to present material, if this occurs, then it will count as 2 pages, if both sides of the foldout are used, it will be counted as 4 pages.*

**14. Section L.3.1.1 – Previous Experience – Environmental Remediation Projects:** We are concerned about the definition of a completed project as it relates specifically to long term Operations and Maintenance (O&M) projects. O&M of treatment systems under a single contract can often last for 5 years or in some cases much longer and the time required to physically complete treatment at a site can be 10 to 20 years or longer. Would Omaha consider allowing inclusion of O&M projects, which have been underway long enough to evaluate performance (typically one and a half years or more) but have not been completed.

*No, it does not meet the definition of “completed project”.*

**15. Section H** indicates that Task Orders will require Cost Cap Insurance (may not be required on all Task Orders), Performance and Payment Bonds and retainage. Given the 5-year warranty period, we are unclear how long the performance and payment bonds and 10 percent retainage will remain in effect. For example, regarding retainage Section H indicated “The Government will withhold the remaining ten (10%) percent of the milestone payment until the milestone is achieved by the Contractor in the judgment of the Contracting Officer.” Given the clauses related to regulatory re-openers and changes in environmental laws and regulations, is it the governments intention to pay the final 10 percent after the project work is completed (i.e. final site walk completed and/or work accepted) or might the government hold the final 10 percent until the 5 year warranty period has expired.

*It is the Government’s intent to withhold the final ten percent until after the contractor has delivered the final deliverable (generally the “site closeout” document). The final deliverables will be identified in each task order. Concerning cost overrun insurance.*

**16. Section B, Paragraph 6.** Since task orders under this contract are to be firm, fixed price and awarded on a competitive basis, we would expect to provide only a schedule of values for milestones accomplished with payments tied to the milestones. What is the intent of this paragraph? Does USACE expect the contractors to submit detailed cost estimates with each task order proposal?

*The Government will require some level of detail to properly analyze the pricing so that the Contracting Officer can document that the price is “fair and reasonable.” However, the level of detail may vary depending upon the project and level of complexity. In any case, as a minimum, the Government will request the Contractor to provide a cost breakdown, which specifies the proposed labor mix (with extended prices), travel costs, other direct costs, and insurance premium costs along with the underlying assumptions to support those costs.*

**17. Section B, Paragraph 5 / Table 1**

There are many groups/levels for many disciplines listed in Table 1 (laborers, engineering technicians, clerks, etc.) that may be required for a given Task Order under both Service Contract Act and Davis Bacon Act wage schedules with numerous minimum wage scales for each group/level and also based on the location where the work is performed. What groups/levels for each category and what location / wage determination schedule is to be utilized to develop the direct cost for these line items.

*Provide pricing that would cover SCA and DBA labor rates recognizing that the Government will use those rates in evaluation of “best value” tradeoff analysis.*

**18.** Does the Cost Containment Insurance Premium as Percentage of Overall of Contract Price presume to include costs associated with Corporate Assets (SIRs, exclusions and deductibles, surplus lines taxes and broker fees) and Performance and Payment Bonds?

*No. The Cost Containment Insurance Premium should only be costs directly paid to the insurance company for binding. The Government has enough historical data that it is not necessary to include Performance and Payment Bond costs.*

**19.** Section C, Paragraph 1. This paragraph states, "...high level radioactive waste, unexploded ordnance, and chemical warfare material will not be covered by this contract".

a. Does this mean that no work will be performed under the contract that involves high-level radioactive waste, unexploded ordnance or chemical warfare materials? Or does it mean that work involving these types of materials is not included in cost containment insurance or indemnification?

*The Government will not be performing work that involves high-level radioactive waste, unexploded ordnance or chemical warfare materials under this contract.*

b. Does USACE intend that low-level waste, transuranic waste, NORM or other radioactive waste will be covered? These may be hard to insure.

*Work that involves low-level waste, transuranic waste, NORM or other radioactive waste may be performed under this contract.*

**20.** Section C, Paragraph 1 and Paragraph 2. Under what circumstances will the Contracting Officer determine it necessary to provide Performance and Payment Bonds?

*Performance and Payment Bonds may be required depending upon the project and the customer's needs.*

**21.** Section C, Paragraph 4. Will the government agree to language in the contract limiting their role in regulatory agency negotiations?

*It is the Government's intent to limit its involvement in direct negotiations with the regulators. However, it cannot fully disengage because the Government is still ultimately responsible. Therefore, it would not agree to such language.*

**22.** Section C, Paragraph 5.1 and Section H, Paragraph 4. The contract scope of work includes "...operation and maintenance during the 5-year warranty period..." Please clarify when the 5-year warranty period begins. Does it begin upon construction of the remedial design, such as SVE system or landfill cap/leachate collection system?

*The 5-year warranty begins after the work has been completed and accepted by the customer and the regulators have designated the tasks complete.*

**23. Section H, Paragraph 2.1.**

a. Is it the government's intent to limit the indemnity to 2X times the task order price and the Contractor is not responsible excess of limits of insurance?

*Yes, it is the Government's intent to limit the Contractor's exposure to risk. It is not the Government's intent to have the Contractor assume unlimited risk.*

b. What is the definition of "completion of the work"? Clarify how "completion of the work" is defined in Section C.

*The performance measure of "completion of work" will be defined in the individual task order. Typically, it will be the regulatory closure where no further action at the site(s) is required. Goals, standards for cleanup, etc will vary on a site-by-site basis. Further definition cannot be further provided at this time.*

**24. Section H, Paragraph 2.2**

a. What is the process for the Contractor to prove entitlement to an indemnity exclusion?

*As stated in the RFP, the burden of proof is on the Contractor.*

b. Do these exclusions also apply to the firm fixed price terms? For example, if UXO or high level radioactive waste is unexpectedly encountered in an excavation area, is this cause for a modification to the firm, fixed price?

*The issues would be addressed on a case-by-case basis. It is the Contractor's responsibility to notify the Contracting Officer immediately if such items were discovered.*

c. Will the government provide indemnification for the contractor conducting high hazard services such as UXO, or high-level radioactive waste?

*The contractor will not be performing this type of work under this contract, therefore, no such indemnification would be provided.*

**25. Section H, Paragraph 2.3**

a. Is it the intent of the government to review and approve the insurance policy before the Contractor purchases (binds) insurance coverage?

*Yes. The Government will review the insurance policy, which most likely will be in final draft form in the request for proposals, before the award is made. It has been the Government's experience that the insurance underwriter will not bind the policy until payment is made and the payment cannot be made until the task order is awarded. Therefore, the Government will review and approve the final draft insurance policy, award the task order, and issue the Notice To Proceed once the final binding policy is issued and approved by the Government.*

- b. Does the Contractor have 30 days from notice to proceed to provide proof of insurance?

*No. The Contractor will not receive a notice to proceed until the purchased insurance policy has been finalized, reviewed by the Government, and approved by the Contracting Officer.*

**26.** Section H, Paragraph 2.7

- a. Are there certain corporate assets not acceptable to the government?

*The corporate assets being proposed to cover the self-insured retention and other deductibles are being used for evaluation purposes. While no specific assets are excluded, the Government will assess the financial risk of the assets being offered.*

- b. Is a parent guarantee sufficient?

*See Answer 26a.*

- c. Many exclusions are uninsurable and therefore not quantifiable. Would the government consider capping the Contractor's liability for exclusions?

*No, that is a contractual discussion between the Prime Contractor and their insurer and directly relates to risk and profits.*

**27.** Section H, Paragraph 4

- a. Does this 5-year warranty cover cost increases due to additional contamination that is due to an ongoing or subsequent release(s) caused by others?

*The Government would not hold the Contractor accountable for ongoing or subsequent contamination.*

- b. Is the 5-year warranty period terminated early if the regulators do close out the sites?

*No. This is due to the fact that there may be regulatory reopeners within that 5-year period after the customer has accepted the work.*

- c. Upon completion of the 5-year warranty period, how will the Government transfer liability from the contractor to the Government?

*The contract defines the period of performance for the warranty as 5 years.*

d. The warranty period is 5 years for regulatory reopeners. If such an event happens, does the warranty continue for another 5 years after the "fix" for the regulatory change.

*No. It only covers 5 years from the date of original acceptance for the work performed.*

**28.** Section H, Paragraph 5

a. The 10% retention clause appears unusually high and will result in higher cost to the Government. We suggest the retention be reduced to 5% or allow the contractor to use a Retainer Bond.

*The 10% is specified by FAR in the Performance Based Milestone Payments section.*

b. Will the Government release the final retention before the warranty period starts, or is the end of the 5-year warranty considered the final milestone?

*The Government will release the final payment(s) when the defined milestones are met.*

**29.** Section H, Paragraph 6. Since the contractor is liable for all fines and penalties, the contract should state that the contractor has sole and absolute discretion and authority to defend, negotiate and settle any alleged violations.

*The RFP states that the contractor is liable for fines and penalties for failure to comply with the requirements of the Contract. Therefore, it is the Contractor's responsibility to resolve these issues.*

**30.** Section H, Paragraph 13. What criteria is the government using to determine which task order requires cost overrun indemnification and/or bonding?

*All Task Orders will require cost overrun insurance. Bonding requirements will be based the customer's needs and the project requirements.*

**31.** Section I, 1<sup>st</sup> Paragraph. We request that USACE reconsider deleting FAR Clauses 52.236-2 and 52.243-4 from the contract since either or both the "Differing Site Conditions" and the "Changes" clauses may be required in case the exclusions identified in Section H, Paragraph 2.2 are encountered, and/or when unanticipated military operations disrupt Task Order operations or otherwise negatively impact Task Order scope of work, schedule and/or cost.

*In RFP DACA45-03-R-0029, the "Changes" clause will remain with a local provision added; however, the "Differing Site Conditions" has been removed based on approval from higher Headquarters. The "Changes" clause would not activated in the two examples used. In fact, the "Changes" clause would not apply unless the Scope of Work was changed and was ordered by written direction from the Contracting Officer.*

*The Differing Site Conditions Clause does not apply to DACA45-03-R-0027 and R-0028 since the resulting contracts will be Environmental Remediation Services Contracts.*

**32.** Section I, Contract Clause 252.204-7000 – Disclosure of Information (DEC 1991). Disclosure of information to subcontractors and to the state and federal regulators is required in order to meet the SOW requirements. Please clarify whether or not the contractor will be denied permission to share information with its subcontractors and regulatory agencies.

*No, you will be allowed to share information with your subcontractors and the regulatory agencies.*

**33.** Section L, Paragraph 3.3.1. We have had successful relationships and placed policies with several carriers. Is the government open to offerors providing more than one insurer, if we can get the commitments from more than one? Given the length of the contract and variety of projects, flexibility might be best.

*Yes.*

**34.** Section M, Paragraph 5.1.1. The Government has only recently begun issuing firm, fixed price contracts with cost containment insurance requirements, and we are aware of no contracts of this nature that have been completed for the Government.

a. Does the Government place a higher value on projects performed for private sector clients that required cost containment insurance, than on projects performed for the Government that were firm, fixed price contracts but that did not require cost containment insurance?

*It is the Offeror's responsibility to provide the best mix of experience to demonstrate their competence using sound business judgment.*

b. Does the Government place a higher value on projects performed for private sector clients that required cost containment insurance, than on projects performed for the Government that had performance-based milestones but that did not require cost containment insurance?

*It is the Offeror's responsibility to provide the best mix of experience to demonstrate their competence using sound business judgment.*

c. Does the government place higher value on projects that had cost containment insurance and were completed within budget with no claims or projects that had cost containment insurance and did have cost overruns that were successfully covered by the insurance, thereby still being completed within budget to the client.

*It is the Offeror's responsibility to provide the best mix of experience to demonstrate their competence using sound business judgment.*

**35.** Section M, Paragraph 5.1.2

a. Does the Government place a higher value on a Program Manager who has experience on projects performed for private sector clients that required cost containment insurance, than on a Program Manager who has experience on projects performed for the Government that were firm, fixed price contracts but that did not require cost containment insurance?

*It is the Offeror's responsibility to provide the best mix of experience to demonstrate their competence using sound business judgment.*

b. Does the Government place a higher value on Project Managers who have experience on projects performed for private sector clients that required cost containment insurance, than on Project Managers who have experience on projects performed for the Government that were firm, fixed price contracts but that did not require cost containment insurance?

*It is the Offeror's responsibility to provide the best mix of experience to demonstrate their competence using sound business judgment.*

**36. Contractual Issues.** Does the Government place a higher value on a Program Manager who has experience on projects performed for private sector clients that required cost containment insurance, than on a Program Manager who has experience on projects performed for the Government that were firm, fixed price contracts but that did not require cost containment insurance?

*It is the Offeror's responsibility to provide the best mix of experience to demonstrate their competence using sound business judgment.*

**37.** Since FPRI is a relatively new approach to performing environmental remediation projects, we strongly recommend that the government consider holding Oral Presentations which focus on explaining the Offeror's approach to, and experience in arranging these complex transactions. In our view, the requirements of the draft RFP do not sufficiently allow Offerors the opportunity to fully present their capabilities in this regard. We further believe that it is in the best interest of the government to select contractors whose approach to making these arrangements offers the best chance for success on this contract.

*Depending on the project, Oral Presentations will be strongly considered for follow-on task order proposals.*

**38.** Section L 3.1.1 provides a definition of a completed project as work completed within the past four years. Given the newness of Guaranteed Fixed Price contracts, would the government consider including contracts with insurance projects that have been negotiated and are in progress?

*No.*

**39.** Section L.3.2.2 states that, "The offeror shall provide a narrative of its past performance in working with regulators with points of contact for those projects listed under Volume I, Section I, Tab 1 – Summary of Previous Experience – Environmental Remediation Projects of their proposal." In addition to providing the POC information required for the 10 "Previous Experience " projects, will the Government consider additional information on Past Performance with Regulators pertaining to other (than these 10) projects?

*No.*

**40.** *Section L.3.5.2, Small Business Subcontracting Past Performance*, please clarify the use of the terms "projects" and "contracts". In instances where a completed task order from an ongoing ID/IQ contract is used as a "Previous Experience" project, it is not clear whether the Government is requiring SB Performance information on the completed task order or the overall ID/IQ contract. Typically, the Corps of Engineers has not required individual SB utilization goals for Task Orders. The use of the U.S. Government Standard Form 294, and SB Subcontracting Plans, have pertained to an entire contract, not individual task orders. Therefore, a past performance requirement would not appear to be applicable since there would be no measurable criteria at the task order level. We, recommend that the wording of this requirement be revised to allow the submittal of SB Past Performance information on an overall contract basis, both completed or on-going, including those cases where a completed task order is used as a "Previous Experience" project.

*The Government agrees that usually the small business utilization information is collected on macro basis. However, it is also interested on how the firm performed on each "project." Therefore, the offeror should submit its SB Subcontracting Past Performance on each of the projects, be it a Task Order from and ID/IQ Contract or a Site Specific – Non-ID/IQ Type Contract.*

**41.** *Section L.3.4.3, Section IV, Tab 3 - Safety and Health Program* requests the offeror to provide a signed certification sheet stating that the offeror has developed and implemented a S&H program in accordance with OSHE regulation 29 CFR 1926,65(b) and EM 385-1-1, and provide a Table of Contents of the required written Safety and Health Program. Are these items excluded from the page count?

*No.*

**42.** Section B.5 – Would it be correct to assume that contingency can be included in the rates proposed in Table 1? For example, adding contingency in the "Other" column provided on Table 1?

*The Offeror should provide reasonable, fully loaded labor rates that will be compared with other offerors. The offeror should use their best business judgment.*

**43.** May offerors choose to submit rates in Table 1 that are lower than their DCAA audited rates?

*The offeror is encouraged to use their best business judgment although they are not required to provide pricing in accordance with the DCAA audited rates.*

**44.** C.1 -- May the government issue task orders that solely require services related to Remedial Investigations and Feasibility Studies, as defined in Section C.1.1.13 and C.1.1.14, respectively?

*The Government does not anticipate such task orders but would not rule them out.*

**45.** Is it conceivable a contractor could be tasked with completing a RI/FS and Record of Decision under a firm-fixed price task order?

*Yes.*

**46.** C.1.1.8 -- Will the Installation's Commander decision to be based on a "reasonableness" standard or an "arbitrary and capricious" standard?

*No Government decisions would be arbitrary and capricious. In addition, the Government would provide written documentation to support its decision.*

**47.** Will the government consider making the regulator the final authority for DDs instead of the Installation Commander?

*The Installation Commander cannot delegate that authority.*

**48.** Will the Installation Commander's subjective "satisfaction" be the standard of performance for the work over and above specific contract requirements such as an approved Work Plan?

*Customer satisfaction as it relates to past performance will be considered.*

**49.** C.1.1.9 – Will the Contractor be responsible for preparing the "Completion Report."

*The terms are provided as part of the glossary. Specific requirements will be identified in the task orders.*

**50.** Can the Installation Commander, who has approval authority for the Completion Report, require a subjective standard higher than that set forth in the DD to certify that further RAs are not necessary?" If so, than how would a contractor submit a firm-fixed price task order price?

*The terms are provided as part of the glossary. Specific requirements will be identified in the task orders.*

**51.** C.2 -- If the warranty period commences at the same time the contract expires, what right will the government have to enforce the contract?

*The task order period does not expire until all requirements are met including the warranty period requirements.*

**52.** C.6.1 – Does the requirement that the Program Manager "take immediate corrective action" provide the Corps with unilateral authority to impose standards beyond those set forth in the Final Work Plan or other approved Decision Documents?

*No. The program manager is required to meet the performance-based requirements of the contract.*

**53.** C.7.6 – Will final acceptance inspection be based on the approved Work Plan and other Decision Documents?

*The final acceptance will be based on the required deliverables.*

**54.** Does the government anticipate other factors will govern the final acceptance inspection?

*See answer to Question 53.*

**55.** C.8 – The Installation Commander is the "the sole approval authority" for DDs. Since the performance-based, firm-fixed price is established prior to final approval of the DDs, how will the government determine it is receiving a fair and reasonable price for an unquantifiable task order?

*The Installation Commander cannot delegate this authority. However, the intent of the contract and resulting task orders are to closeout sites using performance-based criteria. And the price will be negotiated and firm-fixed price prior to work commencement.*

**56.** C.9.9.2 -- How would the Contractor be reimbursed for providing the emergency services that were not part of its approved task order and in no way is associated with its actions or the actions of its subcontractors?

*If the spill was by the Contractor, they would not receive any further compensation. If the spill was caused by others and the Government requested the Contractor to clean it up, it would be accomplished using the "Changes" clause by written direction of the Contracting Officer.*

**57.** Would it be correct in assuming that the Contractor would be liable for all indirect, special, punitive and consequential damages even if the spill were not attributable to any negligence on the part of the Contractor?

*Yes, only if it was attributable to the negligence on the part of the Prime Contractor or the Prime's Subcontractors would the Prime Contractor be liable for any indirect, special, punitive and consequential damages.*

**58.** Would it be correct to assume that Contractors will be required to meet the requirements of this subsection even if the spillage occurred from underground storage tanks that were not impacted in any way from the Contractor's activities? How about aboveground storage tanks? Oil tankers that crash onto the shore of the military installation?

*See answer to Question No. 56.*

**59.** C.9.11.1 -- If the Contractor uses electrical power supplied by the Installation, will it be charged the average, marginal or variable rate per kilowatt-hour or some other pricing variation?

*Most likely, the contractor will be charged per kilowatt-hour used as determined off the electrical meter that the contractor is responsible for supplying as required in Section C. However, site-specific requirements would be identified in each task order.*

**60.** C.9.11.3 -- If the Contractor uses water supplied by the Installation, will it be charged the average, marginal or variable rate per gallon or some other pricing variation?

*Most likely, the contractor will be charged per gallon used as determined by the water meter that the contractor is responsible for supplying as required in Section C. However, site-specific requirements would be identified in each task order.*

**61.** C.9.11.6 – Will the installation provide Contractors with utility maps? Assuming a Contractor damaged a utility line that was not shown on a government supplied map and the damage causes spillage of natural gas from a pipeline and the spillage results in an explosion, is the Contractor responsible for damages resulting from the breach of a utility that could not have reasonable been identified based on information supplied by the government?

*The Government would provide its best information available; however, the Contractor is responsible to verify the information provided is accurate.*

**62.** Does the government intend that contractors will be liable for damages to utilities even if the damage resulted from the failure of the installation to disclose known utility information?

*See answer to Question No. 57.*

**63.** Will Contractors be held liable for damages under the indemnity provisions of the contract, if it impairs or damages utilities not shown on government supplied utility maps?

*See answer to Question No. 57.*

**64.** H.2.1 – Will the government place a limit on the contractor's liability?

*Yes, the limit is up to two times the Task Order Cost for that Task Order.*

**65.** Will the Government typically require cost cap insurance for site investigations and similar services where the nature and extent of the contamination is unknown?

*Each Task Order issued under these contracts will require cost cap insurance. The intent of the Government is to use this contract on well-characterized sites in order to better control costs.*

**66.** Would it be correct to assume the Contractor will be liable for loss related to the site even if the loss is directly attributable to the inaction or negligence of the Government, e.g., delay in approvals, etc.?

*The Federal Government intends to expedite approvals and reviews to the maximum extent possible; however, the risk for loss lies with the Contractor.*

**67.** Would it be correct to assume the Contractor's indemnify would apply for losses related to the "pursuit of" the contractual obligations even if the loss was caused by persons not under the authority or control of the Contractor, e.g., the actions of another contractor.

*It would be correct to assume this if the other contractor was performing work for the Prime.*

**68.** Would it be correct to assume the phrase "standards...identified within a period of five years" means that if a regulatory agency issues a new cleanup standard but does not apply it to the site until after the five-year warranty period expires, that the Contractor is still liable for any resultant reopener?

*No. The Contractor is responsible for regulatory reopeners only within the 5 year warranty period.*

**69. Standard Form 33, Block 9, Proposal Due Date:** Due to the added time that will be required for us to identify and negotiate with the insurance carrier that offers the most competitive cost containment insurance program, we would like to request a 2-week extension on the due date for this proposal.

*We are not in a position to extend the due date. At this point, the Government is only trying to assess whether the firm can obtain cost containment insurance. During the task order phase, a contractor can then negotiate and work with multiple carriers in order to achieve the best value for the government and allow for submittal of a competitive cost containment insurance package.*

**70. Section B, Paragraph 6, and Table 1 – Labor Rates:** This table includes a line at the bottom for Cost Containment Insurance Premiums. Will the Contractor be restricted to this range when pricing individual task orders? Or, as indicated in Section B, Paragraph 5, is this really a "general range," and

the Government recognizes that a high risk project may result in a premium that exceeds the high end of the range.

*No. The range will be used as part of the "best value" evaluation purposes. The Government recognizes that insurance premiums are directly related to project risk; however, the Government wants to evaluate contractor performance risk.*

**71. Section H—Special Contract Requirements, Paragraph 2.1, Financial Indemnification:**

Third sentence reads: *"The Contractor shall financially indemnify the U.S. Government, the Department of Defense, its officers, agents, and employees from and against all claims ...expenses as may arise out of the Contractor's pursuit of or failure to satisfy its contractual obligation for completion of the work as defined ...for each individual task order."* Does USACE interpret this passage to mean that Contractor will be required to indemnify U.S. & DOD against costs arising from U.S. & DOD's respective portion of negligence, wrongful acts or omissions?

*No.*

**72. Section H—Special Contract Requirements, Paragraph 2.2, Indemnification Exclusions:**

Section reads that Contractor "shall have the burden" of proving its entitlement to any of indemnity provisions. Who is the decision maker? What standard of proof shall be applicable, i.e., preponderance of evidence, clear & convincing, etc.? If Government, i.e., Contracting Officer?, decides indemnity exclusion not applicable, may Contractor resolve this dispute by filing a claim under the procedures prescribed by the Contract Disputes Act?

*The Contracting Officer is the decision maker. That decision could be disputed.*

**73. Section H—Special Contract Requirements, Paragraph 2.2.3, and Indemnification Exclusions:**

Please clarify meaning of phrase "natural resources damages".

*Natural Resources Damages can mean any damage to the property that is attributable to continuing or future contamination that is not associated with the contractor's negligence or intentional misconduct.*

**74. Section H—Special Contract Requirements, Paragraph 2.3, Insurance Indemnification Requirements:**

Section reads *"The items covered by the insurance policy shall not entitle the Contractor to an equitable adjustment. The limits of indemnification shall never exceed two (2) times the task order amount less the cost of the insurance premium."* Will Contractor be allowed to seek an equitable adjustment if limits of indemnification insurance coverage become exhausted?

*Once the limits of indemnification have been reached, the Contracting officer would make a decision on how the remaining work would be completed on a case-by-case basis.*

**75. Section H—Special Contract Requirements, Paragraphs 2.5.1 & 2.7, Risk Transfer Limits:**

Does "...[t]he balance of the indemnification..." that "... may be covered by other securities, including other financial instruments and other corporate assets" in 2.5.1 refer to "... the 15% of indemnification not covered by the insurance policy" in 2.7?

*Yes.*

**76. Section H, Paragraph 15, Oral Presentations:**

This paragraph states that Oral Presentations may be required to evaluate proposals on individual task orders. Due to the high cost required to prepare a proposal and an oral presentation package, followed by the cost to prepare for and give the oral presentation, can you provide us with an estimate of what percentage of task orders will be awarded

without the need for an oral presentation? Also, please specify where the oral presentations will be held. For example, will USACE representatives travel to the proposers' offices for these presentations?

*The number of presentations is not known at this time, it will depend on the project. Oral Presentations will either be held at the District Office that is going to be executing the work, or at the customer's site.*

**77. Section H, Paragraph 15.1, General Instructions For Oral Presentations:** Will the criteria in this paragraph listed for making the overall selection of the winning contractor be specified (i.e. ranked in order of importance) in each task order request (see also Section H, Para. 17)?

*Yes.*

**78. Sample Task, Paragraph 6:** In order to accurately price the Sample Task, we need to understand if there is a deductible that we would be responsible for prior to the insurance kicking in. Has one been pre-established for this task, or should this be an assumption on our part?

*Clearly state any assumptions. The Cost of the Insurance has been given in the sample projects.*

**79. General:** Work under the contract is to be performance based. There is a potential for significant conflict if the Installation/Customer disagrees with Contractor recommended methods that achieve the performance standard within regulatory requirements. An example would be if the Contractor can show natural attenuation is appropriate but the Installation/Customer insists on complete removal of impacted media. What controls are included in the Contract to prevent Installation/Customer's from mandating remediation methods?

*While, the installation or customer may have some preference depending on the site's current use or the political nature of the project, the Government is primarily concerned with the outcomes, not the method to achieve those outcomes. The key is that the Offeror will be responsible for obtaining regulator approval for its work plans under each site/project.*

**80. Section J, Sample Project:** The sample project includes a description of contamination at the site. In order to provide a consistent starting point for all Contractors it would be helpful to understand the extent of investigative work that has been performed at the site. Is the contamination information presented in the sample project based on a preliminary assessment, or a full remedial investigation?

*The Offeror is to make an assumption and based off these assumptions, come up with a solution and costs supporting the solution in order to reach the milestones/objectives.*

**81.** Section B, Para 3 this para cites cost overrun insurance while other sections throughout the solicitation reference cost cap and cost containment coverage (e.g. last sentence of Section B para 5). Assume this is intended to be one and the same.

*Correct*

**82.** Section B, Para 4 "Performance Time" and Section I, FAR clause 52.216.22, The Period of performance is a Base Period for 3 years and an Option Period for 2 years. FAR Clause 52.216-22 states "Any order issued during the effective period of the contract and not completed within that period shall be specified by the contractor within the time specified in the order". Is there a time limit on how far an order can go past the effective contract period?

*Depends on the type of Funds.*

**83.** Section B, Para 5, Sub Para 6 - Expressing the cost for the insurance premium as a percentage of the overall price is not an accurate disclosure, but a ballpark number for the hi/low range. Please note that the SOW would drive the premium and considers items such as, the site conditions, cleanup standards, limits of coverage, type and amount of estimated contamination, size of the site, dollar size of the project, etc. How is the range to be judged or evaluated? Is the contractor going to be held to the range?

*No. The range will be used as part of the "best value" evaluation purposes. The Government recognizes that insurance premiums are directly related to project risk; however, the Government wants to evaluate contractor performance risk.*

**84.** Section C, Para 5.1: Why is Davis-Bacon a part of an Environmental Service Clean-up Contract? Isn't Davis-Bacon Clause for construction?

*Some of the task orders will require incidental construction or full construction activities, depending on the contract the work is being performed under, hence the reason for the clause.*

**85.** Section C, Para 7.1.4, Work Plan Acceptance: " regulatory acceptance of the Contractors work plan(s) is required prior to start of field mobilization". This does not allow the contractor to proceed at risk while a plan is being reviewed. Should be amended to allow for the contractor to be able to proceed at his risk - imperative if the TO(s) include a mandatory product/project completing date.

*The Government will not approve of a contractor proceeding at his own risk.*

**86.** Section E, Far 52.246-12 (h): is this sub-para applicable to this contract type?

*FAR Clause cannot be changed and is a required clause.*

**87.** Section E, Far 52.246-12 (i): Explain who the "Government" is in this case. Does this mean the regulators, or USACE? The scope requires the objective of the contractor is "... to achieve regulatory closure" (last sentence of Section B, para 3, Contract Definition)

*USACE.*

**88.** H, Para 2.1, first sentence: Indicates the contractor's responsibility extends for the duration of the contract Should that say for a period of 5 years after the last delivery order under the completion of the final task order under the contract - (i.e. the 5 year warranty period for that TO?).

*No. A Task Order may extend more than 5 years if funding permits and then the Task Order will not be closed out until after that additional 5-year warranty period.*

**89.** Section H, Para 2.2, Indemnification Exclusions: What is intended to be meant by "the contractor owns the burden of proving its entitlement to any of these indemnity exclusions"? Why must the contractor have the burden of proof for the named exclusions to the contract (i.e. UXO, High Level Rad and Chemical Warfare Materials).

*The contractor holds the policy. Not the Government.*

**90.** Section H, Para 2.2.2.1 and Section C, Para 1.1.1: Both definitions of UXO indicate that 50 and 60 caliber munitions are not to be counted as UXO. Why? What is meant by the 50 and 60 caliber exclusion? What is meant by "50 and 60 caliber" materials? What munitions are these?

*This definition is revised, see Section C and H.*

**91.** Section H, Para 2.2.3: Discusses natural resources damages as an exclusion also. This is not mentioned in Section C or listed elsewhere as an exclusion to the scope. Is it likewise an exclusion for insurance purposes?

*Claims on natural resources damages not otherwise attributable to the Contractor's negligence or intentional misconduct in the performance of work under the contract/task order are excluded only.*

**92.** Section H, Para 2.3: This Para provides that the range of Remedial Cost Containment Insurance shall range from an minimum of 0.75 x to a maximum of 2.0 x the task order price depending on the requirements of the individual task order. Will the government allow the contractor to have input to the determination of these limits on each task order? If so when and how?

*No. USACE and the Customer will decide this.*

**93.** Section H, Para 4: Five Year Warranty: Does the five-warranty period need to be covered by insurance? Please note cost containment insurance is only regularly available for a 10-year policy period.

*Yes.*

**94.** General question: Nowhere in the draft RFP is there an indication of the anticipated dollar volume anticipated for each of the winning MARC contractors. Other than the minimum amounts specified in Section H para 8, it appears that by bidding all task orders it is possible that one contractor could conceivably win work totaling the contract ceiling capacity. Is this true?

*Yes.*

**95.** General question: Is it the expectation that every MARC holder will be required to bid on each task order? If a contractor elects not to bid on a particular task order, how will this affect that contractor's ability to propose on future task orders? Under what conditions may a contractor elect not to propose and yet not jeopardize its chances of, or its allowance to bid on future task orders?

*Every MARC Contractor has the choice on whether or not they want to perform the work without consequence for not proposing.*

**96.** Section H, para 13, Performance and Payment Bonds: Performance bonds do not provide the same levels and duration of protection to the government that do the insurance / risk transfer products. Performance bonds are potentially cost prohibitive, if at all obtainable. Under what circumstances does the Government envision both performance bonds and insurance being required? Will the Government discuss it's reasons for requiring both a performance bond and cost containment insurance on a task order with industry? It would appear that these are duplicative and thus result in extra costs to the government. Will the selected contractor(s) have the opportunity to discuss these requirements with the Government per task order?

*The Government and Customer will decide on the need for bonding and will provide its reasons with the issuance of the request for proposals.*

**97.** Section J, Para 5.1: A 10 page limit for Volume II (tabs 1 and 2) does not seem reasonable for the information required / detail to be submitted. No page limits should apply to these tabs. Also see Section L - 2.2 Page Limitation and 2.3 Format. Again this does not appear to be enough pages to meet the requirement of the RFP. It is requested that the page limit be lifted for these Tabs 1 & 2 or that the Government not disqualify or penalize the contractor if the required information and detail can not be represented in the Tab 1, 5 page limit and Tab 2, 10 page limit.

*The page limits have changed – See Section L. If a contractor chooses to exceed the page limits, the excess pages will not be evaluated and may cause the proposal to have a critical defect as defined in Section M.*

**98.** Section L, Para 1.4.4: This para indicates that the government may award a “**contract** to other than the offeror submitting the lowest bid”. Does this apply to the award of the **contract** only, or does this also apply to each task or delivery order competed and awarded under this contract? Presume yes as there are other locations throughout the draft RFP that imply that a “best value” approach will be used on task orders as well (e.g. Section H para 9.2 and para 15).

*All task orders will be awarded under a “best value” approach using tradeoffs.*

**99.** Section L, Para 3.5.1, Subcontracting Plan: These subcontracting goals seem high for this type of work – i.e. firm fixed price with insurance and performance based. Can they be relaxed?

*No. These are the goals that USACE has set. If an offeror chooses to submit a plan that has goals lower than USACE’s, they can expect to have a lower score on their plan when it is evaluated. In addition, the Contracting Officer will not award a contract until a small business subcontracting plan has been approved and accepted.*

**100.** Section L, Para 3.5.1, Subcontracting Plan: please explain how the government envisions the use of HBCU/MI’s under this contract, and the seemingly large subcontracting goal established for these type entities. Submit that this is an unrealistic goal for this type of contract.

*The HBCU/MI goal is a goal. It is the responsibility of every offeror to make every effort to reach each goal. As long as there is justification and evidence that efforts were made, the Government will note this effort. In addition, the Contracting Officer will not award a contract until a small business subcontracting plan has been approved and accepted.*

**101. Section C, Para 9.1:** Please clarify the last sentence of this para. What does the word “eligible” means in the last sentence? Eligible for what? Does this mean that all munitions other than 50 and 60 caliber munitions are to be considered UXO, and thus excluded from the contractor’s responsibility under this contract? Further, there are small arms calibers (e.g. 7.62, 5.56 etc.) that are smaller than 50 and 60 caliber items, and that by this text would thus appear to not be excluded from this contract. Please clarify what is intended.

*See Changes in Section C.*

**102. Section C Para 3, Regulators:** What are the turn around times for review that the Corps will impose on itself and its customers for task orders under this contract? The text indicates that “USACE and its customers will review and comment on all documents prior to or concurrent with the submission to the regulatory agencies”? Are these comments advisory only, i.e. for the contractor to take into consideration, or does this mean that the comments process by USACE and its customers will require changes - via numerous iterations - to be made by the contractor and approved by the government prior to submission to the regulatory agencies. Does this also imply an expectation that there will be sequential reviews and approval by the USACE and its customers?

*USACE will generally provide comments for the Contractor to take into consideration in order to provide a better document. The turn around times will be as short as possible, but long enough to provide for a satisfactory review. It is not the Government’s intent to slow down the review or approval process. Under a performance based scope of work, the Contractor takes on additional responsibility for project execution. Therefore, the Government’s role changes to more of an advisory position.*

**103. Section C, Para 4.2.6, Support of Remedial Actions:** This section requires the contractor to provide to the government copies of “all documents” produced by the contractor. At what point in the process are these to be submitted and how? In what quantity? Does this mean all or just the engineering documents enumerated below this reference? Are these submissions for review or only for historical record?

*The context of this sentence indicates that the Government would receive a copy of all engineering documents to support this activity. Any special requirements would be listed in the Task Order specific scope of work.*

**104. Section C, Para 6.1.3, Work Plan Development:** Are we to assume that the 15 days turn around time for comments applies to USACE and its customers?

*Yes.*

**105. Section H Para 2.1 and Section H Para 3 (in R-0029) and Para 4 (in R-0027):** The last sentence of para 2.1 requires a 5-year warranty period “after completion of remedy in place”. This seems to be at odds with the requirement in para(s) 3&4 respectively that indicates the 5-year warranty period commences “from the date of site close out”. Please clarify the intended start of the 5-year warranty period. Submit that remedy in place and site close out are not the same.

*The 5-year warranty period for each site starts from the date the customer and regulators have accepted the work completed by the Contractor. See Amendment.*

**106. Section H, Para 2.2, Indemnification Exclusions:** This section identifies that the indemnity required does not extend to the three exclusions that are further enumerated in sub paragraphs to para 2.2. These exclusions are specifically called out to be Acts of God (para 2.2.1), UXO and High Level Rad Waste (para 2.2.2.), and natural resource damages not otherwise attributable to contractor negligence or misconduct. Para 2.2 thus does not include the exclusion of Chemical Warfare Materials that is stated in Section C, para 1. Submit that a Chemical Warfare Materials exclusion should also be listed along with UXO and High Level Rad Waste in a new sub para 2.2.2.3. Please clarify.

*CWM added as paragraph 2.2.2.3.*

**107. Section H, Para 2.2.2.1 and Section C, Para 9.1:** Both definitions of UXO indicate that 50 and 60 caliber munitions are not to be counted as UXO. What is meant by “50 and 60 caliber” materials? What munitions are these? (See also the question above re para C.9.1)

*See Changes in Section C.*

**108. Section H, Para 5, Fines and Penalties:** This exclusion for liability for fines references only para 2.2.1 which only covers Acts of God. Should the other exclusions also be included here – e.g. natural resources damages? Submit this cross-reference should be para 2.2., not para 2.2.1 as it currently reads.

*See Changes in Section H.*

**109. Section L, proposal format table, page limits; the** page limits in the insurance section (5 pages) are insufficient to provide all information asked for in section L for both insurance and corporate assets.

*The number of pages used per section does not have to be the suggested page count per section. However the total volume I cannot exceed the page limits set depending on the size of the business proposing – See new page count limitations!*

**110. Section L para 3.3.2 Corporate Assets:** this para does not delineate what pages are excluded from the page count. Para 2.2, Page Limitation indicates that certain pages related to corporate assets are to be excluded from the page count. Please clarify what documents are to be excluded from the page count under corporate assets.

*See Paragraph 3.3.2. Volume I Section III Tab 2 – Corporate Assets that states “(e.g., CPA certified financial audits, Government financial stability audits, etc. – these will be excluded from the page count as the page number for these audits can not be determined).”*

**111.** Section B, Table 1: In filling out the labor rates in Table 1, should we use only one set of labor rates for the Base Period and one for the Option Period since they have a 3-year and a 2-year period of performance, respectively? Or should we expand the pricing to 5 years with five different sets of rates? How would that change the number of hours to use for calculation?

*The format of the Table 1 should not change. Use a composite rate for the base period and a composite for the option period. The rates used will contain your G&A, Overhead and Profit. It is assumed that the composite rate will take yearly escalation into consideration when the rate is proposed in order to cover future cost of labor increases.*

**112.** Do we assume that cost cap premiums will be paid during mobilization/start of project?

*Yes, the premiums will be paid before the NTP is issued.*

**113.** Who will be responsible for the public involvement efforts under this contract? Will this be a function of the contractor or the Government?

*Both.*

**114.** Section L, 3.2.1.1 Owner/Client Past performance Survey Forms states: "The Government shall evaluate the Past Performance survey pages filled out by the owner/client for this past performance section only. These pages will be counted as part of the contractor's proposal pages." In light of the fact that contractors have no control over whether the owner/client includes additional comments that affect the page count in our proposal, will the Government exclude Past Performance survey pages from the proposal page count?

*Surveys are not going to be counted in the page count, however the page limitation has decreased. See Section L.*

**115.** Section L, 3.5.2, last paragraph asks for a “brief narrative describing the impacts on home office, field office, and relocation costs and to discuss how any of the impacts described above would be minimized so that the work will be completed successfully.” Since this is a fixed price contract with an insurance guarantee, what is the relevancy of this information to the Government? Based on the stringent page allocations for this section, will the Government remove this requirement?

*Yes, this paragraph's requirements have been removed from Section L.*

**116.** Will a TO require insurance/bond/retainage/warranty? Is there an overlap in security and cost to the Government if all of these mechanisms are incorporated into a single TO?

*A Task Order will require cost containment insurance (normally 1 times the task order amount less the premium, but could be up to 2 times less the premium), a 10% retainage (10% of the total task order cost will be held until the last milestone has been completed) as required by the FAR, and a 5-year warranty period. Most likely only Construction Task Orders issued will require bonding as required by the FAR.*

**117.** The milestones were centered on the EPA site closure. Will there be any projects that do not have site closure as the end point? If so, how will the insurance coverage termination, warranty period, etc. be determined?

*This cannot be determined at this point, but it is possible that a final milestone other than site closure could be required on certain sites under a task order. The Government will work with the customer to*

*make the determination at that point in time as to if insurance is necessary on those sites and if a warranty period is also necessary for those sites.*

**118.** In the TO delivery request, what is the average time frame that we will be allotted to respond to the request?

*The Government will make that determination based on the complexity of the project. It is understood that these types of projects require much more time to develop a performance based cost proposal than proposals done in the past. Therefore, the time frame for receipt of proposals could likely be months out from the request for proposals.*

**119.** In the preparation of a TO bid, will the USACE provide access to the involved regulators? How will the data from the TO sites be provided for review and preparation of the bid documents?

*It is expected that the contractors will be involved with the regulators and have access to them as the contractor's develop their proposals and final remedies as they will have to be approved by the regulators before work can begin. The data on a site will be provided either in the RFP's scope of services, on site, in a library, database, or on CD. All contractors will be given enough time to obtain/review the documentation in order to provide a competitive proposal.*

**120.** A) What are the differences in projects contemplated between the three contracts? Two of them (nos. '0027 and '0028) are (in paragraph 3 of Section A) for "engineering services and incidental construction" while the third (no. '0029) is for "construction and incidental engineering services." B) Can you give specific examples of the kinds of projects to be awarded under each contract?

*The two contracts for environmental remediation services with incidental construction R-0027 and R-0028 will contain just that, incidental construction activities as defined by the FAR. If there is to be more than 50% of the work is construction activities than the other contract resulting from R-0029 will be used. The types of projects are unknown at this point in time, it is expected that the Contractors awarded the contracts will be able to perform all work under Section C.*

**121.** Are all of the projects under each of the contracts on-base or off-base?

*The projects could be either on a Government Installation or a civil site such as an EPA Superfund Site. This is not able to be determined at this point. The Task Order Scope of Work could contain on base or off base activities or some combination. The Site boundaries will be determined before the Task Order RFP is issued.*

**122.** A) Why are termination for convenience clauses included in the solicitations, given that in fixed price contracts a contractor is likely not to realize profit until the end of the performance period and thus is substantially at risk in the event of any early termination for convenience? B) Will the government delete such clauses? C) If not, what measures will be viewed as acceptable ways for the successful offeror to mitigate these risks?

*The T4C Clauses are included incase the Government needs to terminate the contract due to no fault of the Contractor's. It cannot be deleted without a FAR Deviation Approval.*

**123.** A) What impact will termination for convenience have on the remainder of the scope of work that is not performed? B) For example, what will be the scope of the contractor's warranty obligations if substantial portions of the scope of work are terminated? C) What about the contractor's obligations for remedy failure, re-openers, and regulatory changes? D) What responsibility will the contractor have for claims and lawsuits because environmental conditions were not addressed because of a termination for convenience? E) What happens to the insurance coverage the contractor has obtained in the event of a termination for convenience? F) How does all of this interact with the government's retention of responsibility for cost exceeding the indemnification limit and/or the five-year warranty period?

*A T4C is just that, a termination of the contract for the convenience of the Government.*

**124.** A) What impact will termination for default have on the remainder of the scope of work that is not performed? B) For example, what will be the scope of the contractor's warranty obligations if substantial portions of the scope of work are terminated? C) What about the contractor's obligations for remedy failure, re-openers, and regulatory changes? D) What responsibility will the contractor have for claims and lawsuits because environmental conditions were not addressed because of a termination for default? E) What happens to the insurance coverage the contractor has obtained in the event of a termination for default? F) How does all of this interact with the government's retention of responsibility for cost exceeding the indemnification limit and/or the five-year warranty period?

*A T4D and the consequences of the action, would have to be addressed on a case by case basis by the parties involved.*

**125.** A) What weight is to be placed in evaluating the level of financial support provided by the parent company(ies) of the offeror? B) Can the successful offer demonstrate sufficient financial strength through payment and performance bonds, or will parental guaranty be required? C) If guaranties will be required, in what amount? D) What form of parental guaranty is acceptable?

*The analysis of financial strength by asking for "corporate assets" information is to ensure that the firm can adequately meet its commitments (e.g., SIR, Attachments, Deductibles, etc.)*

**126.** A) High-level radioactive waste, unexploded ordnance, and chemical warfare material are not covered under any of the contracts. How is this to be effectuated if any of these are encountered unexpectedly during performance? B) Will the contractor be compensated for cost and schedule impacts while UXO or other site conditions are addressed?

*The Contractor will be required to stop work immediately, notify the Contracting Officer, and another contract vehicle will be used to take care of the HLRW, UXO, and CWM. Depending on the impact to schedule and cost, the contractor may be compensated for those impacts as determined by the Contracting Officer.*

**127.** Section 6.1.3, Section C of Contract '0029, for example, provides that the contractor is required to submit draft work plans to the Contracting Officer, who will provide comments for the contractor's "consideration" in the final work plan submitted to the regulatory agencies. A) What happens if the Contracting Officer does not comply with the 15-day deadline? B) What happens if the contractor incurs increased costs resulting from the Contracting Officer's delay in reviewing the contractor's comments? C) Will the government reimburse those increased costs through an equitable adjustment in compensation? D) What will happen if the contractor decides not to modify its work plan in response to Contracting Officer comments?

*a) USACE's comments will be constructive and advisory comments in nature. b) The contractor will have to make a business decision on whether they want to wait for the comments. However, no additional compensation will be provided. c) The contractors will not be compensated for delaying their submittals to the Regulatory Agencies or for any delay caused by USACE's inability to comment in the 15 day period. d) See part a response.*

**128.** With regard to the answer to Question #3 from the Pre Proposal meeting, how will the government use the stated insurance premium pricing range to evaluate contractor performance risk?

*Higher percentages would indicate to the Government that either the firm is risk adverse or is perceived as a higher risk to the insurance company(ies). The percentages will be used for bench marks to compare rates.*

**129.** Ref H.2.2.2.1 Unexploded Ordnance. Are chemical warfare materials and biological agents also excluded from the indemnification?

*Yes. See Section H.*

**130.** Ref H.10 Order of Precedence of Work Execution. Ongoing military operations are completely out of the contractor's control, and therefore neither the contractor nor its insurance company would be able to reasonably evaluate the risk associated with potential work disruption due to military operations. We request USACE consider revising this clause to allow for Task Order modification to cost and schedule if the contractor's operations are disrupted due to unanticipated military operations.

*The clause will remain in the contracts. The Government will put forth its best effort to address the specific risk in the Task Order Specific Scope of Services.*

In trying to better understand the extent to which the Contractor would be liable for third party claims, we have questions regarding responsibilities under Clauses H.1, H.2, H.4 and H.6.

**131.** If a third party files a claim for injuries and damages resulting from previous Government activities and/or exposure to contamination from the site, is the Contractor obligated to indemnify the Government?

*The contractor assumes liability for all preexisting conditions in section H 2.3. However, with the environmental impairment liability insurance, which is added to the specifications partly for this reason, the contractor should not have an uninsured risk. Excluding known pre-existing conditions on a site that has been studied will allow for this risk to be insured.*

**132.** If a third party files a claim for bodily injury, does the Government take the lead in the legal process or does the Government submit the claim to the Contractor for action?

*Each action will be handled on a case-by-case basis.*

**133.** For each individual task order, is the Contractor's total liability for all performance and remediation through site closure and warranty period (including legal defense and third party claims), limited to the amount of the Financial Indemnification required in paragraph 2.1?

*Yes, provided that the contractor has diligently pursued completion of the task order scope of work.*

Clause H.5, Retainage

This paragraph states that the retainage will be withheld until "...the final milestone is achieved by the Contractor in the judgment of the Contracting Officer. The final milestone is generally the "site closeout" document, but this will be identified in each task order issued."

**134.** Not questioning the judgment of any Contracting Officer, but will the Government consider changing this wording as shown below. To leave this to the "judgment of the CO" does not provide clear understanding of completion.

"...the final milestone is achieved as specified in each task order issued."

*See Section H.*

**135.** It is our understanding from the pre-proposal conference that the Government's intent for withholding payments is to ensure Contractor's continued performance. Other clauses of the contract indicate that Performance Bonds may be required for certain task assignments, and the purpose of the performance bond is to ensure Contractor performance. Therefore, will the Government consider no withholding of payment on those task orders that require performance bonds?

*Under Performance Based Payments, withholdings are required.*

Clause H.6, Fines, Penalties and Damages:

**136.** Will the Government consider re-wording of the last sentence of the first paragraph as shown below. If the Government does not pay any amount (e.g., contractor paid directly), then to also deduct from payment would be double penalty.

"Any amounts assessed against and paid directly by the Government and that are attributable to fines and penalties resulting from Contractor's performance or failure to perform will be deducted from the payment(s) to the contractor."

*Generally, the penalty is assessed against the owner of the site (i.e., the installation) not the Contractor. Therefore, the purpose of the withholding is to compensate the Government for payment. See revised wording in Section H.*

Reference: L.3.2.1.1 Owner/Client Past Performance Survey Forms--"These pages will be counted as part of the contractor's proposal pages. "

**137.** Please consider excluding the owner/survey forms from the page count limitations while retaining the original page count total.

*Page Count Changed. Owner Client Survey Forms will not be included in the page count, however the total page count has been lowered by 10 Pages for Volume I.*

Reference: L.3.4.2 Tab 2 Safety and Health Program--"...and provide a Table of Contents of the required Safety and Health Program."

**138.** Written Safety and Health Programs are often comprehensive and detailed documents including multiple pages for the Table of Contents. Please consider excluding the Safety and Health Program Tables of Contents from the overall page count limitations.

*These pages will remain in the page count, the offeror can reformat their Table of Contents if necessary.*

Reference: L.3.5.2 Tab 2 Small Business Subcontracting Past Performance--"The description should include... point of contact from the firm which administers the plan internally with their telephone number... the individual responsible for the administration of the subcontracting plan with their address ..."

**139.** Please clarify the differences between the contact from the firm which administers the plan and the individual responsible for the administration of the subcontracting plan.

*USACE is looking for the Government Agency that administered the plan (i.e., who is monitoring the contractor's compliance with the plan – what agency is administering the contract), the Firm where the subcontracting plan is being administered (especially necessary if this is a Joint Venture), and the individual who is responsible for administering the subcontracting plan to make sure they meet the Subcontracting Plan Goals.*

Reference: L.2.2 Page Limitation –

**140.** A Cross-Reference to the Solicitation Paragraphs is excluded from the page count. Is the Cross-Reference considered the Table of Contents?

*No.*

Reference: C.6.3 Onsite Activities—"The Contractor representative shall be notified at least 24 hours in advance of any QA/QC testing."

141. Should the last sentence in this paragraph refer to QC testing rather than QA/QC testing?

Yes.

Reference: C.8 Performance Based Contract / Task Order Quality Assurance Surveillance Plan--

142. In the first paragraph the Quality Assurance Surveillance Plan (QASP) is described as a tool to for systematic quality assurance program. In a follow-on paragraph the QASP "focuses on the quality, timeliness, etc". It would seem that the contractor's approved Work Plan and schedule should be the driving tools for determining the timelines of performance outputs? "The QASP is written concurrently with the Performance Work Statement (PWS) because what is written into the PWS". It would seem that the QASP should be coordinated with the CQCP? Please consider making this part of the early partnering meeting.

*The QASP will be coordinated with the Contractor to make sure that the outputs and procedures in the PWS are measurable.*

Reference: L.3.5.1 Tab 1, Subcontracting Plan --

143. During the Pre-Proposal a condition was referred to that applied to measuring employment of HBCU. The footnote to HBCU/MI mentions non-construction only. Please expand upon this definition given the high percentage required.

*See answer 100.*

Reference: C.9.8 Decision Document – "Decision Documents must be forwarded and signed by appropriate officials (Installation Commander is approval authority for Army and Regulators must then approve of document). Sufficient staffing time must be allowed for.

144. Please clarify the term "sufficient staffing time"?

*Sufficient staffing time means a reasonable amount of time in order to allow for sufficient review and approval.*

145. Section L.3.2.1.1 Owner/Client Past Performance Survey Forms states "These pages [Past Performance Survey Forms] **will be** counted as part of the contractor's proposal pages." Has the Government determined the number of pages that equals one form, and if so how many pages (e.g., has it been determined that the form is equal to two pages as represented in pages 19 and 20 of Section J)? Or will the number of pages counted as forms be equal to the number of one page Survey Forms returned to the Government (the Survey Form can be formatted to fit by itself on one page and attached to a cover letter)? Will the Government count returned cover letters as part of the Survey Form? The RFP requires double-sided copies and double-sided copies are considered as two pages. Will the Survey Forms be counted as two pages each even if the back of the form is left blank? Do the Survey Forms require page numbers and footers stating proposal volume and section number? Your attention to this matter is appreciated.

*The Government will allow for recent past survey forms used by the contractor for other Omaha District ERS Contracts to be used under these Contracts. It will be the Contractor's responsibility to insert a page in Volume I, Section II, Tab 1 stating the following:*

*Name of the Prime Contractor (on past performance survey form):*

*Name of the Subcontractor (if sub's past performance survey form):*

*Project Number for this Solicitation:*

*Previous Solicitation Number and Project Number where Survey can be found by USACE:*

*In addition, the forms can be modified to fit one page. Cover sheets if submitted with the forms will not be counted in the page count and will be removed from the form before inserted into the proposal by a Contract Specialist before going to the SSEB for review. Blank sides of a page are not counted as a submittal page. The Survey Forms should identify what solicitation they are to be used for, who the Prime or Joint Venture is so that the Forms get into the correct offeror's proposal for which solicitation(s) they are submitting a proposal.*

Question regarding sample project (DACA45-03-R-0029)

Section J, Page 2 of 32, 6 Sample Project Cost Proposal:

This Section states: "Cost Containment Insurance will be required for the contract and the cost is fixed at \$600,000 and will be added to the total cost of the project as a separate line item in the cost proposal."

**146.** In order to provide the Cost Overrun Indemnification required by Section H, both a Cleanup Cost Cap (CCC) and a Pollution Legal Liability (PLL) Policy may be required. The policies can be combined or purchased separately based upon the specific project needs. Is the \$600,000 for both policy premiums or just the CCC?

*The Contractor is to assume that the Cost Containment Insurance is the only policy other than the general insurance requirements required under these contracts. The \$600,000 is for evaluation purposes only and is neither one or two times the task order cost.*

**147.** (same sample project). Insurance companies will generally set the self-insured retention (SIR) at a level above the price estimate to complete the project. The difference between the SIR and the contractors price estimate is generally termed the "buffer". Does the USACE have a preference on how responders deal with a potential buffer?

*No, not on the sample project.*

**148.** In the sample problem, the premium for the cost containment insurance policy is given but no attachment point is defined. Would you please describe the limits of the policy.

*The sample problem's premium for the cost containment policy is all that is needed. We are not looking at anything more than this under each sample problem. The Contractor is instructed to just add this cost as a line item in its sample problem cost proposal so that all Contractors insurance costs are the same. The Contractor does not have to go into any further detail on the insurance under the sample problem than what is asked for.*

**149.** Owner/Client Past Performance Survey Forms. It is likely that some of the projects we plan to include in our response to these solicitations will be identical to some of the projects included in proposals submitted earlier in response to the ERSC solicitations. Would you consider allowing offerors to reference these existing surveys, rather than burdening clients with the task of completing the survey forms again? We have compared the survey forms for the ERSC and FPRI solicitations and it appears that they ask for essentially the same information.

If you view the above question favorably, would you also consider excluding the survey forms from the page count and reducing the suggested page limit accordingly?

*Yes. See new page count limits in Section L.*

Questions for Solicitation DACA 45-03-R-0028

**150. Section L, Paragraph 1.5 – Proposal Submittals** Will the USACE Omaha District extend the solicitation due date by two weeks to ensure that bidders have adequate time to respond fully to RFP Past Performance requirements?

*Submittal date is Firm at 30 April 2003.*

**151. Section L.3.1.1 – Previous Experience** Will the USACE Omaha District allow bidders to present experience on FPRI projects that are substantially complete, i.e., complete except for ongoing O&M, environmental monitoring, and the final closure administrative documentation?

*No. See definition as stated in Section L.*