

ATTACHMENT C
BASIC ORDERING AGREEMENT
GENERAL TERMS AND CONDITIONS FOR
COMMERCIAL SERVICES - STAFF AUGMENTATION
MARCH 2021

1. DEFINITIONS

The following terms shall have the meanings below:

- a. "Government" means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- b. "Subcontractor" means the person or organization that has entered into this Basic Ordering Agreement (BOA).
- c. "CONTRACTOR" means any DOE Contractor and authorized Subcontractor utilizing the BOA.
- d. "Item" means "*commercial items or services*" and "*commercial component*" as defined in FAR 52.202-1.
- e. "Order" means individual requests for Services (hereinafter referred to as "Item") issued under this Basic Ordering Agreement (BOA).
- f. "Authorized Subcontractor" means a Subcontractor holding an active Subcontract issued by a DOE Contractor.
- g. "BOA Procurement Representative or Subcontract Administrator" means the person responsible for negotiating and administering the BOA and any respective Order.
- h. "Subcontract Administrator" means the DOE Contractor personnel responsible for negotiating and administration of the respective Order.
- i. "Site Specific Terms and Conditions" means those unique requirements of the CONTRACTOR issuing Orders under this BOA which will supplement these general Terms and Conditions.

2. ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Service Description, (2) Site Specific Order, (3) Site Specific Terms and Conditions, (4) the BOA, and (5) the BOA general Terms and Conditions.

3. TITLE AND ADMINISTRATION

All property rights and interests resulting from this BOA and Orders shall pass directly from Subcontractor to the Government. CONTRACTOR shall make payments under Orders from funds advanced by the Government and agreed to be advanced by DOE, and not from its' own assets. The CONTRACTOR may assign the BOA and Orders to DOE or its' designee, and in case of such transfer and notice thereof to Subcontractor, the CONTRACTOR shall have no further responsibilities hereunder.

4. ACCEPTANCE OF TERMS AND CONDITIONS

Subcontractor, by signing the BOA or Orders or delivering the items identified therein, agrees to comply with all the Terms and Conditions, all specifications and all other documents that this BOA or Order incorporates by reference or attachment. CONTRACTOR hereby objects to any Terms and Conditions contained in any acknowledgment of the BOA or Order that are different from or in addition to those mentioned in this document. Failure of CONTRACTOR to enforce any of the provisions of the BOA or Order shall not be construed as evidence to interpret the requirements of the BOA or Order, nor a waiver of any requirement, nor the right of

CONTRACTOR to enforce each and every provision. All rights and obligations shall survive final acceptance of performance of the BOA or any Order there under.

6. ASSIGNMENT

Subcontractor shall not assign rights or obligations to third parties without the prior written consent of CONTRACTOR. However, Subcontractor may assign rights to payment, meaning financial compensation to a financing institution if CONTRACTOR is furnished written notice and a signed copy of said assignment at the time of or before request for payment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of CONTRACTOR against Subcontractor.

7. PAYMENT

Unless otherwise provided, terms of payment shall be Net 30 days from the latter of:

- (1) receipt of Subcontractor's proper invoice, if required, or
- (2) delivery (and acceptance, if required by the Order) of items/completion of work.

8. DATA REPORTING REQUIREMENTS

Subcontractor shall report quarterly savings to the contractually named point of contact from the individual sites utilizing this BOA. Savings shall be calculated in one of the following two established methodologies (noted in the Order of Precedence clause):

- (1) BOA pricing paid below Subcontractor's pricing previous price paid (Historically Pricing or established GSA Pricing).
- (2) BOA pricing paid below Subcontractor's most preferred supplier pricing.

9. COMPLIANCE WITH LAWS

- a. Subcontractor shall comply with all applicable Federal, State, and local laws and ordinances and all pertinent Orders, DOE Directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this BOA and resulting Orders.
- b. Subcontractor shall include this Article in all Subcontracts, at any tier, involving the performance of this BOA.

13. TERMINATION FOR CAUSE

- a. Only the CONTRACTOR issuing the BOA may terminate the BOA for cause, in whole or in part, if the Subcontractor fails to comply with any of the terms of the BOA, or fails to provide adequate assurance of future performance. Only the CONTRACTOR issuing any Order may terminate the Order for cause, in whole or in part, if Subcontractor fails to comply with any of the terms of the Order or fails to provide adequate assurance of future performance. In either event, the CONTRACTOR shall not be liable for any amount for items or work products not accepted.
- b. If the BOA or any Order is terminated for cause, the CONTRACTOR shall pay the mutually agreed-upon price for services completed and accepted. The CONTRACTOR and Subcontractor shall mutually agree on the amount of payment for all other deliverables.

- c. Subcontractor shall not be liable to CONTRACTOR for delays in performance occasioned by causes beyondSubcontractors' reasonable control and without its fault or negligence.
- d. The rights and remedies of the CONTRACTOR in this clause are in addition to any other rights and remedies provided by law or under the BOA or a resulting Order.

14. BANKRUPTCY

If Subcontractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Subcontract Administrator within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, copies of the pertinent bankruptcy court filings, the identity and location of the court and a listing of the BOA and Order numbers for which final payment has not been made.

15. TAXES

Tax collection and payment is specific to the CONTRACTOR issuing an order under this BOA; therefore, Subcontractor should refer to the Site Specific Terms and Conditions for each order. In the event no Site Specific Terms & Conditions regarding taxes are contained in an order, the order prices shall include all Federal, State & local taxes and duties when applicable.

16. CHANGES

- a. The CONTRACTOR issuing the BOA reserves the right to make changes within the general scope of the BOA by issuance of a bilateral modification to the BOA. The CONTRACTOR issuing the Order reserves the right to make changes within the general scope of the Order by issuance of a unilateral Change Order or by a bilateral modification to the Order. Such changes may include, without limitation, changes in (1) the description of the service, and (2) the duration of service provision or work product ordered. The Subcontractor shall promptly comply with any such change made by the CONTRACTOR. If any change affects the cost for the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the BOA or any Order shall be made by the parties in a bilateral modification. Any claim for adjustment by Subcontractor must be made within thirty (30) days from the date of receipt of the change notice, although CONTRACTOR in its sole discretion may receive and act upon any claim for adjustment at any time before final payment.
- b. Only the Subcontract Administrator is authorized on behalf of CONTRACTOR to issue changes whether formal or informal to the BOA. Only the Subcontract Administrator is authorized on behalf of CONTRACTOR to issue changes whether formal or informal to the respective Order. If Subcontractor considers that any direction or instruction by CONTRACTOR personnel constitutes such a change Subcontractor shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator, as the case may be.
- c. Nothing in this Article, including any disagreement with CONTRACTOR about the equitable adjustment, shall excuse Subcontractor from proceeding with the agreement as changed by the Subcontract Administrator.

17. TERMINATION FOR CONVENIENCE

The CONTRACTOR issuing the BOA may, in its sole discretion, terminate the BOA, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Subcontractor a written notice of termination. The CONTRACTOR issuing the Order may, in its sole discretion, terminate the Order, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the

Subcontractor written notice of termination. Upon receipt of a notice of termination, the Subcontractor shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the CONTRACTOR.

Payment for items already completed or in the process of completion, shall be adjusted between the Subcontractor and the CONTRACTOR in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Subcontractor for termination for convenience by the CONTRACTOR.

18. SUSPENSION

The CONTRACTOR issuing the BOA may, for any reason, direct the Subcontractor to suspend performance of any part of or all of the performance of the BOA for an indefinite period of time. The CONTRACTOR issuing the Order may, for any reason, direct the Subcontractor to suspend performance of any part of or all of the performance of the Order. If any such suspension significantly delays the progress of or causes the Subcontractor additional direct expenses in the performance of the BOA or any Order, not due to the fault or negligence of the Subcontractor, the compensation to the Subcontractor shall be adjusted by a modification to the BOA or any Order and the time of performance shall be extended by the actual duration of the suspension. Any claim by the Subcontractor for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Subcontractor to resume the performance of the BOA or any Order.

19. INCORPORATION BY REFERENCE

The BOA incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) provisions incorporated by reference, "Contractor" means Subcontractor and "Contracting Officer" means the CONTRACTOR Subcontract Administrator.

The following clauses are incorporated by reference:

FAR 52.219-8 Utilization of Small Business Concerns (OCT 2018)

FAR 52.222-26 Equal Opportunity (SEP 2016), (The required poster is available at:
<http://www.dol.gov/dol/esa/public/regs/compliance/posters/eeo.htm>)

FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (Oct 2015), and

FAR 52.222-36 Affirmative Action for Workers with Disabilities (Jul 2014) FAR 52.227-3 Patent Indemnity (APR 1984)

FAR 52.227-9 Refund of Royalties (APR 1984)

FAR 52.222-21 Prohibition of Segregated Facilities (APR 2015)