RFP Questions

Category *Baseline*

Question #	Question	Amend the RFP?
1	In response to Fee Comment #185, DOE stated that "It is DOE's intention to allow the contractor to use the improvements as part of their cost savings under the contract." In response to Baseline Comment #55, however, DOE indicated that the revised baseline to be provided within 6 months after contract award is to include "changes from the due diligence review, baseline improvements (as proposed by the Offeror), as well as guidance from DOE with respect to the funding profile." The fact that DOE will allow the contractor to use the improvements as part of their cost savings under the contract implies that DOE will establish the cost and schedule targets based upon the baseline that results from due diligence and the incorporation of DOE funding guidance. If the impacts of due diligence and DOE' funding guidance are combined with baseline improvements (as proposed by the Offeror) in a single revised baseline, it will be impossible to assess the individual impacts of the three items and to "move" cost and schedule targets in a fair and equitable manner as stated in Section B.6. DOE is requested to provide definitive guidance on the intended approach to be followed to establish the baseline, post award. It is recommended that the revised baseline be provided to DOE in two steps. The first deliverable would include the impacts of the due diligence review and DOE's funding guidance. The second would further include the impacts of baseline improvements (as proposed by the Offeror). Only in this manner can the DOE and the Contractor perform a valid assessment of the cost and schedule impacts that result from the proposed baseline improvements. **Answer** The DOE response to Baseline Comment #55 was incorrect. The revised baseline required to be submitted within six (6) months of contract award should not include the baseline improvements proposed by the Offeror in its proposal. The revised baseline should include the impacts of the due diligence review, incorporate DOE technical changes, and incorporate changes based upon guidance from DOE with respect to the funding profile. Because the proposed baseline improvements will not be incorporated into the revised baseline, the savings from the improvements will be carried as a variance to the baseline. By carrying the savings as a variance, the cost savings will be more readily visible. Also, it is not the intention of DOE to have the baseline submitted in two steps as requested in the above question. DOE feels it can perform a valid assessment of the cost and schedule impacts in the method described. Therefore, multiple submittals are not required.	☐

Question #	Question	Amend the RFP?
3	In response to Baseline Comment 110, DOE states, "If the target date for Site Completion is shifted due to the re-evaluation by DOE, the date for Legacy Facility Completion may shift as well, relative to the change in the Target Date." While this statement was made in the comment response, it appears to have been omitted from the text in the RFP. Since the RFP takes precedent over comment responses, we request that DOE incorporate the above text in Section B of the RFP. **Answer** The Legacy Facility Completion date is subject to adjustment and may shift. A shift in the Legacy Facility Completion date will be based on the aggressiveness of the Contractor's proposal and revised baseline, and will be at the discretion of the Contracting Officer. For clarity Section B.6 of the RFP will be revised.	☑

Question #	Question	Amend the RFP?
8	Section B.7.a states that the Contractor will not receive credit for a cost reduction that is "driven by competition (Low Bid/Proposal)." Thus, if a competed subcontract is awarded at a cost less than the baseline estimate, the Contractor receives no credit for the savings. Conversely, Section B.7.b states that the target cost will not change as a result of "poor engineering or estimating by Contractor or subcontractor." Thus, if a competed subcontract is awarded at a cost greater than the baseline estimate, the Contractor is penalized. In spite of the fact that the Contractor must prepare estimates for all subcontracts within the 6 month period provided for rebaselining, in all possible scenarios for using subcontractors, the Contractor assumes the total risk and forfeits all potential for earning incentive fee. Award Below Estimate — Contractor at Risk — Contractor Receives no Credit for Savings Award at Estimate — Contractor at Risk — Contractor Receives no Credit for Savings Award Above Estimate — Contractor at Risk — Contractor Penalized Section B.7 removes Contractor incentive for subcontracting, since the only way to earn credit against target cost is through self-performance. The revised baseline is subject to independent Government validation before DOE establishes the revised target cost and schedule, so it would seem reasonable for the contractor to be eligible for all the potential benefits that go with the risk of projecting subcontracting costs for the remainder of the contract. We therefore request that if bids received from subcontractors are lower than the baseline estimate, DOE consider this a positive variance from the baseline cost target. **Answer** Since the revised baseline is subject to independent Government validation before DOE establishes the revised target cost and schedule, the contractor will be eligible for all the potential benefits of subcontract cost that are below the baseline cost. So, Subcontract cost reduction will be added to the table in Section B.7.b and carried as a positive variance.	☑

Question #	Question	Amend the RFP?
10	In Sections B.1 and B.4, the DOE establishes a Not-to-Exceed Estimated Cost of $1,000,000 for transition (Statement of Work Item C-7) and states that "No costs above the limitation will be authorized." Section C-3 of the SOW, however, requires that the Contractor prepare and submit to DOE, within six months of contract award, a revised baseline that includes the results of a Due Diligence Review and incorporates guidance from DOE relative to the funding profile. The creation of the revised baseline will require a detailed estimate of the entire Fernald Environmental Management Project, which is beyond the scope of Section C.7, Transition. What funding provisions is DOE providing for preparation of the revised baseline? **Answer** The $1M ceiling is limited to work charged for transition purposes only. Section C-7 of the Statement of Work (SOW) contains examples of transition-related actions which would be charged to the transition funds. Costs of other normal business activities which must be conducted concurrent with any transition activities, such as preparation of the revised baseline, will be funded by DOE as allowable costs under this contract. However, such costs will not be charged to those funds set aside for transition activities.	☑

Question #	Question	Amend the RFP?
13	Part IV, Section L.18.b.1 - Baseline Improvement, States that "The Offeror will describe three (3) potential improvements to the baseline that will achieve critical path schedule efficiencies in executing the Statement of Work utilizing the information provided on the SEB Web Page at http://www.ohio.doe.gov/fernald." While reference data provided by DOE include the baseline and schedules at multiple levels, none of the references define the critical path. What is the critical path that the Contractor should employ to demonstrate the schedule efficiencies requested in L.18.b.1?	☑

Answer

The term "critical path schedule efficiencies" used in the RFP was intended to imply a significant savings of time to key projects or activities which result in overall acceleration of the project based on the three baseline improvements. To avoid confusion, the words "critical path schedule efficiencies" will be replaced with "significant schedule efficiencies which result in overall acceleration of the project" in the referenced text and elsewhere in the RFP where it is used in a similar context.

Category: *Clauses*

Question #	Question	Amend the RFP?
11	Please clarify the response to Comment # 122. Although "similar" provisions were used in the Rocky Flats contract, the provisions are not identical, and that was the basis for the original question. The Rocky Flats contract incorporated performance guarantees that clearly indicate that the parent's guarantee does not make it liable under any circumstance when the Kaiser-Hill joint venture would not have been liable under the original contract. The guarantee in this RFP is not clear on this point. Normally, a contractual guarantee is no broader than the underlying contractual commitments. If that is DOE's intent here, please confirm. If not, please clarify the areas where the parent is expected to be liable even though the original contract imposes no liability or provides an adequate defense to the contracting party.	☑

Answer

We have reviewed your comment and modified the solicitation. The modification was made taking original comment number 122 into account as part of your underlying question. Comment number 122 was an objection to the parent/successor being liable where the parent declares bankruptcy.

Category: *Evaluation Criteria*

Question #	Question	Amend the RFP?
15	Section L.18.b.1.(a).4 of the draft RFP required targets for small and small disadvantaged businesses for the first five years of the contract. The same section of the final RFP is limited to Small Disadvantaged Businesses. The evaluation criteria, Section M.4 .(a).1.A., include an evaluation of the "extent to which Small Business concerns will participate in overall contract performance." To meet the evaluation criteria of the RFP, Section M.4.(a).1.A., is the Offeror to address Small Business concerns in the section of the proposal outlined by RFP Section L.18.b.1.(a).4, although the inclusion of Small Business is not specifically required by Section L?	☑

Answer

Although Small Business is not specifically required by Section L.18.b.1.(a)4, it is required in Section L.17.e. Section L.18.b.1.(a)4 will be amended to address the requirements included in Section L.17.e.

Category: *Fee*

Question #	Question	Amend the RFP?
2	DOE declined a suggestion that the process of establishing revised Targets after completion of the revised baseline be subject to the "Disputes" process of the contract. Although establishment of the revised targets are to be "subject to fair negotiation," DOE reserves the right to "establish the target cost and fee unilaterally." In light of this response, please clarify the process DOE intends to follow in establishing the revised target cost and schedule, including example scenarios demonstrating how the share lines and targets may be changed based on an Offeror's revised baseline. Finally, as DOE is reserving the right to establish unilaterally the most critical terms of the contract regarding the contractor's ability to earn fee, please explain the basis for DOE's conclusion that the original contract would have the mutuality of obligation necessary to create a binding contract. While many standard Federal Acquisition Regulation clauses provide Contracting Officers with the unilateral right to make various final decisions, this right is normally balanced by the contractor's right under the contract's "Disputes" Clause (and the Contract Disputes Act) to appeal. In the absence of further clarification, we recommend a disputes clause to ensure that the establishment of targets is "subject to fair negotiations." ***Answer*** We have considered your question, which is a follow-up question to one previously submitted in response to the draft RFP. The language of the final RFP is sufficient as currently drafted as DOE intends to work closely and diligently with the Contractor to ensure that a fair target is achieved.	☐

Question #	Question	Amend the RFP?
4	Please clarify DOE's intent regarding the Legacy Facility Completion Fee. As noted in Clause B.6, there is to be no adjustment to this fee once it is earned. This is logical, and we assume the contractor would receive full payment for any Legacy Facility Completion Fee earned in the next regular invoice. It seems unlikely that there should be any issue regarding availability of appropriated funds as sufficient funds to cover this obligation should already be available because of the requirements of the Antideficiency Act. To be obligated, the funds must be budgeted and appropriated. In this context, what is meant by the statement in Section B.6 that DOE will pay the Legacy Facility Completion fee "subject to the availability of appropriated funds?" ***Answer*** Your assumption is incorrect. Achievement of activities required for Legacy Facility Completion will not result in payment of the $20 million incentive in a lump sum. As stated in Clause B.6 (Schedule Incentive), an additional $20 million in Schedule Fee will be added to the Site Completion Schedule Fee for attaining Legacy Facility Completion by September 30, 2005. This additional $20 million will be reduced on a straight line basis to zero if Legacy Facility Completion is not achieved by December 31, 2006. Any amount of additional funds related to achievement of Legacy Facility Completion that is added to the Site Completion Schedule Fee will be paid provisionally up to 75% on a quarterly basis, pro-rated per month to the Target Completion date, subject to the availability of funds. Also see Clause B.8.e in this regard. Also, the Department always intends to be in compliance with the requirements of the Antideficiency Act. The term "subject to availability of appropriated funds" is included in the provision because the Department anticipates paying provisionally, as part of the completion fee, once the Legacy Facility goal has been met. The payout will probably cross fiscal years and is therefore "subject to availability" of each year's appropriation. Please note that it is the responsibility of the Contractor to notify the Department when it anticipates achieving cost or schedule incentives in sufficient time to support budget requests. Section B.8.e. of the solicitation has been modified for clarification.	☑

Question #	Question	Amend the RFP?
9	Section B.8, Item f. states that "All fee paid provisionally remains provisional until audit and final closeout of this contract; however, the Contracting Officer will release up to 90% of the fee after Contractor completion of the final punch list items pursuant to Section F.6." All fee under this contract is provisional. Therefore, under this clause, DOE will withhold 10% of total fee until "audit and final closeout of this contract." The time period for audit and final closeout is under the sole control of DOE, leaving the time for final payment indeterminate. Recognizing the high cost of money, the Government has defined reasonable terms and conditions for payment of incentive fee in FAR 52.216-10. In fact, this FAR clause is cited in Section I.89 of the solicitation, but is noted as "Applicable to only the Cost Incentive" and is fully negated since Section B of the RFP takes precedence over Section I. It is recommended that DOE adopt the standard FAR provisions for payment of both cost and schedule fee. If not, please include definitive payment terms that reduce total withholding commensurate with the value of potential discrepancies that may exist following completion of a final punch list and prior to the audit and final contract closeout. **Answer** To protect the Government's interest, the amount of the fee withheld should be commensurate with the value of potential disagreement regarding the incurred cost for the final year, as well as the value of potential discrepancies as indicated in your comment. After consideration of your comment, the paragraph in Section B.8.f. has been revised as follows: "All fee paid provisionally remains provisional until audit and final closeout of this contract. After DOE review and acceptance of the Contractor's Final Declaration of Completion as required by Section F.6, the Contracting Officer will release up to 90% of the cost and schedule fee anticipated to be earned, retaining an amount determined to be necessary for settlement of the incurred costs and/or completion of performance. After receipt of the information required for the annual incurred cost audit and the final indirect cost rate proposal covering the year of physical completion of the contract, the Contracting Officer will release 75% of all cost and schedule fees withheld (provided the Contractor has satisfied all other contract terms and conditions, including submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements). The Contracting Officer may release a higher percentage of the cost and schedule fee withheld if the retainage is considered to be higher than the future settlements".	☑

Category *Project/SOW*

Question #	Question	Amend the RFP?
6	Section B.7 states that changes beyond Contractor control that will result in negotiated changes to target cost and schedule include "New scope that exceeds the defined baseline scope by more than 10%." Is this a percentage of a PBS, a WBS element, or the total project cost? If the 10% applies to the total project cost, the Contractor could lose the ability to earn more than 50 percent of the total cost and schedule incentives due to "changes that are beyond Contractor control" before any negotiated changes would occur. **Answer** The 10% change is a change to the baseline scope of a specific Project Baseline Summary (PBS). Additionally, the 10% change threshold is for increases or reductions to changes in existing scope. Changes due to new scope will not be restricted by a threshold.	☑

Question #	Question	Amend the RFP?
7	Section B.7 states that changes beyond Contractor control that will result in negotiated changes to target cost and schedule include "New scope that exceeds the defined baseline scope by more than 10%." It is assumed that the "changes" referred to in this clause are cumulative and not single-occurrence. Is this correct?	☑

Answer

The 10% is cumulative within a specific PBS. However, it is not cumulative among two or more PBSs. Additionally, the 10% change threshold is for increases or reductions to changes in existing scope. Changes due to new scope will not be restricted by a threshold.

Category — Proposal Preparation Instructions

Question #	Question	Amend the RFP?
12	In the response to Baseline Comment #8, DOE stated, "For purposes of proposal submission by offerors and proposal evaluation by DOE, the funding levels provided in Section B.6 are to be utilized." The term "funding levels" is not used in Section B.6 except to clarify the "actual FY2000 funding level." Section B.6 does, however, provide a table containing the "Current FEMP Baseline dated March 26, 2000" and a "Planning level for FY2001 and beyond," (approximately $290 million per year). In preparing their proposal, should offerors use: a. The data referred to in Section B.6 as the "Current FEMP Baseline dated March 26, 2000," or b. The data referred to in Section B.6 and the "Planning level for FY2001 and beyond?"	☐

Answer

For purposes of proposal submission by Offerors and proposal evaluation by DOE, the figures identified as "Current FEMP Baseline dated March 26, 2000" should be used. The $290 million per year Planning level for FY2001 and beyond was provided for informational purposes only.

Question #	Question	Amend the RFP?
16	Section L.18.b.1.(a).4 of the draft RFP required targets for small and small disadvantaged businesses for the first five years of the contract. The same section of the final RFP is limited to Small Disadvantaged Businesses and requires targets for "each year." For which years should the Offeror provide targets (e.g., the first five years)?	☐

Answer

The Offeror shall provide targets for Small Disadvantaged Businesses for each year of the contract, e.g., FY2001 through contract completion (FY2010). These targets are in addition to the Small Business Subcontracting Plan goals required by Clause 52.219.9 in Section I.

Question #	Question	Amend the RFP?
17	Section H.8.c. of the RFP states that "The Contractor agrees to accept transfer of existing subcontracts as determined necessary by DOE for continuity of operations." Section J, Attachment 5 provides a list of subcontracts. Which of the subcontracts listed in Section J, Attachment 5 have been determined necessary by DOE for continuity of operations? For example, are non-binding staff augmentation BOA contracts listed in Section J, Attachment 5 considered necessary by DOE for continuity of operations.	☐

Answer

The subcontracts to be assumed by the follow-on contractor will include all binding agreements that extend beyond the period of performance of the current contract, whether or not they are listed in Attachment 5. The contractor may also request assignment of some non-binding subcontracts to facilitate continuity. Such non-binding subcontract requests will be considered for assignment on a case-by-case basis.

Question #	Question	Amend the RFP?
18	Section L.24.f. of the RFP states that "The SEB will provide any supplemental written materials necessary for the oral interviews to the participants at the oral interviews. The Offerors are not to bring written materials to the oral interviews, unless specifically instructed to do so by the Contracting Officer." Section L.24.b., however, indicates that for the first hour of the oral presentation, "each of the Offeror's Key Personnel will briefly summarize their background and their proposed position within the Contractor's organization." May the Offeror bring slides, overheads, or some other form of presentation media to support this portion of the orals?	☐

Answer

No. DOE will not, at this time, allow additional presentation media to support the Key Personnel's presentation of their background and position in the organization. If DOE subsequently determines that any additional written or other materials become necessary, offerors will be notified and given sufficient time to prepare the materials in advance of the orals.

Category *Safety*

Question #	Question	Amend the RFP?
5	Section B.9.(a) states in part, "If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system, the Contracting Officer, at his/her sole discretion, may deduct fee by an amount up to the provisional amount paid, or to be paid, in any fiscal year." In this context: - The criteria that DOE will employ in reviewing and approving the Safety Management System, and the minimum performance requirements" contained therein, are not defined in the RFP, - The "minimum performance requirements" that the Contractor must include in the document to assure DOE approval of the Safety Management System are not defined in the RFP, - The time required by DOE to review and approve the Safety Management System is not defined in the RFP, - The consequences of failing to include undefined requirements (i.e., "minimum performance requirements") and meet undefined schedule objectives include the loss of up to the provisional fee to be paid in any fiscal year, and - The assessment of the penalty is at the "sole discretion" of the Contracting Officer. The combination of the above items would allow DOE to unilaterally prescribe the contents of a Safety Management System, which are pivotal to the Contractor's ability to perform work and the potential for fee deductions under the contract. At the same time, the Contractor would have no recourse other than to accept DOE's requirements or default on the contract. Based upon the severity of penalties associated with the above requirements, we request that DOE a) provide concise direction in the RFP regarding the specific "minimum performance requirements" that must be contained in the Safety Management System to assure DOE approval in the specified time frame or b) make the contents and DOE's approval of the document subject to disputes resolution.	☐

Answer

As stated in the RFP Statement of Work, Section C-5.1 "the Contractor will not be required to develop a new Safety Management System Description under the provisions of the RFP Section I clause entitled DEAR 970-5204-2, "Integration of Environment, Safety and Health into Work Planning and Execution." At contract award, DOE considers the currently approved and implemented system adequate to meet the minimum performance requirements. An annual review of the Safety Management System (System) beginning January 31, 2001 will verify the System's content and implementation continue to be in accordance with the clause entitled DEAR 970-5204-2, "Integration of Environment, Safety and Health into Work Planning and Execution" and with the DOE ISMS implementation documents including DOE P 450.4 "Safety Management System Policy" and DOE P450.5 "Line Environment, Safety and Health Oversight" which are requirements of the RFP Section J, Attachment 2.

Question #	Question	Amend the RFP?
14	Part I, Clause I.43, paragraph requires that the Offeror list any hazardous material to be delivered under the contract. Paragraph (d) requires the "apparently successful Offeror" to submit Material Safety Data Sheets for all hazardous material listed in the response to paragraph (b). Paragraph (d) further states that "Failure to submit the Material Safety Data Sheets prior to award may result in the apparently successful Offeror being considered nonresponsible and ineligible for award." Please clarify the applicability of this clause to the current solicitation. Specifically, is the list required by paragraph (b) to be submitted with the Offeror's proposal? If yes, in what Volume of the proposal is the list to be included?	☐
	Answer	
	The data submission required by clause I.43.52.223-3 "Hazardous Material Identification and Material Safety Data" (1/97), paragraph (b) is required to be included as part of the Offeror's proposal Volume I. The clause fill-in may reference the data as provided separately with the Offer.	